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14

Parts 200 to 1199

Revised as of January 1, 2005

Aeronautics and Space

Containing a codification of documents of general applicability and future effect

As of January 1, 2005

With Ancillaries

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Cite this Code: CFR

To cite the regulations in this volume use title, part and section number. Thus, 14 CFR 200.1 *refers to title 14, part 200, section 1.*

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Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16.....as of January 1
Title 17 through Title 27.....as of April 1
Title 28 through Title 41.....as of July 1
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An index to the text of ''Title 3—The President'' is carried within that volume.

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RAYMOND A. MOSLEY,
Director,
Office of the Federal Register.

January 1, 2005.

THIS TITLE

Title 14—AERONAUTICS AND SPACE is composed of five volumes. The parts in these volumes are arranged in the following order: parts 1–59, 60–139, 140–199, 200–1199, and part 1200–End. The first three volumes containing parts 1–199 are comprised of chapter I—Federal Aviation Administration, Department of Transportation (DOT). The fourth volume containing parts 200–1199 is comprised of chapter II—Office of the Secretary, DOT (Aviation Proceedings) and chapter III—Commercial Space Transportation, Federal Aviation Administration, DOT. The fifth volume containing part 1200–End is comprised of chapter V—National Aeronautics and Space Administration and chapter VI—Air Transportation System Stabilization. The contents of these volumes represent all current regulations codified under this title of the CFR as of January 1, 2005.

For this volume, Bonnie Fritts was Chief Editor. The Code of Federal Regulations publication program is under the direction of Frances D. McDonald, assisted by Alomha S. Morris.

Title 14—Aeronautics and Space

(This book contains parts 200 to 1199)

Part

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CHAPTER II—OFFICE OF THE SECRETARY, DEPARTMENT OF TRANSPORTATION (AVIATION PROCEEDINGS)

EDITORIAL NOTE: Chapter II was transferred from the Civil Aeronautics Board to the Department of Transportation on January 1, 1985. For a document giving the disposition of CAB regulations once the Agency ceased to exist, see 50 FR 452, Jan. 4, 1985.

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SUBCHAPTER A—ECONOMIC REGULATIONS

PART 200—DEFINITIONS AND INSTRUCTIONS

Sec.
200.1 Terms and definitions.
200.2 Instructions.

AUTHORITY: 49 U.S.C. Chapters 401, 411, 413, 415, 417, 461.

§ 200.1 Terms and definitions.

Unless otherwise specifically stated, words and phrases other than those listed in this section have the meaning defined in the Statute.

(a) *Board* or *CAB* means the Civil Aeronautics Board.

(b) *Department* or *DOT* means the Department of Transportation.

(c) *Act* means the Federal Aviation Act of 1958, as amended.

(d) *Section* refers to a section of the Statute or a section of the regulations in this chapter, as indicated by the context. The terms *this section, pursuant to this section, in accordance with the provisions of this section,* and words of similar import when used in this chapter refer to the section of this subchapter in which such terms appear.

(e) *Rule, regulation,* and *order* refer to the rules, regulations, and orders prescribed by the Board or the Department pursuant to the Statute.

(f) *Statute* when used in this chapter means Subtitle VII of Title 49 of the United States Code (Transportation).

(g) *FAA* means the Federal Aviation Administration, U.S. Department of Transportation.

(h) *BTS* means the Bureau of Transportation Statistics, U.S. Department of Transportation.

[Doc. No. 47939, 57 FR 40100, Sept. 2, 1992, as amended by Amdt. No. OST–95–397, 60 FR 43523, Aug. 22, 1995; 60 FR 66722, Dec. 26, 1995]

§ 200.2 Instructions.

The regulations of the Department may be cited by section numbers. For example, this regulation may be cited as ''§ 200.2 of the Aviation Economic Regulations.'' The sections contained in the Rules of Practice may also be cited by appropriate rule numbers. (See § 302.1(c) of this chapter.) For example, 14 CFR 302.10 may be cited as ''rule 10 of the Rules of Practice.''

[Doc. No. 47939, 57 FR 40100, Sept. 2, 1992, as amended at 65 FR 6456, Feb. 9, 2000]

PART 201—AIR CARRIER AUTHORITY UNDER SUBTITLE VII OF TITLE 49 OF THE UNITED STATES CODE—[AMENDED]

Subpart A—Application Procedures

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201.1 Formal requirements.
201.2 Amendments.
201.3 Incorporation by reference.
201.4 General provisions concerning contents.
201.5 Advertising and sales by applicants.

Subpart B—Certificate Terms, Conditions, and Limitations

201.6 Applicability.
201.7 General certificate conditions.

AUTHORITY: 5 U.S.C. 1008; 49 U.S.C. Chapters 401, 411, 413, 415, 417.

SOURCE: Docket No. 47582, 57 FR 38765, Aug. 27, 1992, unless otherwise noted.

Subpart A—Application Procedures

§ 201.1 Formal requirements.

(a) Applications for certificates of public convenience and necessity under section 41102 of the Statute and for interstate all-cargo air transportation certificates under section 41103 of the Statute shall meet the requirements set forth in part 302 of this chapter as to general requirements, execution, number of copies, service, and formal specifications of papers.

(b) Any person desiring to provide air transportation as a commuter air carrier must comply with the registration provisions of part 298 of this chapter and submit data to support a fitness determination in accordance with part 204 of this chapter. An executed original plus two (2) true copies of the fitness data shall be filed with DOT Dockets, PL–401, 400 7th Street, SW., Washington, DC 20590–0002. Requests for confidential treatment of documents

should be filed in accordance with the requirements of part 302 of this chapter.

(Approved by the Office of Management and Budget under control number 2106–0023)

[Docket No. 47582, 57 FR 38765, Aug. 27, 1992, as amended at 60 FR 43523, Aug. 22, 1995; 64 FR 3212, Jan. 21, 1999]

§ 201.2 Amendments.

If, after receipt of any application, the Department asks the applicant to supply additional information, such information shall be furnished in the form of a supplement to the original application.

§ 201.3 Incorporation by reference.

Incorporation by reference shall be avoided. However, where two or more applications are filed by a single carrier, lengthy exhibits or other documents attached to one may be incorporated in the others by reference if that procedure will substantially reduce the cost to the applicant.

§ 201.4 General provisions concerning contents.

(a) All pages of an application shall be consecutively numbered, and the application shall clearly describe and identify each exhibit by a separate number or symbol. All exhibits shall be deemed to constitute a part of the application to which they are attached.

(b) All amendments to applications shall be consecutively numbered and shall comply with the requirements of this part.

(c) Requests for authority to engage in interstate air transportation shall not be included in the same application with requests for authority to engage in foreign air transportation. Similarly, requests for authority to engage in scheduled air transportation under section 41102 of the Statute shall not be included in the same application with requests for authority to engage in charter air transportation under section 41102 of the Statute or with requests for authority to engage in interstate all-cargo air transportation under section 41103 of the Statute.

(d) Each application shall specify the type or types of service (passengers, property or mail) to be rendered and whether such services are to be rendered on scheduled or charter operations.

(e) Each application for foreign scheduled air transportation shall include an adequate identification of each route for which a certificate is desired, including the terminal and intermediate points to be included in the certificate for which application is made.

(f) Each application shall give full and adequate information with respect to each of the relevant filing requirements set forth in part 204 of this chapter. In addition, the application may contain such other information and data as the applicant shall deem necessary or appropriate in order to acquaint the Department fully with the particular circumstances of its case; however, the statements contained in an application shall be restricted to significant and relevant facts.

(Approved by the Office of Management and Budget under control number 2106–0023)

[Docket No. 47582, 57 FR 38765, Aug. 27, 1992, as amended at 60 FR 43523, Aug. 22, 1995]

§ 201.5 Advertising and sales by applicants.

(a) An applicant for new or amended certificate or commuter air carrier authority shall not:

(1) Advertise, list schedules, or accept reservations for the air transportation covered by its application until the application has been approved by the Department; or

(2) Accept payment or issue tickets for the air transportation covered by its application until the authority or amended authority has become effective or the Department issues a notice authorizing sales.

(b) An applicant for new or amended certificate or commuter air carrier authority may not advertise or publish schedule listings for the air transportation covered by its application after the application has been approved by the Department (but before all authority issued by DOT, including the FAA, becomes effective) unless such advertising or schedule listings prominently state: ''This service is subject to receipt of government operating authority.''

Subpart B—Certificate Terms, Conditions, and Limitations

§ 201.6 Applicability.

Unless the certificate or the order authorizing its issuance shall otherwise provide, such terms, conditions and limitations as are set forth in this part, and as may from time to time be prescribed by the Department, shall apply to the exercise of the privileges granted by each certificate issued under section 41102 or section 41103 of the Statute.

[Docket No. 47582, 57 FR 38765, Aug. 27, 1992, as amended at 60 FR 43523, Aug. 22, 1995]

§ 201.7 General certificate conditions.

(a) It shall be a condition upon the holding of a certificate that any intentional failure by the holder to comply with any provision of Statute or any order, rule, or regulation issued thereunder or any term, condition, or limitation of such certificate shall be a failure to comply with the terms, conditions, and limitations of the certificate within the meaning of section 41110 of the Statute even though the failure to comply occurred outside the territorial limits of the United States, except to the extent that such failure shall be necessitated by an obligation, duty, or liability imposed by a foreign country.

(b) Failure to file the reports required by part 241, 291, or 298 of this chapter shall be sufficient grounds to revoke a certificate.

(c) The authority to transport U.S. mail under a certificate is permissive, unless the Department, by order or rule, directs a carrier or class of carriers to transport mail on demand of the U.S. Postal Service; such certificate confers no right to receive subsidy, for the carriage of mail or otherwise.

(d) An all-cargo air transportation certificate shall confer no right to carry passengers, other than cargo attendants accompanying a shipment, or to engage in any air transportation outside the geographical scope of interstate cargo transportation. Such certificate shall not, however, restrict the right of the holder to provide scheduled, charter, contract, or other transportation of cargo, by air, within that geographical scope.

(e) It shall be a condition upon the holding of a certificate that the holder have and maintain in effect and on file with the Department a signed counterpart of Agreement 18900 (OST Form 4523), and a tariff (for those carriers otherwise generally required to file tariffs) that includes its terms, and that the holder comply with all other requirements of part 203. OST Form 4523 may be obtained from the Office of Aviation Analysis, Special Authorities Division.

[Docket No. 47582, 57 FR 38765, Aug. 27, 1992, as amended at 60 FR 43523, Aug. 22, 1995]

PART 203—WAIVER OF WARSAW CONVENTION LIABILITY LIMITS AND DEFENSES

Sec.

203.1 Scope.
203.2 Applicability.
203.3 Filing requirements for adherence to Montreal Agreement.
203.4 Montreal Agreement as part of airline-passenger contract and conditions of carriage.
203.5 Compliance as condition on operations in air transportation.

AUTHORITY: 49 U.S.C. Chapters 401, 411, 413, 415, 417.

SOURCE: ER–1324, 48 FR 8044, Feb. 25, 1983, unless otherwise noted.

§ 203.1 Scope.

This part requires that certain U.S. and foreign direct air carriers waive the passenger liability limits and certain carrier defenses in the Warsaw Convention in accordance with the provisions of Agreement 18900, dated May 13, 1966, and provides that acceptance of authority for, or operations by the carrier in, air transportation shall be considered to act as such a waiver by that carrier.

[ER–1324, 48 FR 8044, Feb. 25, 1983, as amended by Docket No. 47939, 57 FR 40100, Sept. 2, 1992]

§ 203.2 Applicability.

This part applies to all direct U.S. and foreign direct air carriers, except for air taxi operators as defined in part

298 of this chapter that (a) are not commuter air carriers, (b) do not participate in interline agreements, and (c) do not engage in foreign air transportation.

§ 203.3 Filing requirements for adherence to Montreal Agreement.

All direct U.S. and foreign air carriers shall have and maintain in effect and on file in the Department's Documentary Services Division (Docket 17325) on OST Form 4523 a signed counterpart to Agreement 18900, an agreement relating to liability limitations of the Warsaw Convention and Hague Protocol approved by CAB Order E–23680, dated May 13, 1966 (the Montreal Agreement), and a signed counterpart of any amendment or amendments to such Agreement that may be approved by the Department and to which the air carrier or foreign air carrier becomes a party. U.S. air taxi operators registering under part 298 of this chapter and Canadian charter air taxi operators registering under part 294 of this chapter may comply with this requirement by filing completed OST Forms 4507 and 4523, respectively, with the Department's Office of Aviation Analysis. Copies of these forms can be obtained from the Office of Aviation Analysis, Special Authorities Division.

[Docket No. 47939, 57 FR 40100, Sept. 2, 1992, as amended at 60 FR 43523, Aug. 22, 1995]

§ 203.4 Montreal Agreement as part of airline-passenger contract and conditions of carriage.

(a) As required by the Montreal Agreement, carriers that are otherwise generally required to file tariffs shall file with the Department's Tariffs Division a tariff that includes the provisions of the counterpart to Agreement 18900.

(b) As further required by that Agreement, each participating carrier shall include the Agreement's terms as part of its conditions of carriage. The participating carrier shall give each of its passengers the notice required by the Montreal Agreement as provided in § 221.175 of this chapter.

(c) Participation in the Montreal Agreement, whether by signing the Agreement, filing a signed counterpart to it under § 203.3, or by operation of law under § 203.5, shall constitute a special agreement between the carrier and its passengers as a condition of carriage that a liability limit of not less than $75,000 (U.S.) shall apply under Article 22(1) of the Warsaw Convention for passenger injury and death. Such participation also constitutes a waiver of the defense under Article 20(1) of the Convention that the carrier was not negligent.

(The reporting provisions contained in paragraph (a) were approved by the Office of Management and Budget under control number 3024–0064.)

[ER–1324, 48 FR 8044, Feb. 25, 1983, as amended by ER–1338, 48 FR 31013, July 6, 1983; Docket No. 47939, 57 FR 40100, Sept. 2, 1992]

§ 203.5 Compliance as condition on operations in air transportation.

It shall be a condition on the authority of all direct U.S. and foreign carriers to operate in air transportation that they have and maintain in effect and on file with the Department a signed counterpart of Agreement 18900, and a tariff (for those carriers otherwise generally required to file tariffs) that includes its provisions, as required by this subpart. Notwithstanding any failure to file that counterpart and such tariff, any such air carrier or foreign air carrier issued license authority (including exemptions) by the Department or operating in air transportation shall be deemed to have agreed to the provisions of Agreement 18900 as fully as if that air carrier or foreign air carrier had in fact filed a properly executed counterpart to that Agreement and tariff.

[ER–1324, 48 FR 8044, Feb. 25, 1983, as amended by Docket No. 47939, 57 FR 40100, Sept. 2, 1992]

PART 204—DATA TO SUPPORT FITNESS DETERMINATIONS

Subpart A—General Provisions

Sec.

204.1 Purpose.
204.2 Definitions.

Subpart B—Filing Requirements

204.3 Applicants for new certificate or commuter air carrier authority.

204.4 Carriers proposing to provide essential air service.
204.5 Certificated and commuter air carriers undergoing or proposing to undergo substantial change in operations, ownership, or management.
204.6 Certificated and commuter air carriers proposing a change in operations, ownership, or management which is not substantial.
204.7 Revocation for dormancy.

AUTHORITY: 49 U.S.C. Chapters 401, 411, 417.

SOURCE: Docket No. 47582, 57 FR 38766, Aug. 27, 1992, unless otherwise noted.

Subpart A—General Provisions

§ 204.1 Purpose.

This part sets forth the fitness data that must be submitted by applicants for certificate authority, by applicants for authority to provide service as a commuter air carrier to an eligible place, by carriers proposing to provide essential air transportation, and by certificated air carriers and commuter air carriers proposing a substantial change in operations, ownership, or management. This part also contains the procedures and filing requirements applicable to carriers that hold dormant authority.

[Docket No. 47582, 57 FR 38766, Aug. 27, 1992, as amended at 60 FR 43523, Aug. 22, 1995]

§ 204.2 Definitions.

As used in this part:

(a) *All-cargo air carrier or section 41103 carrier* means an air carrier holding an all-cargo air transportation certificate issued under section 41103 of the Statute authorizing the transportation by aircraft in interstate air transportation of only property or only mail, or both.

(b) *Certificate authority* means authority to provide air transportation granted by the Department of Transportation or Civil Aeronautics Board in the form of a certificate of public convenience and necessity under section 41102 of the Statute or an all-cargo air transportation certificate to perform all-cargo air transportation under section 41103 of the Statute. *Certificated carriers* are those that hold certificate authority.

(c) *Citizen of the United States* means:

(1) An individual who is a citizen of the United States;

(2) A partnership each of whose partners is an individual who is a citizen of the United States; or

(3) A corporation or association organized under the laws of the United States or a State, the District of Columbia, or a territory or possession of the United States, of which the president and at least two-thirds of the board of directors and other managing officers are citizens of the United States, and in which at least 75 percent of the voting interest is owned or controlled by persons that are citizens of the United States.

(d) *Commuter air carrier* means an air carrier holding or seeking authority under part 298 of this Chapter that carries passengers on at least five round trips per week on at least one route between two or more points according to its published flight schedules that specify the times, days of the week, and places between which those flights are performed.

(e) *Eligible place* means a place in the United States that—

(1) Was an eligible point under section 419 of the Federal Aviation Act of 1958 as in effect before October 1, 1988;

(2) Received scheduled air transportation at any time between January 1, 1990, and November 4, 1990; and

(3) Is not listed in Department of Transportation Orders 89–9–37 and 89–12–52 as a place ineligible for compensation under Subchapter II of Chapter 417 of the Statute.

(f) *Essential air service* is that air transportation which the Department has found to be essential under Subchapter II of Chapter 417 of the Statute.

(g) *Fit* means fit, willing, and able to perform the air transportation in question properly and to conform to the provisions of the Statute and the rules, regulations and requirements issued under the Statute.

(h) *Interstate air transportation* means the transportation of passengers or property by aircraft as a common carrier for compensation, or the transportation of mail by aircraft—

(1) Between a place in—

(i) A State, territory, or possession of the United States and a place in the

District of Columbia or another State, territory, or possession of the United States;

(ii) Hawaii and another place in Hawaii through the airspace over a place outside Hawaii;

(iii) The District of Columbia and another place in the District of Columbia; or

(iv) A territory or possession of the United States and another place in the same territory or possession; and

(2) When any part of the transportation is by aircraft.

(i) *Key personnel* include the directors, president, chief executive officer, chief operating officer, all vice presidents, the directors or supervisors of operations, maintenance, and finance, and the chief pilot of the applicant or air carrier, as well as any part-time or full-time advisors or consultants to the management of the applicant or air carrier.

(j) *Normalized operations* are those which are relatively free of start-up costs and temporary barriers to full-scale operations posed by the carrier's limited experience.

(k) *Relevant corporations* are the applicant or air carrier, any subsidiary thereof, any predecessor thereof (i.e., any air carrier in which any directors, principal officers or persons having a substantial interest have or once had a substantial interest), and any company (including a sole proprietorship or partnership) which has a significant financial or managerial influence on the applicant or air carrier. The latter includes:

(1) Any company (including a sole proprietorship or partnership) holding more than 50 percent of the outstanding voting stock of the applicant or air carrier; and

(2) Any company (including a sole proprietorship or partnership) holding between 20 percent and 50 percent of the outstanding voting stock of the applicant or air carrier and which has significant influence over the applicant or air carrier as indicated, for example, by 25 percent representation on the board of directors, participation in policy-making processes, substantial inter-company transactions, or managerial personnel with common responsibilities in both companies.

(l) *Substantial change in operations, ownership, or management* includes, but is not limited to, the following events:

(1) Changes in operations from charter to scheduled service, cargo to passenger service, short-haul to long-haul service, or (for a certificated air carrier) small-aircraft to large-aircraft operations;

(2) The filing of a petition for reorganization or a plan of reorganization under Chapter 11 of the federal bankruptcy laws;

(3) The acquisition by a new shareholder or the accumulation by an existing shareholder of beneficial control of 10 percent or more of the outstanding voting stock in the corporation; and

(4) A change in the president, chief executive officer or chief operating officer, and/or a change in at least half of the other key personnel within any 12-month period or since its latest fitness review, whichever is the more recent period.

(m) *Substantial interest* means beneficial control of 10 percent or more of the outstanding voting stock.

[Docket No. 47582, 57 FR 38766, Aug. 27, 1992, as amended at 60 FR 43523, Aug. 22, 1995; 64 FR 12085, Mar. 11, 1999]

Subpart B—Filing Requirements

§ 204.3 Applicants for new certificate or commuter air carrier authority.

An applicant for a type of certificate authority it does not currently hold or for commuter air carrier authority shall file the data set forth in paragraphs (a) through (v) of this section. In addition, the Department may require an applicant to provide additional data if necessary to reach an informed judgment about its fitness. If the applicant has previously formally filed any of the required data with the Department or with another Federal agency and they are available to the Department, and those data continue to reflect the current state of the carrier's fitness, the applicant may instead identify the data and provide a citation for the date(s) and place(s) of filing. Prior to filing any data, the applicant may contact the Air Carrier Fitness Division to ascertain what data required by this section are already

available to the Department and need not be included in the filing.

NOTE: If the applicant intends to use as evidence data it has previously filed pursuant to part 241 reporting requirements and those data contain errors, the applicant must first file corrected reports in accordance with § 241.22(g).

(a) The name, address, and telephone number of the applicant.

(b) The form of the applicant's organization.

(c) The State law(s) under which the applicant is organized.

(d) If the applicant is a corporation, a statement provided by the Office of the Secretary of State, or other agent of the State in which the applicant is incorporated, certifying that the applicant corporation is in good standing.

(e) A sworn affidavit stating that the applicant is a citizen of the United States.

(f) The identity of the key personnel who would be employed by the applicant, including:

(1) Their names and addresses;

(2) The experience, expertise, and responsibilities of each;

(3) The number of shares of the applicant's voting stock held by each and the percentage of the total number of such shares issued and outstanding, and the citizenship and principal business of any person for whose account, if other than the holder, such interest is held;

(4) The citizenship of each; and

(5) A description of the officerships, directorships, shares of stock (if 10 percent or more of total voting stock outstanding), and other interests each holds or has held in any air carrier, foreign air carrier, common carrier, person substantially engaged in the business of aeronautics or persons whose principal business (in purpose or fact) is the holding of stock in or control of any air carrier, common carrier or person substantially engaged in the business of aeronautics.

(g) A list of all persons having a substantial interest in the applicant. Such list shall include:

(1) Each person's name, address and citizenship;

(2) The number of shares of the applicant's voting stock held by each such person and the corresponding percentage of the total number of such shares issued and outstanding, and the citizenship and principal business of any person for whose account, if other than the holder, such interest is held;

(3) If any two or more persons holding a substantial interest in the applicant are related by blood or marriage, such relationship(s) shall be included in the list; and

(4) If any person or subsidiary of a person having a substantial interest in the applicant is or has ever been

(i) An air carrier, a foreign air carrier, a common carrier, or

(ii) Substantially engaged in the business of aeronautics, or

(iii) An officer or director of any such entity, or

(iv) A holder of 10 percent or more of total outstanding voting stock of any such entity, the list shall describe such relationship(s).

(h) A list of the applicant's subsidiaries, if any, including a description of each subsidiary's principal business and relationship to the applicant.

(i) A list of the applicant's shares of stock in, or control of, any air carrier, foreign air carrier, common carrier, or person substantially engaged in the business of aeronautics.

(j) To the extent any relevant corporation has been engaged in any business prior to the filing of the application, each applicant shall provide:

(1) Copies of the 10K Annual Reports filed in the past 3 years by any relevant corporation required to file such reports with the Securities and Exchange Commission, and

(2) Copies of recently filed 10Q Quarterly Reports, as necessary, in order to show the financial condition and results of operations of the enterprise current to within 3 months of the date of the filing of the application.

(k) If 10K Reports are not filed with the Securities and Exchange Commission, the following, for the 3 most recent calendar or fiscal years, reflecting the financial condition and results of operations of the enterprise current to within 3 months of the date of the filing of the application:

(1) The Balance Sheet of each relevant corporation;

(2) The Income Statement of each relevant corporation;

(3) All footnotes applicable to the financial statements, including:

(i) A statement as to whether the documents were prepared in accordance with Generally Accepted Accounting Principles, and

(ii) A description of the significant accounting policies of each relevant corporation, such as for depreciation, amortization of intangibles, overhauls, unearned revenues, and cost capitalization;

(4) A statement of significant events occurring subsequent to the most recent Balance Sheet date for each relevant corporation; and

(5) A statement identifying the person who has prepared the financial statements, his or her accounting qualifications, and any affiliation he or she has with the applicant.

(l) A list of all actions and outstanding judgments for more than $5,000 against any relevant corporation, key personnel employed (or to be employed) by any relevant corporation, or person having a substantial interest in any relevant corporation, including the amount of each judgment, the party to whom it is payable, and how long it has been outstanding.

(m) The number of actions and outstanding judgments of less than $5,000 against each relevant corporation, key personnel employed (or to be employed) by any relevant corporation, or person having a substantial interest in any relevant corporation, and the total amount owed by each on such judgments.

(n) A description of the applicant's fleet of aircraft, including:

(1) The number of each type of aircraft owned, leased and to be purchased or leased;

(2) Applicant's plans, including financing plans, for the purchase or lease of additional aircraft; and

(3) A sworn affidavit stating that each aircraft owned or leased has been certified by the FAA and currently complies with all FAA safety standards.

(o) A description of the current status of all pending investigations, enforcement actions, and formal complaints filed by the Department, including the FAA, involving the applicant or any relevant corporation, any personnel employed (or to be employed) by any relevant corporation or person having a substantial interest in any relevant corporation, regarding compliance with the Statute or orders, rules, regulations, or requirements issued pursuant to the Statute, and any corrective actions taken. (If an applicant has a compliance history that warrants it, additional information may be required.)

(p) A description of all charges of unfair or deceptive or anticompetitive business practices, or of fraud, felony or antitrust violation, brought against any relevant corporation or person having a substantial interest in any relevant corporation, or member of the key personnel employed (or to be employed) by any relevant corporation in the past 10 years. Such descriptions shall include the disposition or current status of each such proceeding.

(q) A description of any aircraft accidents or incidents (as defined in the National Transportation Safety Board Regulations, 49 CFR 830.2) experienced by the applicant, its personnel, or any relevant corporation, which occurred either during the year preceding the date of application or at any time in the past and which remain under investigation by the FAA, the NTSB, or by the company itself, including:

(1) The date of the occurrence;

(2) The type of flight;

(3) The number of passengers and crew on board and an enumeration of any injuries or fatalities;

(4) A description of any damage to the aircraft;

(5) The FAA and NTSB file numbers and the status of the investigations, including any enforcement actions initiated against the carrier or any of its personnel; and

(6) Positive actions taken to prevent recurrence. (If an applicant's history of accidents or incidents warrants it, additional information may be required.)

(r) A brief narrative history of the applicant.

(s) A description of all Federal, State and foreign authority under which the applicant has conducted or is conducting transportation operations, and the identify of the local FAA office and personnel responsible for processing an

application for any additional FAA authority needed to conduct the proposed operations.

(t) A description of the service to be operated if the application is granted, including:

(1) A forecast Balance Sheet for the first normal year ending after the initially proposed operations have been incorporated, along with the assumptions underlying the accounts and amounts shown; and

(2) A forecast Income Statement, broken down by quarters, for the first year ending after the initially proposed operations are normalized, and an itemization of all pre-operating and start-up costs associated with the initiation of the proposed service. Such Income Statement shall include estimated revenue block hours (or airborne hours, for charter operators) and revenue miles by type of aircraft, number of passengers and number of tons of mail and cargo to be carried, transport revenues and an estimate of the traffic which would be generated in each market receiving the proposed service. Such statements shall also include a statement as to whether the statements were prepared on the accrual or cash basis, an explanation of how the estimated costs and revenues were developed, a description of the manner in which costs and revenues are allocated, how the underlying traffic forecasts were made, and what load factor has been assumed for the average and peak month. Pre-operating and start-up costs should include, but are not limited to, the following: Obtaining necessary government approval; establishing stations; introductory advertising; aircraft, equipment and space facility deposits and rent; training; and salaries earned prior to start-up.

(u) A signed counterpart of Agreement 18900 (OST Form 4523) as required by part 203 of this chapter.

(v) The following certification, which shall accompany the application and all subsequent written submissions filed by the applicant in connection with its application:

Pursuant to title 18 United States Code section 1001, I [the individual signing the application, who shall be a principal owner, senior officer, or internal counsel of the applicant], in my individual capacity and as the authorized representative of the applicant, have not in any manner knowingly and willfully falsified, concealed or covered up any material fact or made any false, fictitious, or fraudulent statement or knowingly used any documents which contain such statements in connection with the preparation, filing or prosecution of the application. I understand that an individual who is found to have violated the provisions of 18 U.S.C. section 1001 shall be fined nor more than $10,000 or imprisoned not more than five years, or both.

(The reporting requirements contained in this section were approved by the Office of Management and Budget under control number 2106–0023)

[Docket No. 47582, 57 FR 38766, Aug. 27, 1992, as amended at 60 FR 43524, Aug. 22, 1995]

§ 204.4 Carriers proposing to provide essential air service.

Applicants proposing to provide essential air service have been divided into two categories, and are subject to differing data submission requirements as set forth in paragraphs (a) and (b) of this section. However, if a carrier has previously filed any of the required data with the Department or other Federal agency and they are available to the Department, and these data continue to reflect the current state of the carrier's fitness, the carrier may instead identify the data and provide a citation for the date and place of filing. All carriers may contact the Air Carrier Fitness Division to ascertain what information is already available to the Department and thus may not need to be resubmitted.

(a) Carriers who propose to begin or expand non-subsidized essential air service when the incumbent leaves the market must file the following information:

(1) All of the information required under § 204.3 of this part.

(2) A description of the back-up aircraft available to the applicant, including:

(i) The number of each type of such aircraft;

(ii) The conditions under which such aircraft will be available to the carrier;

(iii) The carrier's plans for financing the acquisition or lease of such additional aircraft; and

(iv) A sworn affidavit stating that all such aircraft have been certified by the

FAA and currently comply with all FAA safety standards.

(3) A description of the fuel available to perform the proposed essential air services and the carrier's contracts with fuel suppliers.

(4) The carrier's systemwide on-time and completion record for the preceding year and, if applicable, in the subject market(s).

(5) A list of the markets the carrier serves and the number of weekly round trips it provides in each.

(6) A description of the average number of block hours each type of aircraft is currently flown per day.

(7) An estimate of the impact the proposed essential air service would have on the carrier's utilization of its aircraft fleet.

(8) A detailed schedule of the service to be provided, including times of arrivals and departures, the aircraft to be used for each flight, and the fares to be charged.

(9) A pro-forma income statement for the proposed operation for the first annual period.

(b) Carriers filing proposals to provide subsidized service in response to an order inviting proposals shall file:

(1) All of the information required under § 204.3 of this part.

(2) All of the information required under paragraph (a) of this section.

(3) A forecast Income Statement covering the operations conducted in essential air service for the first year following the initiation of the proposed essential services. Such statement shall include:

(i) Subsidy needed;

(ii) Estimated block hours and revenue miles by type of aircraft;

(iii) Total projected revenue including volumes of passengers and freight by essential air service market and the associated fares and rates;

(iv) An explanation of the derivation of estimates of operating expenses; and

(v) A description of the manner in which costs and revenues are allocated.

(4) A traffic forecast including a load factor analysis on all segments between the small community and the hub; and an estimate of the number of seats available to and from the eligible point each day.

(Approved by the Office of Management and Budget under control number 2106–0023)

[Docket No. 47582, 57 FR 38766, Aug. 27, 1992, as amended at 60 FR 43524, Aug. 22, 1995]

§ 204.5 Certificated and commuter air carriers undergoing or proposing to undergo substantial change in operations, ownership, or management.

(a) A certificated or commuter air carrier proposing a substantial change in operations, ownership or management shall file the data set forth in § 204.3. These data must be submitted in cases where:

(1) The proposed change requires new or amended authority, or

(2) Although the carrier's existing certificate or commuter authority is adequate for the performance of its planned services, the change substantially alters the factors upon which its latest fitness finding is based.

(b) Information which a carrier has previously formally filed with the Department, or with another Federal agency where they are available to the Department, which continues to reflect the current state of the carrier's fitness may be omitted. The carrier instead should identify the data and provide a citation for the date(s) and place(s) of filing. Prior to filing any data, the carrier may contact the Department (Air Carriers Fitness Division) to ascertain what data required by this section, if any, are already available to the Department or are not applicable to the substantial change in question and need not be included in the filing.

(c) Information filings pursuant to this section made to support an application for new or amended certificate authority shall be filed with the application and addressed to the Documentary Services Division, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Information filed in support of a certificated or commuter air carrier's continuing fitness to operate under its existing authority in light of substantial changes in its operations, ownership or management shall be addressed to the Chief,

Air Carrier Fitness Division, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

(Approved by the Office of Management and Budget under control number 2106–0023)

§ 204.6 Certificated and commuter air carriers proposing a change in operations, ownership, or management which is not substantial.

Carriers proposing to make a change which would not substantially affect their operations, management, or ownership, such as certificated carriers applying for additional authority which would not substantially change their operations, will be presumed to be fit and need not file any information relating to their fitness at time of the change. However, if the Department concludes, from its own analysis or based on information submitted by third parties, that such change may bring the carrier's fitness into question, the Department may require the applicant carrier to file additional information.

§ 204.7 Revocation for dormancy.

(a) An air carrier that has not commenced any type of air transportation operations for which it was found fit, willing, and able within one year of the date of that finding, or an air carrier that, for any period of one year after the date of such a finding, has not provided any type of air transportation for which that kind of finding is required, is deemed no longer to continue to be fit to provide the air transportation for which it was found fit and, accordingly, its authority to provide such air transportation shall be revoked.

(b) An air carrier found fit which commences operations within one year after being found fit but then ceases operations, shall not resume operations without first filing all of the data required by § 204.3 at least 45 days before it intends to provide any such air transportation. Such filings shall be addressed to the Documentary Services Division, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. The Department will entertain requests for exemption from this 45-day advance filing requirement for good cause shown. If there has been no change in fitness data previously formally filed with the Department, the carrier shall file a sworn statement to that effect signed by one of its officers. The carrier may contact the Department (Air Carrier Fitness Division) to ascertain which data are already available to the Department and need not be refiled. A carrier to which this paragraph applies shall not provide any air transportation for which it is required to be found fit, willing, and able until the Department decides that the carrier continues to be fit, willing, and able to perform such air transportation. During the pendency of the Department's consideration of a data submission under this paragraph, the expiration period set out in paragraph (a) of this section shall be stayed. If the decision or finding by the Department on the issue of the carrier's fitness is favorable, the date or that decision or finding shall be the date considered in applying paragraph (a) of this section.

(c) For purposes of this section, the date of a Department decision or finding shall be the service date of the Department's order containing such decision or finding, or, in cases where the Department's decision or finding is made by letter, the date of such letter.

(d) For purposes of this section, references to operations and to the providing of air transportation shall refer only to the actual performance of flight operations under an operating certificate issued to the carrier by the FAA.

(Approved by the Office of Management and Budget under control number 2106–0023)

PART 205—AIRCRAFT ACCIDENT LIABILITY INSURANCE

Sec.

205.1 Purpose.
205.2 Applicability.
205.3 Basic requirements.
205.4 Filing of evidence of insurance.
205.5 Minimum coverage.
205.6 Prohibited exclusions of coverage.
205.7 Cancellation, withdrawal, modification, expiration, or replacement of insurance coverage.
205.8 Cargo liability disclosure statement.

AUTHORITY: 49 U.S.C. Chapters 401, 411, 413, 417.

SOURCE: ER–1253, 46 FR 52577, Oct. 27, 1981, unless otherwise noted.

§ 205.1 Purpose.

This part contains the rules for aircraft accident liability insurance coverage needed by U.S. direct air carriers to obtain or to exercise authority from the Department to operate in interstate or foreign air transportation, and by foreign direct air carriers to operate under permit or other authority in foreign air transportation. It further requires a disclosure statement to shippers about cargo liability limits and insurance coverage for U.S. and foreign direct air carriers.

[ER–1253, 46 FR 52577, Oct. 27, 1981, as amended by Docket No. 47939, 57 FR 40100, Sept. 2, 1992; Doc. No. OST-96-1269, 61 FR 19165, May 1, 1996]

§ 205.2 Applicability.

These rules apply to all U.S. direct air carriers, including commuter air carriers and air taxi operators as defined in § 298.2 of this chapter, and foreign direct air carriers, including Canadian charter air taxi operators as defined in § 294.2(c) of this chapter.

[Docket No. 47939, 57 FR 40100, Sept. 2, 1992]

§ 205.3 Basic requirements.

(a) A U.S. or foreign direct air carrier shall not engage in air transportation unless it has in effect aircraft accident liability insurance coverage that meets the requirements of this part for its air carrier or foreign air carrier operations. The minimum amounts of coverage required by this part may be provided either by insurance policies or by self-insurance plans. The currently effective policy of insurance or complete plan for self-insurance shall be available for inspection by the Department at the carrier's principal place of business. The current certificate of insurance or a summary of the complete self-insurance plan on file with the Department, as required by § 205.4, shall be available for public inspection at the carrier's principal place of business.

(b) For purposes of this part, a certificate of insurance is one or more certificates showing insurance by one or more insurers (excluding reinsurers) of currently effective and properly endorsed policies of aircraft accident liability insurance in compliance with this part. When more than one such insurer is providing coverage, the limits and types of liability assumed by each insurer (excluding reinsurers) shall be clearly stated in the certificate of insurance. Insurance policies and self-insurance plans named in a certificate of insurance that accompanies an application for initial registration or for operating authority shall become effective not later than the proposed starting date for air carrier operations as shown in the application.

(c) The certificate of insurance shall list the types or classes of aircraft, or the specific aircraft by FAA or foreign government registration number, with respect to which the policy of insurance applies, or shall state that the policy applies to all aircraft owned or operated by the carrier in its air transportation operations. With respect to certificates of insurance that list aircraft by government registration number, the policy or self-insurance plan shall state that, while an aircraft owned or leased by the carrier and declared in the policy is withdrawn from normal use because of its breakdown, repair, or servicing, such insurance as is provided by the policy or plan for that aircraft shall apply also to another aircraft of similar type, horsepower, and seating capacity, whether or not owned by the insured, while temporarily used as a substitute aircraft.

(d) Each certificate of insurance shall be signed by an authorized officer, agent, or other representative of the insurer or the insurance broker.

(e) Insurance coverage to meet the requirements of this part shall be obtained from one or more of the following:

(1) An insurer licensed to issue aircraft accident liability policies in any State, Commonwealth, or Territory of the United States, or in the District of Columbia;

(2) Surplus line insurers named on a current list of such insurers issued and approved by the insurance regulatory authority of any State, Commonwealth, or Territory of the United States or of the District of Columbia; or

(3) Insurers licensed or approved by a foreign government.

This requirement may be waived by the Department in the public interest.

[ER–1253, 46 FR 52577, Oct. 27, 1981, as amended by Docket No. 47939, 57 FR 40100, Sept. 2, 1992]

§ 205.4 Filing of evidence of insurance.

(a) A U.S. or foreign air carrier shall file a certificate of insurance or a complete plan for self-insurance with the Department's Office of Aviation Analysis. Each carrier shall ensure that the evidence of aircraft accident liability coverage filed with the Department is correct at all times. The Department will normally notify the carrier within 20 days of receipt if the certificate or plan does not meet the requirements of this part. The two Certificates of Insurance (OST Form 6410 for U.S. air carriers, including commuter air carriers and air taxi operators, and OST Form 6411 for foreign air carriers, including Canadian charter air taxi operators) are available from the Office of Aviation Analysis. The Department may return the certificate or self-insurance plan to the carrier if it finds for good cause that such plan or certificate does not show adequate evidence of insurance coverage under this part.

(b) If the coverage is by type or class of aircraft or by specific aircraft, endorsements that add previously unlisted aircraft or aircraft types or classes to coverage, or that delete listed aircraft, types, or classes from coverage, shall be filed with the Department's Office of Aviation Analysis not more than 30 days after the effective date of the endorsements. Aircraft shall not be listed in the carrier's operations specifications with the FAA and shall not be operated unless liability insurance coverage is in force.

(c) When the insured air carrier is a U.S. air taxi operator operating in the State of Alaska, certificates and endorsements shall be filed with the Department's Alaska Field Office, 801 B Street, Suite 506, Anchorage, Alaska 99501-3657.

(Approved by the Office of Management and Budget under control number 2106–0030)

[Docket No. 47939, 57 FR 40100, Sept. 2, 1992, as amended by Doc. No. OST-96-1269, 61 FR 19165, May 1, 1996]

§ 205.5 Minimum coverage.

(a) Insurance contracts and self-insurance plans shall provide for payment on behalf of the carrier, within the specific limits of liability in this section, of all sums that the carrier shall become legally obligated to pay as damages, excluding any deductible in the policy, for bodily injury to or death of a person, or for damage to the property of others, resulting from the carrier's operation or maintenance of aircraft in air transportation provided under its authority from the Department.

(b) U.S. and foreign direct air carriers, including commuter air carriers but excluding U.S. air taxi operators and Canadian charter air taxi operators, shall maintain the following coverage:

(1) Third-party aircraft accident liability coverage for bodily injury to or death of persons, including nonemployee cargo attendants, other than passengers, and for damage to property, with minimum limits of $300,000 for any one person in any one occurrence, and a total of $20,000,000 per involved aircraft for each occurrence, except that for aircraft of not more than 60 seats or 18,000 pounds maximum payload capacity, carriers need only maintain coverage of $2,000,000 per involved aircraft for each occurrence.

(2) Any such carrier providing air transportation for passengers shall, in addition to the coverage required in paragraph (b)(1) of this section, maintain aircraft accident liability insurance coverage for bodily injury to or death of aircraft passengers, with minimum limits of $300,000 for any one passenger, and a total per involved aircraft for each occurrence of $300,000 times 75 percent of the number of passenger seats installed in the aircraft.

(c) U.S. air taxi operators registered under part 298 shall maintain the following coverage:

(1) Third-party aircraft accident liability coverage for bodily injury to or death of persons, including nonemployee cargo attendants, other than passengers, with minimum limits of:

(i) $75,000 for any one person in any one occurrence, and a total of $300,000 per involved aircraft for each occurrence, and

(ii) A limit of a least $100,000 for each occurrence for loss of or damage to property.

(2) U.S. air taxi operators carrying passengers in air transportation shall, in addition to the coverage required in paragraph (c)(1) of this section, maintain aircraft accident liability insurance coverage for bodily injury to or death of aircraft passengers, with minimum limits of $75,000 for any one passenger, and a total per involved aircraft for each occurrence of $75,000 times 75 percent of the number of passenger seats installed in the aircraft.

(d) Canadian charter air taxi operators registered under part 294 of this chapter shall maintain the following coverage:

(1) Third-party aircraft accident liability coverage for bodily injury to or death of persons, including nonemployee cargo attendants, other than passengers, and for damage to property, with a minimum coverage of $75,000 for any one person in any one occurrence, and a total of $2,000,000 per involved aircraft for each occurrence, except that Canadian charter air taxi operators operating aircraft of more than 30 seats or 7,500 pounds maximum cargo payload capacity, and a maximum authorized takeoff weight on wheels not greater than 35,000 pounds shall maintain coverage for those aircraft of $20,000,000 per involved aircraft for each occurrence.

(2) Canadian charter air taxi operators engaging in passenger charter air service under part 294 of this chapter shall, in addition to the coverage required in paragraph (d)(1) of this section, maintain aircraft accident liability coverage for bodily injury to or death of aircraft passengers, with a minimum coverage of $75,000 for any one passenger and a total per involved aircraft for each occurrence of $75,000 times 75 percent of the total number of passenger seats installed in the aircraft.

(e) Notwithstanding paragraphs (b), (c) and (d) of this section, the carrier may be insured for a combined single limit of liability for each occurrence. The combined single-limit coverage must be not less than the combined required minimums for bodily injury and property damage coverage plus, if the aircraft is used in passenger service, the required total passenger coverages stipulated in paragraph (b) of this section for U.S. and foreign direct air carriers and commuter carriers, paragraph (c) of this section for U.S. air taxi operators, or paragraph (d) of this section for Canadian charter air taxi operators.[1] The single-limit liability policy for the required aircraft accident liability coverage may be provided by a single policy or by a combination of primary and excess policies.

(f) The liability coverage shall not be contingent upon the financial condition, solvency, or freedom from bankruptcy of the carrier. The limits of the liability for the amounts required by this part shall apply separately to each occurrence. Any payment made under the policy or plan because of any one occurrence shall not reduce the coverage for payment of other damages resulting from any other occurrence.

[Docket No. 47939, 57 FR 40101, Sept. 2, 1992; 57 FR 52590, Nov. 4, 1992]

§ 205.6 Prohibited exclusions of coverage.

(a) No warranty or exclusion in the policy or plan or in any endorsement or amendment to the policy or plan, nor any violation of the policy or plan by the carrier, shall remove the liability coverage required by this part, except as specifically approved by the Department. This requirement shall not limit the right of insurers to recover from the carrier for amounts paid.

(b) A policy of insurance or a self-insurance plan required by this part shall not contain the following exclusions:

(1) Violation of any safety-related requirement imposed by statute or by rule of a government agency.

[1] For example: the minimum single limit of liability acceptable for any aircraft in air taxi passenger service with 16 passenger seats would be computed on the basis of limits set forth in paragraph (c) as follows: 16 × .75 equals 12; 12 × $75,000 equals $900,000; $900,000 plus $300,000 (nonpassenger liability per occurrence) plus $100,000 (property damage per occurrence) equals $1,300,000. The latter amount is the minimum in which a single-limit liability policy may be written.

(2) Liability assumed by the carrier under an agreement to raise the liability limitations of the Warsaw Convention by signing a counterpart to the agreement of carriers (such as the Montreal Agreement, 18900, as approved by Board Order E-23680, May 13, 1966, agreeing to a limit on the carrier's liability for injury or death of passengers of $75,000 per passenger), or any amendment to such agreement that may be approved by the Department and to which the carrier becomes a party.

[ER–1253, 46 FR 52577, Oct. 27, 1981, as amended by Docket No. 47939, 57 FR 40100, 40101, Sept. 2, 1992]

§ 205.7 Cancellation, withdrawal, modification, expiration, or replacement of insurance coverage.

(a) Each policy of aircraft accident liability insurance and plan for self insurance shall specify that it shall remain in force, and may not be replaced, canceled, withdrawn, or in any way modified to reduce the minimum standards set forth in this part, or to change the extent of coverage, by the insurer or the carrier, nor expire by its own terms, in regard to coverage for the carrier in its common carrier operations in air transportation, until 10 days after written notice by the insurer (in the event of replacement, by the retiring insurer), or by the insurer's representative, or by the carrier, describing the change, to the Department's Office of Aviation Analysis (or, for Alaskan air taxi operators, to the Department's Alaska Field Office), which 10-day notice period shall start to run from the date such notice is actually received at the Department. For purposes of this part, a policy will not be considered to have expired if the same insurer renews its coverage without reduction in the extent of coverage or amounts of coverage, and without a break in coverage, whether or not a new policy is issued, and notice to the Department is not required in that event. If the coverage being changed is by type or class of aircraft or by specific aircraft, endorsements adding or deleting specific aircraft or types or classes of aircraft, for which prior notice would be required by this paragraph, shall be filed in accordance with § 205.4(b), and prior notice of the change need not be given under this paragraph.

(b) The requirements of this section shall not apply if the policy contains a lesser time period for cancellation in a war risk exclusion. If the war risk exclusion is activated by the insurer, the insurer or its representative shall immediately notify the Department.

[Docket No. 47939, 57 FR 40100, 40101, Sept. 2, 1992]

§ 205.8 Cargo liability disclosure statement.

Every direct U.S. or foreign air carrier providing air cargo service in air transportation shall give notice in writing to the shipper, when a shipment is accepted, of the existence or absence of cargo liability insurance, and the limits on the extent of its liability, if any. The notice shall be clearly and conspicuously included on or attached to all of its rate sheets and airwaybills.

[ER–1282, 47 FR 16173, Apr. 15, 1982]

PART 206—CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY: SPECIAL AUTHORIZATIONS AND EXEMPTIONS

Sec.

206.1 Emergency transportation.
206.2 Exemption from schedule filing.
206.3 Transportation of newspersons by all-cargo carriers.
206.4 Exemption of air carriers for military transportation.
206.5 Small aircraft operations by certificated carriers.

AUTHORITY: 49 U.S.C. Chapters 401, 415, 417, 419.

§ 206.1 Emergency transportation.

Notwithstanding the provisions of section 41101 of the Statute, and any term, condition or limitation attached to the exercise of the privileges of an air carrier certificate of public convenience and necessity which prohibits an air carrier from engaging in air transportation between any points on its route, the air carrier may carry between such points (a) any person or persons certified by a physician to be in need of immediate air transportation in order to secure emergency

medical or surgical treatment together with any necessary attendant or attendants and (b) any medical supplies certified by a physician as requiring immediate air transportation for the protection of life. Air carriers offering to provide this emergency transportation shall file appropriate tariffs pursuant to Chapter 415 of the Statute.

(Secs. 204, 416, 72 Stat. 743, 771; 49 U.S.C. 1324, 1386)

[ER–261, 24 FR 1860, Mar. 14, 1959, as amended at 60 FR 43524, Aug. 22, 1995]

§ 206.2 Exemption from schedule filing.

All air carriers are hereby exempted from the requirements of section 41902(b) of the Statute, which provides that each air carrier must periodically provide the Department and the U.S. Postal Service a listing of all of its regularly operated aircraft schedules and schedule changes, showing for each schedule the points served and the departure and arrival times.

[Docket No. 47939, 57 FR 40101, Sept. 2, 1992, as amended at 60 FR 43524, Aug. 22, 1995]

§ 206.3 Transportation of newspersons by all-cargo carriers.

Notwithstanding the provisions of section 41101 and Chapter 415 of the Statute and part 221 of this chapter, an air carrier holding a certificate of public convenience and necessity for the transportation of only property and mail may provide transportation to persons on regularly scheduled cargo flights for the purpose of collecting data for preparation of feature news, pictorial or like articles provided that the transportation is limited to the writer, journalist, or photographer engaged in the preparation of data for use in feature news, pictorial, or like articles which are to appear in newspapers or magazines, or on radio or television programs and which will publicize the regularly scheduled cargo operations of the carrier.

[Docket No. 47939, 57 FR 40102, Sept. 2, 1992, as amended at 60 FR 43524, Aug. 22, 1995]

§ 206.4 Exemption of air carriers for military transportation.

Air carriers providing air transportation pursuant to a contract with the Department of Defense are hereby exempted from Chapter 415 of the Statute, and from part 221, §§ 207.4 and 208.32, of this chapter, with respect to those services.

[Docket No. 47939, 57 FR 40102, Sept. 2, 1992, as amended at 60 FR 43524, Aug. 22, 1995]

§ 206.5 Small aircraft operations by certificated carriers.

(a) A carrier holding an effective certificate issued under section 41102 of the Statute, when conducting operations with small aircraft, is exempt from the requirements of the Statute as set forth in subpart B of part 298 of this chapter, except section 41708 of the Statute, and is subject to the requirements set forth in the following provisions of this chapter:

(1) Part 205, with the minimum coverage requirements of § 205.5(b),

(2) Part 215,

(3) Part 298, subpart D, §§ 298.30, and 298.38, and subpart H, and

(4) Part 298, subpart F, if the certificated carrier conducts operations with small aircraft only (a certificated carrier conducting operations with both small and large aircraft is subject only to the reporting requirements contained in part 241 of this chapter).

(b) If a certificated carrier, when conducting operations with small aircraft, provides foreign air transportation that includes a segment for which tariff filing is required and another segment for which tariff filing is not required, then for through service over that routing the carrier has the option of filing a tariff or charging the sum of the applicable local rates, fares, or charges. If the carrier files a tariff for through service, it is not exempt from Chapter 415 or section 41310 of the Statute for that air transportation.

[Docket No. 47939, 57 FR 40102, Sept. 2, 1992, as amended at 60 FR 43524, Aug. 22, 1995]

PART 207—CHARTER TRIPS BY U.S. SCHEDULED AIR CARRIERS

Sec.
207.1 Applicability.
207.2 Terms of service.

AUTHORITY: 49 U.S.C. 40101, 40102, 40109, 40113, 41101, 41102, 41103, 41301, 41504, 41702, 41708, 41712, 46101.

SOURCE: Docket No. OST–97–2356, 63 FR 28236, May 22, 1998, unless otherwise noted.

§207.1 Applicability.

This part establishes the terms, conditions, and limitations applicable to charter air transportation conducted by air carriers holding certificates under 49 U.S.C. 41102 authorizing the operation of scheduled air transportation services.

§207.2 Terms of service.

Charter air transportation under this part shall be performed in accordance with the provisions of part 212 of this chapter.

PART 208—CHARTER TRIPS BY U.S. CHARTER AIR CARRIERS

Sec.
208.1 Applicability.
208.2 Terms of service.

AUTHORITY: 49 U.S.C. 40101, 40102, 40109, 40113, 41101, 41102, 41103, 41301, 41504, 41702, 41708, 41712, 46101.

SOURCE: Docket No. OST–97–2356, 63 FR 28236, May 22, 1998, unless otherwise noted.

§208.1 Applicability.

This part establishes the terms, conditions, and limitations applicable to charter air transportation conducted by air carriers holding certificates under 49 U.S.C. 41102 authorizing the operation of charter air transportation services.

§208.2 Terms of service.

Charter air transportation under this part shall be performed in accordance with the provisions of Part 212 of this chapter.

PART 211—APPLICATIONS FOR PERMITS TO FOREIGN AIR CARRIERS

Subpart A—General

Sec.
211.1 Purpose.
211.2 Applicability.

Subpart B—General Requirements

211.10 Filing specifications.
211.11 Verification.
211.12 Filing and service.
211.13 Amendments to applications.
211.14 Incorporation by reference.
211.15 Statements of fact.
211.16 Oral hearing.

Subpart C—Information Requirements

211.20 Initial foreign air carrier permit or transfer of a permit.
211.21 Amendments or renewal of foreign air carrier permits.

Subpart D—Freely Associated State Air Carriers

211.30 Eligibility.
211.31 Application.
211.32 Issuance of permit.
211.33 Interstate and interstate authority.
211.34 Other permits.
211.35 Termination of eligibility.

AUTHORITY: 49 U.S.C. Chapters 401, 411, 413, 415, 417.

SOURCE: ER–1386, 49 FR 33439, Aug. 23, 1984, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 211 appear at 61 FR 34725, July 3, 1996.

Subpart A—General

§211.1 Purpose.

This part sets forth the filing and evidence requirements for foreign air carriers applying for authority to engage in foreign air transportation under section 41301 of Title 49 of the United States Code (Transportation).

(Approved by the Office of Management and Budget under control number 3024–0068)

[ER–1386, 49 FR 33439, Aug. 23, 1984, as amended by ER–1397, 49 FR 50027, Dec. 26, 1984]

§211.2 Applicability.

(a) Except as provided in paragraph (b) of this section, this part applies to all foreign air carriers seeking initial foreign air carrier permits or the transfer, renewal, or amendment of an existing foreign air carrier permit.

(b) Canadian charter air taxi operators, foreign indirect air carriers of property, and foreign charter operators are not required to submit applications under this part. Instead, Canadian charter air taxi operators shall register under part 294 of this chapter, foreign indirect air carriers of property shall register under part 297 of this chapter,

and foreign charter operators shall register under subpart F of part 380 of this chapter.

(Approved by the Office of Management and Budget under control number 3024–0068)

[ER–1386, 49 FR 33439, Aug. 23, 1984, as amended by ER–1397, 49 FR 50027, Dec. 26, 1984]

Subpart B—General Requirements

§ 211.10 Filing specifications.

(a) Except as provided in paragraph (b) of this section, applicants shall follow the requirements in § 302.3 of this chapter as to execution, number of copies, and formal specifications of papers.

(b) Mexican air taxi operators filing applications for foreign air carrier permits authorizing charter flights across the Mexico-United States border with small aircraft (a maximum passenger capacity of 60 seats or less, or a maximum payload capacity of 18,000 pounds or less) shall file an original and two copies of the application. The application shall conform to the instruction document available from the Foreign Air Carrier Licensing Division, Office of International Aviation, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

(c) An application shall have consecutively numbered pages, and shall clearly describe and identify each exhibit by a separate number or symbol. All exhibits are part of the application to which they are attached.

(d) Applications shall state all weights, measures and monetary units in U.S. terms, and all text in English.

(Approved by the Office of Management and Budget under control number 3024–0068)

[ER–1386, 49 FR 33439, Aug. 23, 1984, as amended by ER–1397, 49 FR 50027, Dec. 26, 1984; 61 FR 34725, July 3, 1996]

§ 211.11 Verification.

Applications shall be verified and subscribed and sworn to before a Notary Public or other officer authorized to administer oaths in the jurisdiction in which the application is executed. An application verified before a United States consular officer meets the requirements of this section.

(Approved by the Office of Management and Budget under control number 3024–0068)

[ER–1386, 49 FR 33439, Aug. 23, 1984, as amended by ER–1397, 49 FR 50027, Dec. 26, 1984]

§ 211.12 Filing and service.

All types of applications for foreign air carrier permits (initial, renewal, amendment, or transfer) are filed as of the date the applications are received at the Department's Docket Facility. Each applicant shall serve those persons as required in part 302, subpart B, of this chapter.

(Approved by the Office of Management and Budget under control number 3024–0068)

[ER–1386, 49 FR 33439, Aug. 23, 1984, as amended by ER–1397, 49 FR 50027, Dec. 26, 1984; 65 FR 6456, Feb. 9, 2000]

§ 211.13 Amendments to applications.

An applicant shall submit any information required by this part that is omitted from the original application, or any additional information, as an amendment to the original application. Applicants shall consecutively number amendments to applications and shall comply with the requirements of this subpart.

(Approved by the Office of Management and Budget under control number 3024–0068)

[ER–1386, 49 FR 33439, Aug. 23, 1984, as amended by ER–1397, 49 FR 50027, Dec. 26, 1984]

§ 211.14 Incorporation by reference.

Where two or more applications are filed by a single carrier, the applicant may incorporate lengthy exhibits, or other documents, attached to one application into others by reference. The applicant may not incorporate by reference and update any information from a previous docket unless submitted within the past 2 years. The applicant must identify the docket, and the page number or exhibit number being incorporated, and state that there has been no change in that information since submitting the original information.

(Approved by the Office of Management and Budget under control number 3024–0068)

[ER–1386, 49 FR 33439, Aug. 23, 1984, as amended by ER–1397, 49 FR 50027, Dec. 26, 1984]

§ 211.15 Statements of fact.

The applicant shall include only significant and relevant facts in an application. Each application shall contain adequate information with respect to the evidence required in subpart C of this part. The application may contain other information and data the applicant considers necessary to explain particular circumstances.

(Approved by the Office of Management and Budget under control number 3024–0068)

[ER–1386, 49 FR 33439, Aug. 23, 1984, as amended by ER–1397, 49 FR 50027, Dec. 26, 1984]

§ 211.16 Oral hearing.

If an oral evidentiary hearing is convened, the applicant must make available witnesses who are competent and able to testify to the accuracy of the statements and documents submitted.

(Approved by the Office of Management and Budget under control number 3024–0068)

[ER–1386, 49 FR 33439, Aug. 23, 1984, as amended by ER–1397, 49 FR 50027, Dec. 26, 1984]

Subpart C—Information Requirements

§ 211.20 Initial foreign air carrier permit or transfer of a permit.

A person applying for an initial foreign air carrier permit or the transfer of a permit shall submit the information listed below. The applicant must fully comply with this requirement. If the applicant is unable to respond to an item, the application shall contain an explanation, and include substitute information most closely approximating the information requested. The Department may require an applicant to provide additional information as necessary.

(a) State the name and address of the applicant, the nature of its organization (individual, partnership, corporation, etc.), and, if other than an individual, the name of the country under the laws of which it is organized and the statutory citation of such laws, if any.

(b) State the name and official address of the government air transport authority of applicant's country of citizenship having regulatory jurisdiction over applicant.

(c) Supply the following information regarding the services proposed:

(1) A complete statement of the authority sought; and

(2) A description of the services proposed, specifying:

(i) The point or points in the United States proposed to be served:

(ii) The frequency of service planned at the start of operations, indicating any seasonal variations; whether the service proposed is to be scheduled, nonscheduled or charter; whether the service would be passenger, or property and mail, or a combination; and the type of equipment (and configuration) to be used; and

(iii) A service schedule stating the manner in which the service will be operated (e.g., nonstop or multi-stop, and the identity of proposed intermediate traffic and nontraffic points).

(d) Provide the names, addresses (both residence and business), and citizenship of all Directors, Officers and key management personnel, including the President, Vice Presidents, the Directors or Supervisors of Operations, Maintenance, and Finance, and the chief pilot and chief inspector. Indicate whether any of these persons are related by blood or marriage.

(e) Provide the names and citizenship of all persons holding five percent (5%) or more of the capital stock or capital of the applicant. Also indicate the number and percentage of shares of stock or percentage of capital held by each. If five percent or more of the applicant's stock is held by a corporation or partnership, set forth the name and citizenship of each person holding five percent or more of the entire capital stock or capital of that corporation or partnership and the respective interest of each. If any shares are held for the benefit of another person, give the name and citizenship of that person.

(f) If the applicant is not wholly owned by its homeland government, state whether the applicant (each officer, director, manager, or holder of five percent or more of the capital stock) holds any interest directly or indirectly (through brokers or holding companies) in any of the entities listed below. If no interest is held, so state.

(1) Any U.S. carrier;

(2) Any other foreign air carrier;

(3) Any persons engaged in the business of aeronautics; and

(4) Any common carrier, or any person whose principal business is the holding of stock in, or control of, any air carrier.

(g) Indicate the relationship between the applicant and its homeland government. If the applicant is wholly owned or substantially owned by the government, indicate which governmental department has responsibility for managerial decisions.

(h) State whether the applicant's insurance coverage meets or exceeds the liability limits of 14 CFR part 205. State the name(s) of its insurance carrier(s).

(i) Supply certified evidence, in English, of the applicant's operating authority issued by its government that relates to the operations proposed. This evidence must include a description of the applicant's present authority, the expiration date of this authority, and the manner in which it is expected to be renewed.

(j) Summarize the operating history of the applicant. Include the types of transportation services rendered, points served, etc., from the beginning of operations to the present. Also, if the applicant is a new airline (i.e., an airline that began direct air services within the past 12 months), briefly summarize the business experience of each officer, director and key management personnel, emphasizing any air transportation experience.

(k) Provide a list of the aircraft owned, leased and operated by the applicant. State each aircraft registration number and the country of registration. If leased, state the address and citizenship of each lessor. Describe any plans for the acquisition or lease of additional aircraft if the present permit application is granted as proposed. If any of the listed aircraft will not be used exclusively by the applicant, explain its proposed use. State whether any aircraft are or will be wet-leased.

(l) State where and by whom the maintenance of the aircraft is or will be performed. State whether the applicant's maintenance program complies with the provisions of ICAO Pilots and Airmen Annexes 1, 6 (Part 1) and 7. Also state whether the applicant's home country is a contracting State to the Convention on International Civil Aviation.

(m) Briefly describe any agreements or cooperative working arrangements (e.g., block-space, wet-lease), both oral and written, entered with and between the applicant, or on behalf of the applicant, and any U.S. or foreign air carrier, affecting the proposed services to the United States that are not on file with the Department. If there are no such agreements, so state.

(n) Supply financial data summaries, setting forth in U.S. dollars the applicant's profit and loss statements and balance sheets for the 2 most recent available years (calendar or fiscal). These summaries must be accompanied by a statement from the applicant's official responsible for preparation of the summaries that the submissions are complete and accurate. These summaries must include the following data, but need not be more detailed than the financial data summaries published by ICAO:

(1) The profit and loss summary shall identify:

(i) Total air transport operating revenues (separated into three categories: passenger, cargo, and other transport revenues);

(ii) Total air transport operating expenses;

(iii) Operating result (difference between (i) and (ii));

(iv) Non-operating items; and

(v) Profit or loss after income taxes.

(2) The balance sheet summary shall state and identify:

(i) Current assets;

(ii) Flight equipment (after depreciation);

(iii) Other assets;

(iv) Total assets (sum of (i) through (iii));

(v) Current liabilities;

(vi) Other liabilities;

(vii) Long-term debt;

(viii) Capital stock;

(ix) Retained earnings (balance including capital surplus); and

(x) Total liabilities and equity (sum of (v) through (ix)).

(o) Describe the amount, type and reason for financial assistance received or expected from the applicant's home government, if any.

(p) Submit an estimate showing the total traffic and the financial results of the proposed services for the first full year of normal operations and the supporting data employed to calculate the financial forecast.

(q) If the air transportation proposed is not covered by an air transport agreement, state in narrative form each of the elements of reciprocity or comity relied upon for the requested authority. If the authority requested is governed by an agreement, state whether the applicant has been formally designated by its homeland government, and, if so, cite the diplomatic note.

(r) To the extent not described in paragraph (q), state the policy of the applicant's homeland government with respect to U.S. carriers' applications for scheduled and charter authority. Specifically state whether the homeland government grants Fifth Freedom traffic rights to U.S. carriers.

(s) For the preceeding 5 years, state whether the applicant has been involved in any safety or tariff violations or any fatal accidents. If so, furnish details.

(t) Submit 3 completed copies of OST Form 4523 (Waiver of liability limits under the Warsaw Convention).

(Approved by the Office of Management and Budget under control number 3024–0068)

[ER–1386, 49 FR 33439, Aug. 23, 1984, as amended by ER–1397, 49 FR 50027, Dec. 26, 1984; 61 FR 34725, July 3, 1996]

§ 211.21 Amendments or renewal of foreign air carrier permits.

A person applying for an amendment or renewal of a foreign air carrier permit shall submit the information listed below. The applicant must comply fully with this requirement. If the applicant is unable to respond to an item, the application shall contain an explanation and include substitute information most closely approximating the information requested. The Department may require an applicant to provide any additional information necessary.

(a) The information required in paragraphs (a), (b), (i), (o), (q), (r), and (s), of § 211.20.

(b) Except if seeking renewal of existing authority, the information specified in paragraphs (c) and (p) of § 211.20 regarding the new or altered services proposed to be operated.

(c) If the financial material for the applicant on file with the Department is more than 2 years old, financial summaries setting forth, in U.S. dollars, the applicant's profit and loss statements and balance sheets for the 2 most recent available years (calendar or fiscal) as required in paragraph (n) of § 211.20, together with the statement of completeness and accuracy required by that paragraph. If the financial material on file with the Department is 2 years old or less, the applicant may incorporate that information by reference as described in § 211.14 of this part.

(d) If the ownership and control of the applicant are substantially unchanged, so state. If a change has occurred, the applicant shall respond to the paragraph in § 211.20 that most closely relates to the change that has taken place.

(e) A statement that applicant's maintenance program continues to comply with the provisions of ICAO Pilots and Airmen Annexes 1, 6 (Part 1) and 7.

[ER–1386, 49 FR 33439, Aug. 23, 1984]

Subpart D—Freely Associated State Air Carriers

SOURCE: Amdt. No. 211–18, 52 FR 5442, Feb. 22, 1987, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to subpart D appear at 61 FR 34725, July 3, 1996.

§ 211.30 Eligibility.

Foreign carriers owned and controlled by citizens of the Federated States of Micronesia, the Marshall Islands, Palau and/or the United States may, in accordance with the provisions of paragraph 5(b) of Article IX of the Federal Programs and Services Agreement, implementing section 221(a)(5) of the Compact of Free Association between the United States and those governments, apply for authority as ''Freely Associated State Air Carriers.'' The permit application for such authority shall be labeled on the front

page, ''Application for Freely Associated State Foreign Air Carrier Permit.''

§ 211.31 Application.

The application shall include, in addition to other requirements of this part, documentation clearly establishing:

(a) That the carrier is organized under the laws of the Federated States of Micronesia, the Marshall Islands, Palau or the United States;

(b) That substantial ownership and effective control of the carrier are held by citizens of the Federated States of Micronesia, the Marshall Islands, Palau and/or the United States;

(c) That citizens of other countries do not have interests in the carrier sufficient to permit them substantially to influence its actions, or that substantial justification exists for a temporary waiver of this requirement;

(d) That the Administrator of the Federal Aviation Administration has determined that the carrier complies with such safety standards as the Administrator considers to be required.

(e) That the government or governments of the Freely Associated States concerned have consented to the carrier's operation as a ''Freely Associated State Air Carrier.''

§ 211.32 Issuance of permit.

If the Department is satisfied that the applicant meets the requirements of §211.31 (a) through (e), and that grant of all or part of the requested authority would otherwise be in the public interest, the Department may, subject to Presidential review under section 801(a) of the Federal Aviation Act, issue a ''Freely Associated State Foreign Air Carrier Permit'' to the applicant, including such terms, conditions or limitations as the Department may find to be in the public interest.

§ 211.33 Interstate and interstate authority.

(a) An application under this subpart may include a request, in addition to other foreign air transportation, for authority to engage in interstate air transportation between Guam, the Commonwealth of the Northern Mariana Islands and Honolulu, Hawaii, and interstate air transportation within the Commonwealth of the Northern Mariana Islands. A request for all or part of such limited interstate air transportation authority shall be supported by documentation establishing:

(1) The impact of such interstate air transportation services on the economic projections of the carrier's proposed operations;

(2) The need for such proposed interstate air transportation by the affected U.S. points;

(3) The economic impact of such interstate air transportation on services provided by other carriers providing essential air transportation services to eligible Freely Associated State points within the scope of part 272 of this chapter.

(b) The Department may grant a Freely Associated State Air Carrier authority to engage in all or part of the interstate air transportation requested in paragraph (a) of this section provided that the Department finds:

(1) That grant of such interstate air transportation authority would be in furtherance of the objectives of the Compact of Free Association and related agreements between the United States and the Freely Associated States, and would otherwise be in the public interest; and

(2) That grant of such interstate air transportation authority would not significantly impair the economic viability of existing services providing essential air transportation to any eligible Freely Associated State point within the scope of part 272 of this chapter, or significantly increase compensation that may be required to maintain any such essential air transportation.

(c) The Department may, at any time, subject to Presidential review under section 41307, suspend, modify, or revoke such interstate authority if it concludes that the requirements specified in paragraph (b) of this section are not then being met.

[Amdt. No. 211–18, 52 FR 5442, Feb. 22, 1987]

§ 211.34 Other permits.

Nothing in this section shall be construed as limiting the authority of the

Department to issue a foreign air carrier permit, other than a Freely Associated State Foreign Air Carrier Permit, to a carrier owned or controlled, in whole or in part, by citizens of the Federated States of Micronesia, the Marshall Islands or Palau, that does not meet the requirements of this section.

§211.35 Termination of eligibility.

The eligibility of a carrier owned or controlled, in whole or in part, by citizens of the Federated States of Micronesia, the Marshall Islands or Palau, respectively, for issuance of a Freely Associated State Foreign Air Carrier Permit under this subpart shall exist only for such period as subparagraphs (a), (d), and (e) (eligibility for Freely Associated State essential air transportation subsidy compensation), or subparagraph (c) (limited interstate air transportation authority), of paragraph (5) of the Agreement on Civil Aviation Economic Services and Related Programs (Article IX of the Federal Programs and Services Agreement) remain in effect between the Government of those States and the Government of the United States, insofar as authority is conferred by such permits for purposes specified in those subparagraphs.

[Amdt. No. 211–18, 52 FR 5442, Feb. 22, 1987]

PART 212—CHARTER RULES FOR U.S. AND FOREIGN DIRECT AIR CARRIERS

Sec.

212.1 Scope.
212.2 Definitions.
212.3 General provisions.
212.4 Authorized charter types.
212.5 Operation of affinity (pro rata) charters.
212.6 Operation of gambling junket charters.
212.7 Direct sales.
212.8 Protection of customers' payments.
212.9 Prior authorization requirements.
212.10 Application for statement of authorization.
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212.12 Waiver.
APPENDIX A TO PART 212—CERTIFICATED OR FOREIGN AIR CARRIER'S SURETY BOND UNDER PART 212 OF THE REGULATIONS OF THE DEPARTMENT OF TRANSPORTATION (14 CFR PART 212)
APPENDIX B TO PART 212—CERTIFICATION OF COMPLIANCE

AUTHORITY: 49 U.S.C. 40101, 40102, 40109, 40113, 41101, 41103, 41504, 41702, 41708, 41712, 46101.

SOURCE: Docket No. OST–97–2356, 63 FR 28236, May 22, 1998, unless otherwise noted.

§212.1 Scope.

This part applies to all charter flights, and all other flights carrying charter passengers or cargo, in interstate and/or foreign air transportation by U.S. certificated air carriers or in foreign air transportation by foreign air carriers. It does not apply to any flights performed by a commuter air carrier, air taxi operator, or certificated air carrier operating ''small aircraft'' under part 298 of this chapter. Nothing in this part gives authority to operate a type or level of service not authorized by certificate, foreign air carrier permit, or exemption, except that a certificated air carrier authorized to conduct scheduled operations may conduct charter flights, in interstate and/or foreign air transportation, without limitation as to the points served.

§212.2 Definitions.

For the purposes of this part:

Affinity (pro rata) charter means a charter arranged by an organization on behalf of its membership, and which meets the requirements of §212.5.

Certificated air carrier means a U.S. direct air carrier holding a certificate issued under 49 U.S.C. 41102.

Charter flight means a flight operated under the terms of a charter contract between a direct air carrier and its charterer or lessee. It does not include scheduled interstate air transportation, scheduled foreign air transportation, or nonscheduled cargo foreign air transportation, sold on an individually ticketed or individually waybilled basis.

Charter operator means:

(1) A ''Public Charter operator'' as defined in §380.2 of this chapter, or

(2) An ''Overseas Military Personnel Charter operator'' as defined in §372.2 of this chapter.

Direct air carrier means a certificated or foreign air carrier that directly engages in the operation of aircraft under a certificate, permit, or exemption issued by the Department.

Fifth freedom charter means a charter flight carrying traffic that originates and terminates in countries other than the carrier's home country, regardless of whether the flight operates via the home country.

Foreign air carrier means a direct air carrier which is not a citizen of the United States as defined in 49 U.S.C. 40102(a) that holds a foreign air carrier permit issued under 49 U.S.C. 41302 or an exemption issued under 49 U.S.C. 40109 authorizing direct foreign air transportation.

Fourth freedom charter means a charter flight carrying traffic that terminates in the carrier's home country having originated in another country.

Gambling junket charter means a charter arranged by a casino, hotel, cruise line, or its agents, the purpose of which is to transport passengers to the casino, hotel, or cruise ship where gambling facilities are available, and which meets the requirements of §212.6.

Long-term wet lease means a wet lease which either—

(1) Lasts more than 60 days, or

(2) Is part of a series of such leases that amounts to a continuing arrangement lasting more than 60 days.

Mixed charter means a charter, the cost of which is borne partly by the charter participants and partly by the charterer, where all the passengers meet the eligibility requirements for ''affinity (pro rata)'' charters of §212.5.

Part charter means flight carrying both charter and scheduled passenger traffic.

Single entity charter means a charter the cost of which is borne by the charterer and not by individual passengers, directly or indirectly.

Third freedom charter means a charter flight carrying traffic that originates in the carrier's home country and terminates in another country.

Wet lease means a lease between direct air carriers by which the lessor provides all or part of the capacity of an aircraft, and its crew, including operations where the lessor is conducting services under a blocked space or code-sharing arrangement.

§212.3 General provisions.

(a) Certificated and foreign air carriers may conduct charter flights as described in this part, and may carry charter passengers on scheduled flights, or charter cargo on scheduled or nonscheduled flights (or on the main deck or in the belly of passenger charter flights), subject to the requirements of this chapter and any orders of, or specific conditions imposed by, the Department.

(b) Charter flights may be operated on a round-trip or one-way basis, with no minimum group, shipment, or contract size.

(c) Contracts to perform charter flights must be in writing and signed by an authorized representative of the certificated or foreign air carrier and the charterer prior to the operation of the flights involved. The written agreement shall include:

(i) The name and address of either the surety whose bond secures advance charter payments received by the carrier, or of the carrier's depository bank to which checks or money orders for the advance charter payments are to be made payable as escrow holder pending completion of the charter trip; and

(2) A statement that unless the charterer files a claim with the carrier, or, if the carrier is unavailable, with the surety, within 60 days after the cancellation of a charter trip with respect to which the charterer's advance payments are secured by the bond, the surety shall be released from all liability under the bond to such charterer for such trips.

(d) A certificated or foreign air carrier must make a reasonable effort to verify that any charterer with which it contracts, and any charter it conducts, meets the applicable requirements of this chapter.

(e) The certificated or foreign air carriers shall require full payment of the total charter price, including payment for the return portion of a round trip, or the posting of a satisfactory bond for full payment, prior to the commencement of any portion of the air transportation, *provided,* however, that in the case of a passenger charter for

less than the entire of an aircraft, the carrier shall require full payment of the total charter price, including payment for the return portion of a round trip, from the charterers not less than 10 days prior to the commencement of any portion of the transportation, and such payment shall not be refundable unless the charter is canceled by the carrier or unless the carrier accepts a substitute charterer for one which has canceled a charter, in which case the amount paid by the latter shall be refunded. For the purpose of this section, payment to the carrier's depository bank, as designated in the charter contract, shall be deemed payment to the carrier.

(f) A certificated or foreign air carrier operating a U.S.-originating passenger charter shall be responsible to return to his or her point of origin any passenger who purchased round trip transportation on that charter and who was transported by that carrier on his or her outbound flight; except that this provision shall not apply in cases where the return transportation is to be provided by another certificated or foreign air carrier.

(g) A certificated or foreign air carrier may not perform any charter flight for which a statement of authorization is required under §212.9 until one has been granted by the Department. In addition, if a foreign air carrier is required to obtain a statement of authorization under paragraph (e) of that section, neither it, not any charter operator, or any other person shall advertise or sell any passenger charter services except those that have been specifically authorized by the Department.

(h) A certificated air carrier may not operate charters where such operations would result in a substantial change in the scope of its operations within the meaning of part 204 of this chapter.

(i) A certificated air carrier may not limit its baggage liability for interstate charter flights except as set forth in part 254 of this chapter.

(j) A certificated air carrier may not, except as set forth in part 121 of the Federal Aviation Regulations (14 CFR part 121), limit the availability, upon reasonable request, of air transportation and related services to a person who may require help from another person in expeditiously moving to an emergency exit for evacuation of an aircraft.

(k) A certificated air carrier holding a certificate to conduct only cargo operations may not conduct passenger charters.

(l) A certificated air carrier may not perform any charter in interstate commerce within the State of Alaska.

(m) A foreign air carrier may operate charters in foreign air transportation only to the extent authorized by its foreign air carrier permit under 49 U.S.C. 41302 or exemption authority under 49 U.S.C. 40109, and only to the extent to which such operations are consistent with the provisions of any applicable bilateral aviation undertaking.

§212.4 Authorized charter types.

Certificated and foreign air carriers may conduct the following charter types, subject to the provisions of this part:

(a) Affinity (pro rata) charters.

(b) Single entity charters, including:

(1) Wet leases involving the carriage of passengers and/or cargo, provided, that the wet lessee holds appropriate economic authority from the Department to conduct the proposed operations; and

(2) Charters pursuant to contracts with the Department of Defense, provided, that foreign air carriers may conduct charters for the Department of Defense only to the extent that such operations are consistent with the provisions of 49 U.S.C. 40118.

(c) Mixed charters.

(d) Gambling junket charters.

(e) Public Charters in accordance with part 380 of this chapter (including operations by educational institutions as defined in that part).

(f) Overseas military personnel charters in accordance with part 372 of this chapter.

(g) Cargo charters.

§212.5 Operation of affinity (pro rata) charters.

An affinity (pro rata) charter operated by a certificated or foreign air carrier must meet the following criteria:

(a) The aircraft must be chartered by an organization, no part of whose business is the formation of groups for transportation or solicitation or sale of transportation services, for the purpose of providing air transportation to its members and their immediate families.

(b) The charter must be organized by the organization itself, or by a person or company who acts not as a principal, but as an agent for the chartering organization or the certificated or foreign air carrier.

(c) No solicitation, sales, or participation may take place beyond the bona fide members of an eligible chartering organization, and their immediate families (spouse, children, and parents). All printed solicitation materials shall contain the following notice in boldface, 10-point or larger type—

Some of the Federal rules that protect against tour changes and loss of passengers' money in publicly sold charters do not apply to this charter flight.

(d) ''Bona fide members'' are members of an organization who: Have not joined the organization merely to travel on a charter flight; and who have been members of the chartering organization for a minimum of six months prior to the date of commencement of the affected flight; *provided*, that the ''six month'' rule does not apply to:

(1) Employees of a single commercial establishment, industrial plant, or government agency, or

(2) Students and employees of a single school.

(e) The charter price due the direct air carrier shall be prorated equally among all the charter passengers, except that children under 12 may be offered discounted or free transportation.

(f) The certificated or foreign air carrier shall make reasonable efforts to assure that passengers transported meet the eligibility requirements of this section. The certificated or foreign air carrier shall also obtain (no later than the date of departure), and maintain for two years, a certification by an authorized representative of the chartering organization that all passengers are eligible for transportation under this section.

§ 212.6 Operation of gambling junket charters.

A gambling junket charter operated by a certificated or foreign air carrier must meet the following criteria:

(a) The aircraft must be chartered by

(1) A casino, hotel, or cruise line duly licensed by the government of any state, territory or possession of the United States, or by a foreign government, or

(2) An agent of such a casino, or cruise line on behalf of that casino, hotel, or cruise line.

(b) The casino, hotel, or cruise line or its agents, may not require a passenger to incur any expense in taking the trip, *provided,* that this provision shall not preclude the casino, hotel, or cruise line or its agents, from requiring prospective passengers to pay nominal reservation fees that are duly refundable by the casino, hotel, or cruise line before the flight, establish a minimum line-of-credit at the casino, hotel, or cruise line, bring (but not necessarily spend) a specified minimum amount of money, or meet other requirements that do not place them in financial jeopardy; nor does it preclude the casino, hotel, or cruise line, or its agents, from offering operational land packages for a fee.

§ 212.7 Direct sales.

(a) Certificated and foreign air carriers may sell or offer for sale, and operate, as principal, Public Charter flights under part 380 of this chapter directly to the public.

(b) Each certificated or foreign air carrier operating a charter trip under this section shall comply with all the requirements of part 380 of this chapter, except that:

(1) Those provisions of part 380 relating to the existence of a contract between a charter operator and a direct air carrier do not apply;

(2) A depository agreement shall comply with § 380.34a (d) and (f);

(3) A security agreement shall comply with § 380.34 (c) and (d); and

(i) If no depository agreement is used, protect charter participant payments (including those for ground accommodations and services) and assure the certificated or foreign air carrier's

contractual and regulatory responsibilities to charter participants in an unlimited amount (except that the liability of the securer with respect to any charter participant may be limited to the charter price paid by or on behalf of such participant);

(ii) If used in combination with a depository agreement, protect charter participant payments (including those for ground accommodations and services) and assure the certificated or foreign air carrier's contractual and regulatory responsibilities to charter participants in the amount of at least $10,000 times the number of flights, except that the amount need not be more than $200,000. The liability of the securer with respect to any charter participant may be limited to the charter price paid by or on behalf of such participant.

(c) The Department reserves the right to limit or prohibit the operation of direct sales Public Charters by a foreign air carrier upon a finding that such action is necessary in the public interest.

§ 212.8 Protection of customers' payments.

(a) Except as provided in paragraph (c) of this section, no certificated air carrier or foreign air carrier shall perform any charter trip (other than a cargo charter trip) originating in the United States or any Overseas Military Personnel Charter trip, as defined in part 372 of this chapter, nor shall such carrier accept any advance payment in connection with any such charter trip, unless there is on file with the Department a copy of a currently effective agreement made between said carrier and a designated bank, by the terms of which all sums payable in advance to the carrier by charterers, in connection with any such trip to be performed by said carrier, shall be deposited with and maintained by the bank, as escrow holder, the agreement to be subject to the following conditions:

(1) The charterer (or its agent) shall pay the carrier either by check or money order made payable to the depository bank. Such check or money order and any cash received by the carrier from a charterer (or its agent) shall be deposited in, or mailed to, the bank no later than the close of the business day following the receipt of the check or money order or the cash, along with a statement showing the name and address of the charterer (or its agent); provided, however, that where the charter transportation to be performed by a carrier is sold through a travel agent, the agent may be authorized by the carrier to deduct its commission and remit the balance of the advance payment to the carrier either by check or money order made payable to the designated bank.

(2) The bank shall pay over to the carrier escrowed funds with respect to a specific charter only after the carrier has certified in writing to the bank that such charter has been completed; provided, however, that the bank may be required by the terms of the agreement to pay over to the carrier a specified portion of such escrowed funds, as payment for the performance of the outbound segment of a round-trip charter upon the carrier's written certification that such segment has been so completed.

(3) Refunds to a charterer from sums in the escrow account shall be paid directly to such charterer its assigns. Upon written certification from the carrier that a charter has been canceled, the bank shall turn over directly to the charterer or its assigns all escrowed sums (less any cancellation penalties as provided in the charter contract) which the bank holds with respect to such canceled charter, provided however, that in the case of a split charter escrowed funds shall be turned over to a charterer or its assigns only if the carrier's written certification of cancellation of such charter includes a specific representation that either the charter has been canceled by the carrier or, if the charter has been canceled by the charterer, that the carrier has accepted a substitute charterer.

(4) The bank shall maintain a separate accounting for each charter flight.

(5) As used in this section the term ''bank'' means a bank insured by the Federal Deposit Insurance Corporation.

(b) The escrow agreement required under paragraph (a) of this section shall not be effective until approved by

the Department. Claims against the escrow may be made only with respect to the non-performance of air transportation.

(c) The carrier may elect, in lieu of furnishing an escrow agreement pursuant to paragraph (a) of this section, to furnish and file with the Department a surety bond with guarantees to the United States Government the performance of all charter trips (other than cargo charter trips) originating in the United States and of all overseas military personnel charter trips, as defined in part 372 of this chapter, to be performed, in whole or in part, by such carrier pursuant to any contracts entered into by such carrier. The amount of such bond shall be unlimited.[1] Claims under the bond may be made only with respect to the non-performance of air transportation.

(d) The bond permitted by this section shall be in the form set forth as the appendix to this part. Such bond shall be issued by a bonding or surety company—

(1) Which is listed in Best's Insurance Reports (Fire and Casualty) with a general policyholders' rating of ''A'' or better or

(2) Which is listed in the U.S. Department of Treasury's notice listing companies holding Certificates of Authority as acceptable sureties on Federal bonds and as acceptable reinsuring companies, published in the FEDERAL REGISTER on or about July 1. The bonding or surety company shall be one legally authorized to issue bonds of that type in the State in which there is located the office or usual residence of the agency designated by the carrier under 49 U.S.C. 46103 to receive service of notices, process and other documents issued by or filed with the Department of Transportation. For the purposes of this section the term ''State'' includes any territory or possession of the United States, or the District of Columbia. If the bond does not comply with the requirements of this section, or for any reason fails to provide satisfactory or adequate protection for the public, the Department will notify the certificated or foreign air carrier by registered or certified mail, stating the deficiencies of the bond. Unless such deficiencies are corrected within the time limit set forth in the notification, no amounts payable in advance by customers for the subject charter trips shall be accepted by the carrier.

(e) The bond required by this section shall provide that unless the charterer files a claim with the carrier, or, if the carrier is unavailable, with the surety, within 60 days after cancellation of a charter trip with respect to which the charterer's advance payments are secured by the bond, the surety shall be released from all liability under the bond to such charterer for such charter trip. The contract between the carrier and the charterer shall contain notice of this provision.

§ 212.9 Prior authorization requirements.

(a) Certificated air carriers shall obtain a statement of authorization for each long-term wet lease to a foreign air carrier.

(b) Foreign air carriers shall obtain a statement of authorization for each:

(1) Fifth freedom charter flight to or from the United States;

(2) Long-term wet lease;

(3) Charter flight for which the Department specifically requires prior authorization under paragraph (e) or (f) of this section; or

(4) Part charter.

(c) The Department may issue blanket statements of authorization to foreign air carriers to conduct fifth freedom charters. The standards for issuing such blanket authorizations shall be those stated in § 212.11. The Department may revoke any authority granted under this paragraph at any time without hearing.

(d) The Department may at any time, with or without hearing, but with at least 30 days' notice, require a foreign air carrier to obtain a statement of authorization before operating any charter flight. In deciding whether to impose such a requirement, the Department will consider (but not be limited to considering) whether the country of the carrier's nationality:

[1] While the face amount of the bond is unlimited, claims are limited to amounts that are paid to carrier for U.S.-originating passenger charter flights that carrier fails to perform or to refund.

(1) Requires prior approval for third or fourth freedom charter flights by U.S. air carriers;

(2) Has, over the objection of the U.S. Government, denied rights of a U.S. air carrier guaranteed by a bilateral agreement; or

(3) Has otherwise impaired, limited, or denied the operating rights of U.S. air carriers, or engaged in unfair, discriminatory, or restrictive practices with respect to air transportation services to, from, through, or over its territory.

(e) The Department, in the interest of national security, may require a foreign air carrier to provide prior notification or to obtain a statement of authorization before operating any charter flight over U.S. territory.

§ 212.10 Application for statement of authorization.

(a) Application for a statement of authorization shall be submitted on OST Form 4540 except that for part charters or long-term wet leases the application may be in letter form. An application for a long-term wet lease shall describe the purpose and terms of the wet lease agreement. Except for an application for a long-term wet lease involving a codeshare agreement, an original and two copies of an application shall be submitted to the Department of Transportation, Office of International Aviation, U.S. Air Carrier Licensing Division, X–44 (for an application by a certificated air carrier), or Foreign Air Carrier Licensing Division, X–45 (for an application by a foreign air carrier), 400 7th Street, SW., Washington, DC 20590; an original and two copies of an application for a long-term wet lease involving a codeshare agreement shall be submitted to DOT Dockets, PL–401, 400 7th Street, SW., Washington, DC 20590, or by electronic submission to DOT Dockets according to procedures at the DOT Dockets website. Upon a showing of good cause, the application may be transmitted by facsimile (fax) or telegram, or may be made by telephone, provided, that in the case of a fax or telephone application, the applicant must confirm its request (by filing an original and two copies of its application as described above) within three business days.

(b) A copy of each application for a long-term wet lease shall also be served on the Director of Flight Standards Service (AFS–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, and on each certificated air carrier that is authorized to serve the general area in which the proposed transportation is to be performed.

(c)(1) Applicants for statements of authorization filed by foreign air carriers shall include documentation to establish the extent to which the country of the applicant's nationality deals with U.S. air carriers on the basis of reciprocity for similar flights, if such flights are not subject to a bilateral agreement, and

(i) The Department has not established that the country accords reciprocity;

(ii) The Department has found reciprocity defective in the most recent prior approval application involving the country; or

(iii) Changes in reciprocity have occurred since the most recent Department finding for the country in question.

(2) Applications filed by certificated or foreign air carriers to conduct long-term wet leases shall include, for the country of the lessee's nationality, the documentation specified in paragraph (c)(1) of this section.

(d)(1) Applications shall be filed at least 5 business days before commencement of the proposed flight or flights, except as specified in paragraphs (d)(2), (d)(3), and (d)(4) of this section. Late applications may be considered upon a showing of good cause for the lateness.

(2) Applications for a part charter or for a long-term wet lease shall be filed at least 45 calendar days before the date of the first proposed flight.

(3) Applications specifically required under § 212.9(d) shall be filed at least 30 calendar days before the proposed flight or flights (10 calendar days for cargo charters), unless otherwise specified by the Department.

(4) Applications required by a Department order under § 212.9(e) shall be filed at least 14 calendar days before the proposed flight or flights, unless otherwise specified by the Department.

(5) Where an application is required by more than one provision of this part and/or order of the Department, only one application need be filed, but it must conform to the earliest applicable filing deadline.

(6) The Department may require service of applications as it deems necessary.

(e)(1) Any part in interest may file a memorandum supporting or opposing an application. Three copies of each memorandum shall be filed within 7 business days after service of the application or before the date of the proposed flight or flights, whichever is earlier. Memorandums will be considered to the extent practicable; the Department may act on an application without waiting for supporting or opposing memorandums to be filed.

(2) Each memorandum shall set forth the reasons why the application should be granted or denied, accompanied by whatever data, including affidavits, the Department is requested to consider.

(3) A copy of each memorandum shall be served on the certified or foreign air carrier applying for approval.

(f)(1) Unless otherwise ordered by the Department, each application and memorandum filed in response will be available for public inspection at the Office of International Aviation immediately upon filing. Such information with respect to codeshare applications and responsive pleadings will be available for public inspection at DOT Dockets or at the DOT Dockets website. Notice of the filing of all applications shall be published in the Department's Weekly List of Applications Filed.

(2) Any person objecting to public disclosure of any information in an application or memorandum must state the grounds for the objection in writing. If the Department finds that disclosure of all or part of the information would adversely affect the objecting person, and that the public interest does not require disclosure, it will order that the injurious information be withheld.

[Docket No. OST–97–2356, 63 FR 28236, May 22, 1998, as amended at 64 FR 3213, Jan. 21, 1999]

§ 212.11 Issuance of statement of authorization.

(a) The Department will issue a statement of authorization if it finds that the proposed charter flight, part charter, or wet lease meets the requirements of this part and that it is in the public interest. Statements of authorization may be conditioned or limited.

(b) In determining the public interest the Department will consider (but not be limited to) the following factors:

(1) The extent to which the authority sought to covered by and consistent with bilateral agreements to which the United States is a party.

(2) The extent to which an applicant foreign air carrier's home country (and, in the case of a long-term wet lease, the lessee's home country) deals with U.S. air carriers on the basis of substantial reciprocity.

(3) Whether the applicant or its agent has previously violated the provisions of this part.

(4) Where the application concerns a long-term wet lease:

(i) Whether the lessor (applicant) or its agent or the lessee (charterer) or its agent has previously violated the provisions of the Department's charter regulations.

(ii) Whether, because of the nature of the arrangement and the benefits involved, the authority sought should be the subject of a bilateral agreement.

(iii) To what extent the lessor owns and/or controls the lessee, or is owned and/or controlled by the lessee.

(c) The Department will submit any denial of an authorization specifically required of a foreign air carrier under §212.9(d) to the President of the United States at least 10 days before the proposed departure. The denial will be subject to stay or disapproval by the President within 10 days after it is submitted. A shorter period for Presidential review may be specified by the Department where the application for authorization is not timely or properly filed. Denial of a late-filed application need not be submitted to the President. For the purposes of this paragraph, an application filed by a foreign air carrier under §212.9(d) to conduct a cargo charter will be considered as timely filed only if it is filed at least 30 calendar days before the proposed flight,

notwithstanding the 10-day filing requirement for cargo charters in §212.10(d)(3).

(d) The Department will publish notice of its actions on applications for statements of authorization in its Weekly List of Applications Filed. Interested persons may upon request obtain copies of letters of endorsed forms advising applicants of action taken on their applications.

§212.12 Waiver.

The Department may grant a waiver of any of the provisions of this part upon a finding that such waiver is in the public interest. A certificated or foreign air carrier may request a waiver by filing a written application with the Department, citing the specific provision to be waived and providing justification for such waiver.

APPENDIX A TO PART 212—CERTIFICATED OR FOREIGN AIR CARRIER'S SURETY BOND UNDER PART 212 OF THE REGULATIONS OF THE DEPARTMENT OF TRANSPORTATION (14 CFR PART 212)

Know all persons by these presents, that we _____ (Name of certificated or foreign air carrier) of _____, (City) _____ (State or Country) as Principal (hereinafter called Principal), and _____ (name of Surety) a corporation created and existing under the laws of the State of _____ (State) as Surety (hereinafter called Surety) are held and firmly bound unto the United States of America in an unlimited amount, as required by 14 CFR 212.8, for which payment, well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Whereas the principal, a certificated air carrier holding a certificate of public convenience and necessity issued under 49 U.S.C. 41102, or a foreign air carrier holding a foreign air carrier permit issued under 49 U.S.C. 41302 or an exemption issued under 49 U.S.C. 40109 authorizing that foreign air carrier to engage in charter trips in foreign air transportation, is subject to rules and regulations of the Department of Transportation relating to security for the protection of charterers of civil aircraft and has elected to file with the Department of Transportation such a bond as will guarantee to the United States Government the performance of all charter trips (other than cargo charter trips) originating in the United States and of all Overseas Military Personnel Charters, as defined in 14 CFR part 372, to be performed, in whole or in part, by such certificated or foreign air carrier pursuant to contracts entered into by such carrier after the execution date of this bond, and

Whereas this bond is written to assure compliance by the Principal with rules and regulations of the Department of Transportation relating to security for the protection of charterer of civil aircraft for charter trips (other than cargo charters) originating in the United States or of Overseas Military Personnel Charter trips and shall inure to the benefit of any and all such charterers to whom the Principal may be held legally liable for any of the damages herein described.

Now, therefore, the condition of this obligation is such that if the Principal shall pay or cause to be paid to such charterer any sum or sums for which the Principal may be held legally liable by reason of the Principal's failure faithfully to perform, fulfill, and carry out all contracts made by the Principal while this bond is in effect for the performance of charter trips (other than cargo charter trips) originating in the United States and of Overseas Military Personnel Charter trips, then this obligation shall be void, otherwise to remain in full force and effect.

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder in any specified amount. The surety agrees to furnish written notice to the Department of Transportation forthwith of all suits filed, judgments rendered, and payments made by said Surety under this bond.

This bond is effective the _____ day of _____, _____, 12:01 a.m., standard time at the address of the Principal as stated herein and shall continue in force until terminated as hereinafter provided. The Principal or the Surety may at any time terminate this bond by written notice to the Department of Transportation at its office in Washington, D.C., such termination to become effective thirty (30) days after actual receipt of said notice by the Department. The Surety shall not be liable hereunder for the payment of the damages hereinbefore described which arise as the result of any contracts for the performance of air transportation services made by the Principal after the termination of this bond becomes effective, as herein provided, but such termination shall not affect the liability of the Surety hereunder for the payment of any such damages arising as the result of contracts for the performance of air transportation services made by the Principal after the termination of this bond becomes effective. Liability of the Surety under this bond shall in all events be limited only to a charterer who shall within sixty (60) days after the cancellation of a charter trip with

respect to which the charterer's advance payments are secured by this bond give written notice of claim to the certificated or foreign air carrier, or, if it is unavailable, to the Surety, and all liability on this bond for such charter trip shall automatically terminate sixty (60) days after the termination date thereof except for claims filed within the time provided herein.

In witness whereof, the said Principal and Surety have executed this instrument on the _____ day of _____, _____.

Principal

Name _____

By: Signature and title _____

Witness _____

Surety

Name _____

By: Signature and title _____

Witness _____

Bonding or surety company must be listed in Best's Insurance Reports (Fire and Casualty) with a general policyholders' rating of ''A'' or better or in the Department of the Treasury listing of companies holding certificates of authority as acceptable sureties on Federal bonds. In addition, the bonding or surety company shall be one legally authorized to issue bonds of that type in the State(s) in which the charter flight(s) originate. Agents must provide satisfactory proof that they have the requisite authority to issue this bond.

APPENDIX B TO PART 212—CERTIFICATION OF COMPLIANCE

Organization Charterworthiness for Affinity Charter Air Transportation and Eligibility of All Prospective Passengers for Such Flights Under Part 212 of the Regulations of the Department of Transportation (14 CFR Part 212)

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

PART 213—TERMS, CONDITIONS AND LIMITATIONS OF FOREIGN AIR CARRIER PERMITS

Sec.

213.1 Applicability.
213.2 Reports of traffic data.
213.3 Filing and approval of schedules.
213.4 [Reserved]
213.5 Filing and service of schedules and applications for approval of schedules; procedure thereon.
213.6 Compliance.
213.7 Filing requirements for adherence to Montreal Agreement.

AUTHORITY: 49 U.S.C. Chapters 401, 411, 413, 415, 417.

SOURCE: ER–624, 35 FR 8881, June 9, 1970, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 213 appear at 61 FR 34725, July 3, 1996.

§ 213.1 Applicability.

This regulation sets forth terms, conditions, and limitations applicable to foreign air carrier permits issued under section 41302 of Title 49 of the United States Code (Transportation) authorizing scheduled foreign air transportation. Unless such permits or the orders issuing such permits otherwise provide, the exercises of the privileges to engage in scheduled foreign air transportation granted by any such permit shall be subject to the terms, conditions, and limitations as are set forth in this part, and as may from time to time be prescribed by the Department.

[ER–680, 36 FR 7306, Apr. 17, 1971, as amended at 61 FR 34725, July 3, 1996]

§ 213.2 Reports of traffic data.

The Department may at any time require any foreign air carrier to file with the Department traffic data disclosing the nature and extent of such carrier's engagement in transportation between points in the United States and points outside thereof. The Department will specify the traffic data required in each such instance. Interested persons seeking reconsideration of a Department determination under this section may file a petition pursuant to Rule 14 of part 302 within 10 days after Department action.

[ER–624, 35 FR 8881, June 9, 1970, as amended at 65 FR 6456, Feb. 9, 2000]

§ 213.3 Filing and approval of schedules.

(a) In the absence of provisions to the contrary in the permit and of Department action pursuant to this section, a foreign air carrier may determine the schedules (including type of equipment used) pursuant to which it engages in transportation between points in the United States and points outside thereof.

(b) In the case of a foreign air carrier permit for scheduled air transportation which is not the subject of an air transport agreement between the United States and the government of the holder, the Department, if it finds that the public interest so requires, may with or without hearing order the foreign air carrier to file with it within 7 days after service of such order, an original and three copies of any or all of its existing schedules of service between any point in the United States and any point outside thereof, and may require such carrier thereafter to file an original and three copies of any proposed schedules of service between such points at least 30 days prior to the date of inauguration of such service. Such schedules shall contain all schedules of aircraft which are or will be operated by such carrier between each pair of points set forth in the order, the type of equipment used or to be used, the time of arrival and departure at each point, the frequency of each schedule, and the effective date of any proposed schedule.

(c) In the case of any foreign air carrier permit for scheduled air transportation which is the subject of an air transport agreement between the United States and the government of the holder, the Department may with or without hearing issue an order, similar to that provided for in paragraph (b) of this section, if it makes the findings provided for in that subsection and, in addition, finds that the government or aeronautical authorities of the government of the holder, over the objections of the U.S. Government, have: (1) Taken action which impairs, limits, terminates, or denies operating rights, or (2) otherwise denied or failed to prevent the denial of, in whole or in part, the fair and equal opportunity to exercise the operating rights, provided for in such air transport agreement, of any U.S. air carrier designated thereunder with respect to flight operations to, from, through, or over the territory of such foreign government.

(d) The carrier may continue to operate existing schedules, and may inaugurate operations under proposed schedules 30 days after the filing of such schedules with the Department, unless the Department with or without hearing issues an order, subject to stay or disapproval by the President of the United States within 10 days after adoption, notifying the carrier that such operations, or any part of them, may be contrary to applicable law or may adversely affect the public interest. If the notification pertains to a proposed schedule, service under such schedule shall not be inaugurated; if the notification pertains to existing schedules, service under such schedules shall be discontinued on the date specified in the Department's order. Such date shall be not less than ten days after adoption of the Department's order unless affirmative Presidential approval is obtained at an earlier date.

(e) No petitions for reconsideration may be filed with respect to Department orders issued pursuant to paragraph (b), (c), or (d) of this section. Nevertheless, if the Department serves a notification under paragraph (d) of this section, the carrier may make application to the Department for approval of any or all existing or proposed schedules, pursuant to the provisions of § 213.5. The Department may with or without hearing withdraw, in whole or in part, its notification at any time and may permit existing or proposed schedules to be operated for such period or periods as the Department may determine.

(f) The date of service on a foreign air carrier of orders and notifications pursuant to this section shall be the date of mailing thereof, by certified or registered mail, to the agent designated by the foreign air carrier pursuant to 49 U.S.C. 46103 or, if the foreign air carrier has failed to designate an agent, the date of mailing by registered air mail to the foreign air carrier's home office.

[ER–624, 35 FR 8881, June 9, 1970, as amended by ER–870, 39 FR 30843, Aug. 26, 1974; ER–1107, 47 FR 46495, Oct. 19, 1982; 61 FR 34725, July 3, 1996]

§ 213.4 [Reserved]

§ 213.5 Filing and service of schedules and applications for approval of schedules; procedure thereon.

(a) *Number of copies and certificate of service.* An original and three copies of

each schedule, and an original and seven (7) copies of application for approval of schedules (§213.3(e)) shall be filed with the Department, each setting forth the names and addresses of the persons, if any, required to be served, and stating that service has been made on all such persons by personal service or by registered or certified mail (if the addressee is located within the United States, its territories and possessions) or by registered air mail (if the addressee is located outside the United States, its territories and possessions) and the date of such service. In the case of service by mail, the date of mailing shall be considered the date of service.

(b) *Pleadings by interested persons.* Any interested person may file and serve upon the foreign air carrier a memorandum in opposition to, or in support of, schedules or an application for approval of schedules within 10 days of the filing opposed or supported. All memoranda shall set forth in detail the reasons for the position taken together with a statement of economic data and other matters which it is desired that the Department officially notice, and affidavits stating other facts relied upon. Memoranda shall contain a certificate of service as prescribed in paragraph (a) of this section. An executed original and seven (7) true copies shall be filed with the Department's Docket Facility. Unless otherwise provided by the Department, further pleadings will not be entertained.

(c) *Determination and petitions for reconsideration.* The Department may make its determination upon the application and other pleadings or, in its discretion, after hearing. Interested persons seeking reconsideration of the Department's determination on an application approval of schedules may file a petition pursuant to Rule 14 of part 302 of this chapter within 10 days of Department action. Any interested person may file an answer in opposition to, or in support of, the petition within 10 days after it is filed. An executed original and 19 copies of such petition for reconsideration or memorandum shall be filed with the Docket Facility. All petitions for reconsideration shall contain a certificate of service in the form prescribed by paragraph (a) of this section. Unless ordered by the Department upon application or upon its own motion, further pleadings will not be entertained.

[ER–624, 35 FR 8881, June 9, 1970, as amended by ER–644, 35 FR 14382, Sept. 12, 1970; 61 FR 34725, July 3, 1996; 65 FR 6456, Feb. 9, 2000]

§ 213.6 Compliance.

Any violation by the foreign air carrier of applicable provisions of Subtitle VII of Title 49 of the U.S. Code or of orders, rules or regulations issued thereunder, or of the terms, conditions or limitations applicable to the exercise of the privileges granted by the permit shall constitute a failure to comply with the terms, conditions and limitations of such permit: *Provided,* That upon a showing that a violation of a provision not mandatorily prescribed by law resulted from the observance by the holder of an obligation, duty or liability imposed by a foreign country, the Department may excuse the violation.

[ER–624, 35 FR 8881, June 9, 1970, as amended at 61 FR 34725, July 3, 1996]

§ 213.7 Filing requirements for adherence to Montreal Agreement.

It shall be a condition upon the holding of a foreign air carrier permit or other authority authorizing direct foreign scheduled air transportation that the holder have and maintain in effect and on file with the Department a signed counterpart of Agreement 18900 (OST Form 4523), and a tariff (for those carriers otherwise generally required to file tariffs) that includes its provisions, and comply with all other requirements of part 203 of this chapter. That form can be obtained from the Foreign Air Carrier Licensing Division (X-45), Office of International Aviation, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

(Approved by the Office of Management and Budget under control number 3024–0064)

[ER–1330, 48 FR 8050, Feb. 25, 1983, as amended by ER–1346, 48 FR 31014, July 6, 1983; 61 FR 34725, July 3, 1996]

PART 214—TERMS, CONDITIONS, AND LIMITATIONS OF FOREIGN AIR CARRIER PERMITS AUTHORIZING CHARTER TRANSPORTATION ONLY

Sec.
214.1 Applicability.
214.2 Terms of service.

§214.1 Applicability.

This part establishes the terms, conditions, and limitations applicable to charter foreign air transportation pursuant to foreign air carrier permits authorizing the holder to engage in charter transportation only.

(Secs. 204, 402, Pub. L. 85–726, as amended, 72 Stat. 743, 757; 49 U.S.C. 1324, 1371)

[ER–1223, 46 FR 28379, May 26, 1981]

§214.2 Terms of service.

Charter air transportation under this part shall be performed in accordance with the provisions of part 212 of this chapter.

(Secs. 204, 402, Pub. L. 85–726, as amended, 72 Stat. 743, 757; 49 U.S.C. 1324, 1371)

[ER–1223, 46 FR 28379, May 26, 1981]

PART 215—USE AND CHANGE OF NAMES OF AIR CARRIERS, FOREIGN AIR CARRIERS AND COMMUTER AIR CARRIERS

Sec.
215.1 Applicability.
215.2 Purpose.
215.3 Use of name.
215.4 Change of name or use of trade name.
215.5 Procedure in case of similarity of names.
215.6 Acknowledgment of registration.

AUTHORITY: 49 U.S.C. Chapters 401, 411, 413, 417.

SOURCE: 53 FR 17923, May 19, 1988, unless otherwise noted.

§215.1 Applicability.

This part applies to all certified air carriers, commuter air carriers, and foreign direct air carriers and to initial or amended applications for authority, applications for certificate or permit transfers or reissuances, and registration of business names.

§215.2 Purpose.

This part sets rules under which direct air carriers may use the names in their operating authorizations and change those names. It further provides for notification to air carriers that may be affected by the use by other air carriers of the same or similar names. Its purpose is to place the responsibility for resolving private disputes about the use of similar names with the air carriers involved, through recourse to the trade names statutes and the courts. These rules do not preclude Department intervention or enforcement action should there be evidence of a significant potential for, or of actual, public confusion.

§215.3 Use of name.

In holding out to the public and in performing air transportation services, a direct air carrier or foreign direct air carrier subject to this part shall use only the name in which its operating authorization is issued or trade name is registered, and shall not operate or hold out to the public in a name not acknowledged by the Department to be so registered. Except as provided in §§221.21(J) and 221.35(d) of this chapter, minor variations in the use of this name, including abbreviations, contractions, initial letters, or other variations of the name that are identifiable with the authorized name, are permitted. Slogans and service marks shall not be considered names for the purpose of this part, and their use is not restricted.

§215.4 Change of name or use of trade name.

(a) *Registrations.* Any air carrier subject to this part that desires to change the name in which its operating authorization has been issued, or to use a trade name, or to obtain initial operating authority must register the name with the Department. The Department will construe any application for initial, reissued, or transferred authority, a well as any commuter air carrier registration or amendment filed under part 298, as containing a ''registration'' of the intended name. A separate name registration document need not be filed. A carrier registering use of a trade name, without seeking

reissuance of its underlying certificate or foreign air carrier permit or exemption authority, must file a statement that complies with §§ 302.3 and 302.4 of this chapter registering its intended name with the Air Carrier Fitness Division if it is a U.S. certificated or commuter carrier, or within the Licensing Division if it is a foreign air carrier.

(b) *Montreal Agreement.* Each registration under this section shall be accompanied by three copies of a counterpart to the Montreal Agreement (Agreement 18900) (OST Form 4523) signed by the carrier using the proposed name. Upon arrival of the application, the Department will place a copy of the signed OST form 4523 in Docket 17325.

(Reporting and recordkeeping requirements in paragraph (b) were approved by the Office of Management and Budget under control number 3024–0064.)

§ 215.5 Procedure in case of similarity of names.

The Department will compare the proposed name in any registration filed under this part or in an application for new, reissued, or transferred authority with a list of names used by existing certificated, commuter and foreign direct air carriers. The Department will notify the applicant of any other certificated, foreign or commuter carriers that may have an identical or similar name. The registrant must then notify those carriers of its registration. The notification will identify the applicant and state its proposed name or the name requested, area of operation or proposed area of operation, type of business, and other pertinent matters. The registrant must then file a certificate of service of the notification with the Department.

§ 215.6 Acknowledgment of registration.

After completion of the filing and notification requirements of this part, the Department may acknowledge the registration by notice in the action granting the application for initial operating authority, transfer, or reissuance or in approving the commuter registration, or by separate notice in the case of use of a trade name. Non-action under this provision shall not be construed as an adjudication of any rights or liabilities.

PART 216—COMMINGLING OF BLIND SECTOR TRAFFIC BY FOREIGN AIR CARRIERS

Sec.
216.1 Definitions.
216.2 Applicability.
216.3 Prohibition.
216.4 Special authorizations.
216.5 Existing permits.
216.6 Existing unauthorized operations.

AUTHORITY: 49 U.S.C. Chapters 401, 413, 417.

SOURCE: ER–525, 33 FR 692, Jan. 19, 1968, unless otherwise noted.

§ 216.1 Definitions.

(a) As used in this part, unless the context otherwise requires:

Act means the Federal Aviation Act of 1958, as amended.

Blind sector traffic means revenue traffic, carried by a foreign air carrier on a flight operating in air transportation, which is enplaned at one foreign point and deplaned at another foreign point, where at least one of such points is not named as a terminal or intermediate point in the carrier's applicable foreign air carrier permit.

NOTE: This definition shall not be deemed to include the carriage of authorized *beyond homeland* traffic (i.e., traffic carried between a point named in a carrier's foreign air carrier permit and a point beyond a homeland terminal point authorized under such permit).

Revenue traffic means persons, property or mail carried for compensation or hire.

(b) Terms defined in section 101 of the Act have the meaning expressed in such definitions.

§ 216.2 Applicability.

This part sets forth the requirements applicable to foreign air carriers for obtaining a Special Authorization from the Board with respect to any deviation from an authorized foreign air transportation route for the purpose of commingling blind sector traffic with air transportation traffic carried pursuant to a foreign air carrier permit issued by the Board. The deviation by a foreign air carrier from its authorized

route for the purpose of combined carriage to or from the United States of nonrevenue or other traffic, the carriage of which does not constitute engaging in foreign air transportation, is governed by the provisions of part 375 of this chapter.

§216.3 Prohibition.

No foreign air carrier shall carry any blind sector traffic, as defined in this part, on any flight operating in air transportation pursuant to the authority of a foreign air carrier permit issued under section 402 of the Act, unless the combined carriage of such traffic has been specifically authorized by such permit, or by a Special Authorization issued under §216.4.

§216.4 Special authorizations.

(a) *Applications.* Any foreign air carrier may apply to the Board for a Special Authorization, as required by this part, for the carriage of blind sector traffic on a particular flight, series of flights, or for a specified or indefinite period of time between specified points. Applications shall be submitted directly to the Board, addressed to the attention of the Director, Bureau of International Aviation. One original and two copies in conformity with the requirements of §§302.3(b) and 302.4 (a) and (b) of this chapter shall be filed. The applications shall contain a proper identification of the applicant; the flight or flights upon which it is proposed to carry such blind sector traffic, including routing, nontraffic stops, and dates or duration of the authority sought; a full description of such traffic, and points between which such traffic will be carried; information or documentation as to whether the country of which the applicant is a national grants reciprocal privileges to U.S. carriers; and the reasons for requesting such authorization together with such additional information as will establish that the grant of such authority will otherwise be in the public interest. Such additional information as may be specifically requested by the Board shall also be furnished.

(b) *Service.* Applications shall be served upon each direct U.S. air carrier certificated to engage in individually ticketed or waybilled foreign air transportation over any portion of the route to which the application pertains, and on such other persons as the Board may require, and proof of such service shall accompany the application as provided in §302.7 of this chapter. Notice of such applications shall also be published in the Board's Weekly List of Applications Filed.

(c) *Memoranda in support or opposition.* Any interested person may file a memorandum in support of or in opposition to the grant of an application. Such memorandum shall set forth in detail the reasons why it is believed that the application should be granted or denied and shall be accompanied by such data, including affidavits, which it is desired that the Board consider. Copies of the memorandum shall be served upon the applicant. Nothing in this subparagraph shall be deemed to preclude the Board from granting or denying an application when the circumstances so warrant without awaiting the filing of memoranda in support of or in opposition to the application.

(d) *Time for filing.* (1) Applications seeking authority to engage in blind sector operations for a period of 3 months or longer, shall be submitted at least 60 days in advance of the proposed commencement of such operations. Memoranda in response to such an application shall be submitted within 15 days after the date of filing thereof.

(2) Applications seeking authority to engage in blind sector operations for a period less than three months shall be filed at least 20 days in advance of the proposed commencement of such operations, and memoranda in response thereto within 7 days after the date of filing thereof: *Provided,* That the Board may consider late filed applications upon a showing of good cause for failure to adhere to this requirement.

(e) *General procedural requirements.* Except as otherwise provided herein, the provisions of part 302, subpart A, of this chapter shall apply to the extent applicable.

(f) *Issuance of Special Authorization.* A Special Authorization authorizing the carriage of blind sector traffic will be issued only if the Board finds that the proposed carriage is fully consistent with applicable law and this part, and that grant of such authority would be

in the public interest. The application may be granted or denied in whole or in part without hearing, and a Special Authorization made subject to any conditions or limitations, to the extent that such action is deemed by the Board to be in the public interest. Special Authorizations are not transferable.

(g) *Nature of the privilege conferred.* A Special Authorization issued pursuant to this section shall constitute a privilege conferred upon a carrier, which may be enjoyed only to the extent that its continued exercise remains in the interest of the public. Accordingly, any Special Authorization issued pursuant to this section may be revoked, suspended, amended or restricted without hearing.

(Sec. 204(a) of the Federal Aviation Act of 1958, as amended, 72 Stat. 743 (49 U.S.C. 1324); Reorganization Plan No. 3 of 1961, 75 Stat. 837, 26 FR 5989 (49 U.S.C. 1324 (note)))

[ER–525, 33 FR 692, Jan. 19, 1968, as amended by ER–910, 40 FR 23844, June 3, 1975; ER–1060, 43 FR 34117, Aug. 3, 1978; 65 FR 6456, Feb. 9, 2000]

§ 216.5 Existing permits.

''Foreign aircraft permits'' issued by the Board under the provisions of part 375 of the Board's Special Regulations, authorizing the combined carriage of blind sector traffic as defined in this part, shall continue in effect in accordance with their terms until their expiration date unless sooner terminated, revoked or modified by the Board. Such permits shall, upon the effective date of this part, be deemed to constitute a Special Authorization issued pursuant to § 216.4.

§ 216.6 Existing unauthorized operations.

Notwithstanding the provisions of § 216.3, if within 30 days after the effective date of this part a carrier files an application for a Special Authorization to continue to perform existing blind sector operations which have been regularly performed by such carrier commencing on a date prior to August 9, 1967, such carrier may continue to engage in such blind sector operations until final decision by the Board on such application: *Provided,* That any such application shall, in addition to the requirements of § 216.4(a), contain a statement that the carrier is relying upon this section for continuance of preexisting blind sector operations, and shall fully describe such operations including the date inaugurated, and the frequency and continuity of performance.

PART 217—REPORTING TRAFFIC STATISTICS BY FOREIGN AIR CARRIERS IN CIVILIAN SCHEDULED, CHARTER, AND NONSCHEDULED SERVICES

Sec.
217.1 Definitions.
217.2 Applicability.
217.3 Reporting requirements.
217.4 Data collected (service classes).
217.5 Data collected (data elements).
217.6 Extension of filing time.
217.7 Certification.
217.8 Reporting procedures.
217.9 Waivers from reporting requirements.
217.10 Instructions.
217.11 Reporting compliance.

AUTHORITY: 49 U.S.C. 329 and chapters 401, 413, 417.

SOURCE: 53 FR 46294, Nov. 16, 1988, unless otherwise noted.

§ 217.1 Definitions.

As used in this part:

Foreign Air Carrier means a non-U.S. air carrier holding a foreign air carrier permit or exemption authority from the Department of Transportation.

Nonrevenue passenger means: a person traveling free or under token charges, except those expressly named in the definition of *revenue passenger;* a person traveling at a fare or discount available only to employees or authorized persons of air carriers or their agents or only for travel on the business of the carriers; and an infant who does not occupy a seat. (This definition is for 14 CFR Part 217 traffic reporting purposes and may differ from the definitions used in other parts by the Federal Aviation Administration and the Transportation Security Administration for the collection of Passenger Facility Charges and Security Fees.)

The definition includes, but is not limited to the following examples of passengers when traveling free or pursuant to token charges:

(1) Directors, officers, employees, and others authorized by the air carrier operating the aircraft;

(2) Directors, officers, employees, and others authorized by the air carrier or another carrier traveling pursuant to a pass interchange agreement;

(3) Travel agents being transported for the purpose of familiarizing themselves with the carrier's services;

(4) Witnesses and attorneys attending any legal investigation in which such carrier is involved;

(5) Persons injured in aircraft accidents, and physicians, nurses, and others attending such persons;

(6) Any persons transported with the object of providing relief in cases of general epidemic, natural disaster, or other catastrophe;

(7) Any law enforcement official, including any person who has the duty of guarding government officials who are traveling on official business or traveling to or from such duty;

(8) Guests of an air carrier on an inaugural flight or delivery flights of newly-acquired or renovated aircraft;

(9) Security guards who have been assigned the duty to guard such aircraft against unlawful seizure, sabotage, or other unlawful interference;

(10) Safety inspectors of the National Transportation Safety Board or the FAA in their official duties or traveling to or from such duty;

(11) Postal employees on duty in charge of the mails or traveling to or from such duty;

(12) Technical representatives of companies that have been engaged in the manufacture, development or testing of a particular type of aircraft or aircraft equipment, when the transportation is provided for the purpose of in-flight observation and subject to applicable FAA regulations;

(13) Persons engaged in promoting air transportation;

(14) Air marshals and other Transportation Security officials acting in their official capacities and while traveling to and from their official duties; and

(15) Other authorized persons, when such transportation is undertaken for promotional purpose.

Reporting carrier for T–100(f) purposes means the air carrier in operational control of the flight, i.e., the carrier that uses its flight crews under its own operating authority.

Revenue passenger means: a passenger for whose transportation an air carrier receives commercial remuneration. (This definition is for 14 CFR Part 217 traffic reporting purposes and may differ from the definitions used in other parts by the Federal Aviation Administration and the Transportation Security Administration for the collection of Passenger Facility Charges and Security Fees.) This includes, but is not limited to, the following examples:

(1) Passengers traveling under publicly available tickets including promotional offers (for example two-for-one) or loyalty programs (for example, redemption of frequent flyer points);

(2) Passengers traveling on vouchers or tickets issued as compensation for denied boarding or in response to consumer complaints or claims;

(3) Passengers traveling at corporate discounts;

(4) Passengers traveling on preferential fares (Government, seamen, military, youth, student, etc.);

(5) Passengers traveling on barter tickets; and

(6) Infants traveling on confirmed-space tickets.

Statement of Authorization under this part means a statement of authorization from the Department, pursuant to 14 CFR part 207, 208, or 212, as appropriate, that permits joint service transportation, such as blocked space agreements, part-charters, code-sharing or wet-leases, between two direct air carriers holding underlying economic authority from the Department.

Wet-Lease Agreement means an agreement under which one carrier leases an aircraft with flight crew to another air carrier.

[53 FR 46294, Nov. 16, 1988, as amended at 67 FR 49223, July 30, 2002; 67 FR 58689, Sept. 18, 2002]

§217.2 Applicability.

This part applies to foreign air carriers that are authorized by the Department to provide civilian passenger and/or cargo service to or from the

United States, whether performed pursuant to a permit or exemption authority.

[Doc. No. OST 98–4043, 67 FR 49223, July 30, 2002]

§ 217.3 Reporting requirements.

(a) Each foreign air carrier shall file BTS Form 41 Schedule T–100(f) ''Foreign Air Carrier Traffic Data by Nonstop Segment and On-flight Market.'' All traffic statistics shall be compiled in terms of each flight stage as actually performed.

(b) The traffic statistics reported on Schedule T–100(f) shall be accumulated in accordance with the data elements prescribed in §217.5 of this part, and these data elements are patterned after those in section 19–5 of part 241 of this chapter.

(c) One set of Form 41 Schedule T–100(f) data shall be filed.

(d) Schedule T–100(f) shall be submitted to the Department within thirty (30) days following the end of each reporting month.

(e) Schedule T–100(f) shall be filed with the Bureau of Transportation Statistics at the address referenced in §217.10 and the Appendix to §217.10 of this part.

[53 FR 46294, Nov. 16, 1988, as amended at 60 FR 66722, Dec. 26, 1995]

§ 217.4 Data collected (service classes).

(a) The statistical classifications are designed to reflect the operating elements attributable to each distinctive class of service offered for scheduled, nonscheduled and charter service.

(b) The service classes that foreign air carriers shall report on Schedule T–100(f) are:

(1) F Scheduled Passenger/Cargo

(2) G Scheduled All-Cargo

(3) L Nonscheduled Civilian Passenger/Cargo Charter

(4) P Nonscheduled Civilian All-Cargo Charter

(5) Q Nonscheduled Services (Other than Charter). This service class is reserved for special nonscheduled cargo flights provided by a few foreign air carriers under special authority granted by the Department.

§ 217.5 Data collected (data elements).

(a) Within each of the service classifications prescribed in §217.4, data shall be reported in applicable traffic elements.

(b) The statistical data to be reported on Schedule T–100(f) are:

(1) *Air carrier.* The name and code of the air carrier reporting the data. The carrier code is assigned by DOT. The Office of Airline Information (OAI'S) will confirm the assigned code upon request; OAI's address is in the Appendix to §217.10 of this part.

(2) *Reporting period date.* The year and month to which the reported data are applicable.

(3) *Origin airport code.* This code represents the industry designator as described in the Appendix to §217.10 of this part. A common private industry source of these industry designator codes is the *Official Airline Guides* (OAG). Where none exists, OAI will furnish a code upon request. OAI's address is in the Appendix to §217.10 of this part.

(4) *Destination airport code.* This represents the industry designator, from the source described in §217.5(b)(3).

(5) *Service class code.* For scheduled and other services, the applicable service class prescribed in §217.4 of this part shall be reported.

(6) *Aircraft type code.* This code represents the aircraft type, as specified in the Appendix to §217.10 of this part. Where none exists, OAI will furnish a code upon request.

(7) *Revenue aircraft departures performed (Code 510).* The number of revenue aircraft departures performed.

(8) *Revenue passengers transported (Code 130).* The total number of revenue passengers on board over a flight stage, including those already on the aircraft from previous flight stages. Includes both local and through passengers on board the aircraft.

(9) *Revenue freight transported (kilograms) (Code 237).* The volume, expressed in kilograms, of revenue freight that is transported. As used in this part, ''Freight'' means revenue cargo other than passengers or mail.

(10) *Total revenue passengers in market (Code 110).* The total number of revenue passengers enplaned in a market, boarding the aircraft for the first time.

While passengers may be transported over several flight stages in a multi-segment market, this data element (code 110) is an unduplicated count of passengers originating within the market.

(11) *Total revenue freight in market (kilograms) (Code 217).* The amount of revenue freight cargo (kilograms) that is enplaned in a market, loaded on the aircraft for the first time.

(12) *Available capacity-payload* (*Code 270*). The available capacity is collected in kilograms. This figure shall reflect the available load (see load, available in 14 CFR part 241 Section 03) or total available capacity for passengers, mail and freight applicable to the aircraft with which each flight stage is performed.

(13) *Available seats* (*Code 310*). The number of seats available for sale. This figure reflects the actual number of seats available, excluding those blocked for safety or operational reasons. Report the total available seats in item 310.

[53 FR 46294, Nov. 16, 1988 and 53 FR 52404, Dec. 28, 1988, as amended at 54 FR 7183, Feb. 17, 1989; 60 FR 66722, Dec. 26, 1995; 62 FR 6718, Feb. 13, 1997]

§ 217.6 Extension of filing time.

(a) If circumstances prevent the filing of a Schedule T–100(f) report on or before the due date prescribed in section 22 of part 241 of this chapter and the Appendix to § 217.10 of this part, a request for an extension must be filed with the Director, Office of Airline Information.

(b) The extension request must be received at the address provided in § 217.10 at least 3 days in advance of the due date, and must set forth reasons to justify granting an extension, and the date when the report can be filed. If a request is denied, the air carrier must submit the required report within 5 days of its receipt of the denial of extension.

[53 FR 46294, Nov. 16, 1988, as amended at 60 FR 66722, Dec. 26, 1995]

§ 217.7 Certification.

The certification for BTS Form 41 Schedule T–100(f) shall be signed by an officer of the air carrier with the requisite authority over the collection of data and preparation of reports to ensure the validity and accuracy of the reported data.

[53 FR 46294, Nov. 16, 1988, as amended at 60 FR 66722, Dec. 26, 1995]

§ 217.8 Reporting procedures.

Reporting guidelines and procedures for Schedule T–100(f) are prescribed in the Appendix to § 217.10 of this part.

§ 217.9 Waivers from reporting requirements.

(a) A waiver from any reporting requirement contained in Schedule T–100(f) may be granted by the Department upon its own initiative, or upon the submission of a written request of the air carrier to the Director, Office of Airline Information, when such a waiver is in the public interest.

(b) Each request for waiver must demonstrate that: Existing peculiarities or unusual circumstances warrant a departure from the prescribed procedure or technique; a specifically defined alternative procedure or technique will result in substantially equivalent or more accurate portrayal of the operations reported; and the application of such alternative procedure will not adversely affect the uniformity in reporting applicable to all air carriers.

[53 FR 46294, Nov. 16, 1988, as amended at 60 FR 66722, Dec. 26, 1995]

§ 217.10 Instructions.

(a) Foreign air carriers shall submit Form 41 Schedule T–100(f) on either floppy discs produced on microcomputers or on other ADP media, such as magnetic tape, or hardcopy reports.

(b) The detailed instructions for preparing Schedule T–100(f) are contained in the Appendix to this section. Blank copies of Schedule T–100(f) are available from the Office of Airline Information, K–25, Room 4125, U.S. Department of Transportation, 400 Seventh St., SW., Washington, DC 20590.

APPENDIX TO SECTION 217.10 OF 14 CFR PART 217—INSTRUCTIONS TO FOREIGN AIR CARRIERS FOR REPORTING TRAFFIC DATA ON FORM 41 SCHEDULE T–100(F)

(a) General instructions.

(1) Description. Form 41 Schedule T–100(f) provides flight stage data covering both passenger/cargo and all cargo operations in scheduled and nonscheduled services. The schedule is used to report all flights which serve points in the United States or its territories as defined in this part.

(2) Applicability. Each foreign air carrier holding a §41302 permit or exemption authority shall file Schedule T–100(f).

(3) Address for filing reports: Office of Airline Information, K–25, Room 4125, U.S. Department of Transportation, 400 Seventh St., SW., Washington, DC 20590.

(4) Filing period. Form 41 Schedule T–100(f) shall be filed monthly and is due at the Department thirty (30) days following the end of the reporting month to which the data are applicable.

(5) Number of copies. A single set of legible Form 41 Schedule T–100(f) data and certification shall be submitted.

(6) Foreign air carrier certification. Each foreign air carrier shall submit a certification statement (illustrated at the end of this Appendix) as an integral part of each monthly Schedule T–100(f), as prescribed in §217.5 of this part.

(7) Alternative filing on Automatic Data Processing (ADP) media. Foreign air carriers are encouraged to use ADP equipment to reduce the manual effort of preparing Schedule T–100(f). Foreign air carriers may use the floppy disk medium. ADP submission requirements for floppy discs are prescribed in paragraph (f).

(b) Preparation of Form 41 Schedule T–100(f):

(1) Explanation of nonstop segments and on-flight markets. There are two basic categories of data, one pertaining to nonstop segments and the other pertaining to on-flight markets. For example, the routing (A-B-C-D) consists of three nonstop segment records A-B, B-C, and C-D, and six on-flight market records A-B, A-C, A-D, B-C, B-D, and C-D.

(2) Guidelines for reporting a nonstop segment. A nonstop segment is reported when one or both points are in the United States or its territories. These data shall be merged with that for all of the other reportable nonstop operations over the same segment. Nonstop segment data must be summarized by aircraft type, under paragraph (h)(1), and class of service, paragraph (g)(1)(v).

(3) Rules for determining a reportable on-flight market. On-flight markets are reportable when one or both points are within the U.S., with the following exceptions: (i) Do not report third country to U.S. markets resulting from flight itineraries which serve a third country prior to a homeland point in flights passing through the homeland bound for the U.S.; and (ii) do not report U.S. to third country markets resulting from itineraries serving third country points subsequent to a homeland point in flights outbound from the U.S. and passing through the homeland. In reporting data pertaining to these two exceptions, the traffic moving to or from the U.S. relating to the applicable prior or subsequent third countries (referred to as ''behind'' or ''beyond'' traffic) is to be combined with the applicable foreign homeland gateway point, just as though the traffic were actually enplaned or deplaned at the homeland gateway, without disclosure of the actual prior or subsequent points. Applicable flights are illustrated in examples (6) and (7) under paragraph (c).

(c) Examples of flights. Following are some typical flight itineraries that show the reportable nonstop segment and on-flight market entries. The carrier's homeland is the key factor in determining which on-flight markets are reportable.

(1) SQ flight # 11 LAX—NRT—SIN. This is an example of a flight with an intermediate foreign country. It is not necessary to report anything on the NRT—SIN leg.

SQ—Singapore Airlines
LAX—Los Angeles, USA
NRT—Tokyo-Narita, Japan
SIN—Singapore, Singapore

A–3—Airport code	A–4—Airport code	A–5—Service class (mark an X)					By aircraft type—				Sum of all aircraft types—	
Origin	Destination	F	G	L	P	Q	B–1—Aircraft type code	B–2—Revenue aircraft departures	B–3—Revenue passengers transported	B–4—Revenue freight transported (kg)	C–1–Total revenue passengers in market	C–2—Total revenue freight in market (kg)
LAX	NRT	X	....	....	....	....	8161	12	2400	4800	400	500
LAX	SIN	X	....	....	....	....	.....	.....	.....	.....	2000	4300

(2) SQ flight #15 LAX— HNL— TPE— SIN. This is an example of two U.S. points, an intermediate third country, and a homeland point. Information is reportable on only the on-flight markets and nonstop segments that consist of one or both U.S. points.

SQ—Singapore Airlines
LAX—Los Angeles, USA

HNL—Honolulu, USA
TPE—Taipei, Taiwan
SIN—Singapore, Singapore

A–3—Airport code	A–4—Airport code	A–5—Service class (Mark an x)					By aircraft type—				Sum of all aircraft types—	
Origin	Destination	F	G	L	P	Q	B–1—Acft. type code	B–2—Revenue aircraft departures	B–3—Revenue passengers transported	B–4—Revenue freight transported (kg)	C–1—Total revenue passengers in market	C–2—Total revenue freight in market (kg)
LAX	HNL	X	....	....	....	....	8161	12	2700	5300	0	0
LAX	TPE	X	....	....	....	....	.....	.....	.....	.....	700	1300
LAX	SIN	X	....	....	....	....	.....	.....	.....	.....	2000	4000
HNL	TPE	X	....	....	....	....	8161	12	2200	6800	1200	800
HNL	SIN	X	....	....	....	....	.....	.....	.....	.....	1000	6000

(3) LB flight # 902 LPB-VVI-MAO-CCS-MIA. This flight serves two homeland points and two different foreign countries before terminating in the U.S. Nonstop segment information is required only for the nonstop segment involving a U.S. point. On-flight market information is required in 4 of the 10 markets, LPB-MIA and VVI-MIA, since these involve homeland and U.S. points; MAO-MIA is necessary to show traffic carried into the U.S., and CCS-MIA for the same reason, and also because in all cases where a nonstop segment entry is required, a corresponding on-flight market entry must also be reported.

LB—Lloyd Aero Boliviano
LPB—La Paz, Bolivia
VVI—Santa Cruz-Viru Viru, Bolivia
MAO—Manaus, Brazil
CCS—Caracas, Venezuela
MIA—Miami, USA

A–3—Airport code	A–4—Airport code	A–5—Service class (mark an x)					By aircraft type—				Sum of all aircraft types—	
Origin	Destination	F	G	L	P	Q	B–1—Acft. type code	B–2—Revenue aircraft departures	B–3—Revenue passengers transported	B–4—Revenue freight transported (kg)	C–1—Total revenue passengers in market	C–2—Total revenue freight in market (kg)
CCS	MIA	X	....	....	....	....	8161	31	6900	71000	0	0
LPB	MIA	X	....	....	....	....	.....	.....	.....	.....	1100	20000
VVI	MIA	X	....	....	....	....	.....	.....	.....	.....	4000	30000
MAO	MIA	X	....	....	....	....	.....	.....	.....	.....	1000	12000

(4) LY flight #005 TLV-AMS-ORD-LAX. This flight serves a single foreign intermediate point and two U.S. points after its homeland origination. The information on the TLV-AMS leg is not reportable.

LY—El Al Israel Airlines
TLV—Tel Aviv, Israel
AMS—Amsterdam, Netherlands
ORD—Chicago, USA
LAX—Los Angeles, USA

A–3—Airport code	A–4—Airport code	A–5—Service class (mark an x)					By aircraft type—				Sum of all aircraft types—	
Origin	Destination	F	G	L	P	Q	B–1—Acft. type code	B–2—Revenue aircraft departures	B–3—Revenue passengers transported	B–4—Revenue freight transported (kg)	C–1—Total revenue passengers in market	C–2—Total revenue freight in market (kg)
AMS	ORD	X	....	....	....	....	8161	1	350	10000	50	1500
TLV	ORD	X	....	....	....	....	.....	.....	.....	.....	150	4000
TLV	LAX	X	....	....	....	....	.....	.....	.....	.....	125	3000
ORD	LAX	X	....	....	....	....	8161	1	150	4500	0	0
AMS	LAX	X	....	....	....	....	.....	.....	.....	.....	25	1500

(5) QF flight #25 SYD—BNE—CNS—HNL—YVR. This flight serves three homeland points, a U.S. point, and a subsequent third country. Nonstop segment information is required on the respective legs into and out of the United States. All on-flight market entries involving the U.S. point HNL are also required. Data are not required on the homeland to homeland markets, or the homeland—third country markets.

QF—Qantas Airways (Australia)
SYD—Sydney, Australia
BNE—Brisbane, Australia
CNS—Cairns, Australia
HNL—Honolulu, USA
YVR—Vancouver, Canada

A–3—Airport code	A–4—Airport code	A–5—Service class (mark an x)					By aircraft type				Sum of all aircraft types	
Origin	Destination	F	G	L	P	Q	B–1—Acft. type code	B–2—Revenue aircraft departures	B–3—Revenue freight transported	B–4—Revenue freight transported (kg)	C–1—Total revenue passengers in market	C–2—Total revenue freight in market (kg)
CNS	HNL	X					8161	5	2200	41000	400	8000
SYD	HNL	X					.....	.....	.....	.....	600	10000
BNE	HNL	X					.....	.....	.....	.....	600	9000
HNL	YVR	X					8161	5	750	15700	150	1700

(6) JL flight #002 HKG—NRT—SFO. This flight originates in a third country prior to the homeland. No data is required on the HKG-NRT leg, but the HKG-SFO passengers and cargo shall be shown as enplanements in the NRT-SFO on-flight market entry. These volumes are included by definition in the passenger and cargo transported volumes of the NRT-SFO nonstop segment entry.

JL—Japan Air Lines
HKG—Hong Kong, Hong Kong
NRT—Tokyo-Narita, Japan
SFO—San Francisco, USA

A–3—Airport code	A–4—Airport code	A–5—Service class (mark an x)					By aircraft type				Sum of all aircraft types	
Origin	Destination	F	G	L	P	Q	B–1—Acft. type code	B–2—Revenue aircraft departures	B–3—Revenue passengers transported	B–4—Revenue freight transported (kg)	C–1—Total revenue passengers in market	C–2—Total revenue freight in market (kg)
NRT	SFO	X					8161	3	1200	18000	1200	18000

(7) JL flight #001 SFO-NRT-HKG. This flight is the reverse sequence of flight #002 above; it requires a nonstop segment entry covering SFO-NRT, and a single on-flight market entry also for SFO-NRT. In this case, the on flight traffic enplaned at SFO and destined for HKG, a beyond homeland point, shall be included in the SFO-NRT entry; a separate SFO-HKG entry is not required.

JL—Japan Air Lines
SFO—San Francisco, USA
NRT—Tokyo-Narita, Japan
HKG—Hong Kong, Hong Kong

A–3—Airport code	A–4—Airport code	A–5—Service class (mark an x)					By aircraft type				Sum of all aircraft types	
Origin	Destination	F	G	L	P	Q	B–1—Acft. type code	B–2—Revenue aircraft departures	B–3—Revenue passengers transported	B–4—Revenue freight transported (kg)	C–1—Total revenue passengers in market	C–2—Total revenue freight in market (kg)
SFO	NRT	X					8161	1	400	20000	400	20000

(8) BA flight #5 LHR-ANC-NRT-OSA. This example contains a single homeland point and a single U.S. point followed by two third country points. It is necessary to report the nonstop segments into and out of the U.S., and all three of the on-flight markets which

have the U.S. point ANC as either an origin or destination.

BA—British Airways

LHR—London, England
ANC—Anchorage, USA
NRT—Tokyo-Narita, Japan
OSA—Osaka, Japan

A–3—Airport code	A–4—Airport code	A–5—Service class (mark an x)					By aircraft type			Sum of all aircraft types		
Origin	Destination	F	G	L	P	Q	B–1—Acft. type code	B–2—Revenue aircraft departures	B–3—Revenue passengers transported	B–4—Revenue freight transported (kg)	C–1—Total revenue passengers in market	C–2—Total revenue freight in market (kg)
LHR	ANC	X					8161	10	3000	50000	100	1000
ANC	NRT	X					8161	10	3150	55000	100	2500
ANC	OSA	X					.....	.....	.....	.....	150	1500

(d) Provisions to reduce paperwork:

(1) Nonstop Segment Entries. The flight stage data applicable to nonstop segment entries must be summarized to create totals by aircraft equipment type, within service class, within pairs-of-points.

(2) On-flight Market Entries. The applicable on-flight market entries shall be summarized to create totals by service class within pair-of-points.

(e) Preparation of hard copy Schedule T–100(f):

(1) Section A—Indicative and flight pattern information. A copy of Schedule T–100(f) is shown at the end of this Appendix. Section A defines the origin and destination points and the service class code to which the nonstop segment data in Section B and the on-flight market data in Section C are applicable. Section A information, along with the carrier code and report date, must be included on each schedule.

(2) Section B—Nonstop segment information. Section B of the schedule is used for reporting nonstop segment information by aircraft type. To reduce the number of schedules reported, space is provided for including data on multiple different aircraft types. Similarly, the on-flight market section has been included on a single Schedule T–100(f), along with the nonstop segment data, rather than on a separate schedule.

(3) Section C—On-flight market information. Section C of the schedule is used for reporting on-flight market data. There will always be an on-flight market that corresponds to the nonstop segment. Because the on-flight market data are reported at the service class level rather than by aircraft type, a specific flight may produce more on-flight markets than nonstop segments, (see examples in paragraph (c) of this Appendix), resulting in data reported in sections A and C only.

(f) ADP media reports:

(1) ADP report format. A foreign air carrier may, in accordance with the following guidelines, use personal computers (and in some cases mainframe or minicomputers) to report Schedule T–100(f) data.

(i) Reporting medium. ADP data submission must be on IBM compatible disks. Carriers using mainframe or minicomputers shall download (transcribe) to the required IBM compatible disk. Carriers wishing to use a different ADP procedure or e-mail must obtain written approval to do so from the BTS Assistant Director—Airline Information under the waiver provisions in §217.9 of this part. Requests for approval to use alternative methods must disclose and describe in sufficient detail the proposed data transmission methodology.

(ii) File characteristics. OAI files are reported in ASCII delimited format, sometimes called Data Interchange Format (DIF). This form of recording data provides for variable length fields (data elements) which, in the case of alphabetic data, are enclosed by quotation marks (‘‘) and separated by a comma (,); numeric data elements are recorded without editing symbols and separated by a comma. The data is identified by its juxtaposition within a given record. Each record submitted by an air carrier shall contain the specified number of data elements all of which must be juxtapositionally correct.

(iii) Schedule T–100(f) record layout. Each minidisk record shall consist of data fields for recording a maximum of eleven (11) elements. The order and description of the data fields are as follows:

(1). Carrier code: Alphanumeric
(2). Report date: Numeric
(3). Origin airport: Alphabetic
(4). Destination airport: Alphabetic
(5). Service class code: Alphabetic
(6). Aircraft type code: Numeric
(7). Aircraft departures performed: Numeric
(8). Revenue passengers transported: Numeric
(9). Revenue freight transported: Numeric
(10). Total revenue passengers in market: Numeric
(11). Total revenue freight in market: Numeric

(A) Fields numbered 1 through 11 must always be provided. Therefore, enter a zero (0) or space when there is no reportable data for a given element. See paragraph (g)(1) through (g)(3) for a detailed definition of each data element.

(B) The following are sample disk records:

	1	2	3	4	5	6	7	8	9	10	11
Sample No. 1	"CCC"	8701	"JFK"	"LHR"	"F"	8161	29	59	69	79	89
Sample No. 2	"CCC"	8701	"JFK"	"LHR"	"F"	6901	299	599	0	0	0
Sample No. 3	"CCC"	8701	"JFK"	"LHR"	"G"	7102	299	0	599	0	799
Sample No. 4	"CCC"	8701	"JFK"	"LHR"	"F"	0	0	0	0	699	799

Sample No. 1 represents a full record, using the applicable fields for reporting both the nonstop segment (6 through 9) and the on-flight market information (10 and 11). The service class is ''F'' indicating scheduled passenger/cargo service; the aircraft type code is 8161; the 816 indicates a Boeing 747–100, and the 1 in the units position indicates the standard ''passengers-above and cargo-below'' configuration.

Sample No. 2 contains nonstop segment information only. It is needed in this example to report the volumes transported on the same nonstop segment, but with a second aircraft type.

Sample No. 3 contains nonstop segment and on-flight market information for the same points, but for another service class (code letter ''G'' indicates all-cargo service). Also, the units position of aircraft type is a 2, indicating a cargo cabin. Field numbers 8 and 10 are for reporting passengers. In this case both contain a zero, indicating no passengers, while at the same time maintaining the required juxtaposition.

Sample No. 4 shows the reporting of only on-flight market information for a pair-of-points for which there is no corresponding nonstop segment information.

(2) External labeling requirements: Physical label. The following data must be clearly printed on a label affixed to the minidisk or its container.

Carrier Name
Carrier code (as prescribed by DOT, BTS, OAI)
File identification = ''T–100(F) DATA''
Report date (year, month to which data applies)

(3) Collating sequence, optional. If practical, the records should be sorted by origin and destination airport codes, service class, and aircraft type. However, the sequence is optional. Data may be submitted in any sequence including random.

(4) Summarization. See summarization rules as specified in paragraph (d)(1).

(g) Data element definitions:

(1) Service pattern information.

(i) Line A–1 Carrier code. Use the carrier code established by the Department. This code is provided to each carrier in the initial reporting letter from the Office of Airline Information (OAI). If there are any questions about these codes, contact the OAI Data Administration Division at the address in paragraph (a)(3) of this Appendix.

(ii) Line A–2 Report date. This is the year and month to which the data are applicable. For example, 200009 indicates the year 2000, and the month of September.

(iii) Line A–3 Origin airport code. This is the departure airport, where an aircraft begins a flight segment, and where the passengers originate in an on-flight market. Use the 3-letter code from the City/Airport Codes section of the *Official Airline Guide Worldwide Edition*. If no 3-letter code is available, OAI will assign one; the address is in paragraph (a)(3) of this Appendix.

(iv) Line A–4 Destination airport code. This is the arrival airport, where an aircraft stops on a flight segment, and where passengers deplane (get off the flight) after reaching their destination in a market. Use the 3-letter code from the source described in paragraph (g)(1)(iii) of this Appendix.

(v) Line A–5 Service class code. Select one of the following single letter codes which describes the type of service being reported on a given flight operation.

F = Scheduled Passenger/cargo Service
G = Scheduled All-cargo Service
L = Nonscheduled Civilian Passenger/Cargo Charter
P = Nonscheduled Civilian All-Cargo Charter
Q = Nonscheduled Services (Other than Charter)

(2) Nonstop segment information:

(i) Line B–1 Aircraft type code. Use the four digit numeric code prescribed in paragraph (h)(1) of this Appendix. If no aircraft type code is available, OAI will assign one. The address is in paragraph (a)(3) of this Appendix.

(ii) Line B–2 Aircraft departures performed. This is the total number of physical departures performed with a given aircraft type, within service class and pair-of-points.

(iii) Line B–3 Revenue passengers transported. This is the total number of revenue passengers transported on a given nonstop segment. It represents the total number of revenue passengers on board over the segment without regard to their actual point of enplanement.

(iv) Line B–4 Revenue freight transported. This item is the total weight in kilograms (kg) of the revenue freight transported on a given nonstop segment without regard to its actual point of enplanement.

(3) On-flight market information:

(i) Line C–1 Total revenue passengers in market. This item represents the total number of revenue passengers, within service class, that were enplaned at the origin airport and deplaned at the destination airport.

(ii) Line C–2 Total revenue freight in market. This item represents the total weight in kilograms (kg) of revenue freight enplaned at the origin and deplaned at the destination airport.

(h) [Reserved]

(i) Joint Service.

(1) The Department may authorize joint service operations between two direct air carriers. Examples of these joint service operations are:

Blocked-space agreements;

Part-charter agreements;

Code-sharing agreements;

Wet-lease agreements, and similar arrangements.

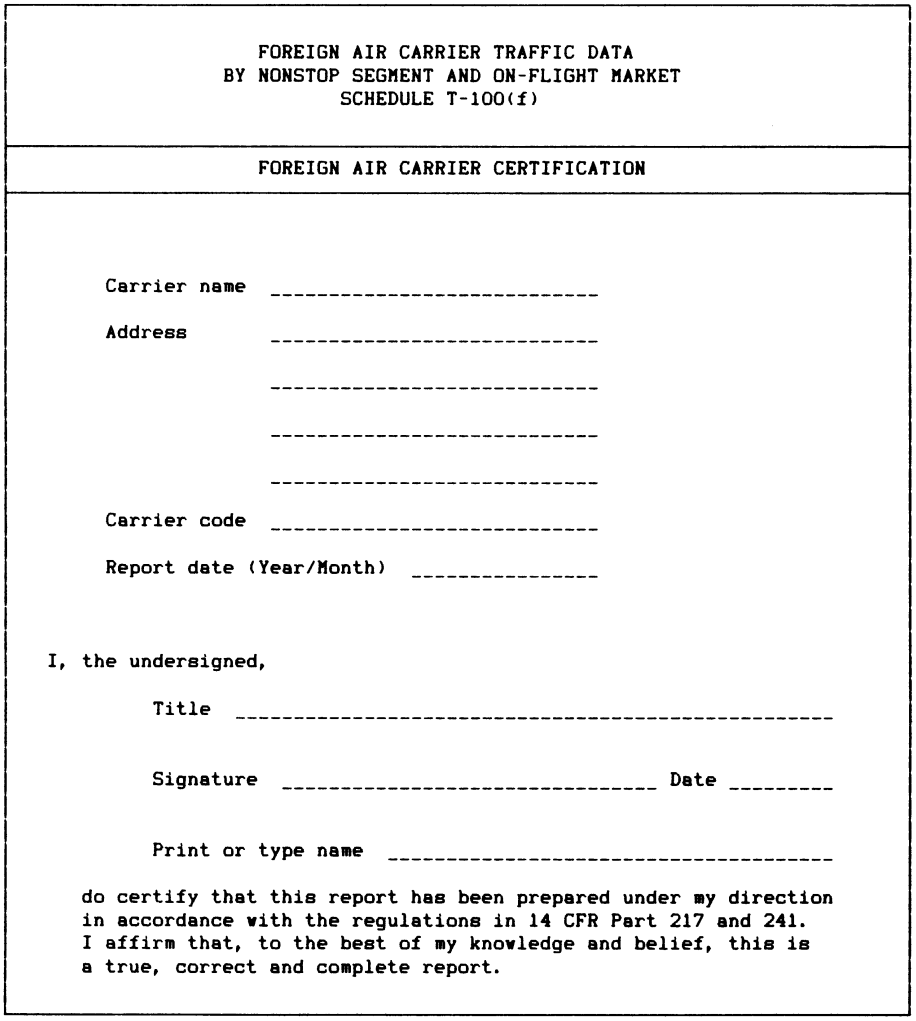
(2) Joint-service operations shall be reported on BTS Form 41 Schedules T–100 and T–100(f) by the air carrier in operational control of the flight, i.e., the air carrier that uses its flight crew to perform the operation. If there are questions about reporting a joint-service operation, contact the BTS Assistant Director—Airline Information at the address in paragraph (a)(3) of this appendix.

(j) Schedules.

SCHEDULE T-100(f) FOREIGN AIR CARRIER TRAFFIC DATA BY NONSTOP SEGMENT AND ON-FLIGHT MARKET	A-1. Air Carrier Name:_____Code_____ A-2. Report Date:(Year)_____ (Month) _____

	A. SERVICE PATTERN							B. NONSTOP SEGMENT INFORMATION				C. ON-FLIGHT MARKET	
Line	A-3 Airport Code	A-4 Airport Code	A-5 Service Class (Mark an x)					B-1 Air-Craft Type Code	B-2 Revenue Aircraft Departures	B-3 Revenue Passengers Transported	B-4 Revenue Freight Transported (kg)	C-1 Total Revenue Passengers In Market	C-2 Total Revenue Freight In Market (kg)
No.	ORIGIN	DESTIN.	F	G	L	P	Q		--- By aircraft type ---			-- Sum of all aircraft types --	
1.													
2.													
3.													
4.													
5.													
6.													
7.													
8.													
9.													
10.													
11.													
12.													
13.													
14.													
15.													
16.													
17.													
18.													
19.													
20.													

RSPA Form 41 Schedule T-100(f)



FOREIGN AIR CARRIER TRAFFIC DATA
BY NONSTOP SEGMENT AND ON-FLIGHT MARKET
SCHEDULE T-100(f)

FOREIGN AIR CARRIER CERTIFICATION

Carrier name _____

Address _____

_____

_____

_____

Carrier code _____

Report date (Year/Month) _____

I, the undersigned,

Title _____

Signature _____ Date _____

Print or type name _____

do certify that this report has been prepared under my direction in accordance with the regulations in 14 CFR Part 217 and 241. I affirm that, to the best of my knowledge and belief, this is a true, correct and complete report.

RSPA Form 41 Certification for Schedule T-100(f)

[53 FR 46294, Nov. 16, 1988, as amended at 54 FR 7183, Feb. 17, 1989; 60 FR 66722, Dec. 26, 1995; 67 FR 49223, July 30, 2002]

§ 217.11 Reporting compliance.

(a) Failure to file reports required by this part will subject an air carrier to civil penalties prescribed in Title 49 United States Code section 46301.

(b) Title 18 U.S.C. 1001, Crimes and Criminal Procedure, makes it a criminal offense subject to a maximum fine of $10,000 or imprisonment for not more than 5 years, or both, to knowingly and willfully make, or cause to be made, any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States. [53 FR 46294, Nov. 16, 1988, as amended at 67 FR 49223, July 30, 2002]

PART 218—LEASE BY FOREIGN AIR CARRIER OR OTHER FOREIGN PERSON OF AIRCRAFT WITH CREW

Sec.

218.1 Definitions.
218.2 Applicability.
218.3 Prohibition against unauthorized operations employing aircraft leased with crew.
218.4 Condition upon authority of lessee.
218.5 Application for disclaimer of jurisdiction.
218.6 Issuance of order disclaiming jurisdiction.
218.7 Presumption.

AUTHORITY: Secs. 204(a), 402, Pub. L. 85–726, as amended, 72 Stat. 743, 757 (49 U.S.C. 1324, 1372).

SOURCE: ER–716, 36 FR 23148, Dec. 4, 1971, unless otherwise noted.

§ 218.1 Definitions.

For the purpose of this part the term *lease* shall mean an agreement under which an aircraft is furnished by one party to the agreement to the other party, irrespective of whether the agreement constitutes a true lease, charter arrangement, or some other arrangement.

§ 218.2 Applicability.

This part applies to foreign air carriers and other persons not citizens of the United States which, as lessors or lessees, enter into agreements providing for the lease of aircraft with crew to a foreign air carrier for use in foreign air transportation. For purposes of section 402 of the Act, the person who has operational control and safety responsibility is deemed to be the carrier, and is required to have appropriate operating authority.

[ER–716, 36 FR 23148, Dec. 4, 1971, as amended by ER–1250, 46 FR 47770, Sept. 30, 1981]

§ 218.3 Prohibition against unauthorized operations employing aircraft leased with crew.

(a) No foreign air carrier, or other person not a citizen of the United States, shall lease an aircraft with crew to a foreign air carrier for use by the latter in performing foreign air transportation unless either:

(1) The lessor holds a foreign air carrier permit issued under section 402 of the Act or an approved registration issued under part 294 of this chapter, and any statement of authorization required by part 212 of this chapter; or

(2) The Board has issued an exemption under section 416 of the Act specifically authorizing the lessor to engage in the foreign air transportation to be performed under the lease; or

(3) The Board has issued an order under §218.6 disclaiming jurisdiction over the matter.

(b) For purposes of this part, an aircraft shall be considered to be leased with crew if:

(1) The pilot in command or a majority of the crew of the aircraft, other than cabin attendants:

(i) Is to be furnished by the lessor;

(ii) Is employed by the lessor;

(iii) Continues in the employ of the lessor in the operation of services other than those provided for in the agreement between the parties; or

(iv) Has been employed by the lessor prior to the lease, and the employment of whom by the lessee is coextensive with the period or periods for which the aircraft is available to the lessee under the lease; or

(2) The aircraft is operated under operations specifications issued to the lessor by the Federal Aviation Administration.

[ER–716, 36 FR 23148, Dec. 4, 1971, as amended by ER–1250, 46 FR 47770, Sept. 30, 1981; ER–1260, 46 FR 52598, Oct. 27, 1981]

§ 218.4 Condition upon authority of lessee.

In any case where a foreign air carrier leases from another foreign air carrier or other person not a citizen of the United States an aircraft with crew for use in performing foreign air transportation, it shall be a condition upon the authority of the lessee to perform such foreign air transportation that compliance be achieved with the requirements of this part.

§ 218.5 Application for disclaimer of jurisdiction.

The parties to a lease with crew as described in §218.3(b) may apply to the Board for an order disclaiming jurisdiction over the matter. The application

shall be filed jointly by both parties to the lease, and shall generally conform to the procedural requirements of part 302, subpart A, of this chapter. It shall be served upon any air carrier providing services over all or any part of the route upon which air transportation services will be provided pursuant to the agreement. The application should set forth in detail all evidence and other factors relied upon to demonstrate that true operational control and safety responsibility for the air transportation services to be provided are in the hands of the lessee rather than the lessor. A copy of the agreement and all amendments thereof, as well as a summary interpretation of its pertinent provisions, shall be included with the applications. Any interested person may file an answer to the application within 7 days after service hereof. Until the Board has acted upon the application, no operations in foreign transportation shall be performed pursuant to the agreement.

§ 218.6 Issuance of order disclaiming jurisdiction.

If the Board finds that true operational control and safety responsibility will be vested in the lessee and not in the lessor (i.e., that the lease transaction is in substance a true lease of aircraft rather than a charter or series of charters), and that the performance of the operations provided for in such lease will not result in the lessor's being engaged in foreign air transportation, it will issue an order disclaiming jurisdiction over the matter. Otherwise the application for disclaimer of jurisdiction will be denied.

§ 218.7 Presumption.

Whether under a particular lease agreement the lessor of the aircraft is engaged in foreign air transportation is a question of fact to be determined in the light of all the facts and circumstances. However, in circumstances where the lessor furnishes both the aircraft and the crew, there is a presumption that true operational control and safety responsibility are exercised by the lessor, and that the agreement constitutes a charter arrangement under which the lessor is engaged in foreign air transportation. The burden shall rest upon the applicants for disclaimer of jurisdiction in each instance to demonstrate by an appropriate factual showing that the operation contemplated will not constitute foreign air transportation by the lessor.

PART 221—TARIFFS

Subpart A—General

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221.1 Applicability of this part.
221.2 Carrier's duty.
221.3 Definitions.
221.4 English language.
221.5 Unauthorized air transportation.

Subpart B—Who Is Authorized to Issue and File Tariffs

221.10 Carrier.
221.11 Agent.

Subpart C—Specifications of Tariff Publications

221.20 Specifications applicable to tariff publications.

Subpart D—Manner of Filing Tariffs

221.30 Passenger fares and charges.
221.31 Rules and regulations governing passenger fares and services.

Subpart E—Contents of Tariff

221.40 Specific requirements.
221.41 Routing.

Subpart F—Requirements Applicable to all Statements of Fares and Charges

221.50 Currency.
221.51 Territorial application.
221.52 Airport to airport application, accessorial services.
221.53 Proportional fares.
221.54 Fares stated in percentages of other fares; other relationships prohibited.
221.55 Conflicting or duplicating fares prohibited.
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AUTHORITY: 49 U.S.C. 40101, 40109, 40113, 46101, 46102, chapter 411, chapter 413, chapter 415 and chapter 417, subchapter I.

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Subpart A—General

§221.1 Applicability of this part.

All tariffs and amendments to tariffs of air carriers and foreign air carriers filed with the Department pursuant to chapter 415 of the statute shall be constructed, published, filed, posted and kept open for public inspection in accordance with the regulations in this part and orders of the Department.

§221.2 Carrier's duty.

(a) *Must file tariffs.* (1) Except as provided in paragraph (d) of this section, every air carrier and every foreign air carrier shall file with the Department, and provide and keep open to public inspection, tariffs showing all fares, and charges for foreign air transportation between points served by it, and between points served by it and points served by any other air carrier or foreign air carrier, when through service and through rates shall have been established, and showing to the extent required by regulations and orders of the Department, all classifications, rules, regulations, practices, and services in connection with such foreign air transportation.

(2) Tariffs shall be filed, and provided in such form and manner, and shall contain such information as the Department shall by regulation or order prescribe. Any tariff so filed which is not consistent with chapter 415 of the statute and such regulations and orders may be rejected. Any tariff so rejected shall be void, and may not be used.

(b) *Must observe tariffs.* No air carrier or foreign air carrier shall charge or demand or collect or receive a greater or less or different compensation for foreign air transportation or for any service in connection therewith, than the fares and charges specified in its currently effective tariffs; and no air carrier or foreign air carrier shall, in any manner or by any device, directly or indirectly, or through any agent or broker, or otherwise, refund or remit any portion of the fares, or charges so specified, or extend to any person any privileges or facilities, with respect to matters required by the Department to be specified in such tariffs, except those specified in such tariffs.

(c) *No relief from violations.* Nothing contained in this part shall be construed as relieving any air carrier or foreign air carrier from liability for violations of the statute, nor shall the filing of a tariff, or amendment thereto, relieve any air carrier or foreign air carrier from such violations or from violations of regulations issued under the statute.

(d) *Exemption authority.* Air carriers and foreign air carriers, both direct and indirect, are exempted from the requirement of section 41504 of the statute and any requirement of this chapter to file, and shall not file with the Department, tariffs for operations under the following provisions:

(1) Part 291, Domestic Cargo Transportation;

(2) Part 296, Indirect Air Transportation of Property;

(3) Part 297, Foreign Air Freight Forwarders and Foreign Cooperative Shippers Association;

(4) Part 298, Exemption for Air Taxi Operations, except to the extent noted in §298.11(b);

(5) Part 380, Public Charters;

(6) Part 207, Charter Trips and Special Services;

(7) Part 208, Terms, Conditions, and Limitations of Certificates to Engage in Charter Air Transportation;

(8) Part 212, Charter Trips by Foreign Air Carriers;

(9) Part 292, International Cargo Transportation, except as provided in part 292.

(10) Part 293 International Passenger Transportation, except as provided in part 293.

§ 221.3 Definitions.

As used in this part, terms shall be defined as follows:

Add-on means an amount published for use only in combination with other fares for the construction of through fares. It is also referred to as ''proportional fare'' and ''arbitrary fare''.

Add-on tariff means a tariff which contains add-on fares.

Area No. 1 means all of the North and South American Continents and the islands adjacent thereto; Greenland; Bermuda; the West Indies and the islands of the Caribbean Sea; and the Hawaiian Islands (including Midway and Palmyra).

Area No. 2 means all of Europe (including that part of the former Union of the Soviet Socialist Republics in Europe) and the islands adjacent thereto; Iceland; the Azores; all of Africa and the islands adjacent thereto; Ascension Island; and that part of Asia lying west of and including Iran.

Area No. 3 means all of Asia and the islands adjacent thereto except that portion included in Area No. 2; all of the East Indies, Australia, New Zealand, and the islands adjacent thereto; and the islands of the Pacific Ocean except those included in Area No. 1.

Bundled normal economy fare means the lowest one-way fare available for unrestricted, on-demand service in any city-pair market.

CRT means a video display terminal that uses a cathode ray tube as the image medium.

Capacity controlled fare means a fare for which a carrier limits the number of seats available for sale.

Carrier means an air carrier or foreign air carrier subject to section 41504 of 49 U.S.C. subtitle VII.

Charge means the amount charged for baggage, in excess of the free allowance, accompanying or checked by a passenger or for any other service ancillary to the passenger's carriage.

Conditions of carriage means those rules of general applicability that define the rights and obligations of the carrier(s) and any other party to the contract of carriage with respect to the transportation services provided.

Contract of carriage means those fares, rules, and other provisions applicable to the foreign air transportation of passengers or their baggage, as defined in the statute.

Department means the Department of Transportation.

Direct-service market means an international market where the carrier provides service either on a nonstop or single-flight-number basis, including change-of-gauge.

Electronic tariff means an international passenger fares or rules tariff or a special tariff permission application transmitted to the Department by means of an electronic medium, and containing fares for the transportation of persons and their baggage, and including such associated data as arbitraries, footnotes, routings, and fare class explanations.

Fare means the amount per passenger or group of persons stated in the applicable tariff for the air transportation thereof and includes baggage unless the context otherwise requires.

Field means a specific area of a record used for a particular category of data.

Filer means an air carrier, foreign air carrier, or tariff publishing agent of such a carrier filing tariffs on its behalf in conformity with this subpart.

Item means a small subdivision of a tariff and identified by a number, a letter, or other definite method for the purpose of facilitating reference and amendment.

Joint fare means a fare that applies to transportation over the joint lines or routes of two or more carriers and which is made and published by arrangement or agreement between such carriers evidenced by concurrence or power of attorney.

Joint tariff means a tariff that contains joint fares.

Local fare means a fare that applies to transportation over the lines or routes of one carrier only.

Local tariff means a tariff that contains local fares.

Machine-readable data means encoded computer data, normally in a binary format, which can be read electronically by another computer with the requisite software without any human interpretation.

On-line tariff database means the remotely accessible, on-line version, maintained by the filer, of:

(1) The electronically filed tariff data submitted to the Department pursuant to this part and Department orders, and

(2) The Departmental approvals, disapprovals, and other actions, as well as any Departmental notation concerning such approvals, disapprovals, or other actions, that subpart R of this part requires the filer to maintain in its database.

Original tariff refers to the tariff as it was originally filed exclusive of any supplements, revised records or additional records.

Passenger means any person who purchases, or who contacts a ticket office or travel agent for the purpose of purchasing, or considering the purchase of, foreign air transportation.

Passenger tariff means a tariff containing fares, charges, or governing provisions applicable to the foreign air transportation of persons and their baggage.

Publish means to display tariff material in either electronic or paper media.

Record means an electronic tariff data set that contains information describing one (1) tariff price or charge, or information describing one (1) related element associated with that tariff price or charge.

SFFL means the Standard Foreign Fare Level as established by the Department of Transportation under 49 U.S.C. 41509.

Statute means subtitle VII of Title 49, United States Code.

Statutory notice means the number of days required for tariff filings in § 221.160(a).

Tariff publication means a tariff, a supplement to a tariff, or an original or revised record of a tariff, including an index of tariffs and an adoption notice (§ 221.161).

Through fare means the total fare from point of origin to destination. It may be a local fare, a joint fare, or combination of separately established fares.

Ticket office means a station, office or other location where tickets are sold or similar documents are issued, that is under the charge of a person employed exclusively by the carrier, or by it jointly with another person.

Unbundled normal economy fare means the lowest one-way fare available for on-demand service in any city-pair market which is restricted in some way, *e.g.*, by limits set and/or charges imposed for enroute stopovers or transfers, exclusive of capacity control.

United States means the several States, the District of Columbia, and the several Territories and possessions of the United States, including the Territorial waters and the overlying air space thereof.

Warsaw Convention means the Convention for the Unification of Certain Rules Relating to International Transportation by Air, 49 Stat. 3000.

§ 221.4 English language.

All tariffs and other documents and material filed with the Department pursuant to this part shall be in the English language.

§ 221.5 Unauthorized air transportation.

Tariff publications shall not contain fares or charges, or their governing provisions, applicable to foreign air transportation which the issuing or participating carriers are not authorized by the Department to perform, except where the Department expressly requests or authorizes tariff publications to be filed prior to the Department's granting authority to perform the foreign air transportation covered by such tariff publications. Any tariff publication filed pursuant to such express request or authorization which is not consistent with chapter 415 and this part may be rejected; any tariff publication so rejected shall be void.

Subpart B—Who is Authorized To Issue and File Tariffs

§ 221.10 Carrier.

(a) *Local or joint tariffs.* A carrier may issue and file, in its own name, tariff publications which contain:

(1) Local fares of such carrier only, and provisions governing such local fares, and/or

(2) Joint fares which apply jointly via such issuing carrier in connection with other carriers (participating in the tariff publications under authority of their concurrences given to the issuing

carrier as provided in §221.140) and provisions governing such joint fares. Provisions for account of an individual participating carrier may be published to govern such joint fares provided §221.40(a)(9) is complied with. A carrier shall not issue and file tariff publications containing local fares of other carriers, joint rates or fares in which the issuing carrier does not participate, or provisions governing such local or joint fares.

(3) Rules and regulations governing foreign air transportation to the extent provided by this part and/or Department order. Rules and regulations may be published in separate governing tariffs, as provided in subpart G.

(b) *Issuing officer.* An officer or designated employee of the issuing carrier shall be shown as the issuing officer of a tariff publication issued by a carrier, and such issuing officer shall file the tariff publication with the Department on behalf of the issuing carrier and all carriers participating in the tariff publication.

§221.11 Agent.

An agent may issue and file, in his or its own name, tariff publications naming local fares and/or joint fares, and provisions governing such fares, and rules and regulations governing foreign air transportation to the extent provided by this part and/or Department order, for account of carriers participating in such tariff publications, under authority of their powers of attorney given to such issuing agent as provided in §221.150. The issuing agent shall file such tariff publications with the Department on behalf of all carriers participating therein. Only one issuing agent may act in issuing and filing each such tariff publication.

Subpart C—Specifications of Tariff Publications

§221.20 Specifications applicable to tariff publications.

(a) *Numerical order.* All items in a tariff shall be arranged in numerical or alphabetical order. Each item shall bear a separate item designation and the same designation shall not be assigned to more than one item.

(b) *Carrier's name.* Wherever the name of a carrier appears in a tariff publication, such name shall be shown in full exactly as it appears in the carrier's certificate of public convenience and necessity, foreign air carrier permit, letter of registration, or whatever other form of operating authority of the Department to engage in air transportation is held by the carrier, or such other name which has specifically been authorized by order of the Department. A carrier's name may be abbreviated, provided the abbreviation is explained in the tariff.

(c) *Agent's name and title.* Wherever the name of an agent appears in tariff publications, such name shall be shown in full exactly as it appears in the powers of attorney given to such agent by the participating carriers and the title ''Agent'' or ''Alternate Agent'' (as the case may be) shall be shown immediately in connection with the name.

(d) *Statement of prices.* All fares and charges shall be clearly and explicitly stated and shall be arranged in a simple and systematic manner. Complicated plans and ambiguous or indefinite terms shall not be used. So far as practicable, the fares and charges shall be subdivided into items or similar units, and an identifying number shall be assigned to each item or unit to facilitate reference thereto.

(e) *Statement of rules.* The rules and regulations of each tariff shall be clear, explicit and definite, and except as otherwise provided in this part, shall contain:

(1) Such explanatory statements regarding the fares, charges, rules or other provisions contained in the tariff as may be necessary to remove all doubt as to their application.

(2) All of the terms, conditions, or other provisions which affect the fares or charges for air transportation named in the tariff.

(3) All provisions and charges which in any way increase or decrease the amount to be paid by any passenger, or which in any way increase or decrease the value of the services rendered to the passenger.

(f) *Separate rules tariff.* If desired, rules and regulations may be published

in separate governing tariffs to the extent authorized and in the manner required by subpart G.

(g) *Rules of limited application.* A rule affecting only a particular fare or other provision in the tariff shall be specifically referred to in connection with such fare or other provision, and such rule shall indicate that it is applicable only in connection with such fare or other provision. Such rule shall not be published in a separate governing rules tariff.

(h) *Conflicting or duplicating rules prohibited.* The publication of rules or regulations which duplicate or conflict with other rules or regulations published in the same or any other tariff for account of the same carrier or carriers and applicable to or in connection with the same transportation is prohibited.

(i) Each tariff shall include:

(1) A prominent D.O.T. or other number identifying the tariff in the sequence of tariffs published by the carrier or issuing agent;

(2) The name of the issuing carrier or agent;

(3) The cancellation of any tariffs superseded by the tariff;

(4) A description of the tariff contents, including geographic coverage;

(5) Identification by number of any governing tariffs;

(6) The date on which the tariff is issued;

(7) The date on which the tariff provisions will become effective; and

(8) the expiration date, if applicable to the entire tariff.

Subpart D—Manner of Filing Tariffs

§ 221.30 Passenger fares and charges.

(a) Fares tariffs, including associated data, shall be filed electronically in conformity with subpart R. Associated data includes arbitraries, footnotes, routing numbers and fare class explanations. See § 221.202(b)(8).

(b) Upon application by a carrier, the Department's Office of International Aviation shall have the authority to waive the electronic filing requirement in this paragraph and in Subpart R in whole or in part, for a period up to one year, and to permit, under such terms and conditions as may be necessary to carry out the purposes of this part, the applicant carrier to file fare tariffs in a paper format. Such waivers shall only be considered where electronic filing, compared to paper filing, is impractical and will produce a significant economic hardship for the carrier due to the limited nature of the carrier's operations subject to the requirements of this part, or other unusual circumstances. Paper filings pursuant to this paragraph shall normally conform to the requirements of § 221.195 and other applicable requirements of this part.

§ 221.31 Rules and regulations governing passenger fares and services.

(a) Tariff rules and regulations governing passenger fares and services other than those subject to § 221.30 may be filed electronically in conformity with subpart R. Such filings shall conform to criteria approved by the Department's Office of International Aviation as provided in § 221.180 and shall contain at a minimum the information required by § 221.202(b)(9).

(b) Applications for special tariff permission may be filed electronically, as provided in § 221.212.

(c) Tariff publications and applications for special tariff permission covered by paragraphs (a) and (b) of this section may be filed in a paper format, subject to the requirements of this part and Department orders.

Subpart E—Contents of Tariff

§ 221.40 Specific requirements.

(a) In addition to the general requirements in § 221.20, the rules and regulations of each tariff shall contain:

(1) *Aircraft and seating.* For individually ticketed passenger service, the name of each type of aircraft used in rendering such service by manufacturer model designation and a description of the seating configuration (or configurations if there are variations) of each type of aircraft. Where fares are provided for different classes or types of passenger service (that is, first class, coach, day coach, night coach, tourist, economy or whatever other class or type of service is provided

under the tariff), the tariff shall specify the type of aircraft and the seating configuration used on such aircraft for each class or type of passenger service. When two or more classes or types of passenger service are performed in a single aircraft, the seating configuration for each type or class shall be stated and described.

(2) *Rule numbers.* Each rule or regulation shall have a separate designation. The same designation shall not be assigned to more than one rule in the tariff.

(3) *Penalties.* Where a rule provides a charge in the nature of a penalty, the rule shall state the exact conditions under which such charge will be imposed.

(4) *Vague or indefinite provisions.* Rules and regulations shall not contain indefinite statements to the effect that traffic of any nature will be ''taken only by special arrangements'', or that services will be performed or penalties imposed ''at carrier's option'', or that the carrier ''reserves the right'' to act or to refrain from acting in a specified manner, or other provisions of like import; instead, the rules shall state definitely what the carrier will or will not do under the exact conditions stated in the rules.

(5) *Personal liability rules.* Except as provided in this part, no provision of the Department's regulations issued under this part or elsewhere shall be construed to require the filing of any tariff rules stating any limitation on, or condition relating to, the carrier's liability for personal injury or death. No subsequent regulation issued by the Department shall be construed to supersede or modify this rule of construction except to the extent that such regulation shall do so in express terms.

(6) *Notice of limitation of liability for death or injury under the Warsaw Convention.* Notwithstanding the provisions of paragraph (a)(5) of this section, each air carrier and foreign air carrier shall publish in its tariffs a provision stating whether it avails itself of the limitation on liability to passengers as provided in Article 22(1) of the Warsaw Convention or whether it has elected to agree to a higher limit of liability by a tariff provision. Unless the carrier elects to assume unlimited liability, its tariffs shall contain a statement as to the applicability and effect of the Warsaw Convention, including the amount of the liability limit in dollars. Where applicable, a statement advising passengers of the amount of any higher limit of liability assumed by the carrier shall be added.

(7) *Extension of credit.* Air carriers and foreign air carriers shall not file tariffs that set forth charges, rules, regulations, or practices relating to the extension of credit for payment of charges applicable to air transportation.

(8) *Individual carrier provisions governing joint fares.* Provisions governing joint fares may be published for account of an individual carrier participating in such joint fares provided that the tariff clearly indicates how such individual carrier's provisions apply to the through transportation over the applicable joint routes comprised of such carrier and other carriers who either do not maintain such provisions or who maintain different provisions on the same subject matter.

(9) *Passenger property which cannot lawfully be carried in the aircraft cabin.* Each air carrier shall set forth in its tariffs governing the transportation of persons, including passengers' baggage, charges, rules, and regulations providing that such air carrier receiving as baggage any property of a person traveling in air transportation, which property cannot lawfully be carried by such person in the aircraft cabin by reason of any Federal law or regulation, shall assume liability to such person, at a reasonable charge and subject to reasonable terms and conditions, within the amount declared to the air carrier by such person, for the full actual loss or damage to such property caused by such air carrier.

(b) [Reserved]

§ 221.41 Routing.

(a) *Required routing.* The route or routes over which each fare applies shall be stated in the tariff in such manner that the following information can be definitely ascertained from the tariff:

(1) The carrier or carriers performing the transportation,

(2) The point or points of interchange between carriers if the route is a joint route (via two or more carriers),

(3) The intermediate points served on the carrier's or carriers' routes applicable between the origin and destination of the fare and the order in which such intermediate points are served.

(b) *Individually stated routings—Method of publication.* The routing required by paragraph (a) of this section shall be shown directly in connection with each fare or charge for transportation, or in a routing portion of the tariff (following the fare portion of the tariff), or in a governing routing tariff. When shown in the routing portion of the tariff or in a governing routing tariff, the fare from each point of origin to each point of destination shall bear a routing number and the corresponding routing numbers with their respective explanations of the applicable routings shall be arranged in numerical order in the routing portion of the tariff or in the governing routing tariff.

Subpart F—Requirements Applicable to All Statements of Fares and Charges

§ 221.50 Currency.

(a) *Statement in United States currency required.* All fares and charges shall be stated in cents or dollars of the United States except as provided in paragraph (b) of this section.

(b) *Statements in both United States and foreign currencies permitted.* Fares and charges applying between points in the United States, on the one hand, and points in foreign countries, on the other hand, or applying between points in foreign countries, may also be stated in the currencies of foreign countries in addition to being stated in United States currency as required by paragraph (a) of this section: Provided, that:

(1) The fares and charges stated in currencies of countries other than the United States are substantially equivalent in value to the respective fares and charges stated in cents or dollars of the United States.

(2) Each record containing fares and charges shall clearly indicate the respective currencies in which the fares and charges thereon are stated, and

(3) The fares and charges stated in cents or dollars of the United States are published separately from those stated in currencies of other countries. This shall be done in a systematic manner and the fares and charges in the respective currencies shall be published in separate records.

§ 221.51 Territorial application.

(a) *Specific points of origin and destination.* Except as otherwise provided in this part, the specific points of origin and destination from and to which the fares apply shall be specifically named directly in connection with the respective fares.

(b) *Directional application.* A tariff shall specifically indicate directly in connection with the fares therein whether they apply ''from'' and ''to'' or ''between'' the points named. Where the fares apply in one direction, the terms ''From'' and ''To'' shall be shown in connection with the point of origin and point of destination, respectively, and, where the fares apply in both directions between the points, the terms ''Between'' and ''And'' shall be shown in connection with the respective points.

§ 221.52 Airport to airport application, accessorial services.

Tariffs shall specify whether or not the fares therein include services in addition to airport-to-airport transportation.

§ 221.53 Proportional fares.

(a) *Definite application.* Add-on fares shall be specifically designated as ''add-on'' fares on each page where they appear.

(b) A tariff may provide that fares from (or to) particular points shall be determined by the addition of add-ons to, or the deduction of add-ons from, fares therein which apply from (or to) a base point. Provisions for the addition or deduction of such add-ons shall be shown either directly in connection with the fare applying to or from the base point or in a separate provision which shall specifically name the base point. The tariff shall clearly and definitely state the manner in which such add-ons shall be applied.

(c) *Restrictions upon beyond points or connecting carriers.* If an add-on fare is intended for use only on traffic originating at and/or destined to particular beyond points or is to apply only in connection with particular connecting carriers, such application shall be clearly and explicitly stated directly in connection with such add-on fare.

§ 221.54 Fares stated in percentages of other fares; other relationships prohibited.

(a) Fares for foreign air transportation of persons or property shall not be stated in the form of percentages, multiples, fractions, or other relationships to other fares except to the extent authorized in paragraphs (b), (c), and (d) of this section with respect to passenger fares and baggage charges.

(b) A basis of fares for refund purposes may be stated, by rule, in the form of percentages of other fares.

(c) Transportation rates for the portion of passengers' baggage in excess of the baggage allowance under the applicable fares may be stated, by rule, as percentages of fares.

(d) Children's, infants' and senior citizen's fares, may be stated, by rule, as percentages of other fares published specifically in dollars and cents (hereinafter referred to as base fares): Provided, that:

(1) Fares stated as percentages of base fares shall apply from and to the same points, via the same routes, and for the same class of service and same type of aircraft to which the applicable base fares apply, and shall apply to all such base fares in a fares tariff.

(2) Fares shall not be stated as percentages of base fares for the purpose of establishing fares applying from and to points, or via routes, or on types of aircraft, or for classes of service different from the points, routes, types of aircraft, or classes of service to which the base fares are applicable.

§ 221.55 Conflicting or duplicating fares prohibited.

The publication of fares or charges of a carrier which duplicate or conflict with the fares of the same carrier published in the same or any other tariff for application over the same route or routes is hereby prohibited.

§ 221.56 Applicable fare when no through local or joint fares.

Where no applicable local or joint fare is provided from point of origin to point of destination over the route of movement, whichever combination of applicable fares provided over the route of movement produces the lowest charge shall be applicable, except that a carrier may provide explicitly that a fare cannot be used in any combination or in a combination on particular traffic or under specified conditions, provided another combination is available.

Subpart G—Governing Tariffs

§ 221.60 When reference to governing tariffs permitted.

(a) *Reference to other tariffs prohibited except as authorized.* A tariff shall not refer to nor provide that it is governed by any other tariff, document, or publication, or any part thereof, except as specifically authorized by this part.

(b) *Reference by fare tariff to governing tariffs.* A fare tariff may be made subject to a governing tariff or governing tariffs authorized by this subpart: Provided, that reference to such governing tariffs is published in the fare tariff in the manner required by § 221.20(h).

(c) *Participation in governing tariffs.* A fare tariff may refer to a separate governing tariff authorized by this subpart only when all carriers participating in such fare tariff are also shown as participating carriers in the governing tariff: Provided, that:

(1) If such reference to a separate governing tariff does not apply for account of all participating carriers and is restricted to apply only in connection with local or joint fares applying over routes consisting of only particular carriers, only the carriers for whom such reference is published are required to be shown as participating carriers in the governing tariff to which such qualified reference is made.

(2) [Reserved]

(d) *Maximum number of governing tariffs.* A single fare tariff shall not make reference to conflicting governing tariffs.

§ 221.61 Rules and regulations governing foreign air transportation.

Instead of being included in the fares tariffs, the rules and regulations governing foreign air transportation required to be filed by §§ 221.20 and 221.30 and/or Department order which do not govern the applicability of particular fares may be filed in separate governing tariffs, conforming to this subpart. Governing rules tariffs shall contain an index of rules.

§ 221.62 Explosives and other dangerous or restricted articles.

Carriers may publish rules and regulations governing the transportation of explosives and other dangerous or restricted articles in separate governing tariffs, conforming to this subpart, instead of being included in the fares tariffs or in the governing rules tariff authorized by § 221.61. This separate governing tariff shall contain no other rules or governing provisions.

§ 221.63 Other types of governing tariffs.

Subject to approval of the Department, carriers may publish other types of governing tariffs not specified in this subpart, such as routing guides.

Subpart H—Amendment of Tariffs

§ 221.70 Who may amend tariffs.

A tariff shall be amended only by the carrier or agent who issued the tariff (except as otherwise authorized in subparts P and Q).

§ 221.71 Requirement of clarity and specificity.

Amendments to tariffs shall identify with specificity and clarity the material being amended and the changes being made. Amendments to paper tariffs shall be accomplished by reissuing each page upon which a change occurs with the change made and identified by uniform amendment symbols. Each revised page shall identify and cancel the previously effective page, show the effective date of the previous page, and show the intended effective date of the revised page. Amendments in electronic format shall conform to the requirements of § 221.202 and other applicable provisions of subpart R.

§ 221.72 Reinstating canceled or expired tariff provisions.

Any fares, rules, or other tariff provisions which have been canceled or which have expired may be reinstated only by republishing such provisions and posting and filing the tariff publications (containing such republished provisions) on lawful notice in the form and manner required by this part.

Subpart I—Suspension of Tariff Provisions by Department

§ 221.80 Effect of suspension by Department.

(a) *Suspended matter not to be used.* A fare, charge, or other tariff provision which is suspended by the Department, under authority of chapter 415 of the statute, shall not be used during the period of suspension specified by the Department's order.

(b) *Suspended matter not to be changed.* A fare, charge, or other tariff provision which is suspended by the Department shall not be changed in any respect or withdrawn or the effective date thereof further deferred except by authority of an order or special tariff permission of the Department.

(c) *Suspension continues former matter in effect.* If a tariff publication containing matter suspended by the Department directs the cancellation of a tariff or any portion thereof, which contains fares, charges, or other tariff provisions sought to be amended by the suspended matter, such cancellation is automatically suspended for the same period insofar as it purports to cancel any tariff provisions sought to be amended by the suspended matter.

(d) *Matter continued in effect not to be changed.* A fare, charge, or other tariff provision which is continued in effect as a result of a suspension by the Department shall not be changed during the period of suspension unless the change is authorized by order or special tariff permission of the Department, except that such matter may be reissued without change during the period of suspension.

§ 221.81 Suspension supplement.

(a) *Suspension supplement.* Upon receipt of an order of the Department

suspending any tariff publication in part or in its entirety, the carrier or agent who issued such tariff publication shall immediately issue and file with the Department a consecutively numbered supplement for the purpose of announcing such suspension.

(b) The suspension supplement shall not contain an effective date and it shall contain the suspension notice required by paragraph (c) of this section.

(c) *Suspension notice.* The suspension supplement shall contain a prominent notice of suspension which shall:

(1) Indicate what particular fares, charges, or other tariff provisions are under suspension,

(2) State the date to which such tariff matter is suspended,

(3) State the Department's docket number and order number which suspended such tariff matter, and

(4) Give specific reference to the tariffs (specifying their D.O.T. or other identifying numbers), original or revised records and paragraphs or provisions which contain the fares, charges, or other tariff provisions continued in effect.

§ 221.82 Reissue of matter continued in effect by suspension to be canceled upon termination of suspension.

When tariff provisions continued in effect by a suspension are reissued during the period of such suspension, the termination of the suspension and the coming into effect of the suspended matter will not accomplish the cancellation of such reissued matter. In such circumstances, prompt action shall be taken by the issuing agent or carrier to cancel such reissued provisions upon the termination of the suspension in order that they will not conflict with the provisions formerly under suspension.

§ 221.83 Tariff must be amended to make suspended matter effective.

(a) When the Department vacates an order which suspended certain tariff matter in full or in part, such matter will not become effective until the termination of the suspension period unless the issuing agent or carrier amends the pertinent tariffs in the manner prescribed in this subpart (except as provided in paragraph (b) of this section).

(b) If the Department vacates its suspension order prior to the original published effective date of the tariff provisions whose suspension is vacated, such provisions will become effective on their published effective date.

§ 221.84 Cancellation of suspended matter subsequent to date to which suspended.

(a) *Endeavor to cancel prior to expiration of suspension period.* When an order of the Department requires the cancellation of tariff provisions which were suspended by the Department and such cancellation is required to be made effective on or before a date which is after the date to which such tariff provisions were suspended, the issuing carrier or agent shall, if possible, make the cancellation effective prior to the date to which such tariff provisions were suspended.

(b) *When necessary to republish matter continued in effect by suspension.* If suspended tariff provisions become effective upon expiration of their suspension period and thereby accomplish the cancellation of the tariff provisions continued in effect by the suspension, the issuing agent or carrier shall republish and reestablish such canceled tariff provisions effective simultaneously with the cancellation of the suspended provisions in compliance with the Department's order. The tariff amendments which reestablish such canceled tariff provisions shall bear reference to this subpart and the Department's order.

Subpart J—Filing Tariff Publications With Department

§ 221.90 Required notice.

(a) *Statutory notice required.* Unless otherwise authorized by the Department or specified in a bilateral agreement between the United States and a foreign country, all tariff filings shall be made on the following schedule, whether or not they effect any changes:

(1) At least 30 days before they are to become effective, for tariffs stating a passenger fare within the zone created by section 41509(e) of the statute or

stating a rule that affects only such a fare;

(2) At least 25 days before they are to become effective, for matching tariffs that are to become effective on the same date as the tariff to be matched and that meet competition as described in § 221.94(c)(1)(v); and

(3) At least 60 days before they are to become effective, for all other tariffs.

(b) *Computing number of days' notice.* A tariff publication shall be deemed to be filed only upon its actual receipt by the Department, and the first day of any required period of notice shall be the day of actual receipt by the Department.

(c) *Issued date.* All tariff publications must be received by the Department on or before the designated issued date.

§ 221.91 Delivering tariff publications to Department.

Tariff publications will be received for filing only by delivery thereof to the Department electronically, through normal mail channels, or by delivery thereof during established business hours directly to that office of the Department charged with the responsibility of processing tariffs. No tariff publication will be accepted by the Department unless it is delivered free from all charges, including claims for postage.

§ 221.92 Number of copies required.

Two copies of each paper tariff, tariff revision and adoption notice to be filed shall be sent to the Office of International Aviation, Department of Transportation, Washington, DC 20428. All such copies shall be included in one package and shall be accompanied by a letter of tariff transmittal.

§ 221.93 Concurrences or powers of attorney not previously filed to accompany tariff transmittal.

When a tariff is filed on behalf of a carrier participating therein under authority of its concurrence or power of attorney, such concurrence or power of attorney shall, if not previously filed with the Department, be transmitted at the same time such tariff is submitted for filing.

§ 221.94 Explanation and data supporting tariff changes and new matter in tariffs.

When a tariff is filed with the Department which contains new or changed local or joint fares or charges for foreign air transportation, or new or changed classifications, rules, regulations, or practices affecting such fares or charges, or the value of the service thereunder, the issuing air carrier, foreign air carrier, or agent shall submit with the filing of such tariff:

(a) An explanation of the new or changed matter and the reasons for the filing, including (if applicable) the basis of rate making employed. Where a tariff is filed pursuant to an intercarrier agreement approved by the Department, the explanation shall identify such agreement by DOT Docket number, DOT order of approval number, IATA resolution number, or if none is designated, then by other definite identification. Where a tariff is filed on behalf of a foreign air carrier pursuant to a Government order, a copy of such order shall be submitted with the tariff.

(b) Appropriate Economic data and/or information in support of the new or changed matter.

(c) *Exceptions.* (1) The requirement for data and/or information in paragraph (b) of this section will not apply to tariff publications containing new or changed matter which are filed:

(i) In response to Department orders or specific policy pronouncements of the Department directly related to such new or changed matter;

(ii) Pursuant to an intercarrier agreement approved by the Department setting forth the fares, charges (or specific formulas therefor) or other matter: Provided that the changes are submitted with the number of the DOT order of approval and fully comply with any conditions set forth in that order;

(iii) To the extent fares for scheduled passenger service are within a statutory or Department-established zone of fare flexibility; and

(iv) To meet competition: Provided, that

(A) Changed matter will be deemed to have been filed to meet competition only when it effects decreases in fares

or charges and/or increases the value of service so that the level of the fares or charges and the services provided will be substantially similar to the level of fares or charges and the services of a competing carrier or carriers.

(B) New matter will be deemed to have been filed to meet competition only when it establishes or affects a fare or charge and a service which will be substantially similar to the fares or charges and the services of a competing carrier or carriers.

(C) When new or changed matter is filed to meet competition over a portion of the filing air carrier's system and is simultaneously made applicable to the balance of the system, such matter, insofar as it applies over the balance of the system, will be deemed to be within the exception in this paragraph (c)(1)(iv) of this section only if such carrier submits an explanation as to the necessity of maintaining uniformity over its entire system with respect to such new or changed matter.

(D) In any case where new or changed matter is filed to meet competition, the filing carrier or agent must supply, as part of the filing justification, the complete tariff references which will serve to identify the competing tariff matter which the tariff purports to meet. In such case the justification or attachment shall state whether the new or changed matter is identical to the competing tariff matter which it purports to meet or whether it approximates the competing tariff matter. If the new or changed matter is not identical, the transmittal letter or attachment shall contain a statement explaining, in reasonable detail, the basis for concluding that the tariff publication being filed is substantially similar to the competing tariff matter.

(2) [Reserved]

Subpart K—Availability of Tariff Publications for Public Inspection

§ 221.100 Public notice of tariff information.

Carriers must make tariff information available to the general public, and in so doing must comply with either:

(a) Sections 221.101, 221.102, 221.103, 221.104, 221.105, and 221.106, or

(b) Sections 221.105, 221.106 and 221.107 of this subpart.

§ 221.101 Inspection at stations, offices, or locations other than principal or general office.

(a) Each carrier shall make available for public inspection at each of its stations, offices, or other locations at which tickets for passenger transportation are sold and which is in charge of a person employed exclusively by the carrier, or by it jointly with another person, all tariffs applicable to passenger traffic from or to the point where such station, office, or location is situated, including tariffs covering any terminal services, charges, or practices whatsoever, which apply to passenger traffic from or to such point.

(b) A carrier will be deemed to have complied with the requirement that it ''post'' tariffs, if it maintains at each station, office, or location a file in complete form of all tariffs required to be posted; and in the case of tariffs involving passenger fares, rules, charges or practices, notice to the passenger as required in § 221.105.

(c) Tariffs shall be posted by each carrier party thereto no later than the filed date designated thereon except that in the case of carrier stations, offices or locations situated outside the United States, its territories and possessions, the time shall be not later than five days after the filed date, and except that a tariff which the Department has authorized to be filed on shorter notice shall be posted by the carrier on like notice as authorized for filing.

§ 221.102 Accessibility of tariffs to the public.

Each file of tariffs shall be kept in complete and accessible form. Employees of the carrier shall be required to give any desired information contained in such tariffs, to lend assistance to seekers of information therefrom, and to afford inquirers opportunity to examine any of such tariffs without requiring the inquirer to assign any reason for such desire.

§ 221.103 Notice of tariff terms.

Each carrier shall cause to be displayed continuously in a conspicuous

public place at each station, office, or location at which tariffs are required to be posted, a notice printed in large type reading as follows:

Public Inspection of Tariffs

All the currently effective passenger tariffs to which this company is a party and all passenger tariff publications which have been issued but are not yet effective are on file in this office, so far as they apply to traffic from or to. (Here name the point.) These tariffs may be inspected by any person upon request and without the assignment of any reason for such inspection. The employees of this company on duty in this office will lend assistance in securing information from the tariffs.

In addition, a complete file of all tariffs of this company, with indexes thereof, is maintained and kept available for public inspection at. (Here indicate the place or places where complete tariff files are maintained, including the street address, and where appropriate, the room number.)

§ 221.105 Special notice of limited liability for death or injury under the Warsaw Convention.

(a)(1) In addition to the other requirements of this subpart, each air carrier and foreign air carrier which, to any extent, avails itself of the limitation on liability to passengers provided by the Warsaw Convention, shall, at the time of delivery of the ticket, furnish to each passenger whose transportation is governed by the Convention and whose place of departure or place of destination is in the United States, the following statement in writing:

Advice to International Passengers on Limitations of Liability

Passengers embarking upon a journey involving an ultimate destination or a stop in a country other than the country of departure are advised that the provisions of a treaty known as the Warsaw Convention may be applicable to their entire journey including the portion entirely within the countries of departure and destination. The Convention governs and in most cases limits the liability of carriers to passengers for death or personal injury to approximately $10,000.

Additional protection can usually be obtained by purchasing insurance from a private company. Such insurance is not affected by any limitation of the carrier's liability under the Warsaw Convention. For further information please consult your airline or insurance company representative.

(2) Provided, however, That when the carrier elects to agree to a higher limit of liability to passengers than that provided in Article 22(1) of the Warsaw Convention, such statement shall be modified to reflect the higher limit. The statement prescribed herein shall be printed in type at least as large as 10-point modern type and in ink contrasting with the stock on:

(i) Each ticket;

(ii) A piece of paper either placed in the ticket envelope with the ticket or attached to the ticket; or

(iii) The ticket envelope.

(b) Each air carrier and foreign air carrier which, to any extent, avails itself of the limitation on liability to passengers provided by the Warsaw Convention, shall also cause to be displayed continuously in a conspicuous public place at each desk, station, and position in the United States which is in the charge of a person employed exclusively by it or by it jointly with another person, or by any agent employed by such air carrier or foreign air carrier to sell tickets to passengers whose transportation may be governed by the Warsaw Convention and whose place of departure or destination may be in the United States, a sign which shall have printed thereon the statement prescribed in paragraph (a) of this section: Provided, however, That an air carrier, except an air taxi operator subject to part 298 of this subchapter, or foreign air carrier which provides a higher limitation of liability than that set forth in the Warsaw Convention and has signed a counterpart of the agreement among carriers providing for such higher limit, which agreement was approved by the Civil Aeronautics Board by Order E–23680, dated May 13, 1966 (31 FR 7302, May 19, 1966), may use the alternate form of notice set forth in the proviso to § 221.106(a) of this chapter in full compliance with the posting requirements of this paragraph. And provided further, That an air taxi operator subject to part 298 of this subchapter, which provides a higher limitation of liability than that set forth in the Warsaw Convention and has signed a counterpart of the agreement among carriers providing for such higher limit, which agreement was approved by the Civil Aeronautics Board by Order E–

23680, dated May 13, 1966 (31 FR 7302, May 19, 1966), may use the following notice in the manner prescribed by this paragraph in full compliance with the posting requirements of this paragraph. Such statements shall be printed in bold faced type at least one-fourth of an inch high.

Advice to International Passengers on Limitation of Liability

Passengers traveling to or from a foreign country are advised that airline liability for death or personal injury and loss or damage to baggage may be limited by the Warsaw Convention and tariff provisions. See the notice with your ticket or contact your airline ticket office or travel agent for further information.

§ 221.106 Notice of limited liability for baggage; alternative consolidated notice of liability limitations.

(a)(1) Each air carrier and foreign air carrier which, to any extent, avails itself of limitations on liability for loss of, damage to, or delay in delivery of baggage shall cause to be displayed continuously in a conspicuous public place at each desk, station, and position in the United States which is in the charge of a person employed exclusively by it or by it jointly with another person, or by any agent employed by such air carrier or foreign air carrier to sell tickets to persons or accept baggage for checking, a sign which shall have printed thereon the following statement:

Notice of Limited Liability for Baggage

For most international travel (including domestic portions of international journeys) liability for loss, delay, or damage to baggage is limited to approximately $9.07 per pound for checked baggage and $400 per passenger for unchecked baggage unless a higher value is declared and an extra charge is paid. Special rules may apply for valuables. Consult your carrier for details.

(2) Provided, however, That an air carrier or foreign air carrier which provides a higher limitation of liability for death or personal injury than that set forth in the Warsaw Convention and has signed a counterpart of the agreement approved by the Civil Aeronautics Board by Order E–23680, dated May 13, 1966 (31 FR 7302, May 19, 1966), may use the following notice in full compliance with the posting requirements of this paragraph and of § 221.105(b):

Advice to Passengers on Limitations of Liability

Airline liability for death or personal injury may be limited by the Warsaw Convention and tariff provisions in the case of travel to or from a foreign country.

For most international travel (including domestic portions of international journeys) liability for loss, delay or damage to baggage is limited to approximately $9.07 per pound for checked baggage and $400 per passenger for unchecked baggage unless a higher value is declared and an extra charge is paid. Special rules may apply to valuable articles.

See the notice with your tickets or consult your airline or travel agent for further information.

(3) Provided, however, That carriers may include in the notice the parenthetical phrase ''($20.00 per kilo)'' after the phrase ''$9.07 per pound'' in referring to the baggage liability limitation for most international travel. Such statements shall be printed in bold-face type at least one-fourth of an inch high and shall be so located as to be clearly visible and clearly readable to the traveling public.

(b)(1) Each air carrier and foreign air carrier which, to any extent, avails itself of limitations of liability for loss of, damage to, or delay in delivery of, baggage shall include on or with each ticket issued in the United States or in a foreign country by it or its authorized agent, the following notice printed in at least 10 point type:

Notice of Baggage Liability Limitations

For most international travel (including domestic portions of international journeys) liability for loss, delay, or damage to baggage is limited to approximately $9.07 per pound for checked baggage and $400 per passenger for unchecked baggage unless a higher value is declared in advance and additional charges are paid. Excess valuation may not be declared on certain types of valuable articles. Carriers assume no liability for fragile or perishable articles. Further information may be obtained from the carrier.

(2) Provided, however, That carriers may include in their ticket notice the parenthetical phrase ''($20.00 per kilo)'' after the phrase ''$9.07 per pound'' in referring to the baggage liability limitation for most international travel.

(c) It shall be the responsibility of each carrier to insure that travel agents authorized to sell air transportation for such carrier comply with the notice provisions of paragraphs (a) and (b) of this section.

(d) Any air carrier or foreign air carrier subject to the provisions of this section which wishes to use a notice of limited liability for baggage of its own wording, but containing the substance of the language prescribed in paragraphs (a) and (b) of this section may substitute a notice of its own wording upon approval by the Department.

(e) The requirements as to time and method of delivery of the notice (including the size of type) specified in paragraphs (a) and (b) of this section and the requirement with respect to travel agents specified in paragraph (c) of this section may be waived by the Department upon application and showing by the carrier that special and unusual circumstances render the enforcement of the regulations impractical and unduly burdensome and that adequate alternative means of giving notice are employed.

(f) Applications for relief under paragraphs (d) and (e) of this section shall be filed with the Department's Office of International Aviation not later than 15 days before the date on which such relief is requested to become effective.

(g) Notwithstanding any other provisions of this section, no air taxi operator subject to part 298 of this subchapter shall be required to give the notices prescribed in this section, either in its capacity as an air carrier or in its capacity as an agent for an air carrier or foreign air carrier.

§ 221.107 Notice of contract terms.

(a) *Terms incorporated in the contract of carriage.* (1) A ticket, or other written instrument that embodies the contract of carriage for foreign air transportation shall contain or be accompanied by notice to the passenger as required in paragraphs (b) and (d) of this section.

(2) Each carrier shall make the full text of all terms that are incorporated in a contract of carriage readily available for public inspection at each airport or other ticket sales office of the carrier: Provided, That the medium, *i.e.*, printed or electronic, in which the incorporated terms and conditions are made available to the consumer shall be at the discretion of the carrier.

(3) Each carrier shall display continuously in a conspicuous public place at each airport or other ticket sales office of the carrier a notice printed in large type reading as follows:

Explanation of Contract Terms

All passenger (and/or cargo as applicable) contract terms incorporated into the contract of carriage to which this company is a party are available in this office. These provisions may be inspected by any person upon request and for any reason. The employees of this office will lend assistance in securing information, and explaining any terms.

In addition, a file of all tariffs of this company, with indexes thereof, from which incorporated contract terms may be obtained is maintained and kept available for public inspection at. (Here indicate the place or places where tariff files are maintained, including the street address and, where appropriate, the room number.)

(4) Each carrier shall provide to the passenger a complete copy of the text of any/all terms and conditions applicable to the contract of carriage, free of charge, immediately, if feasible, or otherwise promptly by mail or other delivery service, upon request at any airport or other ticket sales office of the carrier. In addition, all other locations where the carrier's tickets may be issued shall have available at all times, free of charge, information sufficient to enable the passenger to request a copy of such term(s).

(b) *Notice of incorporated terms.* Each carrier and ticket agent shall include on or with a ticket or other written instrument given to the passenger, that embodies the contract of carriage, a conspicuous notice that:

(1) The contract of carriage may incorporate terms and conditions by reference; passengers may inspect the full text of each applicable incorporated term at any of the carrier's airport locations or other ticket sales offices of the carrier; and passengers, shippers and consignees have the right to receive, upon request at any airport or other ticket sales office of the carrier, a free copy of the full text of any/all such terms by mail or other delivery service;

(2) The incorporated terms may include, among others, the terms shown in paragraphs (b)(2) (i) through (iv) of this section. Passengers may obtain a concise and immediate explanation of the terms shown in paragraphs (b)(2) (i) through (iv) of this section from any location where the carrier's tickets are sold.

(i) Limits on the carrier's liability for personal injury or death of passengers (subject to §221.105), and for loss, damage, or delay of goods and baggage, including fragile or perishable goods.

(ii) Claim restrictions, including time periods within which passengers must file a claim or bring an action against the carrier for its acts or omissions or those of its agents.

(iii) Rules about re-confirmations or reservations, check-in times, and refusal to carry.

(iv) Rights of the carrier and limitations concerning delay or failure to perform service, including schedule changes, substitution of alternate carrier or aircraft, and rerouting.

(c) *Explanation of incorporated terms.* Each carrier shall ensure that any passenger can obtain from any location where its tickets are sold or any similar documents are issued, a concise and immediate explanation of any term incorporated concerning the subjects listed in paragraph (b)(2) or identified in paragraph (d) of this section.

(d) *Direct notice of certain terms.* A passenger must receive conspicuous written notice, on or with the ticket, or other similar document, of the salient features of any terms that restrict refunds of the price of the transportation, impose monetary penalties on customers, or permit a carrier to raise the price or impose more restrictive conditions of contract after issuance of the ticket.

§221.108 Transmission of tariff filings to subscribers.

(a) Each carrier required to file tariffs in accordance with this part shall make available to any person so requesting a subscription service as described in paragraph (b) of this section for its passenger tariffs issued by it or by a publishing agent on its behalf.

(b) Under the required subscription service one copy of each new tariff publication, including the justification required by §221.94, must be transmitted to each subscriber thereto by first-class mail (or other equivalent means agreed upon by the subscriber) not later than one day following the time the copies for official filing are transmitted to the Department. The subscription service described in this section shall not preclude the offering of additional types of subscription services by carriers or their agents.

(c) The carriers or their publishing agents at their option may establish a charge for providing the required subscription service to subscribers: Provided, That the charge may not exceed a reasonable estimate of the added cost of providing the service.

Subpart L—Rejection of Tariff Publications

§221.110 Department's authority to reject.

The Department may reject any tariff which is not consistent with section 41504 of the statute, with the regulations in this part, or with Department orders.

§221.111 Notification of rejection.

When a tariff is rejected, the issuing carrier or agent thereof will be notified electronically or in writing that the tariff is rejected and of the reason for such rejection.

§221.112 Rejected tariff is void and must not be used.

A tariff rejected by the Department is void and is without any force or effect whatsoever. Such rejected tariff must not be used.

Subpart M—Special Tariff Permission To File on Less Than Statutory Notice

§221.120 Grounds for approving or denying Special Tariff Permission applications.

(a) *General authority.* The Department may permit changes in fares, charges or other tariff provisions on less than

the statutory notice required by section 41505 of the statute.

(b) *Grounds for approval.* The following facts and circumstances constitute some of the grounds for approving applications for Special Tariff Permission in the absence of other facts and circumstances warranting denial:

(1) *Clerical or typographical errors.* Clerical or typographical errors in tariffs constitute grounds for approving applications for Special Tariff Permission to file on less than statutory notice the tariff changes necessary to correct such errors. Each application for Special Tariff Permission based on such grounds shall plainly specify the errors and contain a complete statement of all the attending facts and circumstances, and such application shall be presented to the Department with reasonable promptness after issuance of the defective tariff.

(2) *Rejection caused by clerical or typographical errors or unintelligibility.* Rejection of a tariff caused by clerical or typographical errors constitute grounds for approving applications for Special Tariff Permission to file on less than statutory notice, effective not earlier than the original effective dates in the rejected tariff, all changes contained in the rejected tariff but with the errors corrected. Each application for the grant of Special Tariff Permission based on such grounds shall plainly specify the errors and contain a complete statement of all the attending facts and circumstances, and such application shall be filed with the Department within five days after receipt of the Department's notice of rejection.

(3) *Newly authorized transportation.* The fact that the Department has newly authorized a carrier to perform foreign air transportation constitutes grounds for approving applications for Special Tariff Permission to file on less than statutory notice the fares, rates, and other tariff provisions covering such newly authorized transportation.

(4) The fact that a passenger fare is within a statutory or Department-established zone of fare flexibility constitutes grounds for approving an application for Special Tariff Permission to file a tariff stating that fare and any rules affecting them exclusively, on less than statutory notice. The Department's policy on approving such applications is set forth in §399.35 of this chapter.

(5) *Lowered fares and charges.* The prospective lowering of fares or charges to the traveling public constitutes grounds for approving an application for Special Tariff Permission to file on less than statutory notice a tariff stating the lowered fares or charges and any rules affecting them exclusively. However, the Department will not approve the application if the proposed tariff raises significant questions of lawfulness, as set forth in §399.35 of this chapter.

(c) *Filing notice required by formal order.* When a formal order of the Department requires the filing of tariff matter on a stated number of days' notice, an application for Special Tariff Permission to file on less notice will not be approved. In any such instance a petition for modification of the order should be filed in the formal docket.

§221.121 How to prepare and file applications for Special Tariff Permission.

(a) *Form.* Each application for Special Tariff Permission to file a tariff on less than statutory notice shall conform to the requirements of §221.212 if filed electronically.

(b) *Number of paper copies and place of filing.* For paper format applications, the original and one copy of each such application for Special Tariff Permission, including all exhibits thereto and amendments thereof, shall be sent to the Office of International Aviation, Department of Transportation, Washington, DC 20590.

(c) *Who may make application.* Applications for Special Tariff Permission to file fares, or other tariff provisions on less than statutory notice shall be made only by the issuing carrier or agent authorized to issue and file the proposed tariff. Such application by the issuing carrier or agent will constitute application on behalf of all carriers participating in the proposed fares, or other tariff provisions.

(d) *When notice is required.* Notice in the manner set forth in paragraph (e) of this section is required when a carrier files an application for Special Tariff Permission:

(1) To offer passenger fares that would be outside a Department-established zone of price flexibility or, in markets for which the Department has not established such a zone, outside the statutory zone of price flexibility; or

(2) To file any price increase or rule change that the carrier believes is likely to be controversial.

(e) *Form of notice.* When notice of filing of a Special Tariff Permission application affecting passenger fares is required by paragraph (d) of this section, the carrier shall, when it files the application, give immediate telegraphic notice or other notice approved by the Office of International Aviation, to all certificated and foreign route carriers authorized to provide nonstop or one-stop service in the markets involved, and to civic parties that would be substantially affected. The application shall include a list of the parties notified.

§ 221.122 Special Tariff Permission to be used in its entirety as granted.

Each Special Tariff Permission to file fares, or other tariff provisions on less than statutory notice shall be used in its entirety as granted. If it is not desired to use the permission as granted, and lesser or more extensive or different permission is desired, a new application for Special Tariff Permission conforming with §221.121 in all respects and referring to the previous permission shall be filed.

§ 221.123 Re-use of Special Tariff Permission when tariff is rejected.

If a tariff containing matter issued under Special Tariff Permission is rejected, the same Special Tariff Permission may be used in a tariff issued in lieu of such rejected tariff provided that such re-use is not precluded by the terms of the Special Tariff Permission, and is made within the time limit thereof or within seven days after the date of the Department's notice of rejection, whichever is later, but in no event later than fifteen days after the expiration of the time limit specified in the Special Tariff Permission.

Subpart N—Waiver of Tariff Regulations

§ 221.130 Applications for waiver of tariff regulations.

Applications for waiver or modification of any of the requirements of this part 221 or for modification of chapter 415 of the statute with respect to the filing and posting of tariffs shall be made by the issuing carrier or issuing agent.

§ 221.131 Form of application for waivers.

Applications for waivers shall be in the form of a letter addressed to the Office of International Aviation, Department of Transportation Washington, DC 20590, and shall:

(a) Specify (by section and paragraph) the particular regulation which the applicant desires the Department to waive.

(b) Show in detail how the proposed provisions will be shown in the tariff under authority of such waiver if granted (submitting exhibits of the proposed provision where necessary to clearly show this information).

(c) Set forth all facts and circumstances on which the applicant relies as warranting the Department's granting the authority requested. No tariff or other documents shall be filed pursuant to such application prior to the Department's granting the authority requested.

Subpart O—Giving and Revoking Concurrences to Carriers

§ 221.140 Method of giving concurrence.

(a) A concurrence prepared in a manner acceptable to the Office of International Aviation shall be used by a carrier to give authority to another carrier to issue and file with the Department tariffs which contain joint fares or charges, including provisions governing such fares or charges, applying to, from, or via points served by the carrier giving the concurrence. A concurrence shall not be used as authority to file joint fares or charges in which the carrier to whom the concurrence is given does not participate, and

it shall not be used as authority to file local fares or charges.

(b) *Number of copies.* Each concurrence shall be prepared in triplicate. The original of each concurrence shall be filed with the Department, the duplicate thereof shall be given to the carrier in whose favor the concurrence is issued, and the third copy shall be retained by the carrier who issued the concurrence.

(c) *Conflicting authority to be avoided.* Care should be taken to avoid giving authority to two or more carriers which, if used, would result in conflicting or duplicate tariff provisions.

§ 221.141 Method of revoking concurrence.

(a) A concurrence may be revoked by filing with the Department a Notice of Revocation of Concurrence prepared in a form acceptable to the Office of International Aviation.

(b) *Sixty days' notice required.* Such Notice of Revocation of Concurrence shall be filed on not less than sixty days' notice to the Department. A Notice of Revocation of Concurrence will be deemed to be filed only upon its actual receipt by the Department, and the period of notice shall commence to run only from such actual receipt.

(c) *Number of copies.* Each Notice of Revocation of Concurrence shall be prepared in triplicate. The original thereof shall be filed with the Department and, at the same time that the original is transmitted to the Department, the duplicate thereof shall be sent to the carrier to whom the concurrence was given. The third copy shall be retained by the carrier issuing such notice.

(d) Amendment of tariffs when concurrence revoked. When a concurrence is revoked, a corresponding amendment of the tariff or tariffs affected shall be made by the issuing carrier of such tariffs, on not less than statutory notice, to become effective not later than the effective date stated in the Notice of Revocation of Concurrence. In the event of failure to so amend the tariff or tariffs, the provisions therein shall remain applicable until lawfully canceled.

§ 221.142 Method of withdrawing portion of authority conferred by concurrence.

If a carrier desires to issue a concurrence conferring less authority than a previous concurrence given to the same carrier, the new concurrence shall not direct the cancellation of such previous concurrence. In such circumstances, such previous concurrence shall be revoked by issuing and filing a Notice of Revocation of Concurrence in a form acceptable to the Office of International Aviation. Such revocation notice shall include reference to the new concurrence.

Subpart P—Giving and Revoking Powers of Attorney to Agents

§ 221.150 Method of giving power of attorney.

(a) *Prescribed form of power of attorney.* A power of attorney prepared in accordance with a form acceptable to the Office of International Aviation shall be used by a carrier to give authority to an agent and (in the case of the agent being an individual) such agent's alternate to issue and file with the Department tariffs which contain local or joint fares or charges, including provisions governing such fares or charges, applicable via and for account of such carrier. Agents may be only natural persons or corporations (other than incorporated associations of air carriers). The authority conferred in a power of attorney may not be delegated to any other person.

(b) *Designation of tariff issuing person by corporate agent.* When a corporation has been appointed as agent it shall forward to the Department a certified excerpt of the minutes of the meeting of its Board of Directors designating by name and title the person responsible for issuing tariffs and filing them with the Department. Only one such person may be designated by a corporate agent, and the title of such designee shall not contain the word ''Agent''. When such a designee is replaced the Department shall be immediately notified in like manner of his successor. An officer or employee of an incorporated tariff-publishing agent may not be authorized to act as tariff agent in his/her individual capacity. Every tariff issued

by a corporate agent shall be issued in its name as agent.

(c) *Number of copies.* Each power of attorney shall be prepared in triplicate. The original of each power of attorney shall be filed with the Department, the duplicate thereof shall be given to the agent in whose favor the power of attorney is issued, and the third copy shall be retained by the carrier who issued the power of attorney.

(d) *Conflicting authority prohibited.* In giving powers of attorney, carriers shall not give authority to two or more agents which, if used, would result in conflicting or duplicate tariff provisions.

§ 221.151 Method of revoking power of attorney.

(a) A power of attorney may be revoked only by filing with the Department in the manner specified in this section a Notice of Revocation of Power of Attorney in a form acceptable to the Office of International Aviation.

(b) *Sixty days' notice required.* Such Notice of Revocation of Power of Attorney shall be filed on not less than sixty days' notice to the Department. A Notice of Revocation of Power of Attorney will be deemed to be filed only upon its actual receipt by the Department, and the period of notice shall commence to run only from such actual receipt.

(c) *Number of copies.* Each Notice of Revocation of Power of Attorney shall be prepared in triplicate. The original thereof shall be filed with the Department and, at the same time that the original is transmitted to the Department, the duplicate thereof shall be sent to the agent in whose favor the power of attorney was issued (except, if the alternate agent has taken over the tariffs, the duplicate of the Notice of Revocation of Power of Attorney shall be sent to the alternate agent). The third copy of the notice shall be retained by the carrier.

(d) *Amendment of tariffs when power of attorney is revoked.* When a power of attorney is revoked, a corresponding amendment of the tariff or tariffs affected shall be made by the issuing agent of such tariffs, on not less than statutory notice, to become effective not later than the effective date stated in the Notice of Revocation of Power of Attorney. In the event of failure to so amend the tariff or tariffs, the provisions therein shall remain applicable until lawfully canceled.

§ 221.152 Method of withdrawing portion of authority conferred by power of attorney.

If a carrier desires to issue a power of attorney conferring less authority than a previous power of attorney issued in favor of the same agent, the new power of attorney shall not direct the cancellation of such previous power of attorney. In such circumstances, such previous power of attorney shall be revoked by issuing and filing a Notice of Revocation of Power of Attorney in a form acceptable to the Office of International Aviation. Such revocation notice shall include reference to the new power of attorney.

Subpart Q—Adoption Publications Required To Show Change in Carrier's Name or Transfer of Operating Control

§ 221.160 Adoption notice.

(a) When the name of a carrier is changed or when its operating control is transferred to another carrier (including another company which has not previously been a carrier), the carrier which will thereafter operate the properties shall immediately issue, file with the Department, and post for public inspection, an adoption notice in a form and containing such information as is approved by the Office of International Aviation. (The carrier under its former name or the carrier from whom the operating control is transferred shall be referred to in this subpart as the ''former carrier'', and the carrier under its new name or the carrier, company, or fiduciary to whom the operating control is transferred shall be referred to in this subpart as the ''adopting carrier''.)

(b) The adoption notice shall be prepared, filed, and posted as a tariff. The adoption notice shall be issued and filed by the adopting carrier and not by an agent.

(c) *Copies to be sent to agents and other carriers.* At the same time that the adoption notice is transmitted to the

Department for filing, the adopting carrier shall send copies of such adoption notice to each agent and carrier to whom the former carrier has given a power of attorney or concurrence. (See § 221.163.)

§ 221.161 Notice of adoption to be filed in former carrier's tariffs.

At the same time that the adoption notice is issued, posted, and filed pursuant to § 221.160, the adopting carrier shall issue, post and file with the Department a notice in each effective tariff issued by the former carrier providing specific notice of the adoption in a manner authorized by the Office of International Aviation and which shall contain no matter other than that authorized.

§ 221.162 Receiver shall file adoption notices.

A receiver shall, immediately upon assuming control of a carrier, issue and file with the Department an adoption notices as prescribed by §§ 221.160 and 221.161 and shall comply with the requirements of this subpart.

§ 221.163 Agents' and other carriers' tariffs shall reflect adoption.

If the former carrier is shown as a participating carrier under concurrence in tariffs issued by other carriers or is shown as a participating carrier under power of attorney in tariffs issued by agents, the issuing carriers and agents of such tariffs shall, upon receipt of the adoption notice, promptly file on statutory notice the following amendments to their respective tariffs:

(a) Cancel the name of the former carrier from the list of participating carriers.

(b) Add the adopting carrier (in alphabetical order) to the list of participating carriers. If the adopting carrier already participates in such tariff, reference to the substitution notice shall be added in connection with such carrier's name in the list of participating carriers.

§ 221.164 Concurrences or powers of attorney to be reissued.

(a) Adopting carrier shall reissue adopted concurrences and powers of attorney. Within a period of 120 days after the date on which the change in name or transfer of operating control occurs, the adopting carrier shall reissue all effective powers of attorney and concurrences of the former carrier by issuing and filing new powers of attorney and concurrences, in the adopting carrier's name, which shall direct the cancellation of the respective powers of attorney and concurrences of the former carrier. The adopting carrier shall consecutively number its powers of attorney and concurrences in its own series of power of attorney numbers and concurrence numbers (commencing with No. 1 in each series if it had not previously filed any such instruments with the Department), except that a receiver or other fiduciary shall consecutively number its powers of attorney or concurrences in the series of the former carrier. The cancellation reference shall show that the canceled power of attorney or concurrence was issued by the former carrier.

(b) If such new powers of attorney or concurrences confer less authority than the powers of attorney or concurrences which they are to supersede, the new issues shall not direct the cancellation of the former issues; in such instances, the provisions of §§ 221.142 and 221.152 shall be observed. Concurrences and powers of attorney which will not be replaced by new issues shall be revoked in the form and manner and upon the notice required by §§ 221.141 and 221.151.

(c) *Reissue of other carriers' concurrences issued in favor of former carrier.* Each carrier which has given a concurrence to a carrier whose tariffs are subsequently adopted shall reissue the concurrence in favor of the adopting carrier. If the carrier which issued the concurrence to the former carrier desires to revoke it or desires to replace it with a concurrence conferring less authority, the provisions of §§ 221.141 and 221.142 shall be observed.

§ 221.165 Cessation of operations without successor.

If a carrier ceases operations without having a successor, it shall:

(a) File a notice in each tariff of its own issue and cancel such tariff in its entirety.

(b) Revoke all powers of attorney and concurrences which it has issued.

Subpart R—Electronically Filed Tariffs

§ 221.170 Applicability of the subpart.

(a) Every air carrier and foreign air carrier shall file its international passenger fares tariffs consistent with the provisions of this subpart, and part 221 generally. Additionally, any air carrier and any foreign air carrier may file its international passenger rules tariffs electronically in machine-readable form as an alternative to the filing of printed paper tariffs as provided for elsewhere in part 221. This subpart applies to all carriers and tariff publishing agents and may be used by either if the carrier or agent complies with the provisions of subpart R. Any carrier or agent that files electronically under this subpart must transmit to the Department the remainder of the tariff in a form consistent with part 221, Subparts A through Q, on the same day that the electronic tariff would be deemed received under § 221.190(b).

(b) To the extent that subpart R is inconsistent with the remainder of part 221, subpart R shall govern the filing of electronic tariffs. In all other respects, part 221 remains in full force and effect.

§ 221.180 Requirements for electronic filing of tariffs.

(a) No carrier or filing agent shall file an electronic tariff unless, prior to filing, it has signed a maintenance agreement or agreements, furnished by the Department of Transportation, for the maintenance and security of the on-line tariff database.

(b) No carrier or agent shall file an electronic tariff unless, prior to filing, it has submitted to the Department's Office of International Aviation, Pricing and Multilateral Affairs Division, and received approval of, an application containing the following commitments:

(1) The filer shall file tariffs electronically only in such format as shall be agreed to by the filer and the Department. (The filer shall include with its application a proposed format of tariff. The filer shall also submit to the Department all information necessary for the Department to determine that the proposed format will accommodate the data elements set forth in § 221.202.)

(2) The filer shall provide, maintain and install in the Public Reference Room at the Department (as may be required from time to time) one or more CRT devices and printers connected to its on-line tariff database. The filer shall be responsible for the transportation, installation, and maintenance of this equipment and shall agree to indemnify and hold harmless the Department and the U.S. Government from any claims or liabilities resulting from defects in the equipment, its installation or maintenance.

(3) The filer shall provide public access to its on-line tariff database, at Departmental headquarters, during normal business hours.

(4) The access required at Departmental headquarters by this subpart shall be provided at no cost to the public or the Department.

(5) The filer shall provide the Department access to its on-line tariff database 24 hours a day, 7 days a week, except, that the filer may bring its computer down between 6:00 a.m. and 6:00 p.m. Eastern Standard Time or Eastern Daylight Saving Time, as the case may be, on Sundays, when necessary, for maintenance or for operational reasons.

(6) The filer shall ensure that the Department shall have the sole ability to approve or disapprove electronically any tariff filed with the Department and the ability to note, record and retain electronically the reasons for approval or disapproval. The carrier or agent shall not make any changes in data or delete data after it has been transmitted electronically, regardless of whether it is approved, disapproved, or withdrawn. The filer shall be required to make data fields available to the Department in any record which is part of the on-line tariff database.

(7) The filer shall maintain all fares and rules filed with the Department and all Departmental approvals, disapprovals and other actions, as well as all Departmental notations concerning such approvals, disapprovals or other actions, in the on-line tariff database

for a period of two (2) years after the fare or rule becomes inactive. After this period of time, the carrier or agent shall provide the Department, free of charge, with a copy of the inactive data on a machine-readable tape or other mutually acceptable electronic medium.

(8) The filer shall ensure that its on-line tariff database is secure against destruction or alteration (except as authorized by the Department), and against tampering.

(9) Should the filer terminate its business or cease filing tariffs, it shall provide to the Department on a machine-readable tape or any other mutually acceptable electronic medium, contemporaneously with the cessation of such business, a complete copy of its on-line tariff database.

(10) The filer shall furnish to the Department, on a daily basis, on a machine-readable tape or any other mutually acceptable electronic medium, all transactions made to its on-line tariff database.

(11) The filer shall afford any authorized Departmental official full, free, and uninhibited access to its facilities, databases, documentation, records, and application programs, including support functions, environmental security, and accounting data, for the purpose of ensuring continued effectiveness of safeguards against threats and hazards to the security or integrity of its electronic tariffs, as defined in this subpart.

(12) The filer must provide a field in the Government Filing File for the signature of the approving U.S. Government Official through the use of a Personal Identification Number (PIN).

(13) The filer shall provide a leased dedicated data conditioned circuit with sufficient capacity (not less than 28.8K baud rate) to handle electronic data transmissions to the Department. Further, the filer must provide for a secondary or a redundancy circuit in the event of the failure of the dedicated circuit. The secondary or redundancy circuit must be equal to or greater than 14.4K baud rate. In the event of a failure of the primary circuit the filer must notify the Chief of the Pricing and Multilateral Affairs Division of the Department's Office of International Aviation, as soon as possible, after the failure of the primary circuit, but not later than two hours after failure, and must provide the name of the contact person at the telephone company who has the responsibility for dealing with the problem.

(c) Each time a filer's on-line tariff database is accessed by any user during the sign-on function the following statement shall appear:

> The information contained in this system is for informational purposes only, and is a representation of tariff data that has been formally submitted to the Department of Transportation in accordance with applicable law or a bilateral treaty to which the U.S. Government is a party.

§ 221.190 Time for filing and computation of time periods.

(a) A tariff, or revision thereto, or a special tariff permission application may be electronically filed with the Department immediately upon compliance with § 221.180, and anytime thereafter, subject to § 221.400. The actual date and time of filing shall be noted with each filing.

(b) For the purpose of determining the date that a tariff, or revision thereto, filed pursuant to this subpart, shall be deemed received by the Department:

(1) For all electronic tariffs, or revisions thereto, filed before 5:30 p.m. local time in Washington, DC, on Federal business days, such date shall be the actual date of filing.

(2) For all electronic tariffs, or revisions thereto, filed after 5:30 p.m. local time in Washington, DC, on Federal business days, and for all electronic tariffs, or revisions thereto, filed on days that are not Federal business days, such date shall be the next Federal business day.

§ 221.195 Requirement for filing printed material.

(a) Any tariff, or revision thereto, filed in paper format which accompanies, governs, or otherwise affects, a tariff filed electronically, must be received by the Department on the same date that a tariff or revision thereto, is filed electronically with the Department under § 221.190(b). Further, such paper tariff, or revision thereto, shall

be filed in accordance with the requirements of subparts A through Q of part 221. No tariff or revision thereto, filed electronically under this subpart, shall contain an effective date which is at variance with the effective date of the supporting paper tariff, except as authorized by the Department.

(b) Any printed justifications, or other information accompanying a tariff, or revision thereto, filed electronically under this subpart, must be received by the Department on the same date as any tariff, or revision thereto, filed electronically.

(c) If a filer submits a filing which fails to comply with paragraph (a) of this section, or if the filer fails to submit the information in conformity with paragraph (b) of this section, the filing will be subject to rejection, denial, or disapproval, as applicable.

§ 221.200 Content and explanation of abbreviations, reference marks and symbols.

(a) *Content.* The format to be used for any electronic tariff must be that agreed to in advance as provided for in § 221.180, and must include those data elements set forth in § 221.202. Those portions that are filed in paper form shall comply in all respects with part 221, subparts A through Q.

(b) *Explanation of abbreviations, reference marks and symbols.* Abbreviations, reference marks and symbols which are used in the tariff shall be explained in each tariff.

(1) The following symbols shall be used:

R—Reduction
I—Increase
N—New Matter
X—Canceled Matter
C—Change in Footnotes, Routings, Rules or Zones
E—Denotes change in Effective Date only.

(2) Other symbols may be used only when an explanation is provided in each tariff and such symbols are consistent throughout all the electronically filed tariffs from that time forward.

§ 221.201 Statement of filing with foreign governments to be shown in air carrier's tariff filings.

(a) Every electronic tariff filed by or on behalf of an air carrier that contains fares which, by international convention or agreement entered into between any other country and the United States, are required to be filed with that country, shall include the following statement:

> The rates, fares, charges, classifications, rules, regulations, practices, and services provided herein have been filed in each country in which filing is required by treaty, convention, or agreement entered into between that country and the United States, in accordance with the provisions of the applicable treaty, convention, or agreement.

(b) The statement referenced in § 221.201(a) may be included with each filing advice by the inclusion of a symbol which is properly explained.

(c) The required symbol may be omitted from an electronic tariff or portion thereof if the tariff publication that has been filed with any other country pursuant to its tariff regulations bears a tariff filing designation of that country in addition to the D.O.T. number appearing on the tariff.

§ 221.202 The filing of tariffs and amendments to tariffs.

All electronic tariffs and amendments filed under this subpart, including those for which authority is sought to effect changes on less than bilateral/statutory notice under § 221.212, shall contain the following data elements:

(a) A Filing Advice Status File—which shall include:

(1) Filing date and time;
(2) Filing advice number;
(3) Reference to carrier;
(4) Reference to geographic area;
(5) Effective date of amendment or tariff;
(6) A place for government action to be recorded; and
(7) Reference to the Special Tariff Permission when applicable.

(b) A Government Filing File—which shall include:

(1) Filing advice number;
(2) Carrier reference;
(3) Filing date and time;
(4) Proposed effective date;

(5) Justification text; reference to geographic area and affected tariff number;

(6) Reference to the Special Tariff Permission when applicable;

(7) Government control data, including places for:

(i) Name of the government analyst, except that this data shall not be made public, notwithstanding any other provision in this or any other subpart;

(ii) Action taken and reasons therefor.

(iii) Remarks, except that internal Departmental data shall not be made public, notwithstanding any other provision in this or any other subpart;

(iv) Date action is taken; and

(v) Personal Identification Number; and

(8) Fares tariff, or proposed changes to the fares tariffs, including:

(i) Market;

(ii) Fare code;

(iii) One-way/roundtrip (O/R);

(iv) Fare Amount;

(v) Currency;

(vi) Footnote (FN);

(vii) Rule Number, provided that, if the rule number is in a tariff, reference shall be made to that tariff containing the rule;

(viii) Routing (RG) Number(s), provided that the abbreviation MPM (Maximum Permissible Routing) shall be considered a number for the purpose of this file;

(ix) Effective date and discontinue date if the record has been superseded;

(x) Percent of change from previous fares; and

(xi) Expiration date.

(9) Rules tariff, or proposed changes to the rules tariffs.

(i) Rules tariffs shall include:

(A) Title: General description of fare rule type and geographic area under the rule;

(B) Application: Specific description of fare class, geographic area, type of transportation (one way, round-trip, etc.);

(C) Period of Validity: Specific description of permissible travel dates and any restrictions on when travel is not permitted;

(D) Reservations/ticketing: Specific description of reservation and ticketing provisions, including any advance reservation/ticketing requirements, provisions for payment (including prepaid tickets), and charges for any changes;

(E) Capacity Control: Specific description of any limitation on the number of passengers, available seats, or tickets;

(F) Combinations: Specific description of permitted/restricted fare combinations;

(G) Length of Stay: Specific description of minimum/maximum number of days before the passenger may/must begin return travel;

(H) Stopovers: Specific description of permissible conditions, restrictions, or charges on stopovers;

(I) Routing: Specific description of routing provisions, including transfer provisions, whether on-line or interline;

(J) Discounts: Specific description of any limitations, special conditions, and discounts on status fares, e.g. children or infants, senior citizens, tour conductors, or travel agents, and any other discounts;

(K) Cancellation and Refunds: Specific description of any special conditions, charges, or credits due for cancellation or changes to reservations, or for request for refund of purchased tickets;

(L) Group Requirements: Specific description of group size, travel conditions, group eligibility, and documentation;

(M) Tour Requirements: Specific description of tour requirements, including minimum price, and any stay or accommodation provisions;

(N) Sales Restrictions: Specific description of any restrictions on the sale of tickets;

(O) Rerouting: Specific description of rerouting provisions, whether on-line or inter-line, including any applicable charges; and

(P) Miscellaneous provisions: Any other applicable conditions.

(ii) Rules tariffs shall not contain the phrase ''intentionally left blank''.

(10) Any material accepted by the Department for informational purposes only shall be clearly identified as ''for informational purposes only, not part of official tariff'', in a manner acceptable to the Department.

(c) A Historical File—which shall include:

(1) Market;

(2) Fare code;

(3) One-way/roundtrip (O/R);

(4) Fare amount;

(5) Currency;

(6) Footnote (FN);

(7) Rule Number, provided that, if the rule number is in a tariff other than the fare tariff, reference shall be made to that tariff containing the rule;

(8) Rule text applicable to each fare at the time that the fare was in effect.

(9) Routing (RG) Number(s), provided that the abbreviation MPM (Maximum Permissible Routing) shall be considered a number for the purpose of this file;

(10) Effective Date;

(11) Discontinue Date;

(12) Government Action;

(13) Carrier;

(14) All inactive fares (two years);

(15) Any other fare data which is essential; and

(16) Any necessary cross reference to the Government Filing File for research or other purposes.

§ 221.203 Unique rule numbers required.

(a) Each ''bundled'' and ''unbundled'' normal economy fare applicable to foreign air transportation shall bear a unique rule number.

(b) The unique rule numbers for the fares specified in this section shall be set by mutual agreement between the filer and the Department prior to the implementation of any electronic filing system.

§ 221.204 Adoption of provisions of one carrier by another carrier.

When one carrier adopts the tariffs of another carrier, the effective and prospective fares of the adopted carrier shall be changed to reflect the name of the adopting carrier and the effective date of the adoption. Further, each adopted fare shall bear a notation which shall reflect the name of the adopted carrier and the effective date of the adoption, provided that any subsequent revision of an adopted fare may omit the notation.

§ 221.205 Justification and explanation for certain fares.

Any carrier or its agent must provide, as to any new or increased bundled or unbundled (whichever is lower) on-demand economy fare in a direct-service market, a comparison between, on the one hand, that proposed fare and, on the other hand, the ceiling fare allowed in that market based on the SFFL.

§ 221.206 Statement of fares.

All fares filed electronically in direct-service markets shall be filed as single factor fares.

§ 221.210 Suspension of tariffs.

(a) A fare, charge, rule or other tariff provision that is suspended by the Department pursuant to section 41509 of the statute shall be noted by the Department in the Government Filing File and the Historical File.

(b) When the Department vacates a tariff suspension, in full or in part, and after notification of the carrier by the Department, such event shall be noted by the carrier in the Government Filing File and the Historical File.

(c) When a tariff suspension is vacated or when the tariff becomes effective upon termination of the suspension period, the carrier or its agent shall refile the tariff showing the effective date.

§ 221.211 Cancellation of suspended matter.

When, pursuant to an order of the Department, the cancellation of rules, fares, charges, or other tariff provision is required, such action shall be made by the carrier by appropriate revisions to the tariff.

§ 221.212 Special tariff permission.

(a) When a filer submits an electronic tariff or an amendment to an electronic tariff for which authority is sought to effect changes on less than bilateral/statutory notice, and no related tariff material is involved, the submission shall bear a sequential filing advice number. The submission shall appear in the Government Filing File and the Filing Advice Status File, and shall be referenced in such a manner to clearly indicate that such

changes are sought to be made on less than bilateral/statutory notice.

(b) When a filer submits an electronic tariff or an amendment to the electronic tariff for which authority is sought to effect changes on less than bilateral/statutory notice, and it contains related paper under § 221.195, the paper submission must bear the same filing advice number as that used for the electronic submission. Such paper submission shall be in the form of a revised tariff page rather than as a separate request for Special Tariff Permission. All material being submitted on a paper tariff page as part of an electronic submission will clearly indicate the portion(s) of such tariff page that is being filed pursuant to, and in conjunction with, the electronic submission on less than bilateral/statutory notice.

(c) Departmental action on the Special Tariff Permission request shall be noted by the Department in the Government Filing File and the Filing Advice Status File.

(d) When the paper portion of a Special Tariff Permission that has been filed with the Department pursuant to paragraph (b) of this section is disapproved or other action is taken by the Department, such disapproval or other action will be reflected on the next consecutive revision of the affected tariff page(s) in the following manner:

(1) Example of disapproval statement:

The portion(s) of ____ Revised Page ____ filed under EFA No. ____ was/were disapproved by DOT.

(2) Example of other action:

The portion(s) ____ Revised Page ____ filed under EFA No. ____ was/were required to be amended by DOT.

(e) When the Department disapproves in whole or in part or otherwise takes an action against any submission filed under this part, the filer must take corrective action within two business days following the disapproval or notice of other action.

(f) All submissions under this section shall comply with the requirements of § 221.202.

§ 221.300 Discontinuation of electronic tariff system.

In the event that the electronic tariff system is discontinued, or the source of the data is changed, or a filer discontinues its business, all electronic data records prior to such date shall be provided immediately to the Department, free of charge, on a machine-readable tape or other mutually acceptable electronic medium.

§ 221.400 Filing of paper tariffs required.

(a) After approval of any application filed under § 221.180 of this subpart to allow a filer to file tariffs electronically, the filer in addition to filing electronically must continue to file printed tariffs as required by subparts A through Q of part 221 for a period of 90 days, or until such time as the Department shall deem such filing no longer to be necessary: Provided that during the period specified by this section the filed printed tariff shall continue to be the official tariff.

(b) Upon notification to the filer that it may commence to file its tariffs solely in an electronic mode, concurrently with the implementation of filing electronically the filer shall:

(1) Furnish the Department with a copy of all the existing effective and prospective records on a machine-readable tape or other mutually acceptable electronic medium accompanied by an affidavit attesting to the accuracy of such records; and

(2) Simultaneously cancel such records from the paper tariff in the manner prescribed by subparts A through Q of part 221.

§ 221.500 Transmission of electronic tariffs to subscribers.

(a) Each filer that files an electronic tariff under this subpart shall make available to any person so requesting, a subscription service meeting the terms of paragraph (b) of this section.

(b) Under the required subscription service, remote access shall be allowed to any subscriber to the on-line tariff database, including access to the justification required by § 221.205. The subscription service shall not preclude the offering of additional services by the filer or its agent.

(c) The filer at its option may establish a charge for providing the required subscription service to subscribers: Provided that the charge may not exceed a reasonable estimate of the added cost of providing the service.

(d) Each filer shall provide to any person upon request, a copy of the machine-readable data (raw tariff data) of all daily transactions made to its on-line tariff database. The terms and prices for such value-added service may be set by the filer: Provided that such terms and prices shall be non-discriminatory, *i.e.,* that they shall be substantially equivalent for all similarly-situated persons.

§ 221.550 Copies of tariffs made from filer's printer(s) located in Department's public reference room.

Copies of information contained in a filer's on-line tariff database may be obtained by any user at Departmental Headquarters from the printer or printers placed in Tariff Public Reference Room by the filer. The filer may assess a fee for copying, provided it is reasonable and that no administrative burden is placed on the Department to require the collection of the fee or to provide any service in connection therewith.

§ 221.600 Actions under assigned authority and petitions for review of staff action.

(a) When an electronically filed record which has been submitted to the Department under this subpart, is disapproved (rejected), or a special tariff permission is approved or denied, under authority assigned by the Department of Transportation's Regulations, 14 CFR 385.13, such actions shall be understood to include the following provisions:

(1) *Applicable to a record or records which is/are disapproved (rejected).* The record(s) disapproved (rejected) is/are void, without force or effect, and must not be used.

(2) *Applicable to a record or records which is/are disapproved (rejected), and to special tariff permissions which are approved or denied.* This action is taken under authority assigned by the Department of Transportation in its Organization Regulations, 14 CFR 385.13. Persons entitled to petition for review of this action pursuant to the Department's Regulations, 14 CFR 385.50, may file such petitions within seven days after the date of this action. This action shall become effective immediately, and the filing of a petition for review shall not preclude its effectiveness.

(b) [Reserved]

PART 222—INTERMODAL CARGO SERVICES BY FOREIGN AIR CARRIERS

Sec.

222.1 Applicability.
222.2 Scope of permissible intermodal cargo services.
222.3 Application for Statement of Authorization.
222.4 Procedure on receipt of application for Statement of Authorization.
222.5 Cancellation or conditioning of a Statement of Authorization.

APPENDIX A TO PART 222—CAB FORM 222

AUTHORITY: Secs. 204, 402, Pub. L. 85–726, as amended, 72 Stat. 743, 757; 49 U.S.C. 1324, 1372.

SOURCE: ER–1228, 46 FR 32556, June 24, 1981, unless otherwise noted.

§ 222.1 Applicability.

This part applies to all air transportation of property that includes both air movement by a direct foreign air carrier and surface transportation to or from any point within the United States (hereafter referred to as ''intermodal cargo services'').

§ 222.2 Scope of permissible intermodal cargo services.

(a) Under its foreign air carrier permit, a direct foreign air carrier may provide or control the surface portion of intermodal cargo services within a zone extending 35 miles from the boundary of the airport or city it is authorized to serve. A direct foreign air carrier shall not provide or control the surface portion of intermodal cargo services outside of this 35-mile zone unless authorized to do so by the Board in accordance with §§ 222.3, 222.4 and 222.5.

(b) A direct foreign air carrier shall be considered to control the surface portion of intermodal cargo services if it has or publicly represents that it has any responsibility for or control over

the movement of, or has any ownership, controlling or exclusive dealing relationship with, the carrier actually providing the surface transportation.

(c) Except as provided in paragraphs (a) and (b) of this section with respect to control by a direct foreign air carrier, any U.S. or foreign indirect air carrier, surface carrier or surface freight forwarder may provide the surface portion of intermodal cargo services without limitation as to geographic area within the United States.

(d) The Board may withdraw the authority of an indirect foreign air carrier to provide the surface portion of intermodal cargo services, or the authority of a direct foreign air carrier to offer intermodal cargo services pursuant to joint fares with other carriers providing the surface transportation, at any time, with or without hearing, if the Board finds it in the public interest.

§ 222.3 Application for Statement of Authorization.

(a) Application for a Statement of Authorization shall be filed with the Board's Regulatory Affairs Division, Bureau of International Aviation, in duplicate, on CAB Form 222 (obtainable from the Civil Aeronautics Board, Publications Services Division, Washington, D.C. 20428), attached as Appendix A. In most cases the Board will act upon applications for Statements of Authorization within 60 days.

(b) Persons objecting to an application for a Statement of Authorization shall file their objections with the Regulatory Affairs Division, Bureau of International Aviation, within 28 days of the filing date of the application. The Board will list the names and nationalities of all persons applying for Statements of Authorization in its Weekly Summary of Filings.

(c) An application shall include a copy of any bilateral agreement, memorandum of consultations, or diplomatic note or letter, in support of the authority requested. Documents that appear in official U.S. publications may be incorporated by reference.

(Approved by the Office of Management and Budget under control number 3024–0045)

[ER–1228, 46 FR 32556, June 24, 1981, as amended by ER–1348, 48 FR 31635, July 11, 1983]

§ 222.4 Procedure on receipt of application for Statement of Authorization.

(a) After review of an application form filed under § 222.3, the Board will take one or more of the following actions:

(1) Indicate by stamp on CAB Form 222 the effective date of the Statement of Authorization, and return to the carrier the duplicate copy of Form 222 as evidence of approval under this part;

(2) Request additional information from the applicant;

(3) Set the application for notice and hearing procedures;

(4) Disapprove the application or approve it subject to such terms, conditions, or limitations as may be required by the public interest; or

(5) Reject the application on the grounds that there is no agreement by the United States authorizing the proposed services.

(b) An order disapproving an application or subjecting it to conditions or limitations shall be transmitted to the President for stay or disapproval. If the President does not stay or disapprove the Board's order, it shall become effective on the 31st day after transmittal to the President, or within any longer time period established in the order.

§ 222.5 Cancellation or conditioning of a Statement of Authorization.

A Statement of Authorization may be canceled or made subject to additional terms, conditions, or limitations, at any time, with or without hearing, if the Board finds that it is in the public interest to do so. An order canceling or conditioning a Statement of Authorization shall be submitted to the President for stay or disapproval and shall become effective on the 31st day after transmittal or within any longer time period established by the Board.

APPENDIX A TO PART 222—CAB FORM 222

Appendix A

CAB Form 222 UNITED STATES OF AMERICA CIVIL AERONAUTICS BOARD FOREIGN AIR CARRIER APPLICATION FOR STATEMENT OF AUTHORIZATION FOR INTERMODAL CARGO SERVICES	DO NOT WRITE - FOR OFFICIAL USE ONLY

TO: CIVIL AERONAUTICS BOARD
ATTENTION: Regulatory Affairs Division
Bureau of International Aviation
Washington, D.C. 20428

Application is made for a Statement of Authorization to conduct intermodal cargo services under provisions of the applicants' foreign air carrier permit and Economic Regulation Part 222.

☐ Initial Application ☐ Change of Name/Address/Nationality

☐ Application for Removal of conditions

1. Name of Applicant: Nationality:	4. Area in the United States to be served by surface transportation
2. Send Authorization to: (Name and Address)	
3. (a) estimated annual tonnage of cargo to be shipped by surface transportation: _____ (b) percentage of total air cargo to be shiped by surface transportation beyond 35-mile pick-up and delivery zone.	

CERTIFICATION

I certify that the information contained in this application, and in the attachments hereto, is complete and accurate to the best of my knowledge.

Signature: _____

Date: _____ Name: _____
(please type)

Place: _____ Title: _____
(see note)

NOTE: Application must be signed by a responsible officer, such as the President, Vice President, Secretary, or Treasurer of a corporation, or a partner or owner of other non-corporate applicants.

FOR CAB USE ONLY

Special conditions or limitations/reasons for disapproval/rejection/findings.

PART 223—FREE AND REDUCED-RATE TRANSPORTATION

Subpart A—General Provisions

Sec.
223.1 Definitions.
223.2 Exemption from section 401 of the Act.
223.3 Mandatory free transportation.
223.4 Transferability of passes.
223.5 Responsibility of agencies.
223.6 Carrier's rules.

Subpart B—Domestic Travel

223.11 Free and reduced-rate transportation permitted.

Subpart C—International Travel

223.21 Free and reduced-rate transportation authorized by statute or regulation.
223.22 Other persons to whom free and reduced-rate transportation may be furnished.
223.23 Applications for authority to carry other persons.
223.24 Transportation of empty mail bags.
223.25 List of affiliates.

AUTHORITY: Secs. 204, 403, 404, 405(j), 407, 416, Pub. L. 85–726, as amended, 72 Stat. 743, 758, 760, 766, 771, 49 U.S.C. 1325, 1373, 1374, 1375, 1377, 1386, sec. 2 of the Postal Reorganization Act, 84 Stat. 767, 39 U.S.C. 5007.

SOURCE: ER–1371, 48 FR 57118, Dec. 28, 1983, unless otherwise noted.

Subpart A—General Provisions

§ 223.1 Definitions.

As used in this part, unless the context otherwise requires:

An *affiliate* of a carrier means a person:

(a) Who controls that carrier, or is controlled by that carrier or by another person who controls or is controlled by that carrier; and

(b) Whose principal business in purpose or in fact is:

(1) The holding of stock in one or more carriers;

(2) Transportation by air or the sale of tickets therefor;

(3) The operation of one or more airports, one or more of which are used by that carrier or by another carrier who controls or is controlled by that carrier or that is under common control with that carrier by another person; or

(4) Activities related to the transportation by air conducted by that carrier or by another carrier that controls or is controlled by that carrier or which is under common control with that carrier by another person.

Air carrier means the holder of a certificate of public convenience and necessity issued by the Board under section 401 of the Act authorizing the carriage of persons.

Attendant means any person required by a handicapped person in order to travel, whether or not that person's services are required while the handicapped passenger is in an aircraft.

Carrier means:

(a) An air carrier;

(b) An all-cargo air carrier operating under section 401 or section 418 of the Act;

(c) A foreign air carrier;

(d) An intrastate carrier;

(e) An air taxi (including a commuter air carrier) operating under parts 294 or 298 of this chapter; and

(f) Any person operating as a common carrier by air, or in the carriage of mail by air, or conducting transportation by air, in a foreign country.

Control, as used in this section, means the beneficial ownership of more than 40 percent of outstanding capital stock unless, ownership of more than 40 percent of outstanding capital stock unless, in a specific case, the Board determines under section 408 of the Act that control does not exist. Control may be direct or by or through one or more intermediate subsidiaries likewise controlled or controlling through beneficial ownership of more than 40 percent of outstanding voting capital stock.

Delivery flight means a flight from a point in the United States where a carrier has taken delivery of a newly manufactured aircraft to any point or points on its route system.

Foreign air carrier means the holder of a permit issued by the Board under section 402 of the Act authorizing the carriage of persons.

Free transportation means the carriage by an air carrier or foreign air carrier of any person or property (other than property owned by that carrier) in air transportation without compensation therefor.

Handicapped passenger means any person who has a physical or mental

impairment (other than drug addiction or alcoholism), that substantially limits one or more major life activities.

Inaugural flight means a flight on an aircraft type being introduced by a carrier for the first time on a route, even if that aircraft type has been used by that carrier on other routes or on that route by other carriers.

Pass means a written authorization, other than actual ticket stock, issued by a carrier for free or reduced-rate transportation of persons or property.

Reduced-rate transportation means the carriage by an air carrier or foreign air carrier of any person or property (other than property owned by such carrier) in air transportation for a compensation less than that specified in the tariffs of that carrier on file with the Board and otherwise applicable to such carriage.

Retired means:

(a) With respect to carrier directors, officers, and employees, persons receiving retirement benefits from any carrier;

(b) With respect to the general public, persons not regularly working at a full-time paying job, and not intending to do so in the future.

§ 223.2 Exemption from section 401 of the Act.

(a) Any all-cargo carrier is exempted from section 401 of the Act to the extent necessary to carry, for purposes of in-flight observation, technical representatives of companies that have been engaged in the manufacture, development, or testing of aircraft or aircraft equipment.

(b) Every carrier providing transportation under this section shall also comply with the applicable regulations of the Federal Aviation Administration such as regulations pertaining to admission of persons to the aircraft flight deck.

§ 223.3 Mandatory free transportation.

Every air carrier shall carry, without charge, on any aircraft that it operates, the following persons:

(a) Security guards who have been assigned to the duty of guarding such aircraft against unlawful seizure, sabotage or other unlawful interference, upon the exhibition of such credentials as may be prescribed by the Administrator of the Federal Aviation Administration;

(b) Safety inspectors of the National Transportation Safety Board or of the Federal Aviation Administration who have been assigned to the duty of inspecting during flight such aircraft or its equipment, route facilities, operational procedures, or airman competency upon the exhibition of credentials or a certificate from the agency involved in authorizing such transportation; and

(c) Postal employees on duty in charge of the mails or traveling to or from such duty, upon the exhibition of the credentials issued by the Postmaster General.

§ 223.4 Transferability of passes.

Any pass authorizing free or reduced-rate transportation issued by a carrier may be made transferable to the extent specified by the granting carrier.

§ 223.5 Responsibility of agencies.

The Federal Aviation Administration, National Transportation Safety Board, National Weather Service, and the Postal Service shall be responsible for the following:

(a) The issuance of any credentials or certificates to their personnel eligible for free or reduced-rate transportation under this part; and

(b) The promulgation of any internal rules that are necessary to obtain compliance by such personnel with this part.

§ 223.6 Carrier's rules.

(a) Each air carrier and foreign air carrier shall maintain at its principal office either a copy or all instructions to its employees and of all company rules governing its practice in connection with the issuance and interchange of free and reduced-rate transportation passes or a statement describing those practices.

(b) The rules or statement required by this section shall, at a minimum, include the following:

(1) The titles of its officials upon whose authorizations passes may be issued;

(2) The titles of other officials who are authorized by these officials to

countersign passes on their behalf, and the extent of the authority granted to them; and

(3) The titles of persons who are authorized to request passes from other carriers.

(c) The rules, instructions, or statement required by this section shall be furnished to the Board upon request or to a member of the public upon payment of a reasonable charge for this service.

(Approved by the Office of Management and Budget under control number 3024–0002)

Subpart B—Domestic Travel

§ 223.11 Free and reduced-rate transportation permitted.

Air carriers may charge any rate or fare for interstate and overseas air transportation.

Subpart C—International Travel

§ 223.21 Free and reduced-rate transportation authorized by statute or regulation.

(a) Any air carrier or foreign air carrier may provide free or reduced-rate foreign air transportation to any classes of persons specifically named in section 403(b) of the Act or free transportation to those named in § 375.35 of this chapter.

(b) Air carriers and foreign air carriers may offer reduced fares for foreign air transportation to ministers of religion, the elderly, retired, and handicapped passengers, and to attendants required by handicapped passengers, but shall file tariffs for such fares. Carriers may establish reasonable tariff rules to assist in identifying those who qualify for reduced fares.

§ 223.22 Other persons to whom free and reduced-rate transportation may be furnished.

Air carriers and foreign air carriers are exempted from sections 403 and 404(b) of the Act and part 221 of this chapter to the extent necessary to provide free or reduced-rate foreign air transportation, including passes, to the following:

(a) Directors, officers, employees, and retirees and members of their immediate families, of any carrier or of any affiliate of such carrier, subject to the requirements of § 223.25.

(b) Persons to whom the carrier is required to furnish such transportation by law or government directive or by a contract or agreement between the carrier and the government of any country served by the carrier. The Board may, without prior notice, direct the carrier to file a tariff covering such transportation if it finds that the law or government directive in question requires the provision of such transportation. This transportation may be provided only if:

(1) The contract or agreement is filed with the Board, and it is not disapproved by the Board; and

(2) The law or government directive does not require the furnishing of such transportation to the general public or any segment thereof.

(c) Technical representatives of companies that have been engaged in the manufacture, development or testing of a particular type of aircraft or aircraft equipment, when the transportation is provided for the purposes of in-flight observation, and subject to applicable regulations of the Federal Aviation Administration such as regulations pertaining to admission of persons to the aircraft flight deck.

(d) Any person in return for goods or services provided by such person whether the transportation is used by that person or any designee of such person;

(e) Persons engaged in promoting transportation and their immediate families, when such transportation is undertaken for a promotional purpose;

(f) Persons being transported on an inaugural flight or delivery flight of the carrier except that, in the case of delivery flights, this exemption extends only to free, and not reduced-rate, transportation;

(g) Any law-enforcement official, including any person who has the duty of guarding government officials traveling on official business against unlawful interference;

(h) As compensation to persons that file a complaint or claim against the carrier;

(i) Charitable organizations; and

(j) Any person in an aviation-related occupation when the transportation is

provided for the purpose of technical in-flight observation.

§ 223.23 Applications for authority to carry other persons.

(a) Any air carrier or foreign air carrier desiring special authorization to provide free or reduced-rate foreign air transportation to persons to whom the carrier would not otherwise be authorized to furnish such transportation under the previous provisions of this part may apply to the Board, by letter or other writing, for such authorization.

(b) The application shall include the following information:

(1) The identity of the persons to whom the transportation is to be furnished;

(2) The points between which the transportation is to be furnished;

(3) The approximate time of departure; and

(4) The carrier's reasons for desiring to furnish such transportation.

(c) No transportation for which approval is required shall be furnished by the carrier until that approval is received by the carrier.

(Approved by the Office of Management and Budget under control number 3024–0002)

§ 223.24 Transportation of empty mail bags.

Any carrier authorized to engage in foreign air transportation may transport in foreign air transportation empty air mail bags from any country to the country of origin of such bags, free of charge, on a voluntary space-available basis.

§ 223.25 List of affiliates.

(a) Each carrier shall maintain at its principal office a list containing all of that carrier's affiliates, showing the exact relationship of each affiliate to the carrier.

(b) No pass may be issued under § 223.22(a) to a director, officer, employee, or members of their immediate family, of any affiliate, unless that affiliate is on the list required by paragraph (a) of this section.

(c) The list required by paragraph (a) of this section shall be furnished to the Board upon request.

(Approved by the Office of Management and Budget under control number 3024–0002)

PART 232—TRANSPORTATION OF MAIL, REVIEW OF ORDERS OF POSTMASTER GENERAL

Sec.

232.1 Applications for review.
232.2 Answers to applications for review.
232.3 Replies to answers to applications for review.
232.4 Applications to postpone the effective date of an order of the Postmaster General; answers thereto.
232.5 Filing and service of applications, answers, and replies.

AUTHORITY: 49 U.S.C. Chapters 401, 419.

SOURCE: 41 FR 49479, Nov. 9, 1976, unless otherwise noted.

§ 232.1 Applications for review.

(a) Any person who would be aggrieved by an order of the Postmaster General issued under and within the meaning of section 41902 of the Statute may, within not more than 10 days after the issuance of such order, apply to the Department for a review thereof.

(b) An application for review filed under this part shall be made in writing and shall be conspicuously entitled Application for Review of Order of the Postmaster General under section 41902 of the Statute. Except as otherwise provided in paragraph (c) of this section, such application for review shall specify:

(1) The schedule affected and identity of the order complained of;

(2) The manner in which the applicant is or would be aggrieved by the order;

(3) The relief sought;

(4) The facts relied upon to establish that the public convenience and necessity require that such order be amended, revised, suspended, or canceled by the Department;

(5) An estimate of the total economic impact (including nonmail revenues) on the carrier of complying with the Postmaster General's order;

(6) A history of the flight or flights in question and any predecessor flights cooperated in the market at or about

the same hours, including when they were first operated and whether they have been operated continuously since that time: *Provided,* That this history need not extend beyond the last three years;

(7) A detailed statement of the reasons for the schedule change, including copies of any economic data considered by carrier management in reaching that determination;

(8) Any other schedule changes in the affected market which accompany the schedule change in question, or a statement to the effect that there are no such changes;

(9) Monthly load-factor data on the flight or flights in question for the most recent twelve-month period;

(10) Profit and loss data for the flight or flights in question for the most recent twelve-month period, provided that the data be submitted on a fully allocated cost by functional account number or by some other method in which costs are determined on a fully allocated basis and which is explained in complete detail; and

(11) A statement indicating whether the carrier is willing to seatload sack mail on the flight or flights in question.

(c) Where the application is for review of an order which does not involve disapproval, alteration, or amendment of a change or changes which a carrier sought to make in its own schedule(s), the application need not include items 6 through 11, inclusive, specified in paragraph (b) of this section.

[41 FR 49479, Nov. 9, 1976, as amended by Docket No. 47939, 57 FR 40102, Sept. 2, 1992; 60 FR 43524, Aug. 22, 1995]

§ 232.2 Answers to applications for review.

(a) Any interested person may, within not more than ten days after the filing of an application for review, serve and file with the Department an answer in opposition to, or in support of, such applications. Such answer shall set forth the economic data and other facts upon which it is based.

(b) An answer of the Postmaster General or U.S. Postal Service shall contain the following particular information, where applicable:

(1) The Postal Service's critical time frame for the movement of the mail in question together with a detailed explanation of the operational factors which support that estimate;

(2) The alternate air and surface services (including air taxi service) available in the market in question together with a statement of the costs of using such alternate services and, where appropriate, an explanation of why such services are unacceptable;

(3) An estimate of the average amount and expected actual density of mail which will be tendered to the carrier if the order in question is upheld;

(4) An estimate of the amount and type of containers which will be tendered to the carrier if the order in question is upheld;

(5) The volume (including density of mail, amount and types of containers) of mail historically carried on the flight or flights in question;

(6) An estimate of the volume (including density of mail, amount and types of containers) of mail historically carried on the flight or flights in question which could be accommodated on other flights serving the market without significant impairment of service under the mail delivery time standards of the Postal Service, together with an explanation of how that estimate was computed; and

(7) An estimate of the impact of the flight or flights in question on mail delivery time standards of the Postal Service, together with an explanation of how that estimate was computed.

[41 FR 49479, Nov. 9, 1976, as amended by Docket No. 47939, 57 FR 40102, Sept. 2, 1992]

§ 232.3 Replies to answers to applications for review.

Any interested person may, within not more than seven days after the filing of an answer to an application for review, serve and file with the Department a reply in opposition to, or in support of, such answer.

[41 FR 49479, Nov. 9, 1976, as amended by Docket No. 47939, 57 FR 40102, Sept. 2, 1992]

§ 232.4 Applications to postpone the effective date of an order of the Postmaster General; answers thereto.

(a) Any person who would be aggrieved by an order of the Postmaster

General within the meaning of section 41902 of the Statute may, within not more than four calendar days after the issuance of such order, apply to the Department for a postponement of the effective date of that order pending review: *Provided,* That if the final day of the four day period is a Saturday, Sunday, or holiday for the Department, the application may be filed with the Department no later than the end of the next day which is neither a Saturday, Sunday, or holiday.

(b) An application for postponement of the effective date filed under this part may be made in writing or by telegram, and shall be conspicuously entitled Application for Postponement of the Effective Date of Order of the Postmaster General Pending Review Under section 41902 of the Statute. Such application for postponement shall specify:

(1) The schedule affected and identity of the order complained of;

(2) The manner in which the applicant is or would be aggrieved by the order;

(3) The relief which will be sought;

(4) That the applicant intends to file a timely application for review of the order under §232.1; and

(5) A summary of the justification and facts relied upon to establish that the stay should be granted.

(c) Any interested person may, within not more than four calendar days after the service of an application for postponement of the effective date, serve and file with the Department an answer in opposition to, or in support of, the application: *Provided,* That if the final day of the four day period is a Saturday, Sunday, or holiday for the Department, the application may be filed with the Department no later than the end of the next day which is neither a Saturday, Sunday, or holiday: *Provided further, however,* That the Department need not consider any answer filed later than eight calendar days after issuance of the Postmaster General's order.

[41 FR 49479, Nov. 9, 1976, as amended by Docket No. 47939, 57 FR 40102, Sept. 2, 1992; 60 FR 43524, Aug. 22, 1995]

§232.5 Filing and service of applications, answers, and replies.

(a) An application, answer or reply filed hereunder shall be deemed to have been filed on the date on which it is actually received by the Department at its offices in Washington, D.C.

(b) At the time a written or telegraphic application, answer, or reply is filed under this part, a copy thereof shall be served by personal service, registered mail, or telegraph upon the Postmaster General and upon the air carrier operating or ordered to operate the mail service in question. Except in the case of telegraphic delivery each copy so served shall be accompanied by a letter of transmittal stating that such service is being made pursuant to this section. In the case of telegraphic delivery the copy shall be accompanied by a telegraphic statement that service is being made pursuant to this section.

(c) The execution, number of copies, and verification of a written application, answer, or reply filed under this part, and the formal specifications of papers included in such application, answer, or reply shall be in accordance with the requirements of the Rules of Practice relating to applications generally (see part 302 of this chapter).

[41 FR 49479, Nov. 9, 1976, as amended by Docket No. 47939, 57 FR 40102, Sept. 2, 1992]

PART 234—AIRLINE SERVICE QUALITY PERFORMANCE REPORTS

Sec.

234.1 Purpose.
234.2 Definitions.
234.3 Applicability.
234.4 Reporting of on-time performance.
234.5 Form of reports.
234.6 Baggage-handling statistics.
234.7 Voluntary reporting.
234.8 Calculation of on-time performance codes.
234.9 Reporting of on-time performance codes.
234.10 Voluntary disclosure of on-time performance codes.
234.11 Disclosure to consumers.
234.12 Waivers.

AUTHORITY: 49 U.S.C. 329 and chapters 401, 417.

SOURCE: Amdt. No. 234–1, 52 FR 34071, Sept. 9, 1987, unless otherwise noted.

NOTE: The reporting requirements contained in this part have been approved by the

Office of Management and Budget under control number 2138–0041.

§ 234.1 Purpose.

The purpose of this part is to set forth required data that certain air carriers must submit to the Department and to computer reservations system vendors in computerized form, except as otherwise provided, so that information on air carriers' quality of service can be made available to consumers of air transportation. This part also requires that service quality data be disclosed directly to consumers.

§ 234.2 Definitions.

For the purpose of this part:

Cancelled flight means a flight operation that was not operated, but was listed in a carrier's computer reservation system within seven calendar days of the scheduled departure.

Discontinued flight means a flight dropped from a carrier's computer reservation system more than seven calendar days before its scheduled departure.

Diverted flight means a flight which is operated from the scheduled origin point to a point other than the scheduled destination point in the carrier's published schedule. For example, a carrier has a published schedule for a flight from A to B to C. If the carrier were to actually fly an A to C operation, the A to B segment is a diverted flight, and the B to C segment is a cancelled flight.

Extra-section flight means a flight conducted as an integral part of scheduled passenger service, that has not been provided for in published schedules and is required for transportation of traffic that cannot be accommodated on the regularly scheduled flight.

Flight means any nonstop scheduled passenger flight segment with a specific flight number scheduled to be operated pursuant to a published schedule within a specific origin-destination city pair, other than transborder or foreign air transportation. In the case of reporting to computer reservations system vendors, *flight* also means one-stop or multi-stop single plane scheduled operations that include any flight segments for which performance is reported pursuant to this part.

Late or *late flight* means a flight that arrives at the gate 15 minutes or more after its published arrival time.

Mishandled-baggage report means a report filed with a carrier by or on behalf of a passenger that claims loss, delay, damage or pilferage of baggage.

New flight means a flight added to a carrier's schedule to operate in a specific origin-destination city pair and not scheduled to depart within 30 minutes of any discontinued flight that was contained in the carrier's published schedules for the same city pair during the previous month.

On-time means a flight that arrives less than 15 mintues after its published arrival time.

On-time performance means the percentage of scheduled operations of a specific flight that an air carrier operates on-time during a month.

On-time performance code means a single character determined in accordance with the provisions of this part that reflects the monthly on-time performance of certain nonstop flights and single plane one-stop or multi-stop flights, the schedule and availability of which are listed in a computer reservation system (*CRS*) regulated by 14 CFR part 255.

Reportable flight means any nonstop flight, including a mechanically delayed flight, to or from any airport within the contiguous 48 states that accounts for at least 1 percent of domestic scheduled-passenger enplanements in the previous calendar year, as reported to the Department pursuant to part 241 of this title. Qualifying airports will be specified periodically in accounting and reporting directives issued by the Office of Airline Information.

Reporting carrier means an air carrier certificated under 49 U.S.C. 41102 that accounted for at least 1 percent of domestic scheduled-passenger revenues in the 12 months ending March 31 of each year, as reported to the Department pursuant to part 241 of this title. Reporting carriers will be identified periodically in accounting and reporting directives issued by the Office of Airline Information.

Wet-leased flight means a flight operated with a leased aircraft and crew.

[Amdt. 234–1, 52 FR 34071, Sept. 9, 1987, as amended by Docket No. 48524, 59 FR 49797, Sept. 30, 1994; 60 FR 66722, Dec. 26, 1995]

§ 234.3 Applicability.

This part applies to certain domestic scheduled passenger flights that are held out to the public by certificated air carriers that account for at least 1 percent of domestic scheduled passenger revenues. Certain provisions also apply to voluntary reporting to on-time performance by carriers.

§ 234.4 Reporting of on-time performance.

(a) Each reporting carrier shall file BTS Form 234 ''On-Time Flight Performance Report'' with the Office of Airline Information on a monthly basis, setting forth the information for each of its reportable flights held out in the *Official Airline Guide* (OAG), in the computer reservations systems (CRS), or in other schedule publications. The reportable flights include, but are not limited to, cancelled flights, mechanically cancelled flights, diverted flights, new flights and wet-leased flights. The report shall be made in the form and manner set forth in accounting and reporting directives issued by the Director, Office of Airline Statistics, and shall contain the following information:

(1) Carrier and flight number.

(2) Aircraft tail number.

(3) Origin and Destination airport codes.

(4) Published OAG departure and arrival times for each scheduled operation of the flight.

(5) CRS scheduled arrival and departure time for each scheduled operation of the flight.

(6) Actual departure and arrival time for each operation of the flight.

(7) Difference in minutes between OAG and CRS scheduled arrival times.

(8) Difference in minutes between OAG and CRS scheduled departure times.

(9) Actual wheels-off and wheels-on times for each operation of the flight.

(10) Date and day of week of scheduled flight operation.

(11) Scheduled elapsed time, according to CRS schedule.

(12) Actual elapsed time.

(13) Amount of departure delay, if any.

(14) Amount of arrival delay, if any.

(15) Amount of elapsed time difference, if any.

(16) Causal code for cancellation, if any.

(17) Minutes of delay attributed to the air carrier, if any.

(18) Minutes of delay attributed to extreme weather, if any.

(19) Minutes of delay attributed to the national aviation system, if any.

(20) Minutes of delay attributed to security, if any.

(21) Minutes of delay attributed to a previous late arriving aircraft, if any.

(b) When reporting the information specified in paragraph (a) of this section for a diverted flight, a reporting carrier shall use the original scheduled flight number and the original scheduled origin and destination airport codes. Carriers are not required to report causal information for diverted flights.

(c) A reporting carrier shall report the information specified in paragraph (a) of this section for a new flight beginning with the first day of the new scheduled operation.

(d) A reporting carrier shall not report the information specified in paragraph (a) of this section for any discontinued or extra-section flight.

(e) Actual arrival, departure and elapsed times shall be measured by the times at which the aircraft arrived at and departed from the gate or passenger loading area.

(f) The published arrival time and departure time of a flight shall be, respectively, the scheduled arrival and departure times in effect on the date of the scheduled operation of the flight, as shown in the most recent *Official Airline Guide*, and in computer reservations systems. Each carrier shall designate a single computer reservations system in addition to the *Official Airline Guide* as the sources of scheduled arrival time and departure time data in its reports to the Department and shall report the scheduled arrival times and departure times listed in those sources for each flight. Scheduled elapsed

times, amount of departure and/or arrival delay, and elapsed time difference shall be calculated using the scheduled times shown in the designated CRS source.

(g) Reporting carriers should use the following codes to identify causes for cancelled flights:

Code
A—Air Carrier
B—Extreme Weather
C—National Aviation System (NAS).
D-Security

(1) Air Carrier cancellations are due to circumstances that were within the control of the air carrier (*e.g.,* lack of flight crew, maintenance, etc.).

(2) Extreme weather cancellations are caused by weather conditions (*e.g.,* significant meteorological conditions), actual or forecasted at the point of departure, en route, or point of arrival that, in accordance with applicable regulatory standards and/or in the judgment of the air carrier, prevents operation of that flight and/or prevents operations of subsequent flights due to the intended aircraft being out of position as a result of a prior cancellation or delay attributable to weather.

(3) NAS cancellations are caused by circumstances within the National Aviation System. This term is used to refer to a broad set of conditions: weather-non-extreme, airport operations, heavy traffic volume, air traffic control, etc.

(4) Security cancellations may be the result of malfunctioning screening or other security equipment or a breech of security that causes the evacuation of the airport or individual concourses, or the need to re-screen passengers.

(h) Reporting carriers should use the following causes to identify the reasons for delayed flights:

CAUSE
Air Carrier
Extreme weather
NAS
Security
Late arriving aircraft

(1) Air carrier delays are due to circumstances within the control of the air carrier.

(2) Extreme weather delays are caused by weather conditions (*e.g.,* significant meteorological conditions, actual or forecasted at the point of departure, en route, or point of arrival that, in accordance with applicable regulatory standards and/or in the judgment of the air carrier, prevents operation of that flight and/or prevents operations of subsequent flights due to the intended aircraft being out of position as a result of a prior cancellation or delay attributable to weather.

(3) NAS delays are caused by circumstances within the National Aviation System. This term is used to refer to a broad set of conditions: weather-non-extreme, airport operations, heavy traffic volume, air traffic control, etc.

(4) Security delays may be the result of malfunctioning screening or other security equipment or a breech of security that causes the evacuation of the airport or individual concourses or the need to re-screen passengers.

(5) Late arriving aircraft delays are the result of a late incoming aircraft from the previous flight.

(i) When reporting causal codes in paragraph (a) of this section, reporting carriers are required to code delays only when the arrival delay is 15 minutes or greater; and reporting carriers must report each causal component of the reportable delay when the causal component is 5 minutes or greater.

[Amdt. 234–1, 52 FR 34071, Sept. 9, 1987, as amended by Docket No. 48524, 59 FR 49797, Sept. 30, 1994; 60 FR 66722, Dec. 26, 1995; 67 FR 70544, Nov. 25, 2002]

§ 234.5 Form of reports.

Except where otherwise noted, all reports required by this part shall be filed within 15 days of the end of the month for which data are reported. The reports must be submitted to the Office of Airline Information in a format specified in accounting and reporting directives issued by the Bureau of Transportation Statistics' Assistant Director for Airline Information.

[Docket No. OST–2000–8164, 67 FR 70545, Nov. 25, 2002]

§ 234.6 Baggage-handling statistics.

Each reporting carrier shall report monthly to the Department on a domestic system basis, excluding charter flights, the total number of passengers enplaned systemwide, and the total number of mishandled-baggage reports filed with the carrier. The information

shall be submitted to the Department within 15 days of the end of the month to which the information applies and must be submitted with the transmittal letter accompanying the data for on-time performance in the form and manner set forth in accounting and reporting directives issued by the Director, Office of Airline Information.

[Docket No. 48524, 59 FR 49798, Sept. 30, 1994, as amended at 60 FR 66722, Dec. 26, 1995]

§234.7 Voluntary reporting.

(a) In addition to the data for each reportable flight required to be reported by this part, a reporting carrier may report to DOT for every other nonstop domestic flight that it schedules, the reportable flight data specified in this part.

(b) Any air carrier that is not a reporting carrier may file the data specified in this part for every reportable flight that it schedules, or for every nonstop domestic flight that it schedules.

(c) Voluntary reports containing information not required to be filed (1) must be submitted in the same form and manner, and at the same time, as reports containing data required to be filed, and (2) must be accompanied by a written statement describing in detail the information that is being voluntarily submitted. A carrier that files a voluntary report must continue to do so for a period of not less than 12 consecutive months.

§234.8 Calculation of on-time performance codes.

(a) Each reporting carrier shall calculate an on-time performance code in accordance with this section and as provided in more detail in accounting and reporting directives issued by the Director, Office of Airline Information. The calculations shall be performed for each reportable flight, except those scheduled to operate three times or less during a month. In addition, each reporting carrier shall assign an on-time performance code to each of its single plane one-stop or multi-stop flights, or portion thereof, that the carrier holds out to the public through a CRS, the last segment of which is a reportable flight.

(b) The on-time performance code shall be calculated as follows:

(1) Based on reportable flight data provided to the Department, calculate the percentage of on-time arrivals of each nonstop flight. Calculations shall not include discontinued or extra-section flights for which data are not reported to the Department.

(2) Based upon the on-time performance percentage calculated in paragraph (b)(1) of this section, assign a single digit code to each flight that reflects the percentile of on-time performance achieved by the flight, as set forth in the following table:

ON TIME PERFORMANCE

Code:	Percentage
9	90–100
8	80–89.9
7	70–79.9
6	60–69.9
5	50–59.9
4	40–49.9
3	30–39.9
2	20–29.9
1	10–19.9
0	0–9.9

(3) For a one-stop or multi-stop flight, or portion thereof, listed in a CRS, the performance code for the nonstop flight segment arriving at the destination listed in the CRS shall be used.

(4) In the case of a new flight, carriers shall assign a performance code consisting of the letter ''N.'' A flight that is not a new flight shall be assigned the performance code calculated for the flight that it replaces, even if the two flights do not have the same flight number. In the case of a flight scheduled to operate three times or less during a month, carriers shall assign a performance code consisting of the letter ''U.''

(c) Carriers shall calculate on-time performance percentages and assign on-time performance codes on a monthly basis. This process shall be completed no later than the 15th day of each month, when the reports required by this part are due to the Department,

and the codes shall reflect the previous month's operations.

[Amdt. No. 234–1, 52 FR 34071, Sept. 9, 1987, as amended by Amdt. No. 234–3, 52 FR 48397, Dec. 22, 1987; 53 FR 27677, July 22, 1988; Docket No. 48524, 59 FR 49798, Sept. 30, 1994; 60 FR 66722, Dec. 26, 1995]

§ 234.9 Reporting of on-time performance codes.

No later than the 15th day of each month, each reporting carrier shall deliver, or arrange to have delivered, to each system vendor, as defined in 14 CFR part 255, the on-time performance codes required to be determined above. Carriers may report the codes by insuring that they are included in basic schedule tapes provided to CRS vendors or by providing a separate tape that will permit the CRS vendors to match the performance codes with basic schedule tapes.

§ 234.10 Voluntary disclosure of on-time performance codes.

(a) Any air carrier may determine, in accordance with the provisions of § 234.8 of this part, the on-time performance codes for the flights for which it voluntarily provides flight information to the Department pursuant to § 234.7 of this part.

(b) A carrier may supply these additional on-time performance codes to system vendors at the same time and in the same manner as the required disclosures are made to system vendors, provided that voluntary disclosures must continue for a period of not less than 12 consecutive months, and must be supplied either

(1) For each of the carrier's reportable flights and each of its single plane one-stop or multi-stop flights, or portions thereof, that it holds out to the public through a CRS, the last segment of which is a reportable flight or

(2) For each of the carrier's domestic flights.

§ 234.11 Disclosure to consumers.

During the course of reservations or ticketing discussions or transactions, or inquiries about flights, between a carrier's employees and the public, the carrier shall disclose upon reasonable request the on-time performance code for any flight that has been assigned a code pursuant to this part.

§ 234.12 Waivers.

Any carrier may request a waiver from the reporting requirements of this part. Such a request, at the discretion of the Director, Bureau of Transportation Statistics may be granted for good cause shown. The requesting party shall state the basis for such a waiver.

[Docket No. 48524, 59 FR 49798, Sept. 30, 1994, as amended at 60 FR 66722, Dec. 26, 1995]

PART 240—INSPECTION OF ACCOUNTS AND PROPERTY

Sec.

240.1 Interpretation.
240.2 Obligation of air carriers, foreign air carriers, and ticket agents.

§ 240.1 Interpretation.

(a) In the exercise of the authority granted by section 407(e) of the Act, the authority of any special agent or auditor to inspect and examine lands, buildings, equipment, accounts, records, memorandums, papers or correspondence shall include the authority to make such notes and copies thereof as he deems appropriate.

(b) The term ''special agent'' and ''auditor'' are construed to mean any employee of the Bureau of Enforcement and any other employee of the Board specifically designated by it or by the Director, Office of Facilities and Operations.

(c) The issuance in the form set forth below of an identification card and credentials to any such employee shall be construed to be an order and direction of the Board to such individual to inspect and examine lands, buildings, equipment, accounts, records, and memorandums in accordance with the authority conferred on the Board by the Act.

UNITED STATES OF AMERICA, CIVIL AERONAUTICS BOARD, WASHINGTON, D.C.

Number _____
Expires _____

[photo]

Signature

This is to certify that_____, whose signature and photograph appear hereon is a duly designated _____

of the Civil Aeronautics Board and is authorized and directed to perform the duties of said office in accordance with the laws of the United States and regulations thereunder, and his authority will be respected accordingly.

By authority of the Civil Aeronautics Board.

Secretary

CIVIL AERONAUTICS BOARD

Name _____
Date Issued _____
Number _____
Height _____
Weight _____
Hair _____
Eyes _____
Date of Birth _____

The holder hereof is authorized to investigate violations of the Federal Aviation Act, as amended, collect evidence in cases in which the regulatory authority of the Civil Aeronautics Board is or may be involved and perform other duties imposed upon him by law.

Under the Federal Aviation Act and part 240 of the Economic Regulations of the Civil Aeronautics Board (14 CFR part 240), the duly accredited special agents and auditors of the Board are empowered at all times to obtain access to all lands, buildings and equipment of any air carrier or foreign air carrier and to inspect, examine, and make notes and copies of all accounts, records, memorandums, documents, papers and correspondence kept or required to be kept by any air carrier, foreign air carrier or ticket agent.

The issuance of these credentials to the holder hereof constitutes an order and direction on the part of the Civil Aeronautics Board to such individual to carry out these duties as aforesaid and as more fully described in part 240 of the Board's Economic Regulations.

Failure to honor these credentials will result in penalties as provided by law.

UNITED STATES OF AMERICA,
CIVIL AERONAUTICS BOARD,
WASHINGTON, D.C.

(Secs. 204, 407, 701, 72 Stat. 743; 49 U.S.C. 1324, 1377, 1441)

[ER–822, 38 FR 26601, Sept. 24, 1973, as amended by ER–914, 40 FR 27017, June 26, 1975; ER–941, 40 FR 58850, Dec. 19, 1975]

§ 240.2 Obligation of air carriers, foreign air carriers, and ticket agents.

Upon the demand of a special agent or auditor of the Board, and upon the presentation of the identification card and credentials issued to him in accordance with this part: (a) Any air carrier or foreign air carrier shall forthwith permit such special agent or auditor to inspect and examine all lands, buildings and equipment; (b) any air carrier, foreign air carrier or ticket agent shall forthwith permit such special agent or auditor to inspect and examine all accounts, records, memorandums, documents, papers and correspondence now or hereafter existing, and kept or required to be kept by the air carrier, foreign air carrier, or ticket agent, and shall permit such special agent or auditor to make such notes and copies thereof as he deems appropriate.

(Sec. 204(a), Federal Aviation Act of 1958, as amended, 72 Stat. 743; (49 U.S.C. 1324))

[ER–914, 40 FR 27017, June 26, 1975]

PART 241—UNIFORM SYSTEM OF ACCOUNTS AND REPORTS FOR LARGE CERTIFICATED AIR CARRIERS

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AUTHORITY: 49 U.S.C. 329 and chapters 401, 411, 417.

SOURCE: ER–755, 37 FR 19726, Sept. 21, 1972, unless otherwise noted.

Section 01 Authority Under Which Accounting and Reporting Rules and Regulations are Prescribed and Administered

This Uniform System of Accounts and Reports for Large Certificated Air Carriers is issued, prescribed and administered under the following provisions of the Federal Aviation Act of 1958, as amended (72 Stat. 731, 49 U.S.C. 1301):

GENERAL POWERS

SEC. 204. (a) 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, pursuant to and consistent with the provisions of this Act, as it shall deem necessary to carry out the provisions of, and to exercise and perform its powers and duties under, this Act.

FILING OF REPORTS

SEC. 407. (a) The Board is empowered to require annual, monthly, periodical, and special reports from any air carrier; to prescribe the manner and form in which such reports shall be made; and to require from any air carrier specific answers to all questions upon which the Board may deem information to be necessary. Such reports shall be under oath whenever the Board so requires. The Board may also require any air carrier to file with it a true copy of each or any contract, agreement, understanding, or arrangement, between such air carrier and any other carrier or person, in relation to any traffic affected by the provisions of this Act.

DISCLOSURE OF STOCK OWNERSHIP

SEC. 407. (b) Each air carrier shall submit annually, and at such other times as the Board shall require, a list showing the names of each of its stockholders or members holding more than 5 per centum of the entire capital stock or capital, as the case may be, of such air carrier, together with the name of any person for whose account, if other than the holder, such stock is held; and a report setting forth a description of the shares of stock, or other interest, held by such air carrier, or for its account, in persons other than itself.

FORM OF ACCOUNTS

SEC. 407. (d) The Board shall prescribe the forms of any and all accounts, records, and memoranda to be kept by air carriers, including the accounts, records, and memoranda of the movement of traffic, as well as of the receipts and expenditures of money, and the length of time such accounts, records, and memoranda shall be preserved; and it shall be unlawful for air carriers to keep any accounts, records, or memoranda other than those prescribed or approved by the Board: *Provided*, That any air carrier may keep additional accounts, records, or memoranda if they do not impair the integrity of the accounts, records, or memoranda prescribed or approved by the Board and do not constitute an undue financial burden on such air carrier.

INSPECTION OF ACCOUNTS AND PROPERTY

SEC. 407. (e) The Board 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; and it may employ special agents or auditors, who shall have authority under the orders of the Board to inspect and examine any and all such lands, buildings, equipment, accounts, records, and memoranda. The provisions of this section shall apply, to the extent found by the Board to be reasonably necessary for the administration of this Act, to persons having control over any air carrier, or affiliated with any air carrier within the meaning of section 5(8) of the Interstate Commerce Act, as amended.

CLASSIFICATION

SEC. 416. (a) The Board may from time to time establish such just and reasonable classifications or groups of air carriers for the purposes of this title as the nature of the services performed by such air carriers shall require; and such just and reasonable rules and regulations, pursuant to and consistent with the provisions of this title, to be observed by each such class or group, as the Board finds necessary in the public interest.

SAFETY, ECONOMIC AND POSTAL OFFENSES

SEC. 901. (a)(1) Any person who violates (A) any provision of Title III, IV, V, VI, VII, or XII of this Act, or any rule, regulation, or order issued thereunder, or under section 1002(i), or any term, condition or limitation of any permit or certificate issued under Title IV, or (B) any rule or regulation issued by the Postmaster General under this Act, shall be subject to a civil penalty of not to exceed $1,000 for each such violation. If such violation is a continuing one, each day of such violation shall constitute a separate offense: *Provided*, That this subsection shall not apply to members of the Armed Forces of the United States, or those civilian employees of the Department of Defense who are subject to the provisions of the Uniform Code of Military Justice, while engaged in the performance of their official duties; and the appropriate military authorities shall be responsible for taking any necessary disciplinary action with respect thereto and for making to the Administrator or Board, as appropriate, a timely report of any such action taken.

(2) Any such civil penalty may be compromised by the Administrator in the case of violations of Titles III, V, VI, or XII, or any rule, regulation, or order issued thereunder, or by the Board in the case of violations of Titles IV or VII, or any rule, regulation or order issued thereunder, or under section 1002(i), or any term, condition, or limitation of any permit or certificate issued under Title IV, or by the Postmaster General in the case of regulations issued by him. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the person charged.

FAILURE TO FILE REPORTS; FALSIFICATION OF RECORDS

SEC. 902. (e) Any air carrier, or any officer, agent, employee, or representative thereof, who shall, knowingly and willfully, fail or refuse to make a report to the Board or Administrator as required by this Act, or to keep or preserve accounts, records, and memoranda in the form and manner prescribed or approved by the Board or Administrator, or shall, knowingly and willfully, falsify, mutilate, or alter any such report, account, record, or memorandum, or shall knowingly and willfully file any false report, account, record, or memorandum, shall be deemed guilty of a misdemeanor and, upon conviction thereof, be subject for each offense to a fine of not less than $100 and not more than $5,000.

REFUSAL TO TESTIFY

SEC. 902. (g) Any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce books, papers, or documents, if in his power to do so, in obedience to the subpena or lawful requirement of the Board or Administrator, shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine of not less than $100 nor more than $5,000, or imprisonment for not more than one year, or both.

FILING OF COMPLAINTS AUTHORIZED

SEC. 1002. (a) Any person may file with the Administrator or the Board, as to matters

within their respective jurisdictions, a complaint in writing with respect to anything done or omitted to be done by any person in contravention of any provisions of this Act, or of any requirement established pursuant thereto. If the person complained against shall not satisfy the complaint and there shall appear to be any reasonable ground for investigating the complaint, it shall be the duty of the Administrator or the Board to investigate the matters complained of. Whenever the Administrator or the Board is of the opinion that any complaint does not state facts which warrant an investigation or action, such complaint may be dismissed without hearing. In the case of complaints against a member of the Armed Forces of the United States acting in the performance of his official duties, the Administrator or the Board, as the case may be, shall refer the complaint to the Secretary of the department concerned for action. The Secretary shall, within ninety days after receiving such a complaint, inform the Administrator or the Board of his disposition of the complaint, including a report as to any corrective or disciplinary actions taken.

INVESTIGATIONS ON INITIATIVE OF ADMINISTRATOR OR BOARD

SEC. 1002. (b) The Administrator or Board, with respect to matters within their respective jurisdictions, is empowered at any time to institute an investigation, on their own initiative, in any case and as to any matter or thing within their respective jurisdictions, concerning which complaint is authorized to be made to or before the Administrator or Board by any provision of this Act, or concerning which any question may arise under any of the provisions of this Act, or relating to the enforcement of any of the provisions of this Act. The Administrator or the Board shall have the same power to proceed with any investigation instituted on their own motion as though it had been appealed to by complaint.

ENTRY OR ORDERS FOR COMPLIANCE WITH ACT

SEC. 1002. (c) If the Administrator or the Board finds, after notice and hearing, in any investigation instituted upon complaint or upon their own initiative, with respect to matters within their jurisdiction, that any person has failed to comply with any provision of this Act or any requirement established pursuant thereto, the Administrator or the Board shall issue an appropriate order to compel such person to comply therewith.

[ER–755, 37 FR 19726, Sept. 21, 1972, as amended by ER–1400, 50 FR 11, Jan. 2, 1985]

Section 02 [Reserved]

Section 03 Definitions for Purposes of This System of Accounts and Reports

Account, clearing. An account used as a medium for the temporary accumulation of costs that are redistributed to appropriate applicable accounts.

Acquisition, date of. The date on which the title to owned property or equipment (or the right to use or control the reassignment of leased property or equipment) passes to the air carrier.

Act. The Federal Aviation Act of 1958, as amended.

Addition, property. Additional equipment, land, structures, and other tangible property; extensions of fuel, water, and oil distribution equipment; additions to buildings and other structures; and additional safety devices applied to equipment not previously thus equipped. (See also *Modification.*)

Affiliated group. A combination of companies comprised of the air carrier, any person controlling the air carrier or under common control with the air carrier, and organizational divisions (as defined in sections 1–6) of and persons controlled by the air carrier.

Agency, cargo. Any person (other than the air carrier preforming the direct air transportation or one of its bona fide regular employees or an indirect air carrier lawfully engaged in air transportation under authority conferred by any applicable part of the Economic Regulations of the Department) who for compensation or profit: (1) Solicits, obtains, receives or furnishes directly or indirectly property or consolidated shipments of property for transportation upon the aircraft of an air carrier subject to this part, or (2) procures or arranges for air transportation of property upon aircraft of an air carrier subject to this part by charter, lease, or any other arrangement.

Agent, ticket. Any person (other than the air carrier performing the direct air transportation or one of its bona fide regular employees, or an air carrier which subcontracts the performance of charter air transportation which it has contracted to perform) who for compensation or profit: (1) Solicits, obtains, receives, or furnishes directly or indirectly passengers or groups of passengers for transportation upon the aircraft of an air carrier subject to this part, or (2) procures or arranges for air transportation of passengers or groups of passengers upon aircraft of an air carrier subject to this part by charter, lease, or any other arrangement.

Agreement. Any oral or written agreement, contract, understanding, or arrangement, and any amendment, revision, modification, renewal, extension, cancellation or termination thereof.

Air carrier. Any citizen of the United States who undertakes, whether directly or indirectly or by a lease or any other arrangement, to engage in air transportation.

Air carrier, charter. An air carrier holding a certificate issued under 49 U.S.C. 41102(a)(3).

Air carrier, large certificated. An air carrier holding a certificate issued under 49 U.S.C. 41102, as amended, that: (1) Operates aircraft designed to have a maximum passenger capacity of more than 60 seats or a maximum payload capacity of more than 18,000 pounds; or (2) conducts operations where one or both terminals of a flight stage are outside the 50 states of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the U.S. Virgin Islands.

Air carrier, surviving. An entity (air carrier) which, as the result of a business combination, has acquired the net assets, and carries on the operations of, one or more predecessor air carriers, and which may be newly organized at the time of the combination or may be one of the predecessor air carriers.

Aircraft. Any contrivance now known or hereafter invented, used or designed for navigation of or flight in the air.

Aircraft days assigned to service-carrier's equipment means the number of days that aircraft owned or acquired through rental or lease are in the possession of the reporting air carrier and are available for service on the reporting carrier's routes plus the number of days such aircraft are in service on routes of others under wet-lease agreements. Includes days in overhaul, or temporarily out of service due to schedule cancellations. Excludes days that newly acquired aircraft are on hand but not available for productive use, days dry-leased or rented to others, and days in possession but formally withdrawn from air transportation service.

Aircraft day assigned to service-carrier routes—same as *aircraft days assigned to service carrier's equipment* but excluding the number of days owned or rented equipment are in the possession of others under interchange agreements and including the number of days aircraft of others are in the possession of the air carrier under interchange agreements.

Aircraft, leased (*rented*). Aircraft obtained from (or furnished to) others under lease or rental arrangements. Leased and rented aircraft do not include those used under interchange agreements designed to provide oneplane service over the routes of the air carriers involved.

Aircraft type. A distinctive model as designated by the manufacturer.

Airport. A landing area regularly used by aircraft for receiving or discharging passengers or cargo.

Airport, alternate. An approved airport to which a flight may proceed if a landing at the airport to which the flight was dispatched becomes inadvisable.

Airport-to-airport distance. The great circle distance between airports, measured in statute miles in accordance with part 247 of this chapter.

Air transportation. The carriage by aircraft of persons, property, or mail.

Air transportation, charter. Air transportation authorized pursuant to section 401(d)(3).

Airworthiness (*or Airworthy*). When applied to a particular aircraft or component part, it denotes the ability of such aircraft or component part to perform its function satisfactorily through a range of operations determined by the Federal Aviation Administration.

Allocate. To assign an item or group of items of investment, revenue, or cost to an object, activity, process, or operation, in accordance with cost responsibilities, benefits received, or other measure of apportionment.

Allocation, bases of. Bases of distribution whereby revenues, expenses, and/or costs are equitably apportioned among revenue, expense, property and equipment, and other accounts.

Amortization. The gradual extinguishment of an amount in an account by distributing such amount over a fixed period, over the life of the asset or liability to which it applies or over the period during which it is anticipated the benefit will be realized.

Asset, contingent. An asset the existence, value, or ownership of which depend upon the occurrence or nonoccurrence of a specific event or upon the performance or nonperformance of a specified act.

Associated company. A company in which the accounting air carrier holds 5 percent or more of the outstanding proprietary interest; or a company which holds 5 percent or more of the outstanding proprietary interest of the accounting air carrier; or a company that, directly or through one or more intermediaries, controls or is controlled by, or is under common control with the accounting air carrier. Companies owned or controlled jointly with other air carriers shall be regarded as associated companies for purposes of this system of accounts. (See also *Control.*)

Betterment. Any improvement to property or equipment through the substitution of superior parts for inferior parts retired, the object of which is to make such property more useful or of greater capacity than at the time of acquisition or installation. (See also *Modification.*)

BTS. The Bureau of Transportation Statistics.

Cargo. All traffic other than passengers.

Cargo transported. Cargo on board each flight stage.

Certificated point. A city, place or population center authorized to receive scheduled air service under a *Certificate of Public Convenience and Necessity* or under an exemption issued to an air carrier.

Certificate of Public Convenience and Necessity. A certificate issued to an air carrier under 49 U.S.C. 41102, by the Department of Transportation authorizing the carrier to engage in air transportation.

Company, predecessor. An air carrier whose net assets and operations have been taken over by one or more other air carriers.

Compensation (*of personnel*). Remuneration to air carrier employees for personal services. Includes salaries, wages, overtime pay, cost-of-living differentials, bonuses, etc., as distinguished from per diem allowances or reimbursement for expenses incurred by personnel for the benefit of the air carrier.

Continental United States. The 48 contiguous States and the District of Columbia.

Control (including the terms *Controlling, Controlled by*, and *Under common control*). The possession, directly or indirectly, of the power positively to direct, or cause the direction of or negate the direction of, the management and policies of a company, whether such power is through one or more intermediary companies or alone or in conjunction with or pursuant to an agreement, and whether such power is established through a majority or minority ownership or voting of securities, common directors, officers, or stockholders, voting trusts, holding trusts, associated companies, contract, or any other direct or indirect means.

Controlling person. (See *Person Controlling an air carrier*)

Cost. The amount of cash (or its equivalent) actually paid for property, materials and supplies, and services, including that amount paid to put the property or materials and supplies in readiness for use. It includes such items as transportation charges, installation charges, and customs duties, less any cash or other discounts.

Cost, book. The amount at which an asset is recorded in an account without the deduction of amounts in related allowances or other accounts.

Cost, depreciated. The cost of property and equipment less the related allowances for depreciation.

Cost, removal. The cost of demolishing, dismantling, tearing down, or otherwise removing property and equipment, including the cost of related transportation and handling.

Debt, expense on. Expenses incurred by or for the air carrier in connection with the issuance and sale of evidences of debt (exclusive of the sale of reacquired securities), such as fees for drafting mortgages and trust deeds; fees and taxes for issuing or recording evidences of debt; cost of engraving and printing bonds, certificates of indebtedness, and other commercial paper; specific costs of obtaining governmental authority for issuance and filing notices thereunder; fees for legal services; fees and commissions paid underwriters, brokers, and salesmen for marketing such evidences of debt; fees and expenses of listing on exchanges; and other like costs.

Deferred taxes. Tax effects which are deferred for allocation to income tax expense of future periods.

Department. Department of Transportation.

Departures completed, percent scheduled. The percent of scheduled departures that were performed.

Departures completed, scheduled. The number of takeoffs performed at each airport pursuant to published schedules, exclusive of extra sections to scheduled departures.

Departure performed. A takeoff made at an airport.

Departure, scheduled. A takeoff scheduled at an airport, as set forth in published schedules.

Depreciation (*of depreciable property and equipment*). The loss in service value, not restored by current maintenance, incurred in the course of service from causes known to be in current operation, against which the carrier is not protected by insurance, and the effect of which can be forecast with reasonable accuracy. The causes of depreciation include wear and tear, decay, action of the elements, inadequacy, obsolescence, changes in the art, changes in demand, and requirements of public authorities.

Discount (*of securities issued or assumed by the air carrier*). The excess of (1) the par or stated value of securities over (2) the then current money value of the consideration received from their sale less the amount included for dividends or for interest accrued.

DOT. Department of Transportation.

Equipment. Tangible property other than land, structures, and improvements.

Equity security. Any instrument representing ownership shares (for example, common, preferred, and other capital stock), or the right to acquire (for example, warrants, rights, and call options) or dispose of (for example, put options) ownership shares in an enterprise at fixed or determinable prices. The term does not encompass preferred stock that by its terms either must be redeemed by the issuing enterprise or is redeemable at the option of the investor, nor does it include treasury stock or convertible bonds.

Equivalent unit. A new unit substituted for an existing unit that is worn out, is damaged beyond repair, or has become inadequate in service, the substituted unit having substantially no greater capacity than the unit for which substituted.

Estimated economic life of leased property. The estimated remaining period during which the property is expected to be economically usable by one or more users, with normal repairs and maintenance, for the purpose for which it was intended at the inception of the lease, without limitation by the lease term.

Expense, capital stock. Expenses incurred by or for the air carrier in connection with the initial issuance and sale of capital stock (exclusive of the sale of reacquired capital stock), such as fees and commissions paid to promoters, underwriters, brokers, and salesmen; fees for legal services; cost of soliciting subscriptions for capital stock; including fees, commissions, and advertising; specific costs of obtaining governmental authority for issuance and filing notices thereunder; fees and taxes for issuance of capital stock and listing on exchanges; and the cost of preparing, engraving, printing, issuing, and distributing prospectuses and stock certificates.

Flight, developmental. A flight for (1) the development of a new route either prior or subsequent to certification by the Department of Transportation; (2) the extension of an existing route; or (3) the integration of a new type of aircraft or service.

Flight, extra section. A flight, conducted as an integral part of scheduled service, that has not been provided for in published schedules and is required for transportation of traffic that cannot be accommodated on a regularly scheduled flight. Flights made in ferrying aircraft to meet schedules, or for similar operational reasons, are not extra sections and are classified as nonrevenue flights even if an occasional shipment, as a matter of special accommodation, is on board.

Flight, ferry. A flight for the purpose of returning an aircraft to base, equipment equalization, or moving an aircraft to and from a maintenance base.

Flight, paid positioning. A flight for the purpose of positioning an empty aircraft in connection with a charter flight for which a specific charge is set forth in a tariff or contract for application directly to the positioning miles operated. Such flights are considered revenue flights for Form 41 reporting purposes.

Flight, personnel training. A flight for the purpose of obtaining flying time for flight personnel or a flight in connection with a personnel training program.

Flight stage. The operation of an aircraft from takeoff to landing. For purposes of classifying flight stages as between ''domestic'', ''territorial'', and ''international'', technical stops are disregarded. (See Stops, technical.)

Freight. Property, other than mail, transported by air.

Generally accepted accounting principles (GAAP). The body of authoritative accounting knowledge governing the recording, presenting and disclosing of financial transactions, as incorporated in the pronouncements of the Financial Accounting Standards Board.

Group basis (*in depreciation accounting*). A plan under which (1) depreciation is based upon the application of a single depreciation rate to the total book cost of all property included in a given depreciable property and equipment account or class, despite differences in service life of individual items of property and equipment, (2) the full original cost, less any salvage realized, of an item of depreciable property or equipment retired is charged to the allowance for depreciation regardless of the age of the item, and (3) no gain or loss is recognized on the retirement of individual items of property or equipment.

Horsepower, maximum continuous for reciprocating engines. The brake horsepower developed in standard atmosphere at a specified altitude and under the maximum conditions of crankshaft rotational speed and engine manifold pressure, and approved for use during periods of unrestricted duration.

Horsepower, maximum continuous for turbine engines. The brake horsepower developed at specified altitudes, atmospheric temperatures, and flight speeds and under the maximum conditions of rotor shaft rotational speed and gas temperature, and approved for use during periods of unrestricted duration.

Thrust, maximum continuous for turbine engines. The jet thrust developed at specified altitudes, atmospheric temperatures, and flight speeds and under the maximum conditions of rotor shaft rotational speed and gas temperature, and approved for use during periods of unrestricted duration.

Hours, aircraft. The airborne hours of aircraft computed from the moment an aircraft leaves the ground until it touches the ground at the end of a flight.

Hours flown, revenue aircraft. The aircraft hours of flights performed in revenue service.

Hours in capitalized projects, aircraft. Aircraft hours applicable to ferrying newly acquired aircraft from the factory, to capitalized extension and development preoperating projects and to other costs which have been capitalized.

Hours per aircraft per day—carrier's equipment, revenue. Average hours of productive use per day in revenue service of reporting carrier's equipment determined by dividing (1) Aircraft days assigned to service—carrier's equipment into (2) Revenue aircraft hours minus Revenue hours on other carrier's interchange equipment plus Total hours by others on the carrier's interchange equipment.

Hours per aircraft per day—carrier's routes, revenue. Average hours of productive use per day in revenue service on reporting carrier's routes determined by dividing (1) Aircraft days assigned to service-carrier's routes into (2) Revenue aircraft hours.

Hours, ramp-to-ramp. The aircraft hours computed from the moment the aircraft first moves under it own power for purposes of flight, until it comes to rest at the next point of landing.

Improvement. An addition or alteration to land, a building, or a unit of equipment that results in a better piece of property, in the sense of greater durability, or in increased productivity or efficiency. (See also *Modification.*)

Income tax expense. The amount of income taxes (whether or not currently payable or refundable) allocable to a period in the determination of net income.

Income taxes. Taxes based on income determined under provisions of the United States Internal Revenue Code and foreign, State, and other taxes (including franchise taxes) based on income.

Insurance, self. The assumption by an air carrier of a risk of loss or liability arising from an accident or other contingent event.

Interchange agreement. An agreement under which aircraft of one air carrier are utilized to provide one-plane service over its own routes and the routes of other air carriers.

Interperiod tax allocation. The process of apportioning income taxes among periods.

Inventory, perpetual. A book inventory kept in continuous agreement with stock on hand by means of a detailed record.

Investor controlled company (*for purposes of applying the equity method of accounting*). Any business entity in which the accounting air carrier is able to exercise significant influence over operating and financial policies of the issuing company. Significant influence will be presumed, unless established to the contrary by waiver request, with ownership of 20 percent or more of the outstanding voting capital stock. Ability to exercise influence may be indicated in several ways, such as representation on the Board of Directors, participation in policy-making processes, material intercompany transactions, interchange of managerial personnel, or technological dependency. Investor controlled companies shall also be regarded as associated companies for purposes of this system of accounts (see also Associated company).

Item, delayed. An item relating to transactions that occurred during a prior accounting period and that requires further accounting treatment for a true statement of financial condition or operating results. It includes adjustments of errors in the operating revenue, operating expense, and other income accounts for prior periods.

Liability, contingent. A possible source of obligation of an air carrier dependent upon the fulfillment of conditions regarded as uncertain.

Load, available. Represents the maximum salable load. It is the allowable gross weight less the empty weight, less all justifiable aircraft equipment, and less the operating load (consisting of minimum fuel load, oil, flight crew, steward's supplies, etc.). For passenger aircraft, the available load must not exceed the weight of the maximum number of passengers who can be accommodated in the seats installed in the aircraft plus the weight of the traffic that can be accommodated in the cargo space.

Load, average revenue. The average total revenue tons carried in revenue services, determined by dividing total revenue ton-miles by aircraft miles flown in revenue services.

Load, average revenue passenger. Average number of revenue passengers carried in passenger services, determined by dividing revenue passenger-miles by aircraft miles flown in revenue passenger services.

Load factor, over-all revenue. The percent that total revenue ton-miles (passenger plus nonpassenger) are of available ton-miles in revenue services.

Load factor, revenue passenger. The percent that revenue passenger-miles are of available seat-miles in revenue passenger services.

Load, minimum fuel. The minimum quantity of fuel with which an aircraft may be dispatched in accordance with the safety operating needs of the air carrier.

Load, salable. (See *Load, available.*)

Mail, nonpriority. All mail for which transportation by air is provided on a space available basis.

Mail, priority. All mail for which transportation by air is provided on a priority basis.

Mile. A statute mile (5,280 feet).

Miles completed, percent scheduled aircraft. The percent of scheduled aircraft miles which were performed.

Miles completed, scheduled aircraft. The aircraft miles performed on scheduled flights computed between only those scheduled points actually served.

Miles flown, aircraft. The miles (computed in airport-to-airport distances) for each flight stage actually completed, whether or not performed in accordance with the scheduled pattern. For this purpose, operation to a flag stop is a stage completed even though a landing is not actually made. In cases where the interairport distances are inapplicable, aircraft miles flown are determined by multiplying the normal crusing speed for the aircraft type by the airborne hours.

Miles flown, nonrevenue aircraft. The aircraft miles flown on nonrevenue flights, such as ferry (including empty backhauls to MAC one-way charters), personnel training, extension and development, and abortive revenue flights.

Miles, revenue aircraft. The aircraft miles flown in revenue service.

Miles, scheduled aircraft. The sum of the airport-to-airport distances of all flights scheduled to be performed over the air carrier's certificated routes pursuant to published flight schedules. Flights listed in the published schedules for operation only as extra sections, when traffic warrants, are excluded.

Modification. An alteration in a structure or unit of equipment that changes its design

and is made to correct an error, increase production, improve efficiency of operation, or for some other reason.

Obsolescence. The process of becoming out of date due to progress of the arts and sciences, changed economic conditions, legislation, etc., which ultimately results in the retirement or other disposition of property.

Off-Line. Installations maintained or facilities used for other than scheduled certificated air services.

On-Line. Installations maintained or facilities used in conducting scheduled certificated air services.

Domestic. Flight stages with both terminals within the 50 States of the United States and the District of Columbia.

Territorial. Flight stages with both terminals within territory under U.S. jurisdiction where at least one of the terminals is not within a State or the District of Columbia.

International. Flight stages with one or both terminals outside of territory under U.S. jurisdiction.

Operations, systems. The over-all operations of an air carrier including all of the operating entities of an air carrier having multiple operations.

Passenger-mile. One passenger transported 1 mile. Passenger-miles are computed by multiplying the aircraft miles flown on each flight stage by the number of passengers transported on that stage.

Passenger-mile, nonrevenue. One nonrevenue passenger transported one mile.

Passenger-mile, revenue. One revenue passenger transported one mile.

Passenger, nonrevenue. A person traveling free or under token charges, except those expressly named in the definition of revenue passenger; a person traveling at a fare or discount available only to employees or authorized persons of air carriers or their agents or only for travel on the business of the carriers; and an infant who does not occupy a seat. (This definition is for 14 CFR part 241 traffic reporting purposes and may differ from the definitions used in other parts by the Federal Aviation Administration and the Transportation Security Administration for the collection of Passenger Facility Charges and Security Fees.)

The definition includes, but is not limited to following examples of passengers when traveling free or pursuant to token charges:

(1) Directors, officers, employees, and others authorized by the air carrier operating the aircraft;

(2) Directors, officers, employees, and others authorized by the air carrier or another carrier traveling pursuant to a pass interchange agreement;

(3) Travel agents being transported for the purpose of familiarizing themselves with the carrier's services;

(4) Witnesses and attorneys attending any legal investigation in which such carrier is involved;

(5) Persons injured in aircraft accidents, and physicians, nurses, and others attending such persons;

(6) Any persons transported with the object of providing relief in cases of general epidemic, natural disaster, or other catastrophe;

(7) Any law enforcement official, including any person who has the duty of guarding government officials who are traveling on official business or traveling to or from such duty;

(8) Guests of an air carrier on an inaugural flight or delivery flights of newly-acquired or renovated aircraft;

(9) Security guards who have been assigned the duty to guard such aircraft against unlawful seizure, sabotage, or other unlawful interference;

(10) Safety inspectors of the National Transportation Safety Board or the FAA in their official duties or traveling to or from such duty;

(11) Postal employees on duty in charge of the mails or traveling to or from such duty;

(12) Technical representatives of companies that have been engaged in the manufacture, development or testing of a particular type of aircraft or aircraft equipment, when the transportation is provided for the purpose of in-flight observation and subject to applicable FAA regulations;

(13) Persons engaged in promoting air transportation;

(14) Air marshals and other Transportation Security officials acting in their official capacities and while traveling to and from their official duties; and

(15) Other authorized persons, when such transportation is undertaken for promotional purpose.

Passenger, revenue. A passenger for whose transportation an air carrier receives commercial remuneration. (This definition is for 14 CFR part 241 traffic reporting purposes and may differ from the definitions used in other parts by the Federal Aviation Administration and the Transportation Security Administration for the collection of Passenger Facility Charges and Security Fees.) This includes, but is not limited to, the following examples:

(1) Passengers traveling under publicly available tickets including promotional offers (for example two-for-one) or loyalty programs (for example, redemption of frequent flyer points);

(2) Passengers traveling on vouchers or tickets issued as compensation for denied boarding or in response to consumer complaints or claims;

(3) Passengers traveling at corporate discounts;

(4) Passengers traveling on preferential fares (Government, seamen, military, youth, student, etc.);

(5) Passengers traveling on barter tickets; and

(6) Infants traveling on confirmed-space tickets.

Passengers transported. Passengers on board each flight stage.

Person controlling an air carrier. Any person, as defined in 49 U.S.C. 40102, whom the Department has found, in any proceeding, to control an air carrier, or who holds, directly or indirectly, the legal or beneficial ownership of more than 50 percent of the outstanding voting capital stock or capital of an air carrier, and who does not make a proper showing to the Department that he or she does not control the carrier despite such stock ownership, shall be deemed to be a person controlling the carrier for the purpose of this part. A brokerage firm which holds record ownership of securities merely for the convenience of the customer beneficially owning the stock shall not be deemed a person controlling an air carrier.

Premium (*as applied to securities issued or assumed by the air carrier*). The excess of (1) the then current money value of the consideration received from their sale, less the amount included therein for dividends or interest accrued, over (2) their par or stated value.

Pretax accounting income. Income or loss for a period exclusive of related income tax expense.

Property (*as applied to traffic*). (See *Cargo.*)

Replacement. Substitution of new for existing facilities that are worn out, damaged beyond repair, or have become inadequate in service.

Reporting carrier for T–100 purposes means the air carrier in operational control of the flight, i.e., the carrier that uses its flight crew under its own FAA operating authority.

Residual value. The predetermined portion of the cost of a unit of property or equipment excluded from depreciation. It shall represent a fair and reasonable estimate of recoverable value as at the end of the service life over which the property or equipment is depreciated and shall give due consideration to the proceeds anticipated from disposition of the property or equipment and the extent to which costs attaching to property or equipment are otherwise recoverable through charges against income.

Retirement. The permanent withdrawal of assets from services of the corporate entity through sale, abandonment, demolition, or other disposal.

Retirement, date of. The date on which property or equipment is permanently withdrawn from services of the corporate entity.

Route, certificated. The route(s) over which an air carrier is authorized to provide air transportation by a Certificate of Public Convenience and Necessity issued by the Department of Transportation pursuant to section 401(d) (1) or (2) of the Act.

Salvage value. The amount received for property retired, less the expenses incurred in connection with the sale or in the preparation of the property for sale; or, if retained, the amount at which the material recovered is charged to materials and supplies or other appropriate account.

Seats available. Installed seats in an aircraft (including seats in lounges) exclusive of any seats not offered for sale to the public by the carrier; provided that in no instance shall any seat sold be excluded from the count of available seats.

Seats, average available. The average number of seats available for passengers, determined by dividing available seat-miles by revenue aircraft miles flown in passenger service.

Seat-miles available, revenue. The aircraft miles flown on each flight stage multiplied by the number of seats available for revenue use on that stage.

Section 41103 cargo operations. The carriage, pursuant to 49 U.S.C. 41103, by aircraft of property and/or mail as a common carrier for compensation or hire in commerce between a place in any State of the United States, or the District of Columbia, or Puerto Rico, or the U.S. Virgin Islands, and a place in any other of those entities, or between places in the same State or other entity through the air-space over any place outside thereof, or between places within the District of Columbia, Puerto Rico, or the U.S. Virgin Islands. This includes commerce moving partly by aircraft and partly by other forms of transportation, as well as commerce moving wholly by aircraft.

Segment, service. A pair of points served or scheduled to be served by a single stage of at least one flight within any given time period.

Service, charter. Nonscheduled air transport service in which the party receiving transportation obtains exclusive use of an agreed upon portion of the total capacity of an aircraft with the remuneration paid by the party receiving transportation accruing directly to, and the responsibility for providing transportation is that of, the accounting air carrier.

Service, coach (*tourist*). Transport service specifically established for the carriage of passengers at special reduced passenger fares that are predicated on both the operation of specifically designated aircraft space and a reduction in the quality of service regularly and ordinarily provided.

Service, first class. Transport service established for the carriage of passengers moving at either standard fares or premium fares, or at reduced fares not predicated upon the operation of specifically allocated aircraft

space, and for whom standard or premium quality services are provided.

Service life. The period between the date of installation of property or equipment and its date of retirement.

Service, mixed. Transport service for the carriage of both first-class and coach passengers on the same aircraft.

Service, nonpassenger. Transport service established for the carriage of traffic other than passengers.

Service, nonscheduled. Includes transport service between points not covered by Certificates of Public Convenience and Necessity issued by the Department of Transportation to the air carrier; services pursuant to the charter or hiring of aircraft; other revenue services not constituting an integral part of the services performed pursuant to published schedules; and related nonrevenue flights.

Service, passenger-cargo. Transport service established for the carriage of passengers which may also be used jointly for the transportation of cargo.

Service, scheduled. Transport service operated pursuant to published flight schedules, including extra sections and related nonrevenue flights.

Service, transport. The operation of facilities for the carriage of traffic by air.

Services, all. The total of scheduled and nonscheduled transport services.

Stop, flag. A point on an air carrier's operating system that is scheduled to be served only when traffic is to be picked up or discharged.

Stops, technical. Aircraft landing made for purposes other than enplaning or deplaning traffic. For purposes of identifying reporting entities, landings made for stopover passengers are regarded as technical stops.

Tariff, published. A publication containing fares and rates applicable to the transportation of persons or cargo and rules relating to or affecting such fares or rates of transportation, filed with the Department of Transportation.

Taxable income. The excess of revenues over deductions or the excess of deductions over revenues to be reported for income tax purposes for a period.

Tax effects. Differentials in income taxes of a period attributable to (1) revenue or expense transactions which enter into the determination of pretax accounting income in one period and into the determination of taxable income in another period, (2) deductions or credits that may be carried backward or forward for income tax purposes, and (3) adjustments of prior periods (or of the opening balance of retained earnings) and direct entries to other stockholders' equity accounts which enter into the determination of taxable income in a period but which do not enter into the determination of pretax accounting income of that period. A permanent difference does not result in a ''tax effect'' as the term is used in this System of Accounts and Reports.

Ton. A short ton (2,000 pounds).

Ton-mile. One ton transported 1 mile. Ton-miles are computed by multiplying the aircraft miles flown on each flight stage by the number of tons transported on that stage.

Ton-mile, nonrevenue. One ton of nonrevenue traffic transported 1 mile.

Ton-mile, passenger. One ton of passenger weight (including all baggage) transported 1 mile. (See also *Weight, passenger.*)

Ton-mile, revenue. One ton of revenue traffic transported 1 mile.

Ton-miles available, revenue. The aircraft miles flown on each flight stage multiplied by the ton capacity available for use on that stage.

Traffic, deplaned. A count of the number of passengers getting off and tons of cargo unloaded from an aircraft. For this purpose, passengers an cargo on aircraft leaving a carrier's system on interchange flights are considered as deplaning and the interchange point; and passengers and cargo moving from one operation to another operation of the same carrier, for which separate reports are required by the Department of Transportation, are considered as deplaning at the junction point.

Traffic, enplaned. A count of the number of passengers boarding and tons of cargo loaded on an aircraft. For this purpose, passengers and cargo on aircraft entering a carrier's system on interchange flights are considered as enplaning at the interchange point; and passengers and cargo moving from one operation to another operation of the same carrier, for which separate reports are required by the Department of Transportation, are considered as enplaning at the junction point.

Traffic, nonrevenue. Passengers and cargo transported by air for which no remuneration or token service charges are received by the air carrier. Airline employees, officers and directors, or other persons, except for ministers of religion, who are traveling under reduced-rate transportation authorized by 49 U.S.C. 41511(a) and 14 CFR part 223, as well as travel agents, cargo agents, and tour conductors traveling at reduced fares are also considered nonrevenue traffic.

Traffic office. A facility where air transportation is sold, and related processes of documentation and reservation confirmation are performed.

Traffic, revenue. Passengers and cargo transported by air for which remuneration is received by the air carrier. Airline employees, officers and directors, or other persons, except for ministers of religion, who are traveling under reduced-rate transportation authorized by 49 U.S.C. 41511(a) and 14 CFR part 223, travel agents, cargo agents, and tour conductors traveling at reduced fares,

and other passengers and cargo carried for token service charges, are not considered as revenue traffic.

Transportation, free. The carriage of any person or cargo (other than cargo owned by the air carrier) without compensation.

Unit basis (*in depreciation accounting*). A plan under which depreciation expenses is accrued upon the basis of the book cost of the individual item of property in relation to the service life and salvage value of the particular item.

Value, service. The difference between the book cost and the residual value of property and equipment.

Weight, allowable gross. The maximum gross weight (of the aircraft and its contents) which an aircraft is licensed to carry into the air on each flight stage.

Weight, average available. The average capacity available for revenue traffic, determined by dividing available ton-miles by aircraft miles in revenue service.

Weight, empty. The weight of the airframe, engines, propellers, and fixed equipment of an aircraft. Empty weight excludes the weight of the crew and payload, but includes the weight of all fixed ballast, unusable fuel supply, undrainable oil, total quantity of engine coolant, and total quantity of hydraulic fluid.

Weight, passenger. For the purposes of this part, a standard weight of 200 pounds per passenger (including all baggage) is used for all civil operations and classes of service. Other weights may be prescribed in specific instances upon the initiative of the Department of Transportation or upon a factually supported request by an air carrier.

Wet-Lease Agreement means an agreement under which one carrier leases an aircraft with flight crew to another air carrier.

[ER–755, 37 FR 19726, Sept. 21, 1972, as amended by Amdt. 241–58, 54 FR 5590, Feb. 89, 1989]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Section 03, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

Section 04 Air Carrier Groupings

(a) All large certificated air carriers are placed into three basic air carrier groupings based upon their level of operations and the nature of these operations. In order to determine the level of operations, total operating revenues for a twelve-month period are used. The following operating revenue ranges are used to establish air carrier groupings:

Carrier Group	Total Annual Operating Revenues
I	0–$100,000,000
II	$100,000,001–$1,000,000,000
III	$1,000,000,001+

For reporting purposes, Group I air carriers are further divided into two subgroups: (1) Air carriers with total annual operating revenues from $20,000,000 to $100,000,000 and (2) Air carriers with total annual operating revenues below $20,000,000.

(b) Both the criteria for establishing air carrier groupings and the assignment of each air carrier to a specific group of carriers will be reviewed periodically by the Director, Office of Airline Information, to assure the maintenance of appropriate standards for the grouping of carriers. When an air carrier's level of operations passes the upper or lower limit of its currently assigned carrier grouping, the carrier is not automatically transferred to a different group and a new level of reporting. The Office of Airline Statistics will issue an updated listing of the carrier groups on an annual basis. A carrier may petition for reconsideration of its assigned carrier grouping or request a waiver from the accounting and reporting requirements that are applicable to a particular group under the provisions of section 1–2 of this Uniform System of Accounts and Reports.

[Amdt. 241–60, 56 FR 12658, Mar. 27, 1991, as amended at 60 FR 66723, Dec. 26, 1995]

GENERAL ACCOUNTING PROVISIONS

Section 1 Introduction to System of Accounts and Reports

Sec. 1–1 Applicability of system of accounts and reports.

Each large certificated air carrier shall keep its books of account, records and memoranda and make reports to the BTS in accordance with this system of accounts and reports. The BTS reserves the right, however, under the provisions of sections 49 U.S.C. 41701 and 41708, to expand or otherwise modify the classes of carriers subject to this system of accounts and reports.

[ER–1400, 50 FR 11, Jan. 2, 1985, as amended at 60 FR 66723, Dec. 26, 1995]

Sec. 1–2 Waivers from this system of accounts and reports.

A waiver from any provision of this system of accounts or reports may be made by the BTS upon its own initiative or upon the submission of written request therefor from any air carrier, or group of air carriers, provided that such a waiver is in the public interest and each request for waiver expressly demonstrates that: existing peculiarities or unusual circumstances warrant

a departure from a prescribed procedure or technique; a specifically defined alternative procedure or technique will result in a substantially equivalent or more accurate portrayal of operating results or financial condition, consistent with the principles embodied in the provisions of this system of accounts and reports; and the application of such alternative procedure will maintain or improve uniformity in substantive results as between air carriers.

[ER–755, 37 FR 19726, Sept. 21, 1972, as amended at 60 FR 66723, Dec. 26, 1995]

Sec. 1–3 General description of system of accounts and reports.

(a) This system of accounts and reports is designed to permit limited contraction or expansion to reflect the varying needs and capacities of different air carriers without impairing basic accounting comparability as between air carriers. In its administration three air carrier groups, designated Group I, Group II, and Group III, respectively (see section 04), are established by the BTS. This grouping will be reviewed from time to time upon petition of individual air carriers or by initiative of the BTS with the view of a possible regrouping of the air carriers.

(b) Under the system of accounts prescribed, balance sheet elements are accounted for by all air carrier groups within a fixed uniform pattern of specific accounts. All profit and loss elements are accounted for within specific objective accounts established for each air carrier group resulting from dual classifications, designated for each air carrier group, which are descriptive of both basic areas of financial activity, or functional operation, and objective served. The profit and loss elements of the three air carrier groups can be reduced to broad objectives and general or functional classifications which are comparable for all air carrier groups. Both balance sheet and profit and loss accounts and account groupings are designed, in general, to embrace all activities, both air transport and other than air transport, in which the air carrier engages and provide for the separation of elements identifiable exclusively with other than air transport activities. Profit and loss elements which are recorded during the current accounting year are subclassified as between (1) those which relate to the current accounting year and adjustments of a recurrent nature applicable to prior accounting years, and (2) extraordinary items of material magnitude.

(c) In order to afford air carriers as much flexibility and freedom as possible in establishing ledger and subsidiary accounts to meet their individual needs, a minimum number of account subdivisions have been prescribed in this Uniform System of Accounts. It is intended, however, that each air carrier, in maintaining its accounting records, will provide subaccount and subsidiary account segregations of accounting elements which differ in nature of accounting characteristics, in a manner which will render individual elements readily discernible and traceable throughout the accounting system, and will provide for relating profit and loss elements to applicable balance sheet counterparts.

[ER–755, 37 FR 19726, Sept. 21, 1972, as amended at 60 FR 66723, Dec. 26, 1995]

Sec. 1–4 System of accounts coding.

(a) A four digit control number is assigned for each balance sheet and profit and loss account. Each balance sheet account is numbered sequentially, within blocks, designating basic balance sheet classifications. The first two digits of the four digit code assigned to each profit and loss account denote a detailed area of financial activity or functional operation. The first two digits, thus assigned to each profit and loss account, are numbered sequentially within blocks, designating more general classifications of financial activity and functional operation. The second two digits assigned to profit and loss accounts denote objective classifications.

(b) A fifth digit, appended as a decimal, has been assigned for internal control by the BTS of prescribed subdivisions of the primary objective balance sheet and profit and loss classifications. A different fifth digit code number from that assigned by the BTS may be adopted for internal recordkeeping by the air carrier provided the

prescribed subclassification of objective accounts is not impaired and the code number assigned by the BTS is employed in reporting to the BTS on Form 41 Reports.

[ER–755, 37 FR 19726, Sept. 21, 1972, as amended at 60 FR 66723, Dec. 26, 1995]

Sec. 1–5 Records.

(a) The general books of account and all books, records, and memoranda which support in any way the entries therein shall be kept in such manner as to provide at any time full information relating to any account. The entries in each account shall be supported by such detailed information as will render certain the identification of all facts essential to a verification of the nature and character of each entry and its proper classification under the prescribed Uniform System of Accounts. Registers, or other appropriate records, shall be maintained of the history and nature of each note receivable and each note payable.

(b) The books and records referred to herein include not only accounting records in a limited technical sense, but all other records such as organization tables and charts, internal accounting manuals and revisions thereto, minute books, stock books, reports, cost distributions and other accounting work sheets, correspondence, memoranda, etc., which may constitute necessary links in developing the history of, or facts regarding, any accounting or financial transaction.

(c) All books, records and memoranda shall be preserved and filed in such manner as to readily permit the audit and examination thereof by representatives of the DOT. All books, records, and memoranda shall be housed or stored in such manner as to afford protection from loss, theft, or damage by fire, flood or otherwise and no such books and records shall be destroyed or otherwise disposed of, except in conformance with 14 CFR part 249 for the preservation of records.

[ER–755, 37 FR 19726, Sept. 21, 1972, as amended at 60 FR 66723, Dec. 26, 1995]

Sec. 1–6 Accounting entities.

(a) Separate accounting records shall be maintained for each air transport entity for which separate reports to the BTS are required to be made by sections 21(g) and for each separate corporate or organizational division of the air carrier. For purposes of this Uniform System of Accounts and Reports, each nontransport entity conducting an activity which is not related to the air carrier's transport activities and each transport-related activity or group of activities qualifying as a nontransport venture pursuant to paragraph (b) of this section, whether or not formally organized within a distinct organizational unit, shall be treated as a separately operated organizational division; except that provisions of this paragraph and paragraph (b) shall not apply to leasing activities.

(b) As a general rule, any activity or group of activities comprising a transport-related service provided for in transport-related revenue and expense accounts 09 through 18 shall be considered a separate nontransport venture under circumstances in which either: (1) A separate corporate or legal entity has been established to perform such services, (2) the aggregate annual revenue rate, as determined in section 2–1(d), during either of the prior two years exceeds the greater of $1 million per annum or one percent of the air carrier's total annual transport revenues, or (3) the aggregate annual expense rate, as determined in section 2–1(d), during either of the prior two years exceeds the greater of $1 million or one percent of the carrier's total annual operating expenses: *Provided,* That revenues and expenses from in-flight sales, and interchange sales shall be considered related to air transportation and accounted for accordingly, regardless of the revenue or expense standard set forth above.

(c) The records for each required accounting entity shall be maintained with sufficient particularity to permit a determination that the requirements of section 2–1 have been complied with.

[ER–755, 37 FR 19726, Sept. 21, 1972, as amended by ER–841, 39 FR 11994, Apr. 2, 1974; ER–1022, 42 FR 46495, Sept. 15, 1977; ER–1027, 42 FR 60127, Nov. 25, 1977; 60 FR 66723, Dec. 26, 1995]

Sec. 1–7 Interpretation of accounts.

To the end that uniform accounting may be maintained, questions involving matters of accounting significance which are not clearly provided for should be submitted to the Director, Office of Airline Information, K–25, Bureau of Transportation Statistics, for explanation, interpretation, or resolution.

[Amdt. 241–58, 54 FR 5591, Feb. 6, 1989, as amended at 60 FR 66723, Dec. 26, 1995]

Sec. 1–8 Address for reports and correspondence.

All reports required under this part and related correspondence shall be addressed to: Office of Airline Information, K–25, Room 4125, U.S. Department of Transportation, 400 Seventh St., SW., Washington, DC 20590.

[[Amdt. 241–58, 54 FR 5592, Feb. 6, 1989, as amended at 60 FR 66723, Dec. 26, 1995]

Section 2 General Accounting Policies

Sec. 2.1 Generally accepted accounting principles.

(a) The accounting provisions contained in this part are based on generally accepted accounting principles (GAAP). Persons subject to this part are authorized to implement, as prescribed by the Financial Accounting Standards Board, newly issued GAAP pronouncements until and unless the Director, Office of Airline Information (OAI), issues an Accounting Directive making an initial determination that implementation of a new pronouncement would adversely affect the Department's programs.

(b) The Director, OAI, shall review each newly issued GAAP pronouncement to determine its affect on the Department's regulatory programs. If adopting a specific change in GAAP would adversely affect the Department's programs, the Director will issue the results of the review in the form of an Accounting Directive. The directive will state the reasons why the particular change should not be incorporated in the uniform system of accounts and contain accounting guidance for maintaining the integrity of the Department's air carrier accounting provisions.

(c) Objections and comments relating to the Department's decision not to implement a change in generally accepted principles may be addressed to Director, Office of Airline Information, K–25, Room 4125, U.S. Department of Transportation, 400 Seventh St., SW., Washington, DC 20590. If significant objections are raised urging adoption of a particular GAAP pronouncement, the Department will institute a rulemaking.

[[Amdt. 241–58, 54 FR 5592, Feb. 6, 1989, as amended at 60 FR 66723, Dec. 26, 1995]

Sec. 2–2 Basis of allocation between entities.

(a) The provisions of this section shall apply to each person controlling an air carrier, each person controlled by the air carrier, as well as each transport entity and organizational division of the air carrier for which separate records must be maintained pursuant to section 1–6.

(b) Each transaction shall be recorded and placed initially under accounting controls of the particular air transport entity or organizational division of the air carrier or member of an affiliated group to which directly traceable. If applicable to two or more accounting entities, a proration shall be made from the entity of original recording to other participating entities on such basis that the statements of financial condition and operating results of each entity are comparable to those of distinct legal entities. The allocations involved shall include all debits and credits associated with each entity.

(c) For purposes of this section, investments by the air carrier in resources or facilities used in common by the regulated air carrier and those transport-related revenue services defined as separate nontransport ventures under section 1–6(b) shall not be allocated between such entities but shall be reflected in total in the appropriate accounts of the entity which predominately uses those investments. Where the entity of predominate use is a nontransport venture, the air carrier shall reflect the investment in account 1510.3, Advances to Associated Companies.

(d) For purposes of this Uniform System of Accounts and Reports, all revenues shall be assigned to or apportioned between accounting entities on bases which will fully recognize the services provided by each entity, and expenses, or costs, shall be apportioned between accounting entities on such bases as will result: (1) With respect to transport-related services, in the assignment thereto of proportionate direct overheads, as well as direct labor and materials, of the applicable expense functions prescribed by this system of accounts and reports, and (2) with respect to separate ventures, in the assignment thereto of proportional general and administrative overheads as well as the direct overheads, labor, and materials.

[ER–755, 37 FR 19726, Sept. 21, 1972, as amended by ER–841, 39 FR 11994, Apr. 2, 1974; ER–1401, 50 FR 238, Jan. 3, 1985. Redesignated and further amended by Amdt. 241–58, 54 FR 5592, Feb. 6, 1989]

Sec. 2–3 Distribution of revenues and expenses within entities.

(a) Revenues and expenses attributable to a single natural objective account or functional classification shall be assigned accordingly.

(b) Revenue and expense items which are common to two or more natural objective accounts shall be recorded in the objective accounts to which they predominantly relate.

(c) Expense items contributing to more than one function shall be charged to the general overhead functions to which applicable except that where only incidental contribution is made to more than a single function an item may be included in the function to which primarily related, provided such function is not distorted by including an aggregation of amounts applicable to other functions. When assignment of expense items on the basis of the primary activity to which related does not in the aggregate result in a fair presentation of the expenses applicable to each function, apportionment shall be made between functions based upon a study of the contribution to each function during a representative period.

[ER–755, 37 FR 19726, Sept. 21, 1972. Redesignated by Amdt. 241–58, 54 FR 5592, Feb. 6, 1989]

Sec. 2–4 Accounting period.

(a) The accounting year of each air carrier subject to this Uniform System of Accounts shall be the calendar year unless otherwise approved by the BTS.

(b) Each air carrier shall keep its financial accounts and records on a full accrual basis for each quarter so that all transactions, as nearly as may reasonably be ascertained, shall be fully reflected in the air carrier's books for the quarter in which revenues have been earned and the costs attaching to the revenues so earned in each quarter have been incurred independently of the incidence of sales or purchases and settlement with debtors or creditors.

(c) Expenditures incurred during the current accounting year which demonstrably benefit operations to be performed during subsequent accounting years to a significant extent shall be deferred and amortized to the period in which the related operations are performed when of sufficient magnitude to distort the accounting results of the year in which incurred.

(d) Expenditures charged directly or amortized to operations within one accounting year shall not be reversed in a subsequent accounting year and reamortized or charged directly against operations of subsequent years except that retroactive adjustments are permitted where necessary to conform with adjustments required by the DOT for ratemaking purposes.

[ER–755, 37 FR 19726, Sept. 21, 1972, as amended by ER–1027, 42 FR 60127, Nov. 25, 1977; ER–1188, 45 FR 48870, July 22, 1980; 60 FR 66723, 66725, Dec. 26, 1995]

Sec. 2–5 Revenue and accounting practices.

(a) Revenue accounting practices shall conform to the provisions of account 2160, Air Traffic Liability.

(b) Each route air carrier shall physically verify the reliability of its passenger revenue accounting practice at least once each accounting year.

(c) For those carriers who use the yield or average-fare method to determine earned revenue, the analysis supporting the verification shall include:

(1) The cutoff date for the liability to be verified; such cutoff date shall be at the end of a calendar month.

(2) The number of months after the cutoff date during which documents were examined to verify the liability; the number of months after the cutoff date during which documents are examined shall not exceed the maximums set forth below:

Class of carrier	Maximum months [1]
TWA	18
Trunks (except TWA)	12
All other route air carriers	6

[1] Applies only to carriers on a yield or average-fare basis.

(3) The nature of the documents which were examined for purposes of the verification.

(4) The totals for each of the various types of documents examined, on actual or sampling basis.

(5) A description of the sampling technique and conversion to totals, if sampling was employed.

(6) The amount and basis for all estimates employed in the verification.

(7) The amount of resulting adjustments and the quarter in which such adjustments were, or are to be, made in the accounts.

(d) For those carriers who use the sales-lift match method to determine earned revenue, the analysis supporting the physical inventory verification shall include:

(1) The cutoff date for the liability to be verified; such cutoff date shall be at the end of a calendar month.

(2) A trial balance as of the cutoff date of all subaccounts supporting the Air Traffic Liability control account; the subsidiary trial balance must agree with the Air Traffic Liability control account or a reconciliation statement furnished.

(3) A statement to the effect that a sales listing of the value of all unmatched auditor coupons has been compiled and compared to the general ledger control figure; the statement required by this subparagraph shall indicate whether or not the value of the unmatched coupons is in agreement with the general ledger. If the sales listing is not in agreement with the Air Traffic Liability control account, the amount of such difference shall be shown on such statement.

[ER–948, 41 FR 12290, Mar. 25, 1976, as amended by ER–1401, 50 FR 238, Jan. 3, 1985. Redesignated at Amdt. 241–58, 54 FR 5592, Feb. 6, 1989; 60 FR 66725, Dec. 26, 1995]

BALANCE SHEET CLASSIFICATIONS

Section 3 Chart of Balance Sheet Accounts

[See footnotes at end of table]

Name of account	General classification	
Current assets:		
Cash		1010
Short-term investments		1100
Notes receivable		1200
Accounts receivable		1270
Allowance for uncollectible accounts		1290
Spare parts and supplies		1300
Allowance for obsolescence—Spare parts and supplies		1311
Prepaid items		1410
Other current assets		1420
Investments and special funds:		
Investments in associated companies		1510
Investments in investor controlled companies		1510.*1*
Investments in other associated companies		1510.*2*
Advances to associated companies		1510.*3*
Other investments and receivables		1530
Special funds		1550
Property and equipment		1600–1700
	Operating	Nonoperating
Airframes	1601	1701
Airframes	1601.*1*	1701.*1*
Unamortized airframe overhauls	1601.*2*	1701.*2*
Aircraft engines	1602	1702
Aircraft engines	1602.*1*	1702.*1*
Unamortized aircraft engine overhauls	1602.*2*	1702.*2*
Improvements to leased flight equipment	1607	1707
Flight equipment rotable parts and assemblies	1608	1708
Airframe parts and assemblies	[1] 1608.*1*	[1] 1708.*1*
Aircraft engine parts and assemblies	[1] 1608.*5*	[1] 1708.*5*
Other parts and assemblies	[1] 1608.*9*	[1] 1708.*9*
Flight equipment	1609	1709
Allowance for depreciation:		
Airframes	1611	1711
Aircraft engines	1612	1712

[See footnotes at end of table]

Name of account	General classification	
Improvements to leased flight equipment	1617	1717
Flight equipment rotable parts and assemblies	1618	1718
Flight equipment airworthiness allowance	[2]1629	[2]1729
Equipment	1630	1730
Furniture, fixtures and office equipment	1636	1736
Improvements to leased buildings and equipment	1639	1739
	General classification	
Buildings	1640	1740
Maintenance buildings and improvements	1640.*1*	1740.*1*
Other buildings and improvements	1640.*9*	1740.*9*
Ground property and equipment	1649	1749
Allowance for depreciation:		
Equipment	1650	1750
Improvements to leased buildings and equipment	1654	1754
Furniture, fixtures, and office equipment	1656	1756
Buildings	1660	1760
Maintenance buildings and improvements	1660.*1*	1760.*1*
Other buildings and improvements	1660.*9*	1760.*9*
Allowance for depreciation of flight equipment and ground property and equipment, and amortization of overhaul and airworthiness costs	1668	1768
Land	1679	1779
Equipment purchase deposits and advance payments	1685	1785
Construction work in progress	1689	1789
Leased property under capital leases	1695	1795
Capital leases—flight equipment	1695.*1*	1795.*1*
Capital leases—other property and equipment	1695.*2*	1795.*2*
Leased property under capital leases, accumulated amortization	1696	1796
Accumulated amortization—capitalized flight equipment	1696.*1*	1796.*1*
Accumulated amortization—capitalized other property and equipment	1696.*2*	1796.*2*
Property on operating-type lease to others and property held for lease	.....	1797
Property on operating-type lease to others and property held for lease, accumulated depreciation	.....	1798
Other assets:		
Long-term prepayments	.....	1820
Unamortized developmental and preoperating costs	.....	1830
Other assets and deferred charges	.....	1890

[See footnotes at end of table]

Name of account	General classification	
Current liabilities:		
Current maturities of long-term debt	.....	2000
Notes payable:		
Banks	.....	2005
Other	.....	2015
Trade accounts payable	.....	2021
Accounts payable—other	.....	2025
Current obligations under capital leases	.....	2080
Accrued salaries, wages	.....	2110
Accrued vacation liability	.....	2120
Accrued interest	.....	2125
Accrued taxes	.....	2130
Dividends declared	.....	2140
Air traffic liability	.....	2160
Other current liabilities	.....	2190
Noncurrent liabilities:		
Long-term debt	.....	2210
Advances from associated companies	.....	2240
Pension liability	.....	2250
Noncurrent obligations under capital leases	.....	2280
Other noncurrent liabilities	.....	2290
Deferred credits:		
Deferred income taxes	.....	2340
Deferred investment tax credits	.....	2345
Other deferred credits	.....	2390
Stockholders' equity:		
Preferred stock	.....	2820
Common stock	.....	2840
Additional capital invested	.....	2890
Premium on capital stock	.....	2890.*1*
Discount on capital stock	.....	2890.*2*
Other capital stock transactions	.....	2890.*3*
Retained earnings	.....	2900
Subscribed and unissued stock	2860	
Treasury stock	.....	2990

[1] Prescribed for group II and group III air carriers only.
[2] At the option of the air carrier, these accounts may be assigned Nos. 2629 and 2729, respectively, for accounting purposes.

Note: Digits to right of decimals and italicized codes established for BTS control purposes only.

[ER–1401, 50 FR 239, Jan. 3, 1985, as amended by Amdt. 248–58, 54 FR 5592, Feb. 6, 1989; 60 FR 66723, Dec. 26, 1995]

Section 4 General

(a) The balance sheet accounts are designed to show the financial condition of the air carrier as at a given date, reflecting the asset and liability balances carried forward subsequent to the closing or constructive closing of the air carrier's books of account.

(b) The balance sheet accounts prescribed in this system of accounts for each air carrier group are set forth in Section 3, Chart of Balance Sheet Accounts. The balance sheet elements to

be included in each account are presented in section 6.

[ER–755, 37 FR 19726, Sept. 21, 1972, as amended by Amdt. 241–58, 54 FR 5592, Feb. 6, 1989]

Section 5 [Reserved]

Section 6 Objective Classification of Balance Sheet Elements

SOURCE: ER–980, 42 FR 29, Jan. 3, 1977, unless otherwise noted.

CURRENT ASSETS

1010 Cash.

(a) Record here all general and working funds available on demand as of the date of the balance sheet which are not formally restricted or earmarked for specific objectives. Funds deposited for special purposes which are to be satisfied within one year shall be included in account 1100 Short-term Investments and funds restricted as to general availability, which are not offset by current liabilities, shall be included in account 1550 Special Funds.

(b) Each air carrier shall subdivide this account in such manner that the balance can be readily segregated as between balances in United States currency and the balances in each foreign currency.

1100 Short-term Investments.

(a) Record here the cost of short-term investments such as special deposits and United States Government securities, any other temporary cash investments, and the allowance for unrealized gain or loss on current marketable equity securities.

(b) Special deposits for more than one year, not offset by current liabilities, shall not be included in this account but in account 1550 Special Funds.

(c) This account should be charged or credited for discount or premium on United States Government securities or other securities which should be amortized to profit and loss account 80 Interest Income.

1200 Notes Receivable.

(a) Record here current notes receivable including those from associated companies, company personnel, and all other sources.

(b) Balances of notes payable to associated companies shall not be offset against amounts carried in this account. Balances with associated companies which are not normally settled currently shall not be included in this account but in balance sheet account 1510.3 Advances to Associated Companies.

[ER–980, 42 FR 29, Jan. 3, 1977, as amended by ER–1401, 50 FR 241, Jan. 3, 1985]

1270 Accounts Receivable.

(a) Record here current accounts receivable including those due from the United States Government, foreign governments, associated companies, company personnel, and other amounts due for the performance of air transportation.

(b) Amounts due from the United States Government shall be maintained in such fashion as will clearly and separately identify service mail pay receivables, subsidy receivables and other than mail transportation receivables.

(c) Amounts due for the performance of air transportation shall include gross amounts due whether settled through airline clearing houses or with individual carriers. Amounts payable collected as agent shall not be credited to this account, but should be included in account 2190 Other Current Liabilities.

(d) Balances payable to associated companies shall not be offset against amounts carried in this account. Balances with associated companies which are not normally settled currently shall not be included in this account but in balance sheet account 1510.3 Advances to Associated Companies.

[ER–980, 42 FR 29, Jan. 3, 1977, as amended by ER–1401, 50 FR 241, Jan. 3, 1985]

1290 Allowance for Uncollectible Accounts.

(a) Record here accruals for estimated losses from uncollectible accounts.

(b) All accounts against which allowances have been established shall be examined quarterly for the purpose of redetermining the basis of accruals to be applied to subsequent accounting

periods and the reasonableness of allowances already provided.

1300 Spare parts and supplies.

(a) Record here the cost of:

(1) Flight equipment replacement parts of a type which ordinarily would be recurrently expended and replaced rather than repaired and reused;

(2) Unissued fuel inventories for use in the overall or system operations of the carrier. Adjustments of inventories for aircraft fuel due to retroactive price increases and decreases shall not be entered in this account but in profit and loss account 45, Aircraft Fuels and Oils; and

(3) Unissued and unapplied materials and supplies held in stock such as unissued shop materials, expendable tools, stationery and office supplies, passenger service supplies, and restaurant and food service supplies.

(b) Costs paid by the air carrier such as transportation charges and customs duties; excise, sales, use and other taxes; special insurance; and other charges applicable to the cost of spare parts and supplies shall be charged to this account when they can be definitely allocated to specific items or units of property. If such costs cannot be so allocated, or if of minor significance in relation to the cost of such property, such amounts may be charged to balance sheet account 1890 Other Assets and Deferred Charges and cleared either by a suitable ''loading charge'' as the parts are used or by current charges to appropriate expense or property accounts; so long as the method of application does not cause material distortion in operating expenses from one accounting period to another.

(c) Reusable spare parts and supplies recovered in connection with construction, maintenance, or retirement of property and equipment shall be included in this account at fair and reasonable values but in no case shall such values exceed original cost. Recoveries of normally reparable and reusable parts of a type for which losses in value may be covered on a practical basis through valuation allowance provisions shall be included in this account on an original cost basis. Scrap and nonusable parts, expensed from this account and recovered, shall be included at net amounts realizable therefrom with contra credit to the expense accounts initially charged.

(d) The cost of rotable parts and assemblies of material value included in this account which ordinarily are repaired and reused and possess a service life approximating that of the primary property types to which related shall not be recorded in this account but in balance sheet account 1608 Flight Equipment Rotable Parts and Assemblies. For purposes of identifying rotable parts and assemblies of insignificant unit value which may be included in this account, a reasonable maximum unit value limitation may be established.

(e) Any losses sustained or gains realized upon the abandonment or other disposition of flight equipment expendable parts shall be taken up as capital gains or losses in the periods in which sustained or realized. (See balance sheet account 1311.)

(f) Items in this account shall be charged to appropriate expense accounts as issued for use. Profit and loss on sales of inventory items as a routine service to others shall be included in profit and loss accounts 14 General Service Sales—Associated Companies, or 16 General Service Sales—Outside, and the parts sold shall be removed from this accounts at full cost.

(g) Materials and supplies held in small supply and purchased currently may be charged to appropriate expense accounts when purchased.

(h) An allowance for inventory adjustment applicable to materials and supplies is prohibited. Items in this account shall be charged to appropriate expense accounts as issued for use.

(i) Subaccounts shall be established within this account for the separate recording of each class or type of spare parts and supplies.

[ER–980, 42 FR 29, Jan. 3, 1977, as amended by ER–1401, 50 FR 241, Jan. 3, 1985]

1311 Allowance for Obsolescence—Spare Parts and Supplies.

(a) Accruals shall be made to this account when allowances are established for losses in the value of expendable parts. The accruals to this account shall be made by charges to profit and

loss account 73 Provisions for Obsolescence and Deterioration—Expendable Parts. Records shall be maintained with sufficient detail to permit association of the allowances with each class or type of expendable parts.

(b) The accruals to this account shall be based upon a predetermination by the air carrier of that portion of the total inventory of each class and type of expendable parts against which an allowance for loss is to be accrued. Expendable parts issued for use in operations shall be charged to operating expenses as issued and shall not be charged to this account. If at the end of any calendar year the amount of the allowance exceeds the product of the applicable inventory for the year determined consistently on a year-end or average basis, and the sum of the standard percentage accrual rates for all prior years including the current, the allowance shall be adjusted downward by the amount of the excess. Such adjustments shall be charged to this account and credited to profit and loss account 73 Provisions for Obsolescence and Deterioration—Expendable Parts.

(c) Where changing conditions necessitate a revision or adjustment in rates of accrual, such revision or adjustment shall be made applicable to current and subsequent accounting periods and shall not be applied retroactively to prior accounting periods. Following retirement of airframe or aircraft engine types to which related, any balance remaining in this account shall be offset against related balances carried in balance sheet account 1300 Spare Parts and Supplies and the net cleared to profit and loss accounts 88.5 Capital Gains and Losses—Operating Property or 88.6 Capital Gains and Losses—Other.

[ER–980, 42 FR 29, Jan. 3, 1977, as amended by ER–1401, 50 FR 241, Jan. 3, 1985]

1410 Prepaid Items.

Record here prepayments of obligations which if not paid in advance would require the expenditure of working capital within one year, such as prepaid rent, insurance, taxes, interest, etc. Unexpired insurance and miscellaneous prepayments applicable to periods extending beyond one year where significant in amount shall be charged to balance sheet account 1820 Long-Term Prepayments.

1420 Other Current Assets.

Record here current assets not provided for in balance sheet accounts 1010 to 1410, inclusive.

INVESTMENTS AND SPECIAL FUNDS

1510 Investments in Associated Companies.

(a) Record here net investments in associated companies.

(b) [Reserved]

(c) This account shall be subdivided by all air carrier groups as follows:

[ER–980, 42 FR 29, Jan. 3, 1977, as amended by ER–1027, 42 FR 60128, Nov. 25, 1977; ER–1188, 45 FR 48870, July 22, 1980]

1510.1 *Investments in Investor Controlled Companies.*

Record here the cost of investments in investor controlled companies except that permanent impairment in the value of securities may be reflected through charges to profit and loss classification 8100, Nonoperating Income or Expense—Net. This account shall also include the equity in undistributed earnings or losses since acquisition. In the event dividends are declared by such companies, the air carrier shall credit this account for its share in dividends declared and debit balance sheet account 1270 Accounts Receivable. This account shall separately state: (a) The cost of such investments at date of acquisition and (b) the equity in undistributed earnings or losses since acquisition.

[Amdt. 241–58, 54 FR 5592, Feb. 6, 1989]

1510.2 *Investments in Other Associated Companies.*

Record here the cost of investments in associated companies other than investor controlled companies. Cost shall represent the amount paid at the date of acquisition without regard to subsequent changes in the net assets through earnings or losses of such associated companies. However, permanent impairment in the value of securities may be reflected through charges to profit and loss classification 8100, Nonoperating Income or Expense—Net.

[Amdt. 241–58, 54 FR 5592, Feb. 6, 1989]

1510.3 *Advances to Associated Companies.*

(a) Record here advances, loans, and other amounts not settled currently with investor controlled and other associated companies

and nontransport divisions. Balances receivable from and payable to different associated companies and different nontransport divisions shall not be offset.

(b) In the case of nontransport divisions three subaccounts shall be maintained:

(1) Net investment;

(2) current net profit or loss; and

(3) current accounts receivable or payable between the air carrier and the nontransport division.

(c) Each nontransport division shall be accounted for separately in net amounts receivable which shall be included in this account or net amounts payable which shall be included in balance sheet account 2240 Advances from Associated Companies.

[ER–980, 42 FR 29, Jan. 3, 1977. Redesignated by ER–1401, 50 FR 241, Jan. 3, 1985]

1530 Other Investments and Receivables.

Record here notes and accounts receivable not due within one year, investments in securities issued by others, investments in leveraged leases, the noncurrent net investment in direct financing and sales-type leases, and the allowance for unrealized gain or loss on noncurrent marketable equity securities. Securities held as temporary cash investments shall not be included in this account but in balance sheet account 1100 Short-Term Investments. Investments in and receivables from associated companies which are not settled currently shall be included in balance sheet account 1510 Investments in Associated Companies.

[Amdt. 241–58, 54 FR 5592, Feb. 6, 1989]

1550 Special Funds.

Record here special funds not of a current nature and restricted as to general availability. Include items such as sinking funds, cash and securities posted with courts of law, employee's funds for purchase of capital stock, pension funds under the control of the air carrier and equipment purchase funds.

OPERATING PROPERTY AND EQUIPMENT

''Operating Property and Equipment'' shall encompass items used in air transportation services and services related thereto.

1601 Airframes.

(a) Record here the total cost to the air carrier of airframes of all types and classes together with the full complement of instruments, appurtenances and fixtures comprising complete airframes including accessories necessary to the installation of engines and flight control and transmission systems, except as specifically provided otherwise in accounts 1602 and 1607. Also record here in separate subaccounts the costs of airframes overhauls accounted for on a deferral and amortization basis.

(b) Airframes designed to permit multiple payload configurations shall be recorded in this account at the total cost of the maximum complement of instruments, appurtenances, and fixtures used in the air carrier's operations.

(c) This account shall be subdivided as follows by all air carriers:

1601.1 *Airframes.*

1601.2 *Unamortized Airframe Overhauls.*

[ER–980, 42 FR 29, Jan. 3, 1977, as amended by Amdt. 241–58, 54 FR 5593, Feb. 6, 1989]

1602 Aircraft Engines.

(a) Record here the total cost to the air carrier of complete units of aircraft engines of all types and classes together with a full complement of accessories, appurtenances, parts and fixtures comprising fully assembled engines as delivered by the engine manufacturer ready for operation in test but without the accessories necessary to its installation in airframes. Also record here in separate subaccounts the costs of aircraft engine overhauls accounted for on a deferral and amortization basis.

(b) This account shall be subdivided as follows by all air carriers:

1602.1 *Aircraft Engines.*

1602.2 *Unamortized Aircraft Engine Overhauls.*

[ER–980, 42 FR 29, Jan. 3, 1977, as amended by Amdt. 241–58, 54 FR 5593, Feb. 6, 1989]

1607 Improvements to Leased Flight Equipment.

Record here the total cost incurred by the air carrier for modification, conversion or other improvements to leased flight equipment. Also record here, in separate subaccounts, the costs of airframe and aircraft engine

overhauls of leased aircraft accounted for on a deferral and amortization basis.

[Amdt. 241–58, 54 FR 5593, Feb. 6, 1989]

1608 Flight Equipment Rotable Parts and Assemblies.

(a) Record here the total cost to the air carrier of all spare instruments, parts, appurtenances and subassemblies related to the primary components of flight equipment units provided for in balance sheet accounts 1601 through 1607, inclusive. This account shall include all parts and assemblies of material value which are rotable in nature, are generally reserviced or repaired, are used repeatedly and possess a service life approximating that of the property type to which they relate. Items of an expendable nature which generally may not be repaired and reused, shall not be recorded in this account but in account 1300 Spare Parts and Supplies. Except for recurrent service sales, flight equipment parts recorded in this account shall not be charged to operating expenses as retired. Profit or loss on sales of parts as a routine service to others shall be included in profit and loss account 14 General Service Sales, and parts sold shall be removed from this account at full cost irrespective of any allowance for depreciation which has been provided.

(b) This account shall be subdivided as follows by Group II and Group III air carriers:

1608.1 *Airframe Parts and Assemblies.*

1608.5 *Aircraft Engine Parts and Assemblies.*

1608.9 *Other Parts and Assemblies.*

[ER–980, 42 FR 29, Jan. 3. 1977, as amended by Amdt. 241–58, 54 FR 5593, Feb. 6, 1989]

1609 Flight Equipment.

This classification is established only for purposes of control by the BTS and shall reflect the total cost of property and equipment of all types and classes used in the in-flight operations of aircraft.

[ER–980, 42 FR 29, Jan. 3, 1977, as amended at 60 FR 66723, Dec. 26, 1995]

1629 Flight Equipment Airworthiness Allowances.

(a) Record here accumulated provisions for overhauls of flight equipment.

(b) Separate subaccounts shall be established for recording accumulated provisions related to each type of airframe and aircraft engine, respectively.

NOTE: At the option of the air carrier, the number ''2629'' may be assigned to this account for accounting purposes. However, for purposes of reporting on BTS Form 41, the balance in this account shall be reported under account ''1629.''

[ER–980, 42 FR 29, Jan. 3, 1977, as amended by Amdt. 241–58, 54 FR 5593, Feb. 6, 1989; 60 FR 66723, Dec. 26, 1995]

1630 Equipment.

Record here the total cost to the air carrier of ground equipment to include the following:

(a) Equipment assigned to aircraft or active line operations as opposed to items held in stock for servicing passengers such as broilers, bottleware, dishes, food boxes, thermos jugs, blankets, first aid kits, etc. Spare items shall be carried in balance sheet account 1300 Spare Parts and Supplies and shall be charged directly to expense upon withdrawal from stock for replacing original complements.

(b) Equipment used in restaurants and kitchens.

(c) Equipment of all types and classes used in enplaning and handling traffic and in handling aircraft while on ramps, including motorized vehicles used in ramp service. Classes of equipment used interchangeably between handling aircraft on ramps and in maintaining aircraft may be classified in accordance with normal predominant use.

(d) Nonairborne equipment of all types and classes used in meteorological and communication services which is not a part of buildings.

(e) Equipment of all types and classes including motorized vehicles used in engineering and drafting services and in maintaining, overhauling, repairing and testing other classes of property and equipment.

(f) Property and equipment of all types and classes used in ground and marine transportation services.

(g) Property and equipment of all types and classes used in storing and distributing fuel, oil and water, such as fueling trucks, tanks, pipelines, etc.

(h) All other ground equipment of all types and classes such as medical, photographic, employees' training equipment, and airport and airway lighting equipment.

[ER–980, 42 FR 29, Jan. 3, 1977, as amended by Amdt. 241–58, 54 FR 5593, Feb. 6, 1989]

1636 Furniture, Fixtures, and Office Equipment.

Record here the total cost to the air carrier of furniture, fixtures and office equipment of all types and classes wherever used or located.

[Amdt. 241–58, 54 FR 5593, Feb. 6, 1989]

1639 Improvements to Leased Buildings and Equipment.

Record here the total cost to the air carrier incurred in connection with modification, conversion, or other improvements to leased buildings and equipment.

1640 Buildings.

Record here the total cost to the air carrier of owned buildings, structures and equipment and related improvements. Each air carrier shall maintain the following subaccounts in which the values fairly assignable to maintenance and other operations shall be separately recorded:

1640.9 *Other Buildings and Improvements.*

1640.1 *Maintenance Buildings and Improvements.*

[Amdt. 241–58, 54 FR 5593, Feb. 6, 1989]

1649 Ground Property and Equipment.

This classification is established only for purposes of control by the BTS and shall reflect the total cost of property and equipment of all types and classes other than flight equipment, equipment purchase deposits and advance payments, land, and work in progress.

[ER–980, 42 FR 29, Jan. 3, 1977, as amended at 60 FR 66723, Dec. 26, 1995]

1668 Allowance for Depreciation of Flight Equipment and Ground Property and Equipment and Amortization of Overhaul and Airworthiness Costs.

(a) Record in accounts 1611 and 1618, inclusive, and 1650 through 1660, inclusive, accruals for depreciation of flight equipment and ground property and equipment.

(b) As set forth in section 3, Chart of Balance Sheet Accounts, separate accounts shall be established for depreciation allowances to parallel balance sheet accounts 1601 through 1608 established for recording the cost of flight equipment and accounts 1630 through 1640 established for recording the cost of ground property and equipment.

(c) This account shall be used as a control account and shall reflect the total amounts recorded in balance sheet accounts 1611 through 1618 and 1650 through 1660 in addition to account 1629 Flight Equipment Airworthiness Allowance.

1679 Land.

Record here the initial cost and the cost of improving land.

[Amdt. 241–58, 54 FR 5593, Feb. 6, 1989]

1685 Equipment Purchase Deposits and Advance Payments.

Record here the amount of purchase deposits and advance payments made to acquire operating property and equipment under outstanding purchase commitments. Funds set aside but not deposited or used as advance payments should not be included in this account but in Account 1550 Special Funds.

1689 Construction Work in Progress.

(a) Record here all direct and indirect costs of the air carrier that are expended for constructing and readying property and equipment of all types and classes for installation in operations. The amount reported shall reflect all such expenses that are accumulated to the balance sheet date. Where properly includable in the property and equipment classification, record here also the accumulated costs for uncompleted overhauls of airframes, aircraft engines, or other material units of property.

(b) At the option of the air carrier this account may be used as a clearing account for recording the cost of property and equipment acquisitions prior to a distribution thereof to the appropriate property accounts, whether or not conditioning or modification is necessary before placing in service.

[ER–980, 42 FR 29, Jan. 3, 1977, as amended by Amdt. 241–58, 54 FR 5594, Feb. 6, 1989]

1695 Leased Property Under Capital Leases.

(a) Record here the total costs to the air carrier for all property obtained under capital leases.

(b) This account shall be subdivided by all air carrier groups as follows:

1695.1 *Capital Leases—Flight Equipment.*

1696.2 *Capital Leases—Other Property and Equipment.*

[ER–1401, 50 FR 241, Jan. 3, 1985, as amended by Amdt. 241–58, 54 FR 5594, Feb. 6, 1989]

1696 Leased Property Under Capital Leases—Accumulated Amortization.

(a) Record here accruals for amortization of leased property obtained under capital leases.

(b) This account shall be subdivided by all air carrier groups as follows:

1696.1 *Accumulated Amortization—Capitalized Flight Equipment.*

1696.2 *Accumulated Amortization—Capitalized Other Property and Equipment.*

[ER–1401, 50 FR 241, Jan. 3, 1985, as amended by Amdt. 241–58, 54 FR 5594,]

NON-OPERATING PROPERTY AND EQUIPMENT

''Nonoperating Property and Equipment'' includes investments in property and equipment not separately accounted for within a nontransport division but assigned to other than air transportation and transport-related services, and property and equipment held for future use.

1700 Non-operating Property and Equipment.

The total cost to the air carrier of nonoperating property and equipment and related allowances for depreciation shall be recorded in balance sheet accounts 1701 through 1796 which, as set forth in section 3, Chart of Balance Sheet Accounts, parallel balance sheet accounts 1601 through 1689, for recording the cost of operating property and equipment. In addition to these accounts, Account 1797 has been established for recording the cost of property on operating-type leases to others and property held for lease; any accumulated depreciation applicable to the assets contained in Account 1797 shall be recorded in Account 1798.

[ER–1013, 42 FR 37515, July 21, 1977]

1797 Property on Operating-type Lease to Others and Property Held for Lease.

Record here the total cost to the air carrier of property on operating-type lease to others and property held for lease.

[Amdt. 241–58, 54 FR 5594, Feb. 6, 1989]

1798 Property on Operating-type Lease to Others and Property Held for Lease—Accumulated Depreciation.

Record here accruals for depreciation of property on operating-type leases to others and property held for lease.

[Amdt. 241–58, 54 FR 5594, Feb. 6, 1989]

OTHER ASSETS

1820 Long-Term Prepayments.

Record here prepayments of obligations applicable to periods extending beyond one year such as payments on leased property and equipment and other payments and advances for rents, rights, or other privileges.

1830 Unamortized Developmental and Preoperating Costs.

(a) Record here costs accumulated and deferred by the air carrier pertaining to the development of new routes or extension of existing routes, preparation for operation of new routes subsequent to certification by the DOT, the integration of new types of aircraft or services, and other preparations for substantial alterations in operational characteristics.

(b) Costs chargeable to this account shall include items directly related to each specific developmental or preoperating project, such as travel and incidental expenses, legal expenses,

flight crew training expenses, and regulatory proceedings expenses. Expenses which would be otherwise incurred in the normal air transport operations conducted by the air carrier during the current accounting period shall not be allocated to developmental or preoperating projects and charged to this account. Nor shall this account be credited for revenues from aircraft flights of a developmental or preoperating character the operating costs of which are charged to this account. Any such revenues shall be included in the profit and loss account for the respective type of revenue. This account shall include charges for only those costs associated with projects directed at obtaining new operating authority or expanding the physical capacity of the air carrier and shall not include costs incurred for the purpose of generating revenues through rate adjustment. Accordingly, costs associated with regulatory proceedings involving route awards or amendments, whether successful or unsuccessful to the carrier, shall be included in this account whereas costs associated with regulatory proceedings involving rate or other revenue generation matters shall be charged to appropriate expense accounts.

(c) Records shall be established for new routes or extensions of existing routes to record separately: (1) Costs incurred in acquiring or applying for the routes, including all costs incurred prior to certification by the DOT and inauguration of service by the air carrier, and (2) costs incurred after revenue operations begin over the new routes or extensions.

(d) Subclassifications shall be established to record for each developmental project the period covered and the purpose of each item of expense. Each air carrier shall classify the costs of all projects included in this account between: (1) Those related and contributing to the normal air transportation services currently conducted by the air carrier; (2) those related to services conducted by the air carrier which are extraneous to or are not otherwise related to the air transportation services currently conducted; and (3) those held in suspense pending status determination in terms of possible contribution to the air transportation services and inauguration of the service or operation to which related.

(e) Amounts included in this account which contribute to or protect the position of the normal air transportation services currently conducted by the carrier shall be amortized to profit and loss account 74 Amortization, unless otherwise approved or directed by the DOT. Other amounts included in this account shall be amortized or charged to profit and loss account 89.9 Other Miscellaneous Nonoperating Debits.

[ER–980, 42 FR 29, Jan. 3, 1977, as amended at 60 FR 66723, Dec. 26, 1995]

1890 Other Assets and Deferred Charges.

(a) Record here other assets and deferred charges not provided for elsewhere.

(b) Record here debits, the proper final disposition of which cannot be determined until additional information has been received. This account shall include the accumulated cost of labor, materials and outside services used in the process of manufacturing flight equipment expendable parts and materials and supplies for stock, the accumulated cost of jobs in process for others, projects to be charged to expense upon completion. This account shall also include unamortized debt expense, property acquisition adjustments and intangible assets.

(c) This account shall be charged with property loss and other costs related to casualties and credited with recoveries from purchased insurance and salvage. A debit or credit balance in this account related to property retired as a result of a casualty shall be recorded in profit and loss account 88.5 Capital Gains and Losses—Operating Property or 88.6 Capital Gains and Losses—Other; however, any balances related to property not retired or to other casualties shall be recorded in profit and loss account 58 Injuries, Loss and Damage. Proceeds from purchased insurance for property damage, received prior to repair of such damage, shall not be credited to this account but to balance sheet account 2390 Other Deferred Credits pending repair. The records for each major casualty shall be kept in such manner as to clearly

disclose insurance recoveries and the total costs, which shall include charges for the depreciated cost of property damaged or destroyed, costs for clearing wrecks and damaged property and equipment, including salaries and wages for the repair thereof, and payments for damages to property of others. The cost of casualties shall not be charged directly against retained earnings or appropriations thereof, but shall be cleared through the applicable profit and loss accounts in accordance with the foregoing.

(d) Record here the unamortized debt expense related to the assumption by the air carrier of debt of all types and classes. Amounts recorded shall be amortized to profit and loss account 84 Amortization of Debt Discount, Premium and Expense.

(e) Unamortized debt expense shall not include the excess of the par value of debt securities over the cash value of consideration received. Instead, discounts shall be recorded in a subaccount of the related liability.

(f) Record here the cost of patents, copyrights and other intangible properties, rights and privileges acquired as a part of a business from other air carriers and other intangibles not provided for elsewhere. This account shall be subdivided to reflect the nature of each intangible asset included in this account.

(g) Record here the difference between the purchase price to the air carrier of property and equipment acquired as a part of a business from another air carrier through consolidation, merger, or reorganization, pursuant to a plan approved by the DOT, and the depreciated cost to the predecessor company at date of acquisition. Record here also such differences relating to purchases of property and equipment from associated companies unless other treatment is approved by the BTS. Separate subaccounts shall be established to record the amounts applicable to each such acquisition.

(h) Balances in this account relating to property acquisition adjustments shall be amortized by charges to profit and loss account 89.9 Other Miscellaneous Nonoperating Debits unless otherwise directed or approved by the BTS.

[ER–1401, 50 FR 242, Jan. 3, 1985, as amended at 60 FR 66723, Dec. 26, 1995]

CURRENT LIABILITIES

2000 Current Maturities of Long-term Debt.

Record here the face value or principal amount of debt securities issued or assumed by the air carrier which is payable within 12 months of the balance sheet date unless such debt is to refinance, or where payment is to be made from assets of a type not properly classifiable as current.

2005 Notes Payable—Banks.

Record here the face value of all notes, drafts, acceptances, or other similar evidences of indebtedness payable on demand or within one year to a bank or another financial institution with the exception of current maturities of long-term debt which should be included in account 2000.

2015 Notes Payable—Other.

Record here the face value of all notes, drafts, acceptances, or other similar evidences of indebtedness payable on demand or within one year to an associated company or party other than a financial institution.

2021 Trade Accounts Payable.

Record here all accounts payable within one year which accrued from generally recognized trade practices.

2025 Accounts Payable—Other.

Record here all accounts payable within one year which are not provided for in accounts 2000 to 2021, inclusive.

2080 Current Obligations Under Capital Leases.

Record here the total current liability applicable to property obtained under capital leases.

[ER–1013, 42 FR 37515, July 21, 1977; 42 FR 38555, July 29, 1977; Amdt. 241–58, 54 FR 5594, Feb. 6, 1989]

2110 Accrued Salaries, Wages.

Record here amounts accrued for unpaid compensation to personnel, which

have been charged to profit and loss or capitalized, as compensation for the period in which accrued.

2120 Accrued Vacation Liability.

(a) Record here accruals of liabilities for personnel vacations. All vacation policies, plans, or agreements whether oral or written shall be accounted for on an accrual basis whenever a lag exists between vacations earned and vacations taken, thereby resulting in a liability against the carrier under the applicable policy, plan or agreement.

(b) This account shall be credited and the applicable personnel compensation expense account concurrently charged with the cost of any lag between vacations accrued and vacations taken. Accruals may be based upon standard rates of lag, if such standard rates are verified by physical inventory and adjusted accordingly at least once each calendar year. Adjustments of balances in this account shall be cleared to applicable compensation expense accounts.

[ER–980, 42 FR 29, Jan. 3, 1977, as amended by ER–1027, 42 FR 60128, Nov. 25, 1977; ER–1188, 45 FR 48870, July 22, 1980; Amdt. 241–58, 54 FR 5594, Feb. 6, 1989]

2125 Accrued Interest.

Record here interest payable within one year for all outstanding obligations.

2130 Accrued Taxes.

(a) Record here accruals for currently payable income and other forms of taxes which constitute a charge borne by the air carrier as opposed to those collected as an agent for others.

(b) Each air carrier shall disclose in the footnotes of its BTS Form 41 for each calendar quarter whether utilized credits are accounted for by the flow-through method or the deferred method. The method selected shall be consistently followed by the carrier.

[Amdt. 241–58, 54 FR 5594, Feb. 6, 1989, as amended at 60 FR 66723, Dec. 26, 1995]

2140 Dividends Declared.

Record here in separate subdivisions for each class and series of capital stock, all dividends declared but unpaid on capital stock.

2160 Air Traffic Liability.

(a) Record here balances representing the value of unused transportation sold. Transportation sold includes both sales for transportation to be provided by the air carrier and transportation to be provided by another air carrier.

(b) Earned revenue, determined by the yield or average fare method or by the sales-lift-match method, shall be consistently and periodically cleared by debit to this account, and by credit to the appropriate profit and loss revenue account. Amounts receivable for transportation to be provided by the air carrier shall be debited to balance sheet account 1270 Accounts Receivable.

(c) Carriers who determine earned revenue on a yield or average fare method may not accrue income during the accounting year in anticipation of a favorable annual physical inventory determination, nor for unused or unpresented tickets.

(d) Subaccounts to this account shall be established to record balances pertaining to passenger and cargo transportation sold, respectively, and separately to sales in scheduled and nonscheduled services.

[ER–980, 42 FR 29, Jan. 3, 1977, as amended by ER–1401, 50 FR 242, Jan. 3, 1985]

2190 Other Current Liabilities.

Record here current and accrued liabilities, including amounts payable collected as an agent, not provided for in accounts 2110 to 2160, inclusive.

NON-CURRENT LIABILITIES

2210 Long-Term Debt.

(a) Record here the face value of principal amount of debt securities issued or assumed by the air carrier and held by other than associated companies, which has not been retired or cancelled and is not payable within 12 months of the balance sheet date.

(b) In cases where debt coming due within 12 months is to be refunded, or where payment is to be made from assets of a type not properly classifiable as current, the amount payable shall not be removed from this account. In addition, this account shall include short-term debt obligations when both the intent to refinance the short-term

obligations on a long-term basis is established and the ability to consummate this refinancing can be demonstrated.

[Amdt. 241–58, 54 FR 5594, Feb. 6, 1989]

2240 Advances from Associated Companies.

Record here net amounts due associated companies and nontransport divisions for notes, loans and advances which are not settled currently. Balances payable to and receivable from different associated companies shall not be offset.

2250 Pension Liability.

Record here the liability of the air carrier under employee pension plans, to which either or both employees and the air carrier contribute, if the plan is administered by the air carrier.

2280 Noncurrent Obligations under Capital Leases.

Record here the total noncurrent liability applicable to property obtained under capital leases.

[ER–1013, 42 FR 37515, July 21, 1977, as amended by Amdt. 241–58, 54 FR 5594, Feb. 6, 1989]

2290 Other Noncurrent Liabilities.

Record here noncurrent liabilities not provided for in balance sheet accounts 2210 to 2280, inclusive, such as the liability for installments received on capital stock from company personnel who are not bound by legally enforceable subscription contracts, accruals for personnel dismissal liability, and accruals of other demonstrable miscellaneous noncurrent liabilities.

[ER–1401, 50 FR 242, Jan. 3, 1985]

DEFERRED CREDITS

2340 Deferred Income Taxes.

Record here credits and debits representing the net tax effect of material timing differences originating and reversing in the current accounting period, giving appropriate recognition to the portion of investment tax credits which would have been allowed if taxes were based on pretax accounting income by a reduction of the deferred tax provision.

[Amdt. 241–58, 54 FR 5594, Feb. 6, 1989]

2345 Deferred Investment Tax Credits.

Record here investment tax credits utilized as reduction of tax liabilities, when the carrier exercises the option to defer such credits for amortization over the service life of the related equipment.

[Amdt. 241–58, 54 FR 5594, Feb. 6, 1989]

2390 Other Deferred Credits.

Record here credits, not provided for elsewhere, the proper final disposition of which cannot be effected until additional information has been received.

STOCKHOLDERS' EQUITY

2820 Preferred Stock.

Record here in separate subdivisions for each class and series, the par or stated value of preferred capital stock issued or in the case of no-par stock without stated value, the full consideration received.

2840 Common Stock.

Record here in separate subdivisions for each class and series, the par or stated value of common stock issued or in case of no-par stock without stated value, the full consideration received.

2860 Subscribed and Unissued Stock.

Record here in separate subdivisions for each class and series, the par or stated value, or the subscription price in the case of stock without par or stated value, of legally enforceable subscriptions to the capital stock of the air carrier.

2890 Additional Capital Invested.

(a) Record herein separate subdivisions for each class and series, the difference between the price at which capital stock is sold and the par or stated value of the stock; gains or losses arising from the reacquisition and the resale or retirement of each class and series of capital stock; donations; the excess of retained earnings capitalized over par or stated value of capital

stock issued; adjustments in capital resulting from reorganization or recapitalization; and proceeds attributable to detachable stock purchase warrants related to debt issues. This account shall also include balances of contributions to the business enterprise of individual proprietors or partners.

(b) Each air carrier shall maintain the following subaccounts:

2890.1 *Premium on capital stock.* Record here in separate subdivisions for each class and series of capital stock issued the excess of the cash value of consideration received over the par or stated value and accrued dividends of stock issued together with assessments against stockholders representing payments required in excess of par or stated value.

2890.2 *Discount on capital stock.* Record here in separate subdivisions for each class and series of capital stock issued, the excess of the par or stated value over the cash value of consideration received, less accrued dividends. Discounts applicable to a particular class and series of capital stock may be offset against premiums from the same class and series of capital stock. Discounts and premiums on different classes and series of capital stock shall not be offset. The air carrier may, at its option, record in this subaccount commissions and expenses incurred in the issuance of capital stock and may charge balance sheet account 2900 Retained Earnings to the extent capital stock expense may exceed any existing balance of paid-in capital over the par or stated value of capital stock.

2890.3 *Other Capital Stock Transactions.* Record here in separate subdivisions for each class and series, the balance of credits arising from the reacquisition and resale or cancellation of capital stock, credits arising from a reduction in the par or stated value of capital stock or the net balance of credits or debits resulting from other paid-in capital transactions such as proceeds attributable to detachable stock purchase warrants related to debt issues, not provided for elsewhere, which is identified with a particular class and series of capital stock.

2900 Retained Earnings.

(a) Record here the net income or loss from operations of the air carrier and dividends declared on capital stock.

(b) This account shall not be charged with dividends on treasury stock. If a dividend is not payable in cash, the values entered in this account shall be completely described.

(c) Delayed credits or charges to income shall not be entered in this account directly but in appropriate profit and loss accounts.

(d) Net income or loss accounted for during the current fiscal year shall not be entered in this account until the close of the fiscal year. Individual proprietorships or partnerships may clear net income or loss accounted for during the year directly to balance sheet account 2890 Additional Capital Invested, or optionally, to this account for subsequent transfer to balance sheet account 2890 Additional Capital Invested.

(e) A separate subaccount to this account shall be maintained to record changes in the valuation of marketable equity securities included in noncurrent assets. Such changes shall be reflected in this subaccount to the extent the balance in this subaccount represents a net unrealized loss as of the current balance sheet date.

[ER–980, 42 FR 29, Jan. 3, 1977, as amended by ER–1401, 50 FR 242, Jan. 3, 1985]

2990 Treasury Stock.

(a) Record here the cost of capital stock issued by the air carrier reacquired by it and not retired or canceled.

(b) Separate records shall be established for each class and series of capital stock held in this account.

[ER–980, 42 FR 29, Jan. 3, 1977, as amended by Amdt. 241–58, 54 FR 5594, Feb. 6, 1989]

PROFIT AND LOSS CLASSIFICATION

Section 7 Chart of Profit and Loss Accounts

Objective classification of profit and loss elements	Functional or financial activity to which applicable (00)		
	Group I carriers	Group II carriers	Group III carriers
OPERATING REVENUES AND EXPENSES			
Transport revenues:			
01 Passenger:			
01.*1* Passenger—first class	31, 32	31, 32	31, 32.
01.*2* Passenger—coach	31, 32	31, 32	31, 32.

Objective classification of profit and loss elements	Functional or financial activity to which applicable (00)		
	Group I carriers	Group II carriers	Group III carriers
05 Mail:			
05.1 Priority	31, 32	31, 32	31, 32.
05.2 Nonpriority	31, 32	31, 32	31, 32.
05.3 Foreign	31, 32	31, 32	31, 32.
06 Property:			
06.1 Freight	31, 32	31, 32	31, 32.
06.2 Excess passenger baggage	31, 32	31, 32	31, 32.
07 Charter:			
07.1 Passenger	32	32	32.
07.2 Property	32	32	32.
19 Air transport—other:			
19.1 Reservation cancellation fees	31, 32	31, 32	31, 32.
19.2 Miscellaneous operating revenues	31, 32	31, 32	31, 32.
08 Public service revenues (subsidy)	48	48	48.
Transport-related revenues and expenses:			
09 In-flight sales:			
09.1 Liquor and food—gross revenues	48	48	48.
09.2 Movies and stereo—gross revenues	48	48	48.
09.3 Other—gross revenues	48	48	48.
09.4 Liquor and food—depreciation expense	71	71	71.
09.5 Liquor and food—other expense	71	71	71.
09.6 Movies and stereo—depreciation expense	71	71	71.
09.7 Movies and stereo—other expense	71	71	71.
09.8 Other—depreciation expense	71	71	71.
09.9 Other—expense	71	71	71.
10 Restaurant and food service (ground):			
10.1 Gross revenues	48	48	48.
10.2 Depreciation expense	71	71	71.
10.3 Other expenses	71	71	71.
11 Rents:			
11.1 Gross revenues	48	48	48.
11.2 Depreciation expense	71	71	71.
11.3 Other expenses	71	71	71.
12 Limousine service:			
12.1 Gross revenues	48	48	48.
12.2 Depreciation expense	71	71	71.
12.3 Other expenses	71	71	71.
13 Interchange sales:			
13.1 Associated companies—gross revenues	48	48	48.
13.2 Outside—gross revenues	48	48	48.
13.3 Associated companies—depreciation expense	71	71	71.
13.4 Associated companies—other expense	71	71	71.
13.5 Outside—depreciation expense	71	71	71.
13.6 Outside—other expense	71	71	71.
14 General service sales:			
14.1 Associated companies—gross revenues	48	48	48.
14.2 Outside—gross revenues	48	48	48.
14.3 Associated companies—depreciation expense	71	71	71.
14.4 Associated companies—other expense	71	71	71.
14.5 Outside—depreciation expense	71	71	71.
14.6 Outside—other expense	71	71	71.
16 Substitute (replacement) service:			
16.1 Gross revenues	48	48	48.
16.2 Expense	71	71	71.
17 Air cargo service:			
17.1 Gross revenues	48	48	48.
17.2 Depreciation expense	71	71	71.
17.3 Other expense	71	71	71.
18 Other transport related items:			
18.1 Gross revenues	48	48	48.
18.2 Depreciation expense	71	71	71.
18.3 Other expense	71	71	71.
19 Other operating revenues:			
19.1 Reservations cancellation fees	31, 32	31, 32	31, 32.
19.9 Miscellaneous operating revenues	31, 32, 41	31, 32, 41	31, 32, 41.
Transport expenses:			
21 General management personnel	53, 69	53, 55, 64, 67, 68.	53, 55, 61, 62, 63, 65, 66, 68.
23 Pilots and copilots	51	51	51.

Objective classification of profit and loss elements	Functional or financial activity to which applicable (00)		
	Group I carriers	Group II carriers	Group III carriers
24 Other flight personnel	51, 69	51, 55	51, 55.
25 Maintenance labor:			
25.*1* Labor—airframes and other flight equipment		52	52.
25.*2* Labor—aircraft engines		52	52.
25.*6* Labor—flight equipment	52		
25.*9* Labor—ground property and equipment	52, 53	52, 53	52, 53.
26 Aircraft and traffic handling personnel	69		
26.*1* General aircraft and traffic handling personnel		64, 67	61, 62, 63, 65.
26.*2* Aircraft control personnel		64	61.
26.*3* Passenger handling personnel		64, 67	62, 65.
26.*4* Cargo handling personnel		64, 67	62, 65.
28 Trainees, instructors and unallocated shop labor:			
28.*1* Trainees and instructors	51, 53, 69	51, 53, 55, 64,67, 68.	51, 53, 55, 61, 62, 63, 65, 66, 68.
28.*2* Unallocated shop labor	53	53	53.
30 Communications personnel	53, 69	53, 55, 64, 67, 68.	53, 55, 61, 62, 63, 65, 66, 68.
31 Recordkeeping and statistical personnel	53, 69	53, 55, 64, 67, 68.	53, 55, 61, 62, 63, 65, 66, 68.
32 Lawyers and law clerks	69	68	68.
33 Traffic solicitors	69	67	65.
34 Purchasing personnel	53, 69	53, 68	53, 68.
35 Other personnel	53, 69	53, 55, 64, 67, 68.	53, 55, 61, 62, 63, 65, 66, 68.
36 Personnel expenses	51, 53, 69	51, 53, 55, 64, 67, 68.	51, 53, 55, 61, 62, 63, 65, 66, 68.
37 Communications purchased	53, 69	53, 55, 64, 67, 68.	53, 55, 61, 62, 63, 65, 66, 68.
38 Light, heat, power, and water	53, 69	53, 55, 64, 67, 68.	53, 55, 61, 62, 63, 65, 66, 68.
39 Traffic commissions	69		
39.*1* Commissions—passenger		67	65.
39.*2* Commissions—property		67	65.
40 Legal fees and expenses	69	68	68.
41 Professional and technical fees and expenses	51, 53, 69	51, 53, 55, 64, 67, 68.	51, 53, 55, 61, 62, 63, 65, 66, 68
43 General services purchased:			
43.*1* Airframe and other flight equipment repairs		52	52
43.*2* Aircraft engine repairs	52	52	
43.*6* Flight equipment repairs	52		
43.*7* Aircraft interchange charges	51, 52	51, 52	51, 52
43.*8* General interchange service charges	52, 69	52, 55, 64, 67, 68.	52, 55, 61, 62, 63, 65, 66, 68
43.*9* Other services	52, 53, 69	52, 53, 55, 64, 67, 68.	52, 53, 55, 61, 62, 63, 65, 66, 68
44 Landing fees	69	64	61.
45 Aircraft fuels and oils	51		
45.*1* Aircraft fuels		51	51.
45.*2* Aircraft oils		51	51.
46 Maintenance materials:			
46.*1* Airframes and other flight equipment		52	52
46.*2* Aircraft engines		52	52.
46.*6* Flight equipment	52		
46.*9* Ground property and equipment	52, 53	52, 53	52, 53.
47 Rentals	51, 53, 69	51, 53, 55, 64, 67, 68.	51, 53, 55, 61, 62, 63, 65, 66, 68.
49 Shop and servicing supplies	53, 69	53, 64	53, 61.
50 Stationery, printing, and office supplies	53, 69	53, 55, 64, 67, 68.	53, 55, 61, 62, 63, 65, 66, 68.
51 Passenger food expense	69	55	55.
53 Other supplies	51, 53, 69	51, 53, 55, 64, 67, 68.	51, 53, 55, 61, 62, 63, 65, 66, 68.
54 Inventory adjustments	53, 69	53, 55	53, 55.
55 Insurance—general	51, 53, 69	51, 53, 68	51, 53, 68.
56 Insurance—traffic liability	69	55, 64	55, 62.
57 Employee benefits and pensions	51, 53, 69	51, 53, 55, 64, 67, 68.	51, 53, 55, 61, 62, 63, 65, 66, 68.
58 Injuries, loss and damage	51, 53, 69	51, 53, 55, 64, 67, 68.	51, 53, 55, 61, 62, 63, 65, 66, 68.
59 Schedules and timetables	69	67	65, 66.
60 Advertising	69	67	66.

Objective classification of profit and loss elements	Functional or financial activity to which applicable (00)		
	Group I carriers	Group II carriers	Group III carriers
61 Foreign exchange gains and losses	69	68	68.
62 Other promotional and publicity expenses	69	67	66.
63 Interrupted trips expense	69	55	55.
64 Memberships	53, 69	53, 55, 64, 67, 68.	53, 55, 61, 62, 63, 65, 66, 68.
65 Corporate and fiscal expenses	69	68	68.
66 Uncollectible accounts	69	68	68.
67 Clearance, customs and duties	69	64	61, 62.
68 Taxes—payroll	51, 53, 69	51, 53, 55, 64, 67, 68.	51, 53, 55, 61, 62, 63, 65, 66, 68.
69 Taxes—other than payroll	51, 69	51, 68	51, 68.
71 Other expenses	51, 53, 69	51, 53, 55, 64, 67, 68.	51, 53, 55, 61, 62, 63, 65, 66 68.
72 Aircraft overhauls	52, 53	52, 53	52, 53.
72.1 Airworthiness allowance provisions—airframes	52, 53	52, 53	52, 53.
72.3 Airframe overhauls deferred	52, 53	52, 53	52, 53.
72.6 Airworthiness allowance provisions—aircraft engines	52, 53	52, 53	52, 53.
72.8 Aircraft engine overhauls deferred	52, 53	52, 53	52, 53.
73 Provisions for obsolescence and deterioration—expendable parts:			
73.1 Current provisions	70	70	70.
73.2 Inventory decline credits	70	70	70.
74 Amortizations:			
74.1 Developmental and preoperating expenses	70	70	70.
74.2 Other intangibles	70	70	70.
75 Depreciation:			
75.1 Airframes	70	70	70.
75.2 Aircraft engines	70	70	70.
75.3 Airframe parts	70	70	70.
75.4 Aircraft engine parts	70	70	70.
75.5 Other flight equipment	70	70	70.
75.6 Flight equipment	70	70	70.
75.8 Maintenance equipment and hangars	70	70	70.
75.9 General ground property	70	70	70.
76 Amortization expense, capital leases:			
76.1 Amortization—capitalized flight equipment	70	70	70
76.2 Amortization—capitalized other property and equipment	70	70	70
77 Uncleared expense credits:			
77.8 Uncleared interchange expense credits	53, 69	53, 55, 64, 67, 68.	53, 55, 61, 62, 63, 65, 66, 68.
77.9 Other uncleared expense credits	53, 69	53, 55, 64, 67, 68.	53, 55, 61, 62, 63, 65, 66, 68.
78 Direct maintenance—flight equipment	52	52	52.
79 Applied burden Dr/Cr:			
79.6 Flight equipment	52 Dr, 53 Cr	52 Dr, 53 Cr	52 Dr, 53 Cr.
79.8 General ground property	52 Dr, 53 Cr	52 Dr, 53 Cr	52 Dr, 53 Cr.
NONOPERATING INCOME AND EXPENSE			
81 Interest on long-term debt and capital leases:			
81.1 Interest expense, long-term debt	81	81	81
81.2 Interest expense, capital leases	81	81	81
82 Other interest:			
82.1 Interest expense, short-term debt	81	81	81
83.1 Imputed interest capitalized—credit	81	81	81
83.2 Imputed interest deferred—debit	81	81	81
83.3 Imputed interest deferred—credit	81	81	81
83.4 Interest capitalized—credit	81	81	81
84.1 Amortization of discount and expense on debt	81	81	81
84.2 Amortization of premium on debt	81	81	81
85 Foreign exchange gains and losse	81	81	81
89 Other nonoperating income and expense-net:			
80.0 Interest income	81	81	81
86.0 Income from nontransport ventures	81	81	81
87.0 Equity in income of investor controlled companies	81	81	81
88.1 Intercompany transaction adjustment-credit	81	81	81
88.2 Dividend income	81	81	81
88.3 Net unrealized gain or loss on marketable equity securities.	81	81	81.
88.4 Net realized gain or loss on marketable equity securities.	81	81	81.
88.5 Capital gains and losses—operating property	81	81	81.
88.6 Capital gains and losses—other	81	81	81.

Objective classification of profit and loss elements	Functional or financial activity to which applicable (00)		
	Group I carriers	Group II carriers	Group III carriers
88.*7* Unapplied cash discounts	81	81	81.
88.*9* Other miscellaneous nonoperating credits	81	81	81.
89.*1* Intercompany transaction adjustment—debit	81	81	81.
89.*9* Other miscellaneous nonoperating debits	81	81	81.
INCOME TAXES			
91 Provision for income taxes:			
91.*1* Income taxes before investment tax credits	91	91	91.
91.*2* Investment tax credits utilized	91	91	91.
92 Provisions for deferred income taxes:			
92.*1* Current provisions for deferred taxes	91	91	91.
92.*2* Application of deferred taxes	91	91	91.
92.*3* Adjustment of deferred taxes	91	91	91.
93 Investment tax credits deferred and amortized:			
93.*1* Investment tax credits deferred	91	91	91.
93.*2* Amortization of deferred investment tax credits	91	91	91.
94 Excess profits taxes	91	91	91.
DISCONTINUED OPERATIONS			
95 Discontinued operations:			
95.*1* Income from discontinued operations	96	96	96.
95.*2* Loss on disposal of discontinued operations	96	96	96.
EXTRAORDINARY ITEMS			
96 Extraordinary items	97	97	97.
97 Income taxes applicable to extraordinary items	97	97	97.
CHANGES IN ACCOUNTING PRINCIPLES			
98 Cumulative effects of change in accounting principles	98	98	98.

[ER–755, 37 FR 19726, Sept. 21, 1972, as amended by ER–781, 37 FR 25223, Nov. 29, 1972; 37 FR 28277, Dec. 22, 1972; ER–797, 38 FR 10926, May 3, 1973; ER–841, 39 FR 11995, Apr. 2, 1974; ER–948, 41 FR 12295, Mar. 25, 1976; ER–980, 42 FR 35, Jan. 3, 1977; ER–1013, 42 FR 37515, July 21, 1977; ER–1401, 50 FR 242, Jan. 3, 1985; Amdt. 241–56, 52 FR 9129, Mar. 23, 1987; Amdt. 241–58, 54 FR 5594, Feb. 6, 1989]

Section 8 General

(a) The profit and loss accounts are designed to reflect, through natural groupings, the elements entering into the derivation of income or loss accruing to the proprietary interests during each accounting period.

(b) The prescribed system of accounts provides for the co-ordinate grouping of all revenues and expenses in terms of both major natural objectives and functional activities and for subdivision of both to provide varying degrees of detail for air carriers of differing accounting capacities and/or requirements.

(c) The detailed objective accounts established for each air carrier group, by the dual subdivision of profit and loss elements in terms of both natural objectives and functional activities, are set forth in section 7, Chart of Profit and Loss Accounts.

(d) The prescribed system of accounts provides generally that profit and loss elements shall be grouped in accordance with their inherent characteristics within the following primary classifications:

(1) *Operating revenues.* (i) This primary classification shall include revenues of a character usually and ordinarily derived from the performance of air transportation and air transportation-related services, which relate to services performed during the current accounting year, and adjustments of a recurrent nature applicable to services performed in prior accounting years.

(ii) Operating revenues shall be subclassified in terms of functional activities as provided in section 9.

(2) *Operating expenses.* (i) This primary classification shall include expenses of a character usually and ordinarily incurred in the performance of air transportation and air transportation-related services, which relate to services performed during the current accounting year, and adjustments of a

recurring nature attributable to services performed in prior accounting years.

(ii) Operating expenses shall be subclassified in terms of functional activities as provided in sections 10 and 11.

(3) *Nonoperating income and expense—net.* This primary classification (8100) shall include income and loss incident to commercial ventures not inherently related to the performance of the common carrier air transport services of the accounting entity; other revenues and expenses attributable to financing or other activities which are extraneous to and not an integral part of air transportation or its incidental services; and special recurrent items of a nonperiod nature.

(4) *Income taxes for current period.* This primary classification (9100) shall include provisions for Federal, state, local, and foreign taxes which are based upon the net income of the air carrier for the current period together with refunds for excess profits credits or carryback of losses and increases or reductions of income taxes of prior years of a magnitude which will not distort net income of the current accounting year. Income taxes applicable to special income credits or debits recorded in profit and loss classification 9700 Extraordinary Items, and other material income tax items not allocable to income of the current accounting year, shall not be included in this classification but in profit and loss classification 9700 Extraordinary Items.

(5) *Discontinued operations.* This primary classification (9600) shall include earnings and losses of discontinued nontransport operations and gains or losses from the disposal of nontransport operations the result of which are customarily accounted for through profit and loss objective accounts 86, 87 and 88.2.

(6) *Extraordinary items.* This primary classification (9700) shall include material items characterized by their unusual nature and infrequent occurrence.

(7) *Cumulative effect of changes in accounting principles.* This primary classification (9800) shall include the cumulative effect of material changes in accounting principles.

[ER–755, 37 FR 19726, Sept. 21, 1972, as amended by ER–841, 39 FR 11997, Apr. 2, 1974; ER–980, 42 FR 36, Jan. 3, 1977, Amdt. 241–58, 54 FR 5594, Feb. 6, 1989]

Section 9 Functional Classification—Operating Revenues

3900 Transport Revenues.

This classification is prescribed for all air carrier groups and shall include all revenues from the air transportation of traffic of all classes. It shall consist of the following subclassifications:

3100 *Scheduled Services.*

This subclassification shall include revenues from the transportation by air of individual passengers or cargo shipments (as opposed to charter flights) pursuant to published schedules, including extra sections and other flights performed as an integral part of published flight schedules.

3200 *Nonscheduled Services.*

This subclassification shall include revenues from the transportation by air of traffic applicable to the performance of aircraft charters, and other air transportation services not part of services performed pursuant to published flight schedules (but shall not include data applicable to flights performed as extra sections to published flight schedules, which shall be reported in the subclassification 3100 Scheduled Services).

[ER–755, 37 FR 19726, Sept. 21, 1972, as amended by ER–1401, 50 FR 243, Jan. 3, 1985]

4800 Transport-Related Revenues.

(a) This classification is prescribed for all air carrier groups and shall include all revenues from the United States Government as direct grants or aids for providing air transportation facilities and all revenues from services which grow from and are incidental to the air transportation services performed by the air carrier.

(b) Revenues related to services of a magnitude or scope beyond an incidental adjunct to air transportation services shall not be included in this classification (see section 1–6(b)). Revenues applicable to such services shall be included in profit and loss classification 8100, Nonoperating Income and Expense-Net, and the accounting modified to conform with that of a nontransport

division whether or not the service is organized as a nontransport division.

[ER–841, 39 FR 11997, Apr. 2, 1974]

Section 10 Functional Classification—Operating Expenses of Group I Air Carriers

5100 Flying Operations.

(a) This function shall include expenses incurred directly in the in-flight operation of aircraft and expenses attaching to the holding of aircraft and aircraft operational personnel in readiness for assignment to an in-flight status.

(b) This function shall not include expenses incurred in repairing, servicing or storing aircraft, expenses incurred on the ground in protecting and controlling the inflight movement of aircraft, or the compensation of ground personnel and other expenses incurred in scheduling or preparing aircraft or aircraft operational personnel for flight assignment. Such expenses shall be included in function 5400 Maintenance or function 6900 General Services and Administration.

5400 Maintenance.

(a) This function shall include all expenses, both direct and indirect, specifically identifiable with the repair and upkeep of property and equipment as may be required to meet operating and safety standards; in inspecting or checking property and equipment in accordance with prescribed operational standards; and in polishing or cleaning property and equipment when such polishing or cleaning is not an incidental routine in connection with the normal productive use of property and equipment.

(b) This function shall include the cost of direct labor, materials, and outside services and maintenances overhead or other costs specifically associated with maintenance operations regardless of the location at which incurred.

(c) This function shall not include costs incurred in the construction, improvement, or modification of property and equipment even when necessitated to meet new or changed operating or safety standards. Such costs shall be charged to appropriate property and equipment accounts.

(d) Costs incurred by aircraft handling personnel in visual inspection, minor check and servicing of aircraft, while in line service, shall not be included in this function when performed as an incidental routine during the normal productive use of aircraft but shall be included in function 6900 General Services and Administration.

(e) Each Group I air carrier shall maintain the following subfunctions:

5200 *Direct Maintenance.*

a. This subfunction shall include the costs of labor, materials and outside services consumed directly in periodic maintenance operations and the maintenance and repair of property and equipment, of all types and classes, regardless of the location at which incurred, exclusive of costs specifically identified with maintenance property and equipment expenses in balance sheet accounts 1630 Equipment, 1639 Improvements to Leased Buildings and Equipment, and 1640.1 Maintenance Buildings and Improvements which shall be included in subfunction 5300 Maintenance Burden.

b. The cost of direct labor, materials and supplies, as well as outside repairs, used in the maintenance and repair of property and equipment shall be recorded on running job orders or tickets covering repairs and periodic inspections except servicing. Where a number of like items are maintained on a group basis, it will be necessary to maintain only one job order for each group.

c. When supervisory personnel such as crew chiefs, inspectors and foremen are engaged in direct labor in connection with equipment maintenance, a proportionate part of their salaries and wages shall be charged to the appropriate direct labor accounts. The cost of transporting property to and from shops for repair and maintenance shall be included as a part of the cost of the materials and supplies used in the repair or maintenance of such property and equipment. Transportation charges, customs and duties, etc.; shall be included in the cost of repairs and maintenance operations when made by outside parties.

5300 *Maintenance Burden.*

a. This subfunction shall include all overhead or general expenses which are specifically identified with activities involved in periodic maintenance operations and the maintenance and repair of property and equipment of all types and classes, including the cost of direct labor, materials and outside services identified with the maintenance and repair of maintenance property and

equipment included in balance sheet accounts 1630 Equipment, 1639 Improvements to Leased Buildings and Equipment, and 1604.1 Maintenance Buildings and Improvements. It shall include expenses specifically related to the administration of maintenance stocks and stores, the keeping of pertinent maintenance operations records, and the scheduling, controlling, planning and supervision of maintenance operations.

b. This subfunction shall not include expenses related to financial accounting, purchasing or other overhead activities which are of general applicability to all operating functions. Such expenses shall be included in function 6900 General Services and Administration.

c. This subfunction shall include only those expenses attributable to the current air transport operations of the air carrier. Maintenance burden associated with capital projects of the air carrier, other than overhauls of airframes and aircraft engines shall be allocated to such projects. Maintenance burden incurred in common with services to other companies and operating entities shall be allocated to such services on a pro rata basis unless the services are so infrequent in performance or small in volume as to result in no appreciable demands upon the air carrier's maintenance facilities. When overhauls of airframes or aircraft engines are as a consistent practice accounted for on an accrual basis instead of being expensed directly, maintenance burden shall be allocated to such overhauls on a pro rata basis. Standard burden rates may be employed for quarterly allocations of maintenance burden provided the rates are reviewed at the close of each calendar year. When the actual burden rate for the year differs materially from the standard burden rate applied, adjustment shall be made to reflect the actual cost incurred for the full accounting year. Allocations of maintenance burden to capital projects, and service sales to others shall be made through the individual maintenance burden objective accounts, except that the air carrier may make such allocations by credits to profit and loss account 77 Uncleared Expense Credits provided that use of that account will not undermine the significance of the individual maintenance burden objective accounts in terms of the expense levels associated with the air carrier's air transport services. Maintenance burden allocated to overhauls shall be credited to profit and loss subaccounts 5372.1 or 5372.6 Airworthiness Allowance Provisions.

[ER–755, 37 FR 19726, Sept. 21, 1972, as amended by ER–980, 42 FR 36, Jan. 3, 1977; ER–1027, 42 FR 60128, Nov. 25, 1977; ER–1188, 45 FR 48870, July 22, 1980; Amdt. 241–58, 54 FR 5595, Feb. 6, 1989]

6900 General Services and Administration.

This function shall include expenses incurred on the ground in controlling and protecting the in-flight movement of aircraft; landing, handling, or servicing aircraft on the ground; selling transportation; servicing and handling traffic of all classes; promoting the development of traffic; administering operations generally; and all other expenses not otherwise provided for in functions 5100 Flying Operations, 5400 Maintenance and 7000 Depreciation and Amortization.

7000 Depreciation and Amortization.

This function shall include all charges to expense to record losses suffered through current exhaustion of the serviceability of property and equipment due to wear and tear from use and the action of time and the elements, which are not replaced by current repairs, as well as losses in serviceability caused by obsolescence, supersession, discoveries, change in demand or actions by public authority. It shall also include charges for the amortization of capitalized developmental and preoperating costs, leased property under capital leases and other intangible assets applicable to the performance of air transportation. (See sections 6–1696, 1830 and 1890.)

[Amdt. 241–58, 54 FR 5595, Feb. 6, 1989]

7100 Transport-Related Expenses.

(a) This function shall include all expense items applicable to the generation of transport-related revenues included in section 9, Function 4800.

(b) Such expense related to services of a magnitude or scope beyond an incidental adjunct to air transportation services shall not be included in this function (see section 1–6(b)). Expenses applicable to the generation of such revenues shall be included in profit and loss classification 8100, Nonoperating Income and Expense-Net, and the accounting modified to conform with that of a nontransport division whether or not the service is organized as a nontransport division.

(c) This function shall also include expenses representing increases in costs incurred in common with the air

transport service, to the extent such increases result from the added transport-related services, as well as a pro rata share of the costs incurred by the air carrier in operating facilities which are used jointly with others. As a general rule, this function shall not include those expenses, other than joint facilities costs, which would remain as an essential part of the air transport services if the transport-related services were terminated.

[ER–841, 39 FR 11997, Apr. 2, 1974, as amended by ER–1401, 50 FR 243, Jan. 3, 1985]

Section 11 Functional Classification—Operating Expenses of Group II and Group III Air Carriers

5100 Flying Operations.

(a) This function shall include expenses incurred directly in the in-flight operation of aircraft and expenses attaching to the holding of aircraft and aircraft operational personnel in readiness for assignment to an in-flight status.

(b) This function shall not include expenses incurred in repairing, servicing or storing aircraft, expenses incurred on the ground in protecting and controlling the in-flight movement of aircraft, or compensation of ground personnel and other expenses incurred in scheduling or preparing aircraft or aircraft operational personnel for flight assignment. Such expenses shall be included in function 5400 Maintenance, or function 6400 Aircraft and Traffic Servicing.

5400 Maintenance.

(a) This function shall include all expenses, both direct and indirect, incurred in the repair and upkeep of property and equipment as may be required to meet operating and safety standards; in inspecting or checking property and equipment in accordance with prescribed operational standards; and in polishing or cleaning property and equipment when such polishing or cleaning is not an incidental routine in connection with the normal productive use of property and equipment.

(b) This function shall include the cost of direct labor, materials, and outside services and maintenance overhead or other costs associated with maintenance operations regardless of the location at which incurred.

(c) This function shall not include costs incurred in the construction, improvement, or modification of property and equipment even when necessitated to meet new or changed operating or safety standards. Such costs shall be charged to appropriate property and equipment accounts.

(d) Costs incurred by aircraft handling personnel in visual inspection, minor check and servicing of aircraft, while in line service, shall not be included in this function when performed as an incidental routine during the normal productive use of aircraft but shall be included in function 6400 Aircraft and Tariff Servicing.

(e) Both Group II air carriers and Group III air carriers shall maintain the following subfunctions:

5200 *Direct Maintenance.*

a. This subfunction shall include the costs of labor, materials and outside services consumed directly in periodic maintenance operations and the maintenance and repair of property and equipment of all types and classes, regardless of the location at which incurred, exclusive of maintenance property and equipment included in balance sheet accounts 1630 Equipment, 1639 Improvements to Leased Buildings and Equipment, and 1640.1 Maintenance Buildings and Improvements, which shall be included in subfunction 5300 Maintenance Burden.

b. The cost of direct labor, materials and supplies, as well as outside repairs, used in the maintenance and repair of property and equipment shall be recorded on running job orders or tickets covering repairs and periodic inspections except servicing. Where a number of like items are maintained on a group basis, it will be necessary to maintain only one job order for each group.

c. When supervisory personnel such as crew chiefs, inspectors and foremen are engaged in direct labor in connection with equipment maintenance, a proportionate part of their salaries and wages shall be charged to the appropriate direct labor accounts. The cost of transporting property to and from shops for repair and maintenance shall be included as a part of the cost of the materials and supplies used in the repair or maintenance of such property and equipment. Transportation charges, customs and duties, etc., shall be included in the cost of repairs and maintenance operations when made by outside parties.

5300 *Maintenance Burden.*

a. This subfunction shall include all overhead or general expenses used directly in the activities involved in periodic maintenance operations and the maintenance and repair of property and equipment of all types and classes, including the cost of direct labor, materials and outside services used in the maintenance and repair of maintenance property and equipment included in balance sheet accounts 1630 Equipment, 1639 Improvements to Leased Buildings and Equipment, and 1640.1 Maintenance Buildings and Improvements. It shall include expenses related to the administration of maintenance stocks and stores, the keeping of pertinent maintenance operation records, and the scheduling, controlling, planning and supervision of maintenance operations.

b. This subfunction shall not include expenses related to financial accounting, purchasing or other overhead activities which are of general applicability to all operating functions. Such expenses shall be included in function 6800 General and Administrative.

c. This subfunction shall include only those expenses attributable to the current air transport operations of the air carrier. Maintenance burden associated with capital projects of the air carrier, other than overhauls of airframes and aircraft engines, shall be allocated to such projects. Maintenance burden incurred in common with services to other companies and operating entities shall be allocated to such services on a pro rata basis unless the services are so infrequent in performance or small in volume as to result in no appreciable demands upon the air carrier's maintenance facilities. When overhauls of airframes or aircraft engines are as a consistent practice accounted for on an accrual basis instead of being expensed directly, maintenance burden shall be allocated to such overhauls on a pro rata basis. Standard burden rates may be employed for quarterly allocations of maintenance burden provided the rates are reviewed at the close of each calendar year. When the actual burden rate for the year differs materially from the standard burden rate applied, adjustment shall be made to reflect the actual costs incurred for the full accounting year. Allocations of maintenance burden to capital projects, and service sales to others shall be made through the individual maintenance burden objective accounts, except that the air carrier may make such allocations by credits to profit and loss account 77 Uncleared Expense Credits under such circumstances in which the use of that account will not undermine the significance of the individual maintenance burden objective accounts in terms of the expense levels associated with the air carrier's air transport services. Maintenance burden allocated to overhauls shall be credited to profit and loss subaccounts 5372.1 or 5372.6 Airworthiness Allowance Provisions.

[ER–755, 37 FR 19726, Sept. 21, 1972, as amended by ER–980, 42 FR 36, Jan. 3, 1977; ER–1401, 50 FR 244, Jan. 3, 1985; Amdt. 241–58, 54 FR 5595, Feb. 6, 1989]

5500 Passenger Service.

This function shall include all expenses chargeable directly to activities contributing to the comfort, safety and convenience of passengers while in flight and when flights are interrupted. It shall not include expenses incurred in enplaning or deplaning passengers, or in securing and selling passenger transportation and caring for passengers prior to entering a flight status. Such expenses shall be included in functions 6400 Aircraft and Traffic Servicing and 6700 Promotion and Sales, respectively.

6400 Aircraft and Traffic Servicing.

(a) This function shall include the compensation of ground personnel and other expenses incurred on the ground incident to the protection and control of the in-flight movement of aircraft, scheduling and preparing aircraft operational crews for flight assignment, handling and servicing aircraft while in line operation, servicing and handling traffic on the ground, subsequent to the issuance of documents establishing the air carrier's responsibility to provide air transportation, and in-flight expenses of handling and protecting all nonpassenger traffic including passenger baggage.

(b) This function shall include only those aircraft servicing and cleaning expenses which are incurred as an incidental routine during the normal productive use of aircraft in line operations. It shall not include expenses incurred in the repair and maintenance of property and equipment, or in checking or inspecting property and equipment in accordance with prescribed operational standards when such activities are not an incidental routine during the normal productive use of aircraft. Such expenses shall be included in function 5400 Maintenance.

(c) This function shall not include expenses incurred in securing traffic, arranging aircraft space for traffic sold or in issuing documents confirming

traffic sales and establishing the air carrier's responsibilities to provide air transportation. Such expenses shall be included in function 6700 Promotion and Sales. However, for purposes of this system of accounts, expenses attributable to the operation of airport traffic offices, excluding reservation centers, shall be included in this function. Expenses attributable to the operation of reservation or aircraft space control centers shall be included in function 6700 Promotion and Sales regardless of the location at which incurred.

(d) Group III air carriers shall further subdivide this function as follows:

6100 *Aircraft Servicing.*

a. This subfunction shall include the compensation of ground personnel and other expenses incurred on the ground incident to the protection and control of the in-flight movement of aircraft; scheduling or preparing aircraft operational crews for flight assignment; landing and parking aircraft; visual inspection, routine checking, servicing and fueling of aircraft; and other expenses incurred on the ground incident to readying for arrival and takeoff of aircraft.

6200 *Traffic Servicing.*

a. This subfunction shall include the compensation of ground personnel and other expenses incurred on the ground incident to handling traffic of all types and classes on the ground subsequent to the issuance of documents establishing the air carrier's responsibility to provide air transportation. Expenses attributable to the operation of airport traffic offices shall also be included in this subfunction; expenses attributable to reservations centers shall be excluded. It shall include expenses incurred in both enplaning and deplaning traffic as well as expenses incurred in preparation for enplanement and all expenses subsequent to deplanement.

b. This subfunction shall also include costs incurred in handling and protecting all nonpassenger traffic while in flight. It shall not include expenses incurred in contributing to the comfort, safety and convenience of passengers while in flight or when flights are interrupted. Such expenses shall be included in function 5500 Passenger Service.

6300 *Servicing Administration.*

a. This subfunction shall include expenses of a general nature incurred in performing supervisory or administrative activities relating solely and in common to subfunctions 6100 Aircraft Servicing and 6200 Traffic Servicing.

b. This subfunction shall not include supervisory or administrative expenses which can be charged directly to subfunction 6100 Aircraft Servicing or subfunction 6200 Traffic Servicing. Nor shall this subfunction include expenses of a general administrative character and of significant amount regularly contributing to operating functions generally. Such expenses shall be included in function 6800 General and Administrative.

c. The expenses in this subfunction shall be recorded separately for each geographic location at which incurred.

6700 Promotion and Sales.

(a) This function shall include expenses incurred in creating public preference for the air carrier and its services; stimulating the development of the air transport market; and promoting the air carrier or developing air transportation generally.

(b) It shall also include the compensation of personnel and other expenses incident to documenting sales; expenses incident to controlling and arranging or confirming aircraft space for traffic sold; expenses incurred in direct sales solicitation and selling of aircraft space; and expenses incurred in developing tariffs and schedules for publication.

(c) This function shall not include expenses incurred in handling traffic subsequent to the issuance of documents establishing the air carrier's responsibility to provide air transportation which shall be included in functions 5500 Passenger Service and 6400 Aircraft and Traffic Servicing. However, for purposes of this system of accounts, expenses attributable to the operation of airport traffic offices, excluding reservation centers, shall be included in function 6400 Aircraft and Traffic Servicing. Expenses attributable to the operation of reservation or aircraft space control centers shall be included in function 6700 Promotion and Sales regardless of the location at which incurred.

(d) Group III air carriers shall subdivide this function as follows:

6500 *Reservations and Sales.*

This subfunction shall include expenses incident to direct sales solicitation, documenting sales, controlling and arranging or confirming aircraft space sold, and in developing tariffs and schedules for publication. It shall also include expenses attributable to

the operation of city traffic offices. Expenses incurred in stimulating traffic and promoting the air carrier or air transportation generally shall not be included in this subfunction but in subfunction 6600 Advertising and Publicity.

6600 *Advertising and Publicity.*

a. This subfunction shall include expenses incurred in creating public preference for the air carrier and its services; stimulating development of the air transport market; and promoting the air carrier or developing air transportation generally.

b. This subfunction shall not include expenses incurred in direct sales solicitation and selling of aircraft space. Such costs shall be included in subfunction 6500 Reservations and Sales.

6800 General and Administrative.

(a) This function shall include expenses of a general corporate nature and expenses incurred in performing activities which contribute to more than a single operating function such as general financial accounting activities, purchasing activities, representation at law, and other general operational administration, which are not directly applicable to a particular function.

(b) This function shall not include expenses incurred directly in promoting traffic or in promoting relations of the air carrier generally with the public which shall be included in function 6700 Promotion and Sales. Nor shall this function include expenses, regularly applicable in large part to a specific function, which contribute only incidentally, or in small amount, to various other functions. Such expenses when of such size as will not distort the function to which predominantly related, shall be included in the specific function to which regularly related. However, expenses of a general administrative character and of significant amount regularly contributing to operating functions generally shall be included in this function.

7000 Depreciation and Amortization.

This function shall include all charges to expense to record losses suffered through current exhaustion of the serviceability of property and equipment due to wear and tear from use and the action of time and the elements, which are not replaced by current repairs, as well as losses in serviceability occasioned by obsolescence, supersession, discoveries, change in popular demand or action by public authority. It shall also include charges for the amortization of capitalized developmental and preoperating costs, leased property under capital leases, and other intangible assets applicable to the performance of air transportation. (See sections 6–1696, 1830 and 1890.)

[Amdt. 241–58, 54 FR 5595, Feb. 6, 1989]

7100 Transport-Related Expenses.

(a) This function shall include all expense items applicable to the generation of transport-related revenues included in section 9, Function 4800.

(b) Such expense related to services of a magnitude or scope beyond an incidental adjunct to air transportation services shall not be included in this function (see section 1–6(b)). Expenses applicable to the generation of such revenues shall be included in profit and loss classification 8100, Nonoperating Income and Expense-Net, and the accounting modified to conform with that of a nontransport division whether or not the service is organized as a nontransport division.

(c) This function shall also include expenses representing increases in costs incurred in common with the air transport service, to the extent such increases result from the added transport-related services, as well as a pro rata share of the costs incurred by the air carrier in operating facilities which are used jointly with others. As a general rule, this function shall not include those expenses, other than joint facilities, costs, which would remain as an essential part of the air transport services if the transport-related services were terminated.

[ER–841, 39 FR 11997, Apr. 2, 1974, as amended by ER–1401, 50 FR 244, Jan. 3, 1985]

Section 12 Objective Classification—Operating Revenues and Expenses

00 General Instructions.

(a) Basic objective accounts, applicable to all air carrier groups, are established for recording all revenue and expense elements. These basic accounts

are in certain areas subdivided to provide greater detail for indicated air carrier groups.

(b) Each air carrier shall credit the gross revenues accruing from services ordinarily associated with air transportation and transportation-related services to the appropriate account established for each revenue source. Expenses incident to transport and transport-related services shall be charged to the accounts established in this section in accordance with the objectives served by each expenditure. However, direct costs of forwarding traffic as a result of interrupted trips, and refunds of sales, shall be charged to the applicable revenue account.

(c) To the end that the integrity of the prescribed objective accounts shall not be impaired, each air carrier shall:

(1) Charge the appropriate account prescribed for each service purchased or expense element incurred expressly for the benefit of the air carrier regardless of whether incurred directly by the air carrier or through an agent or other intermediary, and (2) except as provided in objective account 77, Uncleared Expense Credits, credit or charge, as appropriate, the account prescribed for each expense element which may be involved in distributions of expenses between (i) separate operating entities of the air carrier, (ii) transport-related services and transport services, or transport functions, (iii) balance sheet and profit and loss elements, and (iv) the air carrier and others, when the expenses are incurred initially by or for the benefit of the air carrier. At the option of the air carrier, standard rates applicable to each objective account comprising a particular pool of expenses subject to assignment between two or more activities, may be established for proration purposes, provided the rates established are predicated upon the experience of the air carrier and are reviewed and modified as appropriate at least once each year.

TRANSPORT REVENUES

01 Passenger.

(a) Record here revenue from the transportation of passengers by air, including infants transported at reduced fares, berth charges, surcharges for premium services and other similar charges. Revenue from airline employees, officers and directors, or other persons, except for ministers of religion, who are traveling under reduced-rate transportation authorized by 49 U.S.C. 41511(a) and 14 CFR part 223, as well as revenue from travel agents, cargo agents and tour conductors traveling at reduced fares, and revenues from service charges for passengers traveling on a nonrevenue basis shall be recorded in objective account 19 Air Transport—Other.

(b) This account shall be subdivided as follows by all air carrier groups:

01.1 *Passenger—First Class.*

Record here revenue from the air transportation of passengers moving at either standard fares or premium fares, or at reduced fares not predicated upon the use of aircraft space specifically separated from first class, and for whom standard or premium quality services are provided.

01.2 *Passenger—Coach.*

Record here revenue from the air transportation of passengers moving at special fares reduced from the first class or premium fares which are predicated upon both the operation of specifically designated aircraft space and a reduction in the quality of service regularly and ordinarily provided.

[ER–755, 37 FR 19726, Sept. 21, 1972, as amended by ER–980, 42 FR 36, Jan. 3, 1977; 60 FR 66723, Dec. 26, 1995]

05 Mail.

(a) Record here revenue from the transportation by air of both United States and foreign mail.

(b) Fines and penalties imposed by the United States Government and foreign governments in connection with the carriage of mail shall not be charged to this account but to profit and loss account 89.9 Other Miscellaneous Nonoperating Debits.

(c) This account shall be subdivided as follows by all air carrier groups:

05.1 *Priority.*

Record here revenue from United States mail for which transportation by air is provided on a priority basis.

05.2 *Nonpriority.*

Record here revenue from United States mail for which transportation by air is provided on a space available basis.

05.3 *Foreign.*

Record here revenue from the transportation by air of mail other than United States mail.

[ER–980, 42 FR 36, Jan. 3, 1977, as amended by Amdt. 241–58, 54 FR 5595, Feb. 6, 1989]

06 Property.

(a) Record here revenue from the transportation by air of property including excess passenger baggage.

(b) Revenues resulting from services incidental to the transportation services such as collection of shipper's interest insurance premiums and charges and fees for service such as pick-up and delivery, assembly and distribution, storage and handling, and C.O.D. collection shall not be credited to this account but to profit and loss account 17 Air Cargo Services.

(c) This account shall be subdivided as follows by all air carrier groups:

06.1 *Freight.*

Record here revenue from the transportation by air of property other than passenger baggage.

06.2 *Excess Passenger Baggage.*

Record here revenue from the transportation by air of passener baggage in excess of fixed free allowance.

[ER–755, 37 FR 19726, Sept. 21, 1972, as amended by ER–1401, 50 FR 244, Jan. 3, 1985]

07 Charter.

(a) Record here the revenue from nonscheduled air transport services (except as otherwise required by profit and loss Account 86 Income from Non-transport Ventures) where the party receiving the transportation obtains exclusive use of an aircraft at either published tariff or other contractual rates and the remuneration paid by the party receiving transportation accrues directly to, and the responsibility for providing transportation is that of, the accounting air carrier. This account shall also include revenues from air transport services other than inter-airport services, whether scheduled or nonscheduled, where each passenger or shipment receiving transportation is individually documented and does not obtain exclusive use of an aircraft.

(b) This account shall not include revenues or fees received from other air carriers for flight facilities furnished or operated by the accounting air carrier where the remuneration paid by the party receiving transportation accrues directly to, and the responsibility for providing transportation is that of other air carriers. Such revenues and related expenses shall be included in profit and loss accounts 11, Rents; 13, Interchange Sales; or 18, Other Transport-Related Revenues and Expenses.

(c) This account shall be subdivided as follows by all air carrier groups:

07.1 *Passenger.*

Record here revenue from the transportation of passengers and their personal baggage.

07.2 *Property.*

Record here revenue from the transportation of property.

[ER–755, 37 FR 19726, Sept. 21, 1972, as amended by ER–980, 42 FR 37, Jan. 3, 1977; ER–1401, 50 FR 244, Jan. 3, 1985]

TRANSPORT RELATED REVENUES AND EXPENSES

08 Public Service Revenues (Subsidy).

Record here amounts of compensation received pursuant to the provisions of 49 U.S.C. 41733 under rates established by the Department of Transportation for the provision of essential air service to small communities.

[Amdt. 241–58, 54 FR 5595, Feb. 6, 1989, as amended at 60 FR 66723, Dec. 26, 1995]

09 In-Flight Sales.

(a) Record here revenues from and expenses related to transport-related services performed while in flight.

(b) This account shall be subdivided as follows by all air carrier groups:

09.1 *Liquor and food—gross revenues.*

09.2 *Movies and stereo—gross revenues.*

09.3 *Other—gross revenues.*

09.4 *Liquor and food—depreciation expense.*

09.5 *Liquor and food—other expense.*

09.6 *Movies and stereo—depreciation expense.*

09.7 *Movies and stereo—other expense.*

09.8 *Other—depreciation expense.*

09.9 *Other—expense.*

10 Restaurant and Food Service (Ground).

(a) Record here revenues from and expenses related to the operation of restaurants and similar facilities, and from sales of food. (See section 12–51.)

(b) This account shall be subdivided as follows by all air carrier groups.

10.1 *Gross revenues.*

10.2 *Depreciation expense.*

10.3 *Other expense.*

11 Rents.

(a) Record here revenues from and expenses related to property and equipment owned or leased which has been rented or subleased to others exclusive of associated companies. This account shall not include fees from the use by others of air carrier aircraft under aircraft interchange agreements.

(b) This account shall be subdivided as follows by all air carrier groups:

11.1 *Gross Revenues.*

11.2 *Depreciation Expense.*

11.3 *Other Expenses.*

12 Limousine Service.

(a) Record here revenues from and expenses related to the operation of passenger limousine surface transportation services.

(b) This account shall be subdivided as follows by all air carrier groups:

12.1 *Gross Revenues.*

12.2 *Depreciation Expense.*

12.3 *Other Expenses.*

13 Interchange Sales.

(a) Record here the revenues or fees from and the expenses related to services provided associated companies and other than associated companies by the air carrier under aircraft interchange agreements. This account shall be charged and the applicable operating expense objective accounts shall be credited, except as provided in operating expense objective account 77, Uncleared Expense Credits, with the expenses attaching to services provided all companies under aircraft interchange agreements.

(b) This account shall not include revenues or expenses related to air transportation services performed in the name of and for the account of the accounting air carrier. Such revenues shall be included in applicable transport revenue and operating expense objective accounts.

(c) This account shall be subdivided as follows by all air carrier groups:

13.1 *Associated companies—gross revenues.*

13.2 *Outside—gross revenues.*

13.3 *Associated companies—depreciation expense.*

13.4 *Associated companies—other expense.*

13.5 *Outside—depreciation expense.*

13.6 *Outside—other expense.*

14 General Service Sales.

(a) Record here the revenues, commissions or fees from and expenses related to other than air transportation and aircraft interchange services provided to associated and outside companies by the air carrier. This account shall include the contractual fees or other revenues from and expenses related to services provided to associated and other companies in the operation of facilities which are used jointly with associated and other companies as well as revenues from and the costs related to the sale of supplies, parts and repairs sold directly or furnished as a part of services to associated and other companies.

(b) This account shall not include consideration received from sales of property, equipment, materials or supplies when disposed of as a part of a program involving retirement of property and equipment as opposed to routine sales and services to associated and other companies unless such disposition is conducted as a normal part of the incidental sales activity. Such retirement gain or loss shall be included in capital gains and losses accounts. Maintenance parts, materials or supplies sold as a service to others shall be charged to this account at cost without adjustment of related obsolescence or depreciation allowances.

(c) This account shall be subdivided as follows by all air carrier groups:

14.1 *Associated companies—gross revenues.*

14.2 *Outside—gross revenues.*

14.3 *Associated companies—depreciation expense.*

14.4 *Associated companies—other expense.*

14.5 *Outside—depreciation expense.*

14.6 *Outside—other expense.*

[ER–755, 37 FR 19726, Sept. 21, 1972, as amended by ER–980, 42 FR 37, Jan. 3, 1977]

16 Substitute (replacement) Service.

(a) Record here revenues from and expenses related to substitute service. This account shall include as revenues all monies received from substitute carriers and as expense all monies paid to substitute carriers.

(b) This account shall be subdivided as follows by all air carrier groups:

16.1 *Gross revenue.*

16.2 *Expense.*

17 Air Cargo Services.

(a) Record here fees and other revenues from and expenses related to incidental services performed in connection with cargo shipments such as pickup and delivery fees, shipper's interest insurance charges, storage and handling fees, etc.

(b) This account shall be subdivided as follows by all air carrier groups:

17.1 *Gross Revenues.*

17.2 *Depreciation Expense.*

17.3 *Other Expenses.*

18 Other Transport-Related Revenues and Expenses.

(a) Record here revenues from and expenses related to transport-related services not provided for in profit and loss accounts 10 through 17, inclusive, such as revenues and expenses incident to the operation of flight facilities by the accounting air carrier, except those operated under aircraft interchange agreements, where the remuneration paid by the party receiving transportation accrues directly to, and the responsibility for providing transportation is that of, other air carriers; and the revenues and expenses incident to vending machines, parcel rooms, storage facilities, etc.

(b) [Reserved]

(c) Revenues from the renting or leasing of property and equipment to others shall not be included in this account but in profit and loss account 11 Rents.

(d) This account shall be subdivided as follows by all air carrier groups:

18.1 *Gross Revenues.*

18.2 *Depreciation Expense.*

18.3 *Other Expenses.*

19 Air Transport—Other.

(a) Record here revenues associated with air transportation conducted by the air carrier, not provided for in profit and loss accounts 01 through 09, inclusive, such as revenue from (1) airline employees, officers and directors, or other persons, except for ministers of religion, who are traveling under reduced-rate transportation authorized by 49 U.S.C. 41511(a) and 14 CFR part 223, as well as travel agents, cargo agents and tour conductors traveling at reduced fares, (2) service charges for failure to cancel or for late cancellation of air transportation reservations, and (3) nontransportation service charges collected on both revenue and nonrevenue flights.

(b) Revenues derived from sightseeing, aerial photography, advertising, or other special flights shall not

be included in this account but in account 07 Charter.

(c) This account shall be subdivided as follows by all air carrier groups:

19.1 *Reservations Cancellation Fees.*

19.9 *Miscellaneous Operating Revenue.*

[ER–755, 37 FR 19726, Sept. 21, 1972, as amended by ER–820, 38 FR 24352, Sept. 7, 1973; ER–841, 39 FR 11997, Apr. 2, 1974; ER–980, 42 FR 37, Jan. 3, 1977; 60 FR 66723, Dec. 26, 1995]

TRANSPORT EXPENSES

20 General Instructions.

(a) Each element of expense ordinarily associated with air transportation services shall be charged to the accounts established in this section in accordance with the objectives served by each expenditure. Basic objective accounts, applicable to all air carrier groups, are established for recording all expense elements. These basic accounts are in certain areas subdivided to provide greater detail for indicated air carrier groups.

(b) To the end that the integrity of the prescribed objective accounts shall not be impaired, each air carrier shall:

(1) Charge the appropriate account prescribed for each service purchased or expense element incurred expressly for the benefit of the air carrier regardless of whether incurred directly by the air carrier or through an agent or other intermediary, and (2) except as provided in objective account 77 Uncleared Expense Credits, credit or charge, as appropriate, the account prescribed for each expense element which may be involved in distributions of expenses between (i) separate operating entities of the air carrier, (ii) incidental and transport services or transport functions, (iii) balance sheet and profit and loss elements and (iv) the air carrier and others, when the expenses are incurred initially by or for the benefit of the air carrier. At the option of the air carrier, standard rates applicable to each objective account comprising a particular pool of expenses subject to assignment between two or more activities, may be established for proration purposes, provided the rates established are predicated upon the experience of the air carrier and are reviewed and modified as appropriate at least once each year.

21 General Management Personnel.

Record here the compensation, including vacation and sick leave pay, of general officers and supervisors, and immediate assistants regardless of locality at which based, responsible for an activity not provided for in profit and loss accounts 25 through 35, inclusive, or an activity involving two or more such accounts.

23 Pilots and Copilots.

Record here the compensation, including vacation and sick leave pay, of pilots and copilots assigned or held inactive awaiting assignment to flight duty.

24 Other Flight Personnel.

Record here the compensation, including vacation and sick leave pay, of other flight personnel assigned or held inactive awaiting assignment to flight status, not responsible for the in-flight management of aircraft, such as engineers, navigation officers and cabin attendants.

25 Maintenance Labor.

(a) Record here the compensation for time of personnel spent directly on specific property and equipment maintenance projects. (See sections 10 and 11–5200.) Vacation and sick leave pay shall be charged to profit and loss account 28 Trainees, Instructors and Unallocated Shop Labor.

(b) This account shall be subdivided as follows:

GROUP II AND GROUP III AIR CARRIERS

25.1 *Labor—Airframes and Other Flight Equipment.*

Record here the direct labor expended upon airframes, spare parts related to airframes, and other flight equipment (Other than aircraft engines and spare parts related to aircraft engines). Other flight equipment shall include instruments, which encompass all gauges, meters, measuring devices, and indicators, together with appurtenances thereto for installation in aircraft and aircraft engines which are maintaned separately from airframes and aircraft engines.

25.2 *Labor—Aircraft Engines.*

Record here the direct labor expended upon aircraft engines and spare parts related to aircraft engines.

GROUP I AIR CARRIERS

25.6 *Labor—Flight Equipment.*

Record here the direct labor expended upon flight equipment of all types and classes.

ALL AIR CARRIER GROUPS

25.9 *Labor—Ground Property and Equipment.*

Record here the direct labor expended upon ground property and equipment of all types and classes. Direct labor expended upon general ground properties shall be charged to subfunction 5200 Direct Maintenance; and direct labor expended upon maintenance buildings and equipment shall be charged to subfunction 5300 Maintenance Burden.

[ER–755, 37 FR 19726, Sept. 21, 1972, as amended by ER–1401, 50 FR 244, Jan. 3, 1985]

26 Aircraft and Traffic Handling Personnel.

(a) Record here the compensation, including vacation and sick leave pay, of personnel of all types and classes, including direct supervisory personnel, assigned to ground activities, engaged directly in protecting and controlling aircraft in flight, scheduling and preparing flight crews for flight assignment, parking and servicing aircraft incidental to line operations, and of personnel of all types and classes engaged in servicing and handling traffic of all types and classes on the ground.

(b) This account shall be subdivided as follows by Group II and Group III air carriers:

26.1 *General Aircraft and Traffic Handling Personnel.*

Record here compensation of personnel handling or controlling aircraft and generally servicing or handling traffic of all types and classes whose activities are not identifiable with the particular activities provided for in subaccounts 26.2, 26.3, or 26.4, inclusive.

26.2 *Aircraft Control Personnel.*

Record here compensation of personnel whose activities are identifiable with the protection and control of aircraft in flight and in scheduling or preparing flight crews for flight assignment.

26.3 *Passenger Handling Personnel.*

Record here compensation of personnel whose activities are identifiable with the handling of passengers.

26.4 *Cargo Handling Personnel.*

Record here compensation of personnel whose activities are identifiable with the handling of passenger baggage, mail, express, or freight.

28 Trainees, Instructors, and Unallocated Shop Labor.

(a) Record here the compensation, including vacation and sick leave pay, of instructors and personnel in an off-the-job training status; direct maintenance personnel compensation not assigned to specific projects; and vacation or sick leave pay of direct maintenance personnel.

(b) This account shall be subdivided as follows by all air carrier groups:

28.1 *Trainees and Instructors.*

Record here the compensation of instructors and personnel in a training status.

28.2 *Unallocated Shop Labor.*

Record here the pay of direct maintenance personnel which has not been assigned to profit and loss account 25 Maintenance Labor for time spent on specific maintenance projects, and vacation or sick leave pay of direct maintenance personnel.

30 Communications Personnel.

Record here the compensation, including vacation and sick leave pay, of personnel of all types and classes, including direct supervisory personnel, engaged in local, interstation, or groundair communication activities. This account shall include compensation of personnel such as radio operators, telephone operators, switchboard operators, teletype operators, messengers, etc.

31 Recordkeeping and Statistical Personnel.

Record here the compensation, including vacation and sick leave pay, of personnel including supervisory personnel, whose primary duties relate to maintaining records or conducting economic or other analyses required for general management controls, such as accountants, economists, statisticians, maintenance record clerks, stores

record clerks, stores receiving and issuing clerks and file clerks. The account shall not include personnel engaged in documentation or other activities constituting an integral part of activities encompassed by other objective accounts.

32 Lawyers and Law Clerks.

Record here the compensation, including vacation and sick leave pay, of air carrier personnel engaged in law research or representing the air carrier in matters of law.

33 Traffic Solicitors.

Record here the compensation, including vacation and sick leave pay, of personnel engaged directly in solicitation of traffic of all types and classes. This account shall not include compensation of traffic office personel engaged in soliciting activities incidental to the documenting of sales and assigning aircraft space which shall be included in profit and loss account 26 Aircraft and Traffic Handling Personnel.

34 Purchasing Personnel.

(a) Record here the compensation, including vacation and sick leave pay, of personnel, including direct supervisory personnel, engaged in purchasing activities.

(b) This account shall include compensation of personnel engaged in maintaining purchasing records but shall not include compensation of personnel responsible for the control of inventories or stores which shall be included in objective account 31 Record Keeping and Statistical Personnel. In cases where the responsibility for maintaining purchasing and stores records are inseparable, the related compensation may be accounted for in accordance with dominant responsibilities.

35 Other Personnel.

Record here the compensation, including vacation and sick leave pay, of personnel whose activities are not identifiable with activities provided for in profit and loss accounts 21 through 34, inclusive.

36 Personnel Expenses.

(a) Record here expenses incurred by officers, executives, directors and other personnel, whether for the benefit of the air carrier or for the private benefit of such persons, which are directly or indirectly borne by the air carrier.

(b) This account shall include allowances in lieu of expenses as well as expenses incurred for travel, lodgings, meals, entertainment of individuals or groups of individuals, and membership fees and dues in professional or social clubs and associations.

(c) Records shall be maintained in a conveniently accessible form which will separately and clearly document each charge to this account in terms of its natural characteristics and contribution to the performance of the air carrier's transport operations. The records shall be maintained in such manner as will identify specifically the persons incurring the cost. Costs for standby hotel or other facilities maintained for the air carrier's personnel generally need not be allocated among the individuals using such facilities; however, sufficiently detailed records are required to identify the use made of such facilities by each individual.

[ER–755, 37 FR 19726, Sept. 21, 1972, as amended by ER–948, 41 FR 12295, Mar. 25, 1976]

37 Communications Purchased.

Record here expenses, including related taxes, incurred for rental of communication services and for communication services of all types and classes not provided by personnel of the air carrier, such as telegraph, telephone, teletype, private line services, and charges for communication services from organizations operated jointly with associated companies or others.

38 Light, Heat, Power and Water.

Record here charges related to the provision of light, heat, power and water including related taxes.

39 Traffic Commissions.

(a) Record here charges by others, including associated companies, for commissions arising from sales of transportation. Commissions, fees or other charges incurred for general agency services, as opposed to commissions

arising from sales of transportation, shall not be included in this account but in profit and loss account 43 General Services Purchased.

(b) This account shall be subdivided as follows by Group II and Group III air carriers.

39.1 *Commissions—Passenger.*

Record here charges for commissions arising from sales of passenger transportation.

39.2 *Commissions—Property.*

Record here charges for commissions arising from sales of nonpassenger transportation.

40 Legal Fees and Expenses.

Record here expenditures incurred for legal services by counsel retained on a fee basis and related expenses reimbursed or borne directly by the air carrier and other expenses incurred directly by the air carrier for legal supplies not obtainable from the air carrier's general stationery stock. This account shall not be charged with legal fees or expenses incurred in connection with claims occasioned by accidents or other casualties. Such charges shall be accumulated in balance sheet account 1890 Other Assets and cleared to profit and loss account 58 Injuries, Loss and Damage upon settlement of insurance claims. Nor should this account include fees or expenses related to developmental projects. Such expenses shall be included, as appropriate, in profit and loss account 89.9 Other Miscellaneous Nonoperating Debits or balance sheet account 1830 Unamortized Developmental and Preoperating Costs.

[ER–980, 42 FR 37, Jan. 3, 1977]

41 Professional and Technical Fees and Expenses.

Record here fees and expenses, other than legal fees and expenses, incurred for outside professional and technical services which are reimbursed or borne directly by the air carrier. This account shall not include fees or expenses related to developmental projects. Such expenses shall be included, as appropriate, in profit and loss account 89.9 Other Miscellaneous Nonoperating Debits or balance sheet account 1830 Unamortized Developmental and Preoperating Costs.

[ER–980, 42 FR 37, Jan. 3, 1977]

43 General Services Purchased.

(a) Record here charges for services performed for the air carrier by outside and associated companies which are not identifiable with services provided for in profit and loss accounts 37 through 41, inclusive, or which are not expressly identified with other objective expense accounts.

(b) Charges from outside and associated companies for services provided the air carrier under aircraft interchange agreements or other agreements embracing a complete activity or service, such as the operating of jointly used ground facilities, shall be included in this account for each operating function to which the services contribute. Charges for providing aircraft capacity, including charges for depreciation and interest on the capital related to the flight equipment provided, shall be included in function 5100 Flying Operations.

(c) This account shall be subdivided by each air carrier group, as follows:

GROUP II AND GROUP III AIR CARRIERS

43.1 *Airframe and Other Flight Equipment Repairs.*

Record here charges for maintenance or repair of airframes and spare parts related to airframes owned or leased by the air carrier. Charges for maintenance or repair of other flight equipment (including instruments) owned or leased by the air carrier, excluding aircraft engines and spare parts related to aircraft engines, shall also be recorded here. Instruments shall include all gauges, meters, measuring devices, and indicators, together with appurtenances thereto for installation in aircraft and aircraft engines, which are maintained separately from airframes and aircraft engines. Charges by outside and associated companies for maintenance of flight equipment provided under aircraft interchange agreements shall not be included in this subaccount but in subaccount 43.7 Aircraft Interchange Charges.

43.2 *Aircraft Engine Repairs.*

Record here charges for maintenance of repair or aircraft engines, including spare parts related to aircraft engines owned or leased by the air carrier. Charges by outside and associated companies for maintenance of aircraft engines provided under aircraft

interchange agreements shall not be included in this subaccount but in subaccount 43.7 Aircraft Interchange Charges.

GROUP I AIR CARRIERS

43.6 *Flight Equipment Repairs.*

Record here charges for maintenance or repair of flight equipment of all types and classes owned or leased by the air carrier. Charges by outside and associated companies for maintenance of flight equipment provided under aircraft interchange agreements shall not be included in this subaccount but in subaccount 43.7 Aircraft Interchange Charges.

ALL AIR CARRIER GROUPS

43.7 *Aircraft Interchange Charges.*

Record here charges by outside and associated companies for providing aircraft capacity or services related to the direct operation or maintenance of flight equipment under aircraft interchange agreements.

43.8 *General Interchange Service Charges.*

Record here charges by outside and associated companies for services provided the air carrier under aircraft interchange agreements, other than charges related to the direct operation or maintenance of flight equipment, including all charges for maintenance and repair of group properties, as well as fees or charges for traffic solicitation and sales, or supervision and administration covered by the aircraft interchange agreements. Charges for depreciation or interest on capital related to flight equipment provided under interchange agreements shall not be included in this subaccount but in subaccount 43.7 Aircraft Interchange Charges.

43.9 *Other Services.*

Record here charges for maintenance and repair of ground property and equipment of all types and classes and other charges for services performed by outside and associated companies not provided for elsewhere. This subaccount shall include only those charges for services not provided for elsewhere in profit and loss accounts 37 to 41, inclusive, and subaccounts 43.1 to 43.8, inclusive, embracing a complete activity or service provided by outside and associated companies such as the operation of traffic offices or other facilities used jointly with the air carrier which do not represent reimbursement of specific expense elements incurred expressly for the benefit of the air carrier. Reimbursement of expenses incurred expressly for the benefit of the air carrier shall be entered in appropriate personnel compensation or other objective expense accounts. The cost of services received in the repair of general ground properties shall be charged to subfunction 5200 Direct Maintenance; and services received in the repair of maintenance buildings and equipment shall be charged to subfunction 5300 Maintenance Burden.

[Amdt. 241–56, 52 FR 9129, Mar. 23, 1987]

44 Landing Fees.

Record here the charges and fees incurred for landing of aircraft while in line operation.

45 Aircraft Fuels and Oils.

(a) Record here the cost of fuels and oils issued from stocks of the air carrier, or delivery directly by others, to aircraft for use in flight operations. Adjustments of inventories of aircraft fuel and oil shall also be entered in this account. The cost of fuels and oils used in repairs and maintenance services and nonrefundable fuel and oil taxes shall not be included in this account but in profit and loss accounts 49 Shop and Servicing Supplies and 69 Taxes—Other than Payroll, respectively.

(b) This account shall be subdivided as follows by Group II and Group III air carriers:

45.1 *Aircraft Fuels.*

Record here the cost of fuels used in flight operations.

45.2 *Aircraft Oils.*

Record here the cost of oils used in flight operations.

46 Maintenance Materials.

(a) Record here the cost of materials and supplies consumed directly in specific property and equipment maintenance projects.

(b) This account shall be subdivided as follows:

GROUP II AND GROUP III AIR CARRIERS

46.1 *Materials—Airframes and Other Flight Equipment.*

Record here the cost of materials and supplies consumed directly in maintenance of airframes and spare parts related to airframes. Other flight equipment (including instruments), excluding aircraft engines and spare parts related to aircraft engines, shall also be recorded here. Instruments shall include all gauges, meters, measuring devices, and indicators, together with appurtenances thereto for installation in aircraft and aircraft engines, which are maintained separately from airframes and aircraft engines.

46.2 *Materials—Aircraft Engines.*

Record here the cost of materials and supplies consumed directly in maintenance of aircraft engines and spare parts related to aircraft engines.

GROUP I AIR CARRIERS

46.6 *Materials—Flight Equipment.*

Record here the cost of materials and supplies consumed directly in the maintenance of flight equipment of all types and classes.

ALL AIR CARRIER GROUPS

46.9 *Materials—Ground Property and Equipment.*

Record here the cost of materials and supplies consumed directly in the maintenance of ground property and equipment of all types and classes. The cost of materials and supplies consumed in the repair of general ground properties shall be charged to subfunction 5200 Direct Maintenance and materials and supplies consumed in the repair of maintenance buildings and equipment shall be charged to subfunction 5300 Maintenance Burden.

[ER–755, 37 FR 19726, Sept. 21, 1972, as amended by ER–1401, 50 FR 245, Jan. 3, 1985]

47 Rentals.

Record here rentals, fee, or charges incurred in the use of property and equipment provided by others. When a lease arrangement provides that the amounts paid include charges for maintenance, insurance, or taxes, the amounts related thereto shall not be recorded in this account but in the appropriate expense account to which related.

49 Shop and Servicing Supplies.

Record here the cost of supplies and expendable small tools and equipment used in maintaining, servicing and cleaning property or equipment the cost of which cannot be directly assigned to a specific job or type of work.

50 Stationery, Printing and Office Supplies.

Record here the cost of stationery and forms used by the air carrier including the cost of engineering and shipping supplies.

51 Passenger Food Expense.

(a) Record here the cost of food and refreshments served passengers except food costs arising from interrupted trips.

(b) If the air carrier prepares its own food, the initial cost and expenses incurred in the preparation thereof shall be accumulated in a clearly identified clearing account through which the cost of food shall be cleared to this account, to profit and loss account 36 Personnel Expenses, and to profit and loss account 10 Hotel, Restaurant and Food Service on bases which appropriately allocate the cost of food served passengers, the cost of food provided employees without charge and the cost of food sold.

53 Other Supplies.

Record here the cost of supplies consumed and not provided for otherwise.

54 Inventory Adjustments.

Record here adjustments for overage, shortage or shrinkage of inventories carried in balance sheet account 1300 Spare Parts and Supplies. Adjustment of aircraft fuel and oil inventories due to retroactive price increases and decreases shall not be included in this account but in profit and loss account 45 Aircraft Fuels and Oils. Gains or losses from retirements of materials and supplies shall not be recorded in this account but in profit and loss account 88.5 Capital Gains and Losses—Operating Property.

[ER–980, 42 FR 37, Jan. 3, 1977]

55 Insurance—General.

Record here the cost of public liability and property damage insurance and all other general insurance except insurance covering liability for injuries, loss, and damage to passengers and cargo, and insurance carried for the protection or welfare of employees.

[ER–948, 41 FR 12295, Mar. 25, 1976]

56 Insurance—Traffic Liability.

Record here the cost of purchased insurance covering liability for injuries, loss and damage to passengers and cargo.

[ER–980, 42 FR 37, Jan. 3, 1977]

57 Employee Benefits and Pensions.

(a) Record here all costs for the benefit or protection of employees including all pension expenses whether for payments to or on behalf of retired employees or for accruals or annuity payments to provide for pensions; and all expenses for accident, sickness, hospital, and death benefits to employees or the cost of insurance to provide these benefits. Include, also, expenses incurred in medical, educational, or recreational activities for the benefit of employees. Do not include vacation and sick leave pay, or salaries of doctors, nurses, trainees, or instructors, which shall be recorded in the regular salary accounts.

(b) [Reserved]

[ER–755, 37 FR 19726, Sept. 21, 1972, as amended by ER–980, 42 FR 37, Jan. 3, 1977; ER–1188, 45 FR 48871, July 22, 1980]

58 Injuries, Loss and Damage.

Record here the remainder of gains, losses or costs resulting from accidents, casualties or mishandlings, after offsetting insurance recoveries, as accumulated until finally determined in balance sheet account 1890 Other Assets and Deferred Charges. This account shall not include gains or losses from retirement of property and equipment resulting from casualties. Such gains or losses shall be recorded in appropriate capital gains or losses accounts.

[Amdt. 241–58, 54 FR 5596, Feb. 6, 1989]

59 Schedules and Timetables.

Record here the production and distribution cost, excluding compensation of air carrier personnel, of all operating schedules, timetables, circulars and related quick reference charts.

[ER–1401, 50 FR 245, Jan. 3, 1985]

60 Advertising.

Record here the cost, excluding compensation of air carrier personnel, of all space, direct mail, spot and other advertising for the purpose of increasing air travel, disseminating air travel information and publicizing services offered by the air carrier.

61 Foreign Exchange Gains and Losses.

Record here gains or losses from transactions involving currency translations resulting from normal, routine, current fluctuations in rates of foreign exchange. Gains or losses of a nonroutine abnormal character and gains or losses which arise from long-term debt principal and interest transactions shall not be entered in this account but in profit and loss account 85, Foreign Exchange Gains and Losses.

[Amdt. 241–58, 54 FR 5596, Feb. 6, 1989]

62 Other Promotional and Publicity Expenses.

Record here the costs, excluding compensation of air carrier personnel, of producing and distributing publicity releases and other expenses, not chargeable to profit and loss accounts 59 and 60, incurred for the purpose of publicizing or improving the public relations of the air carrier generally.

63 Interrupted Trips Expense.

Record here expenses allowed or paid for the care and serving of passengers because of unscheduled interruptions in passenger journeys. Transportation refunds and the cost of forwarding traffic by surface common carrier or otherwise as a result of such interruptions shall not be charged to this account but to the appropriate operating revenue account.

64 Memberships.

Record here the cost of membership dues in trade associations, chambers of commerce, or other business associations and organizations together with special assessments related thereto.

65 Corporate and Fiscal Expenses.

Record here corporate and fiscal fees and expenses of the air carrier and all expenses in connection with exchange and transfer of capital stock excluding expenses in connection with original issuance of capital stock.

66 Uncollectible Accounts.

Record here losses from uncollectible accounts and allowance provisions and adjustments thereto, for such losses.

When allowances for uncollectible accounts are established, losses as realized shall be charged against such allowances and shall not be charged to this account.

[ER–980, 42 FR 37, Jan. 3, 1977]

67 Clearance, Customs and Duties.

Record here clearance, customs, duties and brokerage fees and charges applicable to clearing aircraft and traffic.

68 Taxes—Payroll.

Record here all taxes levied against the air carrier based upon or directly relating to compensation of personnel.

69 Taxes—Other Than Payroll.

(a) Record here all taxes levied against the air carrier not otherwise provided for including nonrefundable aircraft fuel and oil taxes. Interest and penalties on delinquent taxes shall not be charged to this account but to profit and loss accounts 82 Other Interest and 89.9 Other Miscellaneous Nonoperating Debits, respectively.

(b) Entries to this account shall clearly reveal each kind of tax and the governmental agency to which paid or payable.

[ER–755, 37 FR 19726, Sept. 21, 1972, as amended by ER–980, 42 FR 37, Jan. 3, 1977]

71 Other Expenses.

Record here all expenses ordinarily associated with air transportation and its incidental services not provided for otherwise.

72 Aircraft Overhauls.

(a) Record here airframe and aircraft engine overhauls of the current period which are transferred to balance sheet subaccounts 1601.2 Unamortized Airframe Overhauls or 1602.2 Unamortized Aircraft Engine Overhauls. This account shall also include the amount of deferred overhauls costs being amortized for the current period. For carriers which elect to continue accruing for aircraft overhauls for aircraft types acquired before January 1, 1976, as well as for other aircraft of the same type acquired after January 1, 1976, the related provisions and charges shall be recorded in the appropriate subaccounts of this account.

(b) This account shall be subdivided as follows by all carrier groups:

72.1 *Airworthiness Allowance Provisions—Airframes.*

Record here current provisions for effecting an equitable distribution of airframe overhaul costs between different accounting periods. Record here also credits for airframe overhaul costs incurred in the current period which have been charged against related airworthiness allowances.

72.3 *Airframe Overhauls Deferred.*

Record here airframe overhauls of the current period transferred to subaccount 1601.2, Unamortized Airframe Overhauls, and the amount of deferred airframe overhaul costs amortized for the current period.

72.6 *Airworthiness Allowance Provisions—Aircraft Engines.*

Record here current provisions for effecting an equitable distribution of aircraft engine overhauls costs between different accounting periods. Record here also credits for aircraft engine overhaul costs incurred in the current period which have been charged against related airworthiness allowances.

72.8 *Aircraft Engine Overhauls Deferred.*

Record here airframe overhauls of the current period transferred to subaccount 1602.2, Unamortized Aircraft Engine Overhauls, and the amount of deferred aircraft engine overhaul costs amortized for the current period.

[ER–948, 41 FR 12295, Mar. 25, 1976, as amended by ER–1401, 50 FR 245, Jan. 3, 1985]

73 Provisions for Obsolescence and Deterioration—Expendable Parts.

(a) Where allowances for loss in value of flight equipment expendable parts are established, provisions for accruals to such allowances shall be charged to this account and credited to balance sheet account 1311 Allowance for Obsolescence in accordance with the provisions of that account.

(b) This account shall be subdivided as follows by all air carrier groups:

73.1 *Current provisions.*

Record here provisions during the current period for losses in value of expendable parts.

73.2 *Inventory decline credits.*

Record here credits applicable to the current period for any adjustments for excess inventory allowance levels determined pursuant to section 6–1311.

[ER–980, 42 FR 37, Jan. 3, 1977]

74 Amortization.

(a) Record here amortization of deferred changes attaching to the air transportation services conducted by the air carrier which are not prepayments of recurrent expenses ordinarily requiring expenditures of working capital within one year.

(b) This account shall be subdivided as follows by all air carrier groups:

74.1 *Developmental and Preoperating Expenses*

Record here amortization of the cost of projects carried in balance sheet account 1830 Unamortized Developmental and Preoperating Costs.

74.2 *Other Intangibles.*

Record here mortization of the cost of intangibles not provided for otherwise.

[ER–755, 37 FR 19726, Sept. 21, 1972, as amended by ER–980, 42 FR 38, Jan. 3, 1977; Amdt. 241–58, 54 FR 5596, Feb. 6, 1989]

75 Depreciation.

(a) Record here provisions for depreciation of property and equipment carried in balance sheet accounts 1601 through 1640, inclusive.

(b) This account shall be subdivided as follows:

ALL AIR CARRIER GROUPS

75.1 *Depreciation—Airframes.*

Record here provisions for depreciation of property and equipment carried in balance subaccount 1601.1 Airframes.

75.2 *Depreciation—Aircraft Engines.*

Record here provisions for depreciation of property and equipment carried in balance sheet subaccount 1602.1 Aircraft Engines.

GROUP II AND GROUP III AIR CARRIERS

75.3 *Depreciation—Airframe Parts.*

Record here provisions for depreciation of spare airframe instruments and parts carried in balance sheet subaccount 1608.1 Airframe Parts and Assemblies.

75.4 *Depreciation—Aircraft Engine Parts.*

Record here provisions for depreciation of spare aircraft engine instruments and parts carried in balance sheet subaccount 1608.5 Aircraft Engine Parts and Assemblies.

ALL AIR CARRIER GROUPS

75.5 *Depreciation—Other Flight Equipment.*

Record here provisions for depreciation of property and equipment carried in balance sheet account 1607 Improvements to Leased Flight Equipment (exclusive of capitalized overhauls accounted for on a deferral and amortization basis) and balance sheet subaccount 1608.9 Other Parts and Assemblies. Group I air carriers shall also include in this subaccount provisions for depreciation of property carried in balance sheet account 1608 Flight Equipment Rotable Parts and Assemblies.

75.6 *Depreciation—Flight Equipment.*

This classification is established only for purposes of control by the BTS and shall include all charges to operating expenses for depreciation of flight equipment of all types and classes.

75.8 *Depreciation—Maintenance Equipment and Hangars.*

Record here provisions for depreciation of maintenance property and equipment included in balance sheet accounts 1630 Equipment, 1639 Improvements to Leased Buildings and Equipment, and 1640.1 Maintenance Buildings and Improvements.

75.9 *Depreciation—General Ground Property.*

Record here provisions for depreciation of property and equipment included in balance of property and equipment included in balance sheet accounts 1630 through 1640, exclusive of provision for depreciation of maintenance property and equipment included in account 75.8.

[ER–755, 37 FR 19726, Sept. 21, 1972, as amended by ER–948, 41 FR 12296, Mar. 25, 1976; ER–980, 42 FR 38, Jan. 3, 1977; 60 FR 66723, Dec. 26, 1995]

76 Amortization Expense—Capital Leases.

(a) Record here amortization charges applicable to assets recorded under capital leases in Account 1695 — Leased Property under Capital Leases.

(b) This account shall be subdivided as follows by all air carrier groups:

76.1 *Amortization—Capitalized Flight Equipment.*

Record here amortization charges applicable to flight equipment acquired under capital leases.

76.2 *Amortization—Capitalized Other Property and Equipment.*

Record here the amortization charges applicable to property and equipment, other than flight equipment, acquired under capital leases.

[ER–1401, 50 FR 245, Jan. 3, 1985]

77 Uncleared Expense Credits.

(a) Record here credits to operating expenses, which have not been cleared to the objective accounts to which applicable.

(b) Each air carrier shall credit, or charge as appropriate, the objective account prescribed for each expense element which may be involved in distribution of expenses between separate reporting entities or nontransport divisions of the air carrier. At the option of the air carrier, either the individual applicable objective accounts or this account may be credited with amounts capitalized, charged against incidental services, or otherwise assigned to other than separate operating entities of the air carrier provided the aggregate credits to this account in each function do not, for any accounting year, distort the individual objective accounts of the function to which related and all expense credits applicable to complete individual transactions are consistently credited either to this account or the individual objective accounts to which related. Each air carrier using this account shall establish such standard practices as may be prescribed by the BTS or, in the absence of such action by the Civil Aeronautics Board, such standard practices as will prevent credits to this account from significantly distorting the individual objective accounts of each function to which related.

(c) This account shall not be credited with amounts applicable to objective accounts of the Flying Operations, Depreciation, and Direct Maintenance functions. Credits applicable to such functions shall be carried to the individual objective accounts to which applicable.

(d) This account shall be subdivided as follows by all air carrier groups:

77.8 *Uncleared Interchange Expense Credits.*

Record here credits to operating expenses, from operations performed for others under aircraft interchange agreements, which have not been cleared to the objective accounts to which applicable.

77.9 *Other Uncleared Expense Credits.*

Record here credits to operating expenses, from other than operations under aircraft interchange agreements, which have not been cleared to the objective accounts to which applicable.

[ER–755, 37 FR 19726, Sept. 21, 1972, as amended at 60 FR 66723, Dec. 26, 1995]

78 Direct Maintenance—Flight Equipment.

This classification is established for purposes of control by the BTS and shall include all charges to operating expenses for maintenance of flight equipment of all types and classes.

[ER–755, 37 FR 19726, Sept. 21, 1972, as amended at 60 FR 66723, Dec. 26, 1995]

79 Applied Burden Debit/Credit.

(a) This classification is established only for purposes of control by the BTS and reporting on Form 41 by air carriers, and shall reflect all maintenance burden applied in accordance with the provisions of section 24, schedule P–5 of this system of accounts and reports.

(b) This classification shall be subdivided as follows by all air carrier groups:

79.6 *Applied Burden—Flight Equipment.*

79.8 *Applied Burden—General Ground Property.*

[ER–755, 37 FR 19726, Sept. 21, 1972, as amended by ER–979, 38 FR 10926, May 3, 1973; 60 FR 66723, Dec. 26, 1995]

Section 14 Objective Classification—Nonoperating Income and Expense

80 Interest Income.

Included under account 89 Other Nonoperating Income and Expense—Net.

[ER–1401, 50 FR 245, Jan. 3, 1985]

81 Interest on Long-term Debt and Capital Leases.

(a) Record here interest expense applicable to long-term debt and capitalized leases.

(b) This account shall be subdivided as follows by all air carrier groups:

81.1 *Interest expense—long-term debt.*

Record here interest on all classes of long-term debt. This includes interest expense applicable to all portions of long-term debt which are classified as either current (Account 2000) or long-term (Account 2210) for balance sheet classification purposes.

81.2 *Interest expense—capital leases.*

Record here for all capitalized leases, that portion of each lease payment which represents interest expense.

[ER–1013, 42 FR 37516, July 21, 1977]

82 Other Interest.

(a) This account shall be subdivided as follows by all air carrier groups:

82.1 *Interest Expense—Short-Term Debt.*

Record here interest on all classes of short-term debt.

83.1 *Imputed Interest Capitalized—Credit.*

Record here credits related to imputed interest capitalized and recorded in asset accounts.

83.2 *Imputed Interest Deferred—Debit.*

Record here debits related to imputed interest deferred in balance sheet account 2390, Other deferred credits.

83.3 *Imputed Interest Deferred—Credit.*

Record here periodic credits for imputed interest, cleared to this account as the amount of such interest in the asset accounts is amortized.

83.4 *Interest Capitalized—Credit.*

Record here interest which is capitalized and recorded in asset accounts.

84.1 *Amortization of discount and expense on debt.*

Record here for all classes of debt the amortizations of discount and expense on short-term and long-term obligations.

84.2 *Amortization of premium on debt.*

Record here for all classes of debt the amortizations of premium on short-term and long-term obligations.

(b) [Reserved]

[ER–1401, 50 FR 245, Jan. 3, 1985, as amended by Amdt. 241–58, 54 FR 5596, Feb. 6, 1989]

83 Capitalized Interest.

Included under account 82 Other Interest.

[ER–1401, 50 FR 245, Jan. 3, 1985]

84 Amortization of Debt Discount, Premium and Expense.

Included under account 82 Other Interest.

[ER–1401, 50 FR 245, Jan. 3, 1985]

85 Foreign exchange gains and losses.

Record here gains and losses from transactions involving currency translations resulting from nonroutine abnormal changes in rates of foreign exchange and gains or losses which arise from translations of long-term debt principal and interest transactions.

[Amdt. 241–58, 54 FR 5596, Feb. 6, 1989]

86 Income from Nontransport Ventures.

Included under account 89 Other Non-Operating Income and Expense—Net.

[ER–980, 42 FR 38, Jan. 3, 1977]

87 Equity in Income of Investor Controlled Companies.

Included under account 89 Other Nonoperating Income and Expense—Net.

[ER–1401, 50 FR 245, Jan. 3, 1985]

89 Other Nonoperating Income and Expense—Net.

(a) Record here all debits and credits of a nonoperating character which are not otherwise provided for in this section.

(b) This account shall be subdivided as follows by all air carrier groups:

80.0 *Interest Income.*

(a) Record here interest income from all sources. This account shall include as an increase or reduction of interest received the proportionate amortization of any discount or premium on the purchase price of securities of others held by the air carrier.

(b) This account shall not include interest on securities issued or assumed by the air carrier and subsequently reacquired.

86.0 *Income from Nontransport Ventures.*

(a) Record here the gross revenues and expenses applicable to operations not reasonably considered as incidental to the commercial air transport services of the accounting entity; rents from nonoperating properties used by others; income or loss from nontransport divisions; and other income or loss from activities of the air carrier which are extraneous to the air transport and incidental services of the accounting entity.

(b) This account shall include revenues and expenses applicable to nonscheduled transport services performed for the defense establishment when separate reports for such services are required in accordance with section 21 ''Introduction to System of Reports.'' Where the foregoing transport services are

not required to be separately reported, gross revenues from such services shall be included in profit and loss account 07 Charter, or other appropriate revenue account, and gross expenses shall be included in the appropriate operating expense functions.

87.0 *Equity in Income of Investor Controlled Companies.*

Record here the equity in the current earnings or losses of investor controlled companies. Dividends declared on the stock of such companies shall not be included in this account as income but shall be entered in balance sheet subaccount 1510.1 Investments in Investor Controlled Companies as a return on investment.

88.1 *Intercompany Transaction Adjustment—Credit.*

Record here all intercompany credits for any differences between amounts at which transactions between the air carrier and its nontransport divisions or associated companies are initially recorded and are to be settled.

88.2 *Dividend income.*

Record here income from dividends declared on stocks of other than investor controlled companies. Dividends declared on stock of investor controlled companies shall not be included in this account but shall be entered in balance sheet subaccount 1510.1 Investments in Investor Controlled Companies.

88.3 *Net Unrealized Gain or Loss on Marketable Equity Securities.*

Record here the net unrealized gain or loss on the valuation of marketable equity securities.

88.4 *Net Realized Gain or Loss on Marketable Equity Securities.*

Record here the net realized gain or loss on the valuation of marketable equity securities.

88.5 *Capital gains and losses—operating property.*

Record here gains or losses on retirements of operating property and equipment, flight equipment expendable parts, or miscellaneous materials and supplies sold or otherwise retired in connection with a general retirement program as opposed to incidental sales performed as a service to others.

88.6 *Capital gains and losses—other.*

Record here gains or losses not required to be reported in accounts 88.3, 88.4 and 88.5 such as gains or losses on retirement of nonoperating property and equipment, investments in other than marketable equity securities, and the transfer of assets in a troubled debt restructuring.

88.7 *Unapplied cash discounts.*

Record here cash discounts on routine purchases of materials, repair parts or supplies. Cash discounts on classes of assets included in property and equipment accounts shall not be recorded in this account but shall be applied as a reduction of the cost of such accounts.

88.9 *Other miscellaneous nonoperating credits.*

Record here all credits of a nonoperating character not provided for otherwise, such as royalties from patents, gains from reacquisition and retirement or resale of debt securities issued by the air carrier, and gains resulting from troubled debt restructurings.

89.1 *Intercompany Transaction Adjustment—Debit.*

Record here all intercompany debits for any differences between amounts at which transactions between the air carrier and its nontransport divisions or associated companies are initially recorded and are to be settled.

89.9 *Other Miscellaneous Nonoperating Debits.*

Record here all debits of a nonoperating character not provided for otherwise, such as the following:

(a) Fines or penalties imposes by governmental authorities;

(b) Costs associated with employment discrimination that include the following:

(1) Fines or penalties paid by the carrier as a result of a judicial or administrative decree; or the amount paid to the complainant in settling or securing a consent decree;

(2) Back pay awards as a result of a judicial or administrative decree or a compromise settlement regardless of admission of guilt;

(3) Attorneys' fees or court costs awarded to the complainant by a judicial or administrative decree or as a result of a compromise settlement regardless of admission of guilt;

(4) The fees of outside legal counsel or of experts retained in the unsuccessful defense of a discrimination suit or in securing a compromise settlement or consent decree, unless the amounts attributable to the discrimination are not reasonably identifiable; or

(5) Any other expenses, such as employee salaries, resulting from employment practices that were found to be discriminatory or that were the subject of a compromise settlement or consent decree where the amounts attributable to discrimination are reasonably identifiable.

(c) Amortization expense attributable to capital leases recorded in balance sheet Account 1795, Leased Property under Capital Leases;

(d) Costs related to property held for future use;

(e) Donations for charitable, social or community welfare purposes;

(f) Losses on reacquired and retired or resold debt securities of the air carrier;

(g) Losses resulting from troubled debt restructurings;

(h) Losses on uncollectible nonoperating receivables; or

(i) Accruals to allowance for uncollectible nonoperating receivables.

(Secs. 204, 404, 407, and 1002 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 760, 766, 788, (49 U.S.C. 1324, 1374, 1377, 1482))

[ER–980, 42 FR 38, Jan. 3, 1977, as amended by ER–1013, 42 FR 37516, July 21, 1977; ER–1027, 42 FR 60128, Nov. 25, 1977; ER–1076, 43 FR 46296, Oct. 6, 1978; ER–1401, 50 FR 245, Jan. 3, 1985; Amdt. 241–58, 54 FR 5596, Feb. 6, 1989]

Section 15 Objective Classification—Income Taxes for Current Period

91 Provision for Income Taxes.

(a) Record here quarterly provisions for accruals of Federal, State, local, and foreign taxes based upon net income, computed at the normal tax and surtax rates in effect during the current accounting year. In general, this account shall reflect provisions within each period for currently accruing tax liabilities as actually or constructively computed on tax returns, and any subsequent adjustments. This account shall include credits for refund claims arising from the carryback of losses in the year in which the loss occurs, credits for the carry-forward of losses in the year to which the loss is carried, and investment tax credits in the year in which each credit is utilized to reduce the liability for income taxes.

(b) Income taxes shall be allocated among the transport entities of the air carrier, its nontransport divisions, and members of an affiliated group. Under circumstances in which income taxes are determined on a consolidated basis by an air carrier and other members of an affiliated group, the income tax expense to be recorded by the air carrier shall be the same as would result if determined for the air carrier separately for all time periods, except that the tax effect of carryback and carryforward operating losses, investment tax credits, or other tax credits generated by operations of the air carrier shall be recorded by the air carrier during the period in which applied in settlement of the taxes otherwise attributable to any member, or combination of members, of the affiliated group. Any difference between the income tax so recorded and the amount at which settlement is to be made shall be recorded in subaccount 88.1 Intercompany Transaction Adjustment—Credit or in subaccount 89.1 Intercompany Transaction Adjustment—Debit, as is appropriate.

(c) This account shall be subdivided as follows by all carrier groups:

91.1 *Income Taxes Before Investment Tax Credits.*

Record here accruals of income taxes based upon taxable income of the period.

91.2 *Investment Tax Credits Utilized.*

Record here investment tax credits utilized to reduce the accrued liability for income taxes.

[Amdt. 241–58, 54 FR 5596, Feb. 6, 1989]

92 Provisions for Deferred Income Taxes.

(a) Record here income tax debits and credits deferred in accordance with the provisions of balance sheet account 2340 Deferred Income Taxes for all material timing differences.

(b) This account shall be subdivided as follows by all air carrier groups:

92.1 *Current Provisions for Deferred Taxes.*

92.2 *Application of Taxes Deferred.*

92.3 *Adjustments of Deferred Taxes.*

[ER–948, 41 FR 12296, Mar. 25, 1976]

93 Investment Tax Credits Deferred and Amortized.

(a) Record here investment tax credits of the current period which are transferred to balance sheet account 2345 Deferred Investment Tax Credits in accordance with the provisions of balance sheet account 2130 Accrued Taxes. This account shall also include amounts for previously deferred investment tax credits amortized during the current period.

(b) This account shall be subdivided as follows by all carrier groups:

93.1 *Investment Tax Credits Deferred.*

93.2 *Amortization of Deferred Investment Tax Credits.*

[ER–755, 37 FR 19726, Sept. 21, 1972, as amended by ER–980, 42 FR 39, Jan. 3, 1977]

Section 16 Objective Classification—Discontinued Operations

95 Discontinued Operations.

(a) Record here the earnings (losses) of discontinued nontransport operations. For the purposes of this system of accounts and reports discontinued operations shall refer to the disposal of investor controlled companies and nontransport ventures whether sold, abandoned, spun off, or otherwise disposed of. This account shall not include earnings or losses from discontinued transport or transport-related operations.

(b) This account shall be subdivided as follows by all air carrier groups:

95.1 *Income from Discontinued Operations.*

Record here the results of operations of the discontinued operations.

95.2 *Loss of Disposal of Discontinued Operations.*

Record here the gain or loss on the disposal of an operation. If loss is anticipated it should be provided for at the measurement date. If gain is anticipated it should be recognized when realized.

[ER–948, 41 FR 12296, Mar. 25, 1976]

Section 17 Objective Classification—Extraordinary Items

96 Extraordinary Items.

Record here material items characterized by their unusual nature and infrequent occurrence. Events or transactions which are material and either unusual or nonrecurring, but not both, shall be recorded in the profit and loss accounts to which they relate and disclosed on BTS Form 41 Schedule P–2 with identification as to their nature and financial effects.

[Amdt. 241–58, 54 FR 5596, Feb. 6, 1989, as amended at 60 FR 66723, Dec. 26, 1995]

97 Income Taxes Applicable to Extraordinary Items.

Record here income taxes allocable to items of income included in profit and loss account 96 Extraordinary Items and income tax assessments that do not constitute ordinary adjustments of a recurrent nature. Records supporting entries to this account shall be maintained with sufficient particularity to identify the nature and gross amount of each extraordinary credit and each extraordinary debit.

[ER–948, 41 FR 12296, Mar. 25, 1976]

Section 18 Objective Classification—Cumulative Effect of Changes in Accounting Principles

98 Cumulative Effect of Changes in Accounting Principles.

Record here the difference between the amount of retained earnings at the beginning of the period of a change in accounting principle and the amount of retained earnings that would have been reported at that date if the new accounting principle had been applied retroactively for all periods which would have been affected and by recognizing only the direct effects of a change and the related income tax effect.

[ER–948, 41 FR 12296, Mar. 25, 1976]

OPERATING STATISTICS CLASSIFICATIONS

Section 19 Uniform Classification of Operating Statistics

Sec. 19–1 Applicability.

(a) *United States air carrier.* Each large certificated U.S. air carrier shall file with the Department, on a monthly basis, Form 41 Schedule T–100 ''U.S. Air Carrier Traffic and Capacity Data By Nonstop Segment and On-flight Market,'' and summary data as prescribed in this section and in sections 22 and 25 of this part.

(b) *Foreign (non-U.S.) air carrier:* Each foreign air carrier as required by part 217 of this chapter shall file Form 41 Schedule T–100(f) ''Foreign Air Carrier Traffic Data by Nonstop Segment and On-flight Market.'' The ''Instructions to Foreign Air Carriers for Reporting Traffic Data on Form 41 Schedule T–100(f),'' (Instructions-Foreign Air Carriers) are included in the Appendix to §217.10 of this chapter.

(c) Each U.S. air carrier shall use magnetic computer tape or IBM compatible disk for transmitting the prescribed data to the Department. Upon good cause shown, OAI may approve the request of a U.S. air carrier, under section 1–2 of this part, to use hardcopy data input forms or submit data via e-mail.

(d) On-flight market and nonstop segment detail data by carrier shall be made public only as provided in section 19–6.

[53 FR 46305, Nov. 16, 1988; 53 FR 52404, Dec. 28, 1988, as amended at 60 FR 66723, Dec. 26, 1995; 67 FR 49223, July 30, 2002]

Sec. 19–2 Maintenance of data.

(a) Each air carrier required to file Form 41 Schedule T–100 data shall maintain its operating statistics, covering the movement of traffic in accordance with the uniform classifications prescribed. Codes are prescribed for each operating element and service class. All traffic statistics shall be compiled in terms of each flight stage as actually performed.

(b) Each carrier shall maintain data applicable to the specified traffic and capacity elements prescribed in section 19–5 and section 25, and by general service classes prescribed in section 19–4 of this part.

(c) Operating statistics shall be maintained in accordance with the type of record, either nonstop segment or on-flight market.

Sec. 19–3 Accessibility and transmittal of data.

(a) Each reporting air carrier shall maintain its prescribed operating statistics in a manner and at such locations as will permit ready accessability for examination by representatives of the Department. The record retention requirements are prescribed in part 249 of this chapter.

(b) [Reserved]

(c) Form 41 Schedule T–100 reports shall be transmitted in accordance with the standard practices established by the Department, and must be received by the Department within 30 days following the end of each reporting month.

[53 FR 46305, Nov. 16, 1988; 53 FR 52404, Dec. 28, 1988, as amended at 67 FR 49223, July 30, 2002]

Sec. 19–4 Service classes.

The statistical classifications are designed to reflect the operating elements attributable to each distinctive class of service offered. The operating elements shall be grouped in accordance with their inherent characteristics as follows:

(a) *Scheduled services.* Scheduled services shall include traffic and capacity elements applicable to air transportation provided pursuant to published schedules and extra sections to scheduled flights. Scheduled Passenger/Cargo (Service Class F) is a composite of first class, coach, and mixed passenger/cargo service. The following classifications shall be reported, as applicable:

U.S. Air Carriers:
- K—Scheduled Services (F+G)
- F—Scheduled Passenger/Cargo
- G—Scheduled All-Cargo

Foreign Air Carriers:
- F—Scheduled Passenger/Cargo
- G—Scheduled All-Cargo

(b) *Nonscheduled services.* Nonscheduled services shall include all traffic and capacity elements applicable to the performance of nonscheduled aircraft charters, and other air transportation services not constituting an integral part of services performed pursuant to published flight schedules. The following classifications shall be reported, as applicable:

U.S. Air Carriers:
- V—Nonscheduled Services (L+N+P+R)
- L—Nonscheduled Civilian Passenger/Cargo
- P—Nonscheduled Civilian Cargo
- N—Nonscheduled Military Passenger/Cargo
- R—Nonscheduled Military Cargo

Foreign Air Carriers:
- L—Nonscheduled Civilian Passenger Cargo
- P—Nonscheduled Civilian All-Cargo Charters
- Q—Nonscheduled Services (Other than Charter)

(c) *All Services.* This classification shall reflect, for the applicable elements, the aggregate amounts for all services performed by the operating entity:

U.S. Air Carriers:
Z—All Services (V+K)

Sec. 19–5 Air transport traffic and capacity elements.

(a) Within each of the service classifications prescribed in section 19–4, data shall be reported as applicable to specified air transport traffic and capacity elements.

(b) These reported items are as follows:

Code	Description	Segment	Market	Computed by DOT
	Carrier, carrier entity code	S	M	
	Reporting period date	S	M	
	Origin airport code	S	M	
	Destination airport code	S	M	
	Service class code	S	M	
	Aircraft type code	S		
110	Revenue passengers enplaned		M	
130	Revenue passengers transported	S		
140	Revenue passenger-miles			CFD*
210	Revenue cargo tons enplaned			CFD*
217	Enplaned freight		M	
219	Enplaned mail		M	
230	Revenue tons transported			CFD*
237	Transported freight	S		
239	Transported mail	S		
240	Revenue ton-miles			CFD*
241	Revenue ton-miles passenger			CFD*
247	Revenue ton-miles freight			CFD*
249	Revenue ton-miles mail			CFD*
270	Available capacity payload	S		
280	Available ton-miles			CFD*
310	Available seats, total	S		
320	Available seat-miles			CFD*
410	Revenue aircraft miles flown			CFD*
430	Revenue aircraft miles scheduled			CFD*
501	Inter-airport distance			CFD*
510	Revenue aircraft departures performed	S		
520	Revenue aircraft departures scheduled	S		
610	Revenue aircraft hours (airborne)	S		
630	Aircraft hours (ramp-to-ramp)	S		
650	Total aircraft hours (airborne)	S		

*CFD = Computed by DOT from detail Schedule T–100 and T–100(f) data.

(c) These reported items are further described as follows:

(1) *Reporting period date.* The year and month or quarter to which the reported data are applicable.

(2) *Carrier, Carrier entity code.* Each foreign air carrier shall report its name and code (assigned by DOT). Each U.S. air carrier shall report its name and entity code (a five digit code assigned by DOT that identifies both the carrier and its entity) for its particular operations. The Office of Airline Information (OAI) will assign or confirm codes upon request; OAI's address is in the Appendix to section 25 of this part and the Appendix to §217.10 of this chapter.

(3) *Service class code.* The service class codes are prescribed in section 19–4 of this part. In general, classes are divided into two broad categories, either K (scheduled) or V (nonscheduled), where K=F+G for all carriers and V=L+N+P+R for U.S. air carriers and comprises L+P and Q for foreign air carriers. Refer to section 19–4 for the more information on service class codes F, G, L, N, P, R and Q.

(4) *Record type code.* This code indicates whether the data pertain to nonstop segment (record type S) or onflight market (record type M).

(5) *Aircraft type code.* This code represents the aircraft types, as described in the Appendix to section 25 of this part.

(6) *Origin, Destination airport code(s).* These codes represent the industry designators described in the Appendix to section 25 of this part. A common private industry source of these industry designator codes is the *Official Airline Guides* (OAG). OAI will assign codes upon request if not listed in the OAG.

(7) *110 Revenue passengers enplaned.* The total number of revenue passengers enplaned at the origin point of a flight, boarding the flight for the first time; an unduplicated count of passengers in a market. Under the T–100 system of reporting, these enplaned passengers are the sum of the passengers in the individual on-flight markets. Report only the total revenue passengers enplaned in item 110. For all air carriers and all entities, item 110 revenue passengers enplaned is reported on Form 41 Schedule T–100 in column C–1, as follows:

	Col.	All carrier groups and entities
C–1	110	Revenue passengers enplaned.

(8) *130 Revenue passengers transported.* The total number of revenue passengers transported over single flight stage, including those already on board the aircraft from a previous flight stage. Report only the total revenue passengers transported in item 130. For all air carriers and all entities, item 130 revenue passengers transported is reported on Form 41 Schedule T–100 in Column B–7, as follows:

	Col.	All carrier groups and entities
B–7	130	Revenue passengers transported.

(9) *140 Revenue passenger-miles.* Computed by multiplying the interairport distance of each flight stage by the number of passengers transported on that flight stage.

(10) *210 Revenue cargo tons enplaned.* The total number of cargo tons enplaned. This data element is a sum of the individual on-flight market figures for each of the following categories: 217 Freight and 219 mail. This element represents an unduplicated count of the revenue traffic in a market.

(11) *230 Revenue tons transported.* The number of tons of revenue traffic transported. This element is the sum of the following elements: 231 Passengers transported-total, 237 Freight, and 239 Mail.

(12) *240 Revenue ton-miles—total.* Ton-miles are computed by multiplying the revenue aircraft miles flown (410) on each flight stage by the number of tons transported on that stage. This element is the sum of 241 through 249.

(13) *241 Revenue ton-miles—passenger.* Equals the number of passengers times 200, times interairport distance, divided by 2000. A standard weight of 200 pounds per passenger, including baggage, is used for all operations and service classes.

(14) *247 Revenue ton-miles—freight.* Equals the volume of freight in whole tons times the interairport distance.

(15) *249 Revenue ton-miles—mail.* Equals the volume of mail in whole tons times the interairport distance.

(16) *270 Available capacity-payload.* The available capacity is collected in pounds. This figure shall reflect the payload or total available capacity for passengers, mail and freight applicable to the aircraft with which each flight stage is performed.

(17) *280 Available ton-miles.* The aircraft miles flown on each flight stage multiplied by the available capacity on the aircraft in tons.

(18) *310 Available seats.* The number of seats available for sale. This figure reflects the actual number of seats available, excluding those blocked for safety or operational reasons. Report the total available seats in item 310. For all air carriers and all entities, item 310 available seats, total is reported on Form 41 Schedule T–100 in column B–4, as follows.

	Col.	All carrier groups and entities
B–4	310	Available seats, total.

(19) *320 Available seat-miles.* The aircraft miles flown on each flight stage multiplied by the seat capacity available for sale.

(20) *410 Revenue aircraft miles flown.* Revenue aircraft miles flown are computed in accordance with the airport pairs between which service is actually performed; miles are generated from the data for scheduled aircraft departures (Code 520) times the interairport distances (Code 501).

(21) *430 Revenue aircraft miles scheduled.* The number of revenue aircraft miles scheduled. All such data shall be maintained in conformity with the airport pairs between which service is scheduled, whether or not in accordance with actual performance.

(22) *501 Interairport distance.* The great circle distance, in official statute

miles as prescribed in part 247 of this chapter, between airports served by each flight stage. Official interairport mileage may be obtained from the Office of Airline Information at the address included in section 25 of this part.

(23) Revenue aircraft departures performed. The number of revenue aircraft departures performed.

(24) *520 Revenue aircraft departures scheduled.* The number of revenue aircraft departures scheduled, whether or not actually performed.

(25) *610 Revenue aircraft hours (airborne).* The elapsed time, computed from the moment the aircraft leaves the ground until its next landing.

(26) *630 Aircraft hours (ramp-to-ramp).* The elapsed time, computed from the moment the aircraft first moves under its own power from the boarding ramp at one airport to the time it comes to rest at the ramp for the next point of landing. This data element is also referred to as ''block'' and block-to-block aircraft hours.

(27) *650 Total aircraft hours (airborne).* The elapsed time, computed from the moment the aircraft leaves the ground until it touches down at the next landing. This includes flight training, testing, and ferry flights.

(28) *810 Aircraft days assigned to service—carrier's equipment.* The number of days that aircraft owned or acquired through rental or lease (but not interchange) are in the possession of the reporting air carrier and are available for service on the reporting carrier's routes plus the number of days such aircraft are in service on routes of others under interchange agreements. Includes days in overhaul, or temporarily out of service due to schedule cancellations. Excludes days that newly acquired aircraft are on hand, but not available for productive use, days rented or leased to others (for other than interchange) and days in possession but formally withdrawn from air transportation service.

(29) *820 Aircraft days assigned to service—carrier's routes.* The same as ''aircraft days assigned to service—carrier's equipment,'' but excluding the number of days that the reporting carrier's owned or rented equipment are in the possession of others under interchange agreements and including the number of days aircraft of others are in the possession of the reporting air carrier under interchange agreements.

(30) *921 Aircraft fuels issued (gallons).* The amount of aircraft fuels issued, in U.S. gallons, during the reporting period for both revenue and nonrevenue flights.

[ER–755, 37 FR 19726, Sept. 21, 1972, as amended by Amdt. 241–58, 54 FR 7184, Feb. 17, 1989; 60 FR 66723, Dec. 26, 1995; 62 FR 6718, Feb. 13, 1997; 67 FR 49224, July 30, 2002]

Section 19–6 Public disclosure of traffic data.

(a) Detailed domestic on-flight market data and nonstop segment data except military data shall be made publicly available after processing. Domestic data are defined as data from air transportation operations from a place in any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the Virgin Islands, or a U.S. territory or possession to a place in any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the Virgin Islands, or a U.S. territory or possession. Domestic military operations are reported under service codes N or R.

(b) Detailed international on-flight market and nonstop segment data in Schedule T–100 and Schedule T–100(f) reports, except military data, shall be publicly available immediately following the Department's determination that the database is complete, but no earlier than six months after the date of the data. Military operations are reported under service codes N or R. Data for on-flight markets and nonstop segments involving no U.S. point shall not be made publicly available for three years. Industry and carrier summary data may be made public before the end of six months or the end of three years, as applicable, provided there are three or more carriers in the summary data disclosed. The Department may, at any time, publish international summary statistics without carrier detail. Further, the Department may release nonstop segment and on-flight market detail data by carrier before the end of the confidentiality period as follows:

(1) To foreign governments as provided in reciprocal arrangements between the foreign country and U.S. Government for exchange of on-flight market and/or nonstop segment data submitted by air carriers of that foreign country and U.S. carriers serving that foreign country;

(2) To parties to any proceeding before the Department under Title IV of the Federal Aviation Act of 1958, as amended, as required by the Administrative Law Judge or other decision-maker of the Department. Parties may designate agents or consultants to receive the data in their behalf, provided the agents or consultants agree to abide by the disclosure restrictions. Any data to which access is granted pursuant to this provision may be introduced into evidence, subject to the normal rules of admissibility of evidence.

(3) To agencies and other components of the U.S. Government for their internal use only.

[Amdt. 241–59, 56 FR 2845, Jan 25, 1991, as amended at 62 FR 6719, Feb. 13, 1997; 67 FR 49224, July 30, 2002]

Sec. 19–7 Passenger origin-destination survey.

(a) All U.S. large certificated air carriers conducting scheduled passenger operations (except helicopter carriers) shall participate in a Passenger Origin-Destination (O & D) Survey covering domestic and international operations, as described in the instructions manual entitled, *Instructions to Air Carriers for Collecting and Reporting Passenger Origin-Destination Survey Statistics* (Appendix A to this section), and in *Passenger Origin-Destination Directives* issued by the Department's Bureau of Transportation Statistics (BTS), Office of Airline Information (OAI). Copies of these *Instructions* and *Directives* are provided to each large carrier participating in the Survey. Copies are also available from the Office of Airline Information, K–25, Room 4125, U.S. Department of Transportation, 400 Seventh St., SW., Washington, DC 20590.

(b) Those participating air carriers that have access to automatic data processing (ADP) services shall utilize magnetic tape, cartridge, floppy diskette or other ADP media for transmitting the prescribed data. Those carriers without ADP capability should contact the Office of Airline Information for further instructions ((202) 366–4373).

(c) A statistically valid sample of light coupons shall be selected for reporting purposes. The sample shall consist of at least 1 percent of the total lifted ticket flight coupons for all large domestic markets listed in the Instructions and 10 percent for all others—including domestic and international markets. The sample shall be selected and reported in accordance with the requirements of paragraph (a) of their section, except that the participating O & D carriers with nonstandard ticketing procedures, or other special operating characteristics, may propose alternative procedures. Such departures from standard O & D Survey practices shall not be authorized unless approved in writing by the Director, Office of Airline Information under the procedures in Sec. 1–2 of 14 CFR part 241. The data to be recorded and reported from selected lifted ticket flight coupons, as stipulated in the *Instructions* and *Directives* shall include the following data elements: Point of origin, carrier on each flight-coupon stage, fare-basis code for each flight-coupon stage, points of stopover or connection (interline and intraline), point of destination, number of passengers, and total dollar value of ticket (fare plus tax).

(d) Data covering the operations of foreign air carriers that are similar to the information collected in the Passenger Origin-Destination Survey are generally not available to the Department, the U.S. carriers, or U.S. interests. Therefore, because of the damaging competitive impact on U.S. carriers and the adverse effect upon the public interest that would result from unilateral disclosure of the U.S. survey data, the Department has determined its policy to be that the international data in the Passenger Origin-Destination Survey shall be disclosed only as follows:

(1) To an air carrier directly participating in and contributing input data to the Survey or to a legal or consulting firm designated by an air carrier to use on its behalf O & D data in

connection with a specific assignment by such carrier.

(2) To parties to any proceeding before the Department to the extent that such data are relevant and material to the issues in the proceeding upon a determination to this effect by the Administrative Law Judge or by the Department's decision-maker. Any data to which access is granted pursuant to this section may be introduced into evidence subject to the normal rules of admissability of evidence.

(3) To agencies and other components of the U.S. Government.

(4) To other persons upon a showing that the release of the data will serve specifically identified needs of U.S. users which are consistent with U.S. interests.

(5) To foreign governments and foreign users as provided in formal reciprocal arrangements between the foreign and U.S. governments for the exchange of comparable O & D data.

(e) The Department reserves the right to make such other disclosures of the O & D data as is consistent with its regulatory functions and responsibilities.

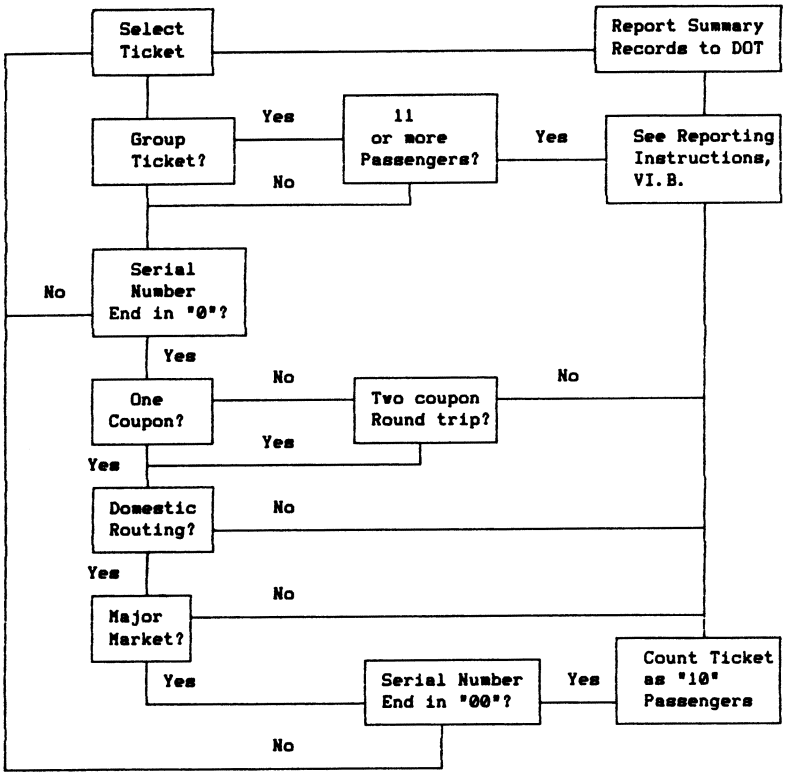
APPENDIX A TO SEC. 19–7—INSTRUCTIONS TO AIR CARRIERS FOR COLLECTING AND REPORTING PASSENGER ORIGIN-DESTINATION SURVEY STATISTICS

All questions, comments, extension and waiver requests should be addressed to:

Office of Airline Information, K–25, Room 4125, U.S. Department of Transportation, 400 Seventh St., SW., Washington, DC 20590, Telephone (202) 366–9059.

I. GENERAL DESCRIPTION OF O&D SURVEY

A. Flow Chart of O&D Reporting From Tickets



B. Narrative Description

A single O&D Survey is conducted continuously by the large U.S. certificated air carriers. Foreign air carriers do not directly participate in the Survey, although some of their data are captured in the Survey, since passengers who share a ticketed itinerary between a U.S. carrier and a foreign carrier may be sampled by the U.S. carrier. The authority for these instructions is found in 14 CFR part 241, section 19–7, and in the CAB Sunset Act of 1984 (Pub. L. 94–443).

The Survey samples revenue passenger trips moving in whole or in part on domestic and/or international scheduled services of the carriers participating in the Survey. In general, these requirements do not apply to small certificated, all-cargo and all charter carriers.

The source documents for the Survey data are passenger tickets. These data are collected from the ''lifted'' flight coupons of tickets (a portion of a multi-part ticket booklet of three[1] or more coupons, including one for each stage of the passenger's trip itinerary which is lifted by the carrier as the passenger boards a particular flight segment).

The Survey data are taken from the coupon that is lifted by a participating carrier, unless it is apparent from the lifted coupon that another participating carrier has already recorded and reported the data, in which instance the ticket coupon is non-reportable for the second honoring/participating carrier. The complete passenger itinerary, and related data on type of fare and dollar value of the ticket, is recorded as one entry from the sampled, reportable flight coupon.

The recording of data from the sampled flight coupon normally consists of transcribing the information exactly as indicated on the ticket. The detail recorded for each trip shows the complete routing from the origin city (airport code) to the destination city (airport code) including, in sequence from the origin, each point of transfer and stopover (intraline and interline), the summarized fare-basis code shown for each flight coupon stage of the itinerary, and the total dollar value of the fare and tax for the entire ticket.

Prior to 1987, the Survey was generally based on a 10-percent sample of passenger tickets. Beginning July 1, 1987, the Survey is collected primarily on the basis of a stratified, scientific sample of at least 1 percent of tickets in domestic major markets and 10 percent of tickets in all other domestic and in all international city-pair markets. The Survey data are taken from the selected flight coupons of the tickets sampled: single-coupon or double-coupon round trips in domestic major markets where the ticket serial number ends in double zero (00) and all other ticket coupons ending in zero (0). This procedure yields a ''two-tiered'' stratified sample.

Group tickets are included on the basis of a 10-percent sample when the number of passengers on such a group ticket is 10 or less. Group tickets with more than 10 passengers on each ticket are included on the basis of a 100 percent census, *i.e.,* all such tickets are sampled, regardless of serial number, and the total data listed are conformed to a 10 percent sample for inclusion in the O&D Survey.

Following the selection of reportable flight coupons and the recording of data, each participating carrier shall edit and summarize[2] the data into a quarterly report to the Department.

II. EFFECTIVE DATE OF INSTRUCTIONS

These data collection and reporting instructions are effective on and after July 1, 1987 and apply to all flight coupons lifted on or after July 1, 1987.

III. CARRIERS PARTICIPATING IN SURVEY

A. *Participating carriers.* As defined in section 19–7 of the Department's Economic Regulations (14 CFR part 241), the participants in the O&D Survey include all large certificated air carriers conducting scheduled passenger services (except helicopter carriers). These participating carriers collect and report data in accordance with these Instructions, and supplemental *Passenger Origin-Destination Directives* that may be issued periodically. The list of participating carriers will be issued by reporting directive under the authority in 14 CFR 385.27(b).

B. *Amendments to list of participating carriers.* As new carriers begin service, they will be required to file O&D Survey Data. These carriers will not be added to the participating carrier list automatically, but will be added when the next annual review is made.

IV. SUBMISSION OF REPORTS

A. *Period covered by reports.* Reports are to be filed for each calendar quarter of the year as shown below:

[1] Each ticket booklet is comprised of one or more *flight coupons* for passenger travel in a city-pair market, plus a *passenger coupon* (the traveler's receipt) and the *auditor coupon* (for the carrier's internal controls).

[2] These summarization procedures include showing two or more passengers with the same itinerary as one O&D record and compressing extremely lengthy itineraries (such as around-the-world tickets) into a standard trip stage length limit (which may be either seven or twenty-three stages, at the carrier's option), as explained in Section V.D.

Report	Time period covered
1st quarter	Jan. 1 through Mar. 31.
2nd quarter	Apr. 1 through June 30.
3rd quarter	July 1 through Sept. 30.
4th quarter	Oct. 1 through Dec. 31.

B. *Filing date for reports.* Reports are to be filed with the Department on or before the dates listed below. The mailing address is on the inside cover to these instructions.

Report	Due date [1]
1st quarter	May 15
2nd quarter	Aug. 15
3rd quarter	Nov. 15
4th quarter	Feb. 15

[1] Due dates falling on Saturday, Sunday or national holiday will become effective the first following work day.

C. *Format of report.* The report may be submitted in any one of the following formats:

(1) ADP media including magnetic tapes and floppy discs.[3]

(2) Hard copy BTS Form 2787, in typewritten form, for carriers that lack computer capability. Sample formats of the required data appear in Sections IX and XII. Supplies of blank Form 2787 are available, upon request, from the Director, Office of Airline Information (address on inside cover). Any reasonable facsimile of Form 2787 will be acceptable in lieu of Form 2787, if approved in advance by the Director.

D. *Number of copies of report to be filed.* A participating carrier shall file with the Department a single copy of its quarterly O&D data report. When ADP submissions are transmitted, the package is to contain a transmittal letter describing the contents, and stating the overall record and passenger counts included in the submission. Each submission is to be labeled externally as to submitting carrier and time period of the O&D Survey data.

E. *Address for filing reports.* Reports should be submitted to the Director, Office of Airline Information (address on inside cover).

V. SELECTION OF SAMPLE AND RECORDING OF DATA.[4]

A. *Sampling Basis.* Each participating carrier in this O&D Survey shall search all listed flight coupons, whether the coupons are its own ticket stock or on the ticket stock of another U.S. or foreign carrier (either standard IATA and ARC ticket stock or non-standard ticket stock), and is to *select for reporting purposes* the following flight coupons:

(1) *Major domestic markets.* All single-passenger flight coupons that are either a single flight coupon ticket or part of a round trip, two coupon ticket where the ticket serial number ends in the digits double-zero (00). NOTE.—The list of major domestic markets will be issued by reporting directive under the authority in 14 CFR 385.27(b).

(2) *International markets and all other domestic markets.* (a) All single-passenger flight coupons with ticket serial numbers ending with the digit zero (0);

(b) Those group-ticket flight coupons with 10 or fewer passengers with ticket serial numbers ending with the digit zero (0);

(c) Those group-ticket flight coupons with 11 or more passengers without regard to serial number; and

(d) Itineraries in major domestic markets that comprise more than two coupons are sampled on a uniform 10 percent basis, by selecting all ticket serial numbers ending with the digit zero (0).

B. *Selection of Reportable Flight Coupons.* The flight coupons identified above are to be examined to isolate the reportable flight coupons, i.e. coupons from which data are to be recorded. Flight coupon data are reported only by the first honoring and participating carrier (operating carrier). Such carriers shall report the required data for the entire ticketed itinerary.

If a participating carrier has preceded an examining carrier on any stage in the trip itinerary, including any stage in a conjunction itinerary and any stage in a reissued ticket (either before or after reissue) that coupon is not reportable.

For conjunction tickets, the ticket number for the first ticket booklet determines if the conjunction tickets should be reported in the Survey. Otherwise, conjunction tickets do not require special treatment and are governed by the rules for regular tickets.

No adjustment is made in the Survey for alterations or changes in the trip itinerary subsequent to the stage covered by the reportable coupon.

C. *Optional Use of Other Sampling Procedures.*

[3] Magnetic tapes, floppy discs and similar media will be returned to the carriers, upon request, following completion of the processing cycle by the Department.

[4] Upon approval of the Director, Office of Airline Information, carriers may continue current reporting procedures (up to twenty-three stages of a passenger flight) and may report a uniform 10 percent sample of tickets lifted (each zero ending lifted coupon) without reducing the sample size from 10 percent to 1 percent for domestic major markets. Note that the domestic major markets will be reviewed each year at June 30, based on the prior 12 months O&D data, and the list amended as necessary. The list could remain static for more than a year, although it will be reviewed annually. Necessary amendments will be effective on January 1 of the following year.

(1) Alternative sampling procedures or alternative O&D data systems may be proposed by participating carriers with nonstandard ticketing procedures, or other special operating characteristics. Data reported under proposed alternative procedures must approximate the usefulness and statistical validity of the O&D Survey.

(2) Such departures from the prescribed O&D Survey practices shall not be authorized unless approved in writing by the Director, Office of Airline Information (address inside front cover). The proposed alternative O&D Survey procedures must be described in detail in the letter requesting the waiver.

D. *Recording of Data from Reportable Flight Coupons.* (1) The following items are to be reported from the reportable flight coupons:

(a) Point of origin,

(b) Operating carrier on each flight stage (if unknown, identify ticketed carrier),

(c) Ticketed carrier on each flight stage,

(d) Fare-basis on each flight coupon, C, D, F, G, X or Y,

(e) Points of stopover or connection (interline and intraline),

(f) Point of destination,

(g) Number of passengers, and

(h) Total dollar value of ticket (fare plus tax and other charges, such as Passenger Facility Charges).

(2) The individual items are to be recorded in the sequence of occurrence in the itinerary as follows:

(a) All entries for *points* (airport codes[5]) in an itinerary are to be recorded in three-letter airport code data to fit into the stage-length limitation (seven or twenty-three stages at the carrier's option), all airport codes are to be reported, including data on commuter, foreign, intra-state and other carriers' portions of itineraries. Normally codes are recorded as they appear on the ticket. However, if a code is obviously incorrect, *record the correct code.* For instance, if a ticket is coded DCA-NYC or Washington/National to New York when the flight stage actually operated from Washington, Dulles to Newark (EWR), record the correct airport code. When only name spellings of a city appear on the ticket for multi-airport cities (such as Washington, New York, San Francisco, or Los Angeles), record the specific *three letter airport code.* In cases where two airport codes are shown on the ticket for a point, such as when the passenger arrives at an airport such as San Francisco and departs from another local airport such as Oakland, record the code for the arrival airport, enter a surface segment indicator (—) to the departure airport, and record the departure airport code. (When the surface portion is at the beginning or end of an itinerary, the surface indicator is to be omitted). For example:

000001	UCA	YV	UA	Y	JFK	TW	TW	X
Passenger(s)	Utica	Mesa Operating Carrier	United Ticketed Carrier	Fare Code	New York Kennedy Airport	TWA Operating Carrier	TWA Ticketed Carrier	Fare Code

SURFACE TRANSPORTATION

SFO			(Blank space)
San Francisco	Operating Carrier	Ticketed Carrier	Fare Code

OAK	UA	UA	G	LAX	DL	DL	F
Oakland	United Operating Carrier	United Ticketed Carrier	Fare	Los Angeles	Delta Operating Carrier	Delta Operating Carrier	Fare Code

SLC	NW	NW	D	PHX	AA	AA	C	LAX
Salt Lake City	Northwest Operating Carrier	Northwest Ticketed Carrier	Fare Code	Phoenix	American Operating Carrier	American Ticketed Carrier	Fare Code	Los Angeles

[5] Codes to be used are those appearing in the *Official Airline Guide* at the time the data are being recorded. If a code is not found in the OAG, contact the Director, Office of Airline Information (address inside front cover).

JL	JL	C	NRT	04596
Japan Air Lines Operating Carrier	Japan Air Lines Ticketed Carrier	Fare Code	Tokyo Narita	Dollars of Fare + Tax

In the above example, the passenger trip stages or segments are compressed into the maximum of 7 stages so that several intermediate city-pairs (Los Angeles to Seattle to Anchorage, or LAX—SEA—Anc) and the related carriers have not been recorded, as prescribed below in this Section V.D.(3)(e). In addition, after the fourth city-pair (Los Angeles-Salt Lake City), the passenger trip itinerary moves from the initial four-part ticket booklet onto another ''conjunction'' ticket, and the summary fare code data are not recorded beyond the initial four-part ticket.

(b) All entries for operating and ticketed carriers for a coupon stage of an itinerary are to be recorded using two character IATA-assigned or DOT codes, as in the above example. Note that the fare code summary was properly inserted after the ticketed carrier's code, i.e., UA for United Air Lines and Y for unrestricted coach class service. When a two-character carrier code is shown on the ticket, record that code for the ticketed carrier. However, if a code is obviously incorrect, record the correct carrier code. If the reporting carrier does not know the operating carrier on a downline code-share segment, it would use the ticketed carrier's code for both the operating and ticketed carriers. The reporting carrier is not responsible for knowing the operating carrier of a downline code-share where it is not a party to the code-share segment. Except for the infrequent compression of data to fit into the stage-length limitation (7 or 23 stages at the carrier's option), all carrier codes are to be recorded, including data on air taxis, commuters, intra-state, and other carrier portions of itineraries. On tickets involving interchange service or other cooperative carrier arrangements, the juncture point(s) where the passenger moves from one carrier system to another is to be recorded as an intermediate point in the itinerary, even when not shown on the ticket and even though the flight may overfly the juncture point.

(c) Entries for fare-basis codes are to be taken from the ''fare basis'' and ''fare description'' portions of the ticket and simplified into the appropriate category, as shown below. No attempt shall be made to determine and record fare-basis codes for that portion of a conjunction ticket appearing in the ticket. Fare-basis codes are to be recorded in one-character alphabetic codes. The fare-basis codes are recorded as follows:

C—Unrestricted Business Class
D—Restricted Business Class
F—Unrestricted First Class
G—Restricted First Class
X—Restricted Coach/Economy Class
Y—Unrestricted Coach/Economy Class
U—Unknown (This fare category is used when none is shown on a ticket coupon, or when a fare category is not discernible, or when two or more carrier fare codes are compressed into a single stage of a passenger trip).

(d) In recording the number of passengers, each single-passenger ticket is to be recorded as one passenger. Tickets for infants under two years of age not occupying a seat are not to be counted. A revenue passenger is defined in Section X.

For group tickets of 10 or fewer passengers per ticket record the actual number of passengers on each ticket, *i.e.*, either 2, 3, 4, 5, 6, 7, 8, 9 or 10. For group tickets with 11 or more passengers (those sampled at a 100-percent rate) record the actual number of passengers traveling on each ticket, but keep these entries separate from the group ticket records with 10 or fewer passengers and from the single-passenger ticket records. Group tickets with 11 or more passengers are to be sorted and summarized to combine all passengers for all itineraries which are identical in every respect, *i.e.*, points, carriers, fare basis codes, and average dollar value (as defined in paragraph (e), below). The total number of passengers on each summarized record is to be divided by 10, rounding to the nearest whole passenger. If the quotient ends in 0.5 or more, raise to the next whole passenger. If the quotient ends in less than 0.5, drop the fraction. These large group-ticket records, after division by 10 for compatibility with the other data, are to be merged with the single-passenger records and with the group-ticket entries from tickets of 10 or fewer passengers for the quarterly O&D Survey report.

(e) The total dollar value shall be taken from the ''Total'' box on each ticket and shall be the sum of the fare plus tax for the entire ticket. Record this amount in whole U.S. dollars, with the cents dropped. Do not round cents to nearest whole dollar.

Amounts on tickets stated in foreign currency are to be converted to U.S. dollar equivalents. For *all group tickets,* the dollar value to be recorded shall be the average amount per passenger, determined by dividing the total dollar value for the entire group by the number of passengers on the group ticket, dropping cents in the average amount.

(3) The *length of the itineraries to be recorded is limited* to a maximum of seven stages or twenty-three stages, at the carrier's option. This recognizes that the vast majority of tickets sampled have seven stages or fewer and that the rare occurrences of extremely lengthy itineraries do not impact the overall Survey results enough to justify their reporting burden. Therefore, trips longer than these limits are *compressed* to fall within the stated maximums. The ticketed origin and destination are retained, but the *intermediate routing is compressed* by applying the following rules, in sequence:

(a) Combine any contiguous open, unknown carrier, or surface stages eliminating the connecting point, and ignoring the fare-basis codes, if different:

(b) Combine any contiguous stages via the same non-U.S. carrier, eliminating the connecting point, and ignoring the fare-basis codes, if different;

(c) Combine any contiguous stages via different non-U.S. carrier, making the carrier ''UK'', eliminating the connecting point, and ignoring fare-basis codes, if different:

(d) Combine any contiguous stages via the *same U.S. carrier,* eliminating the connecting point, and ignoring the fare-basis codes, if different, and;

(e) If the trip, after applying the four steps above, is still too long, record the compressed routing through to the stage length limitation city (seventh or twenty-third city), enter UK as the final carrier, and then record the ticketed destination as the next (the 8th or 24th) city.

VI. SUMMARIZATION OF RECORDED DATA

A. *General.* Prior to the submission of each quarterly report to the Department, each carrier is to summarize the data in accordance with the rules in Section VI.B. In special hardship cases, carriers may submit a waiver request (with justification under Section 1–2 of 14 CFR part 241) requesting permission to report their flight coupon records exactly as represented on their lifted tickets. Waiver requests must provide the documentation described in Section VI.C. so that the Department can develop the necessary procedures and edit routines to ensure the accuracy and reliability of the overall O&D Survey results. The granting of such waivers will depend upon the availability of resources for the Department to assume this additional burden, which can only be determined on a case by case basis, after evaluating each carrier's need.

B. *Rules for Summarization.* Sort the recorded entries into sequence by the entire record (excluding the passenger field), *i.e.,* by origin, complete routing (including fare-basis codes), tickets destination, and dollars value of ticket. *All identical records are then to be combined into one summary record.* The number of passengers on the summary record is to be the sum of the passenger amounts of all the individual records combined. Passengers are only summarized where records are identical in all respects except in number of passengers including dollar value of ticket. NOTE: DO NOT SUMMARIZE DOLLARS OVER IDENTICAL RECORDS. This summarization is to include the entries from group tickets, but only after the entries for *group tickets with 11 or more passengers* have been *summarized and divided by 10,* as stated in Section V.D.(2)(d). Carriers submitting quarterly O&D Survey reports on magnetic tapes or similar formats such as ''floppy discs'' will follow the ADP INSTRUCTIONS in Section IX. Carriers filing reports on hardcopy BTS Forms 2787 are to enter, on the last page of the report, the overall total of the number of passengers in the report.

C. *Waiver Requests.* Requests for permission to depart from the required O&D Survey procedures should include a *procedural statement* describing the process the carrier proposed to employ in *examining, selecting and editing* the data from reportable flight coupons for the O&D Survey, as well as a flow chart diagramming the proposed procedures.

D. *Quantity and Quality Controls.* Carriers are expected to establish and maintain *continuous quantity and quality* controls on the flow of all lifted flight coupons through their system processes to determine the total *number of coupons handled* and the number of reportable *coupons selected.* Such data controls and tests have not been specified by the Department, and necessarily must be developed by each carrier. Each participating carrier shall develop and use on a continuous basis such control tests as are necessary to ensure that all reportable coupons are being selected, recorded and reported as intended by these O&D Survey Instructions. Such controls should extend over all ADP processing, both in-house and that from external service bureaus.

VII. EDITING OF RECORDED DATA

A. *City and Airport Codes.* Prior to submission of O&D Survey reports, each carrier is to edit the recorded data to validate city and airport codes. This edit is to verify that the codes recorded are valid official codes, and it is independent of whether or not the carriers shown actually operated into or out of the airport shown. Any questions about airport codes should be addressed to the Director, Office of Airline Information (see inside of cover).

B. *Edit Responsibility of Carriers.* Each carrier is responsible for developing edit procedures and internal controls over its data entry and processing procedures so that valid and reliable data are captured in the O&D Survey inputs and are properly summarized in the outputs. Since the carriers have many different statistical systems, it is not

practicable for the Department of Transportation to prescribe specific controls in this area, and each carrier is responsible for developing the appropriate internal control procedures to edit the O&D Survey data and ensure the integrity of these data. The Department will control the accuracy of its processing of the sampled data upon receipt from the carriers.

C. *System Documentation of Edits.* Carriers are required to maintain written O&D Survey procedural statements and flow charts. As provided in Section VIII, these must be established, or re-certified as of July 1, 1987, and thereafter when significant procedural revisions occur.

VIII. Control of Sample Selection and Data Recording

A. *Sample Accuracy and Reliability.* In order to maximize the accuracy and reliability of the sample selection and data recording, each carrier is to:

(1) Develop a written statement describing the procedures it will employ in examining and selecting reportable flight coupons and in recording, summarizing, editing, and testing the Survey data.

(2) Submit any proposed changes in the above procedures to the Department's Office of Airline Information, prior to implementation of such changes.

(3) Establish continuous quantity controls on the flow of all lifted flight coupons through the carrier's accounting processing to determine the total number of coupons handled, and the number of reportable coupons selected. Tests are to be made continuously to assure that all reportable coupons are being selected and the data recorded. Such tests should be completed while the ''lifted'' flight coupons (representing earned passenger revenues for flight segments operated) remain in the possession of the carrier. Establish such other internal control procedures as are necessary for supervising and monitoring the accuracy of the recording of data from reportable flight coupons.

B. *Staff Review.* The OAI staff will review the carrier procedures and practices and may request modifications or the use of special procedures necessary to improve the sample or to bolster the controls for accuracy and reliability.

IX. ADP Instructions

Each carrier electing to submit its Survey reports in machine listing form or magnetic media in lieu of hardcopy BTS Form 2787 is to be governed by the following instructions:

A. Instructions for Submitting Records on Magnetic Media

(1) *Identification record.* This identification record is to include the reporting carrier and the reporting period. It is designed to fall at the beginning of each file when sorted on columns 7 through 200. The record is to be in the format shown as follows:[6]

Field	Tape positions (from-to)	Tape record layout
Passenger Count	1–6	1. Passenger field must contain leading zeros, and no blanks.
1st City Code	7–9	
1ST Operating Carrier	10–11	
1ST Ticketed Carrier	12–13	2. City field contains the 3-letter alpha code for the airport in the first 3 positions.
Fare Basis Code	14	
2ND City Code	15–17	
2nd Operating Carrier	18–19	
2nd Ticketed Carrier	20–21	
Fare Basis Code	22	
3rd City Code	23–25	
3rd Operating Carrier	26–27	
3rd Ticketed Carrier	28–29	
Fare Basis Code	30	
4th City Code	31–33	3. Ticketed and operating carrier fields are to contain the 2 character air carrier code. An unknown carrier is to be coded ''UK'' and surface carrier is to be coded ''— —'' (dash dash).
4th Operating Carrier	34–35	
4th Ticketed Carrier	36–37	
Fare Basis Code	38	
5th City Code	39–41	
5th Operating Carrier	42–43	
5th Ticketed Carrier	44–45	
Fare Basis Code	46	
6th City Code	47–49	4. Fare basis code is a one position alpha code.
6th Operating Carrier	50–51	
6th Ticketed Carrier	52–53	
Fare Basis Code	54	5. Portion of record for sorting, summarizing, and sequencing includes columns 7 through 200.
7th City Code	55–57	
7th Operating Carrier	58–59	
7th Ticketed Carrier	60–61	
Fare Basis Code	62	
8th City Code	63–65	6. Dollar amount in positions 196–200 is right justified.
8th Operating Carrier	66–67	
8th Ticketed Carrier	68–69	
Fare Basis Code	70	7. Positions 66–193 are used only by those carriers who want to report more data, and are not compressing to 7 stages (see Sec. V.D. (3) for compressing rules.
9th City Code	71–73	
9th Operating Carrier	74–75	
9th Ticketed Carrier	76–77	

[6] Each reel of tape will be returned to the individual carrier upon request.

Field	Tape positions (from-to)	Tape record layout
Fare Basis Code	78	
10th City Code	79–81	
10th Operating Carrier ..	82–83	
10th Ticketed Carrier	84–85	
Fare Basis Code	86	
11th City Code	87–89	
11th Operating Carrier ..	90–91	
11th Ticketed Carrier	92–93	
Fare Basis Code	94	
12th City Code	95–97	
12th Operating Carrier ..	98–99	
12th Ticketed Carrier	100–101	
Fare Basis Code	102	
13th City Code	103–105	
13th Operating Carrier ..	106–107	
13th Ticketed Carrier	108–109	
Fare Basis Code	110	
14th City Code	111–113	
14th Operating Carrier ..	114–115	
14th Ticketed Carrier	116–117	
Fare Basis Code	118	
15th City Code	119–121	
15th Operating Carrier ..	122–123	
15TH Ticketed Carrier ..	124–125	
Fare Basis Code	126	
16th City Code	127–129	
16th Operating Carrier ..	130–131	
16th Ticketed Carrier	132–133	
Fare Basis Code	134	
17th City Code	135–137	
17th Operating Carrier ..	138–139	
17th Ticketed Carrier	140–141	
Fare Basis Code	142	
18th City Code	143–145	
18th Operating Carrier ..	146–147	
18th Ticketed Carrier	148–149	
Fare Basis Code	150	
19th City Code	151–153	
19th Operating Carrier ..	154–155	
19th Ticketed Carrier	156–157	
Fare Basis Code	158	
20th City Code	159–161	
20th Operating Carrier ..	162–163	
20th Ticketed Carrier	164–165	
Fare Basis Code	166	
21st City Code	167–169	
21st Operating Carrier ..	170–171	
21st Ticketed Carrier	172–173	
Fare Basis Code	174	
22nd City Code	175–177	
22nd Operating Carrier	178–179	
22nd Ticketed Carrier ...	180–181	
Fare Basis Code	182	
23rd City Code	183–185	
23rd Operating Carrier	186–187	
23rd Ticketed Carrier	188–189	
Fare Basis Code	190	
24th City Code	191–193	
Blank	194–195	
US Value of Ticket in $	196–200	

Field	Columns	Remarks
Reporting carrier	1–2	Alpha code.
Reporting period:		
Year	3–4	Tens and units position.
Quarter	5	1, 2, 3, or 4.
Blanks	6–200	

(2) *Detail record.* (a) All records are to be summarized on the complete itinerary[7] (columns 7 through 200) and the summary record *only* for each itinerary is to be submitted. The tape file, including the identification record, is to be in sequence by complete itinerary.

(b) The tape record layout is shown on the following page.

(3) Magnetic Tape Instructions: (a) All tapes are to be written using the standard IBM extended binary coded decimal interchange code (EBCDIC).

(b) The recording density can be either 6250 or 1600 B.P.I.

(c) All tape will contain standard IBM volume header, and trailer records.

(d) External labels will contain the carrier, name, the report date, file identification, and an address for returning the tapes.

(4) *Transmittal letter.* The tape shall be accompanied by a transmittal letter which shows the number of records reported and the total number of passengers contained in the report.

B. *Editing of Tape Records.* Prior to submission of data, each carrier is requested to edit and correct its data so that its O&D Survey report may be as error-free as is reasonably practicable. The methods to be used in editing are left to the carriers' discretion, but with assistance available upon request from the Department's Office of Airline Information (OAI). To aid the carriers in maintaining a current file of editing criteria, OAI will re-issue, as needed, the city/airport-carrier file to each participating carrier. There will be a five-position field to denote the city/airport-carrier. The first three positions denotes the airport and the last two positions denotes the air carrier.

C. Standard Formats for Floppy Disk or Cartridge Submissions. Carriers should use the 200 position format with the standard length fields prescribed for magnetic media submissions. The record layout is detailed in subsection A(1) of this section. However, to simplify the PC submissions, the submitter may report the dollar value of the ticket in the field immediately after the last reported city code, rather than in positions 196–200. Submitters may separate fields by using commas or tabs (comma delimited ASCII or tab delimited ASCII format).

X. GLOSSARY OF TERMS

Selected terms used in the foregoing instructions are here defined and explained in the context of the O&D Survey.

ADP. An abbreviation for automated data processing, which is the term applied to all forms of machine processed data.

[7] Itinerary includes total dollar value of ticket.

Carrier. Any scheduled air carrier, U.S. or foreign, that appears on a coupon stage in a ticketed itinerary, including helicopter, air taxi, commuter, intra-Alaska carriers, and intra-state carriers.

City or origin. (See origin.)

Conjunction ticket. Two or more tickets concurrently issued to a passenger and which together constitute a single contract of carriage.

Connecting point. An intermediate point in an itinerary at which the passenger deplanes from one flight and boards another flight, either on the same carrier or from the flight of one carrier to a flight of another carrier, for continuation of the journey.

Coupon stage. (See flight-coupon stage.)

Destination. The last point in the itinerary and the last point at which the passenger is to deplane at the completion of the journey. (In roundtrip itineraries, the destination and the origin are the same.)

Dollar value of ticket. (See total dollar value of ticket.)

Domestic. Itineraries within or between the 50 U.S. States and the District of Columbia are considered domestic for this Survey.

Fare basis code. The alphabetic code(s) or combination of alphabetic and numeric codes appearing in the ''Fare basis'' box on the flight coupon which describe the applicable service and discount to which the passenger is entitled. All fare basis codes are summarized into basic categories; namely C—Unrestricted Business Class, D—Restricted Business Class, F—Unrestricted First Class, G—Restricted First Class, X—Restricted Coach/Economy Class, Y—Unrestricted Coach/Economy Class, and U—Unknown (This fare category is used when none is shown on a ticket coupon, or when a fare category is not discernible, or when two or more carrier fare codes are compressed into a single stage of a passenger trip).

Fare ladder. The ''For-issuing-office-only'' box of a ticket.

Flight-coupon stage. The portion of an itinerary which lies between two contiguous points in the itinerary and between which points the passenger is to travel on a single flight.

Group ticket. A single ticket valid for the transportation of two or more passengers over the same itinerary.

Interline transfer. An occurrence at an intermediate point in an itinerary where a passenger changes from one carrier to another carrier, with or without a stopover.

Intermediate point. Any point in an itinerary, other than the origin or destination, at which the passenger makes an interline or intraline connection or stopover.

International. The world area outside the 50 U.S. States and the District of Columbia. Itineraries between points outside the 50 States are considered as international for this Survey, as well as itineraries between the 50 States and U.S. possessions, and between or within U.S. possessions.

Intraline transfer. An occurrence at an intermediate point in an itinerary where a passenger changes from a flight of one carrier to another flight of that same carrier, with or without stopover, or where the passenger changes from one class of service to another class of service on the same flight.

Itinerary. All points in the passenger journey, beginning with the origin, followed by the routing, and ending with the destination, in the sequence shown on the ticket.

Operating air carrier. Under a code-share arrangement, the air carrier whose aircraft and flight crew are used to perform a flight segment.

Origin. The first point in the itinerary and the point where the passenger first boards a carrier at the beginning of the itinerary.

Participating carrier. A carrier which is governed by the Survey data collection and reporting instructions contained herein and which is required to file Survey reports with the Department of Transportation.

Point. A city or airport (always identified by its airport code).

Reissued ticket. A ticket issued in exchange for all or part of the unused portion of a previously issued ticket.

Reportable flight coupon. A flight coupon in an itinerary in which the carrier examining the coupon is the first participating carrier to lift a flight coupon in the itinerary and from which coupon the examining carrier records the Survey data.

Reporting carrier. The carrier in a given itinerary which has lifted the reportable flight coupon in that itinerary and which carrier is required to record the Survey data for that itinerary for the report to the Department.

Routing. The carrier on each flight-coupon stage in an itinerary and the intermediate points of routing stopover or connection (interline or intraline) in the sequence of occurrence in the movement of the passenger from origin to destination. The routing also includes fare-basis summary codes on each flight-coupon stage, to the extent these are available from the ticket.

Scheduled service. Transport service operated on a certificated large air carrier's routes pursuant to published flight schedules, including extra sections of scheduled flights.

Stage. (See flight-coupon stage.)

Ticketed air carrier. Under a code-share arrangement, the air carrier whose two-character air carrier code is used for a flight segment, whether or not it actually operates the flight segment.

Total dollar value of ticket. The sum of the fare plus tax for the entire ticketed itinerary, in whole U.S. dollars with cents dropped. For a group ticket, the amount is the average per passenger. For fares stated

in foreign currency, it is the equivalent in U.S. dollars.

Transfer. (See interline transfer and intraline transfer.)

XI . Sample of RSPA Form 2787

PASSENGER ORIGIN-DESTINATION SURVEY REPORT

Reporting Carrier: _____
(Two letter carrier code)

Reporting Period: _____
(Indicate reporting qtr.)

Number of Passengers	City Code (1)	Car. Fare Code	City Code (2)	Car. Fare Code	City Code (3)	Car. Fare Code	City Code (4)	Car. Fare Code	City Code (5)	Car. Fare Code	City Code (6)	Car. Fare Code	City Code (7)	Car. Fare Code	City Code (8)	Amount of Fare plus Tax in U.S. Dollars

Car. Fare Code = Two character alphabetic carrier code followed by fare basis code, such as TWFD, indicating Trans World as the carrier and coach discount as the fare basis summary group code.

City Code = Three character alphabetic airport code, such as EWR for Newark, OAK for Oakland, and SJC for San Jose.

Amount = Dollar amount of ticket, stated in whole U.S. dollars.

No. of passengers = Tickets sampled at one-percent are to be multiplied by 10 for reporting on this form. Note that all passenger data are presented as a ten-percent sample.

RSPA Form 2787

[Amdt. No. 241–55, 52 FR 6529, Mar. 5, 1987, as amended at 60 FR 66723, 66724, Dec. 26, 1995; 62 FR 43280, Aug. 13, 1997; 67 FR 58690, Sept. 18, 2002]

GENERAL REPORTING PROVISIONS—LARGE CERTIFICATED AIR CARRIERS

Section 21 Introduction to System of Reports

(a) Each large certificated air carrier subject to the Federal Aviation Act of 1958, as amended, shall file with the BTS, monthly, quarterly, semiannually, and annually BTS Form 41 Reports of financial and operating statistics as prescribed herein unless waiver has been made by the Civil Aeronautics Board.

(b) The system prescribed provides for the submission by each air carrier of four classes of financial and operating statistics, on individual schedules of the BTS Form 41 Report, grouped as follows:

A. Certification.
B. Balance Sheet Elements.
P. Profit and Loss Elements.
T. Traffic and Capacity Elements.

(c) The prescribed system of reports provides that the frequency of reporting shall be monthly for some schedules, quarterly for some, semiannually for some and annually for others. It also provides in some areas for the classification of large certificated air carriers into Group I, Group II, and Group III with the form and content differentiated as between groups.

(d) Each schedule of the prescribed BTS Form 41 Report has been assigned a specific code. The prefix alphabetical codes A, B, P and T, respectively, have been employed to denote certification, balance sheet, profit and loss, and traffic and capacity. The digits immediately following the alphabetical prefix designate the particular schedule.

(e) Upon approval by the Director, Office of Airline Information, a carrier may:

(1) Supply its own computer prepared formats provided each schedule conforms with the size and format of the forms prescribed in this part.

(2) Use telefacsmile, or fax, equipment to submit the forms prescribed by this part; however, forms transmitted by fax must conform to an 8½ × 14 inch size. With prior approval, larger forms may be reduced in size of 8½ × 14 for transmission to the Department.

(f) In submitting each schedule prescribed by this part to the Department, each reporting air carrier shall adhere to the following guidelines:

(1) A good quality black ribbon shall be used in preparing the original copy of each schedule.

(2) In no event shall any information be typed on the reverse side of copies submitted to the Department.

(3) Except as provided for in paragraph (e) of this section, no photocopy or similar process shall be used.

(g) Four separate air carrier entities shall be established for large certificated air carriers conducting scheduled service for the purpose of submitting the prescribed reports. They are as follows: (1) Domestic operations; (2) operations via the Atlantic Ocean; (3) operations via the Pacific Ocean; and (4) operations in Latin American areas. With respect to the first classification, the domestic entity shall embrace all operations within and between the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the U.S. Virgin Islands, and shall also include Canadian transborder operations. The reports to be submitted by each entity shall be comparable to those required of a distinct legal entity whether the reporting entity constitutes such an entity, a semiautonomous physically separated operating division of the carrier, or an entity established for reporting purposes only.

(h) Two separate entities shall be established for large certificated air carriers predominantly engaged in conducting charter activities for the purpose of submitting the prescribed reports: (1) Domestic operations; and (2) international operations. The domestic entity includes all operations within and between the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands. All other operations will be in the international entity.

(i) The entities for which separate reports shall be made by the different route and charter air carriers will be set semiannually by the Office of Airline Information.

(j) As a general rule separate reports shall be filed for the air carrier and for each associated company air carriers as defined in section 03 which is an air carrier. However, transactions of associated companies in which 100 percent equity control resides in the reporting air carrier shall be consolidated with transactions of the reporting air carrier when such associated companies perform services related to the transport operations of the reporting air carrier almost exclusively and are not engaged in air transportation for their own account.

(k) Generally, route air carriers' nonscheduled services shall be treated as an integral part of the reporting entity to which most closely related without regard to the geographic area in which such nonscheduled services may actually be performed. However, supplemental reports shall be made of nonscheduled services (including service

for the Department of Defense) in areas not encompassed by the prescribed reporting entity in any month in which the available ton-miles of such nonscheduled services exceed 5 percent of the available ton-miles of the reporting entity. Such supplemental reports shall continue until waived by the BTS upon a showing that such nonscheduled operations will not in the subsequent 12-month period exceed the 5-percent limit. The supplemental reports to be filed each month or calendar quarter, as applicable, shall be comprised of report Schedules P–5, T–1, and T–2. Transport and nontransport revenues pertaining to such separately reported nonscheduled services shall be reported on Schedule P–2 each quarter.

(l) When and as required in the national interest, any air carrier which performs nonscheduled transport services for the Department of Defense shall, when directed by the Department, make separate reports for such services as if they were conducted by a physically separate transport entity, such reports shall consist of Schedules P–1 through P–7, T–1, and T–2. The letter ''D'' shall be inserted on such reports, following the schedule number of each P and T schedule. When a carrier has more than one reporting entity, nonscheduled transport and nonscheduled Defense services shall be assigned to the reporting entity to which more closely related.

[ER–1027, 42 FR 60128, Nov. 25, 1977, as amended by ER–1073, 43 FR 40453, Sept. 12, 1978; ER–1073, 44 FR 1970, Jan. 9, 1979; ER–1188, 45 FR 48871, July 22, 1980; ER–1297, 47 FR 32919, July 30, 1982; ER–1400, 50 FR 12, Jan. 2, 1985; ER–1401, 50 FR 247, Jan. 3, 1985; Amdt. No. 241–56, 52 FR 9130, Mar. 23, 1987; Amdt. 241–60, 56 FR 12658, Mar. 27, 1991; 60 FR 66724, Dec. 26, 1995]

Section 22 General Reporting Instructions

(a) One copy of each schedule in the BTS Form 41 report shall be filed with the BTS and shall be received on or before the due date indicated for each such schedule in the list titled ''Due Dates of Schedules in BTS Form 41 Report.''

LIST OF SCHEDULES IN BTS FORM 41 REPORT

[See footnotes at end of table]

Schedule No.	Title	Filing frequency	Applicability by carrier group		
			I	II	III
A	Certification	Q	(1)	X	X
B–1	Balance sheet	Q	(1)	X	X
B–1.1	Balance sheet	SA	(2)	NA	NA
B–7	Airframe and aircraft engine acquisitions and retirements	Q	NA	X	X
B–12	Statement of changes in financial position	Q	(1)	X	X
B–43	Inventory of airframes and aircraft engines	A	X	X	X
P–1.1	Statement of operations	SA	(2)	NA	NA
P–1.2	Statement of operations	Q	(1)	X	X
P–1(a)	Interim operations report	M	X	X	X
P–2	Notes to RSPA Form 41 report	Q	(1)	X	X
P–5.1	Aircraft operating expenses	Q(1), SA(2)	X	NA	NA
P–5.2	Aircraft operating expenses	Q	NA	X	X
P–6	Operating expenses by objective groupings	Q	(1)	X	X
P–7	Operating expenses by functional groupings— Group III air carriers	Q	NA	NA	X
P–10	Employment statistics by labor category	A	(1)	X	X
P–12(a)	Fuel consumption by type of service and entity	M	(1)	X	X
T–100	U.S. air carrier traffic and capacity data by nonstop segment and on-flight market.	M	X	X	X
T–100(f)	Foreign air carrier traffic data by nonstop segment and on-flight market. (see 14 CFR 217)	M			
T–8	Report of all-cargo operations	A	(3)	(3)	(3)

M=Monthly, Q=Quarterly, SA=Semiannually, A=Annually, NA=Not Applicable, X=All Carriers.
(1) Applicable to Group I Air Carriers with annual operating revenues of $20 million or more.
(2) Appilcable to Group I Air Carriers with annual operating revenues below $20 million.
(3) Applicable to Air Carriers conducting 49 U.S.C. 41103 all-cargo operations.

DUE DATES OF SCHEDULES IN BTS FORM 41 REPORT

Due dates [1]	Financial data on schedule No.	Traffic and capacity data on schedule No.
January 20	P–12(a)	
January 30	P–1(a)	T–100, T–100(f)
February 10 [2]	A, B–1, B–1.1, B–7, B–12, P–1.1, P–1.2, P–2, P–5.1, P–5.2, P–6, P–7, P–10.	
February 20	P–12(a)	
March 1	P–1(a)	T–100, T–100(f),
March 20	P–12(a)	
March 30	B–43, P–1(a).	T–100, T–100(f), T–8
April 20	P–12(a)	
April 30	P–1(a)	T–100, T–100(f)
May 10	A, B–1, B–7, B–12, P–1.2, P–2, P–5.1, P–5.2, P–6, P–7.	
May 20	P–12(a)	
May 30	P–1(a)	T–100, T–100(f)
June 20	P–12(a)	
June 30	P–1(a)	T–100, T–100(f)
July 20	P–12(a)	
July 30	P–1(a)	T–100, T–100(f)
August 10	A, B–1, B–1.1, B–7, B–12, P–1.1, P–1.2, P–2, P–5.1, P–5.2, P–6, P–7.	
August 20	P–12(a)	
August 30	P–1(a)	T–100, T–100(f)
September 20	P–12(a)	
September 30	P–1(a)	T–100, T–100(f)
October 20	P–12(a)	
October 30	P–1(a)	T–100, T–100(f)
November 10	A, B–1, B–7, B–12, P–1.2, P–2, P–5.1, P–5.2, P–6, P–7.	
November 20	P–12(a)	
November 30	P–1(a)	T–100, T–100(f)
December 20	P–12(a)	
December 30	P–1(a)	T–100, T–100(f)

[1] Due dates falling on a Saturday, Sunday or national holiday will become effective the first following work day.

[2] Reporting due dates on Form 41 Schedules B and P are extended to March 30 if preliminary schedules are filed at the Department by February 10

(b) Each large certificated air carrier shall file the applicable schedules of the BTS Form 41 Report with the BTS in accordance with the above instructions with the following exceptions:

(1) The time for filing B and P report schedules for the final quarter or semiannual period of each calendar year may be extended to the following March 30 if the preliminary Schedules B–1 or B–1.1 and P–1.1 or P–1.2 are submitted, as applicable, and are received on or before their respective due dates.

(2) For the third month of any calendar quarter, Schedule P–1(a) need not be filed if Schedule P–1.1 or P–1.2 for the quarter or semiannual period, as applicable, is received on the due date prescribed for Schedule P–1(a).

(3) Income and expense data on Schedule P–1(a) for each month will be withheld by the BTS from public disclosure, until such time as (i) the semiannual or quarterly financial reports are due, (ii) the semiannual or quarterly financial reports are filed, or (iii) information covered by monthly reports is publicly released by the carrier concerned, whichever occurs first. Before that time, income and expense data reported on Schedule P–1(a) will be disclosed to parties to any proceeding before the DOT to the extent that such data are relevant and material to the issues in the proceeding upon a determination to this effect by the administrative law judge assigned to the case or by the DOT. Any data to which access is granted may be introduced into evidence, subject to the normal rules of admissibility of evidence. The DOT will make other disclosure of these data upon its own motion or upon application of any interested person, when the DOT finds the public interest so requires. The BTS may, from time to time, publish summary information compiled from Schedule P–1(a) in a form which will not identify the individual carrier. At the request of an air carrier, and upon a showing by such air carriers that public disclosure of its preliminary year-end report would adversely affect its interests and would not be in the public interest, the BTS will withhold such preliminary year-end report from public disclosure until such time as (i) the final report is filed, (ii) the final report is due, or (iii) information covered by the preliminary report is publicly released by the carrier concerned, whichever occurs first.

(c) If circumstances prevent the filing of a report on or before the prescribed due date, consideration will be given to the granting of an extension

upon receipt of a written request therefor. To provide ample time for consideration and communication to the air carrier of the action taken, such a request must be delivered to the Board in writing at least three (3) days in advance of the due date, setting forth good and sufficient reason to justify the granting of the extension and the date when the report can be filed. Except in cases of emergency, no such request will be entertained which is not in writing and received by the BTS at least three (3) days before the prescribed due date. If a request is denied, the air carrier remains subject to the filing requirements to the same extent as if no request for extension of time had been made.

(d) [Reserved]

(e) All financial data reported on B, P and G schedules shall reflect the status of the air carrier's books of account for the period for which the report is being made and shall conform to the instructions contained in this Uniform System of Accounts and Reports. At the option of the air carrier, Group III air carriers may round reported financial data to the nearest thousands of dollars by typing ''($000)'' at the top of each amount column. All Group I and Group II air carriers may, at their option, round reported financial data to the nearest whole dollars by dropping the cents. All rounded amounts must be balanced within and between schedules. This option applies only to the submission of hardcopy reports. Instructions for the submission of data in ADP format are contained in the Accounting and Reporting Directives, which are available from OAI.

(f) Traffic and other operational statistics included in schedules of the BTS Form 41 reports shall reflect data pertaining to the month, quarter or 12-months-to-date period for which the report is being made.

(g) Adjustments correcting errors in previously reported traffic and other operational statistics shall not be included in data reported in schedules for the current period but shall be effected by submission of corrected schedules for the period to which applicable or, if only a few items are involved, by written notice and authorization to the BTS to correct previously filed reports except that any correction which amounts to less than one-half of one percent (0.5%) of the corrected amount for the month to which related may be included in the report for the current month provided the amount of the correction is clearly noted on the Form 41 Report.

(h) All letters and statements of correction or revision of reported data shall be a part of the BTS Form 41 reports.

(i) All changes in accounting methods having a material impact upon the particular financial elements involved, and all changes in methods of computing and reporting traffic and capacity statistics having a material impact upon the particular statistic involved shall be adequately explained and identified in the report first reflecting such changes. Such explanations related to financial position or financial results shall be made on BTS Form 41 Schedule P–2. Changes in methods for computing or reporting traffic and capacity statistics shall be identified and explained on a separate sheet attached to the first report affected. (See sec. 2–16.) The reporting requirements shall not be construed, in any sense, as relieving the air carrier of the responsibility for conforming its procedures to those otherwise prescribed in this system of accounts and reports.

(j) All financial statements released by carriers to the public reflecting a financial position or operating results for dates or reporting periods not covered by reports on file with the Board shall be filed with the Board simultaneously with their public release.

(Approved by the Office of Management and Budget under control number 2138–0013)

[ER–755, 37 FR 19726, Sept. 21, 1972]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting part 241, section 22, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

FINANCIAL REPORTING REQUIREMENTS

Section 23 Certification and Balance Sheet Elements

Schedule A—Certification

(a) The certification of the BTS Form 41 Report shall be signed by an elective corporate officer, executive, or director. Other

persons may be authorized by the carrier to sign the certification provided a written authorization disclosing the individual's name and title is forwarded to the Department of Transportation. Since corrections or revisions of reported data are a part of the BTS Form 41 Report, all correspondence relating to such matters shall be signed only by the person(s) authorized to sign the certification.

(b) The certification of the Form 41 reports, embodied in Schedule A thereof, shall read as follows:

I, the undersigned (Title of officer in charge of accounts) _____ of the (Full name of the reporting company) _____ do certify that this report and all schedules, ADP-media submissions, Passenger Origin-Destination Survey submissions and supporting documents which are submitted herewith or have been submitted heretofore as parts of this report filed for the above indicated period have been prepared under my direction; that I have carefully examined them and declare that they correctly reflect the accounts and records of the company, and to the best of my knowledge and belief are a complete and accurate statement, after adjustments to reflect full accruals, of the operating revenues and expenses, income items, assets, liabilities, capital, retained earnings, and operating statistics for the periods reported in the several schedules, the Schedule T–100 ADP-media submissions, and the Passenger Origin-Destination Survey; that the various items herein reported were determined in accordance with the Uniform System of Accounts and Reports for Large Certificated Air Carriers prescribed by the Department of Transportation; and that the data contained herein are reported on a basis consistent with that of the preceding report except as specifically noted in the financial and statistical statements.

Schedule B–1 Balance Sheet

(a) This schedule shall be filed by all Group II and Group III air carriers and Group I air carriers that have annual operating revenues of $20 million or more.

(b) This schedule shall reflect the balances at the close of business on the last day of each calendar quarter for the overall or system operations of each air carrier in conformance with the provisions of sections 4, 5 and 6.

(c) Individual proprietors or partners shall report the aggregate capital contributed by the proprietor or partners in account 2890 Additional Capital Invested.

Schedule B–1.1—Balance Sheet

(a) This schedule shall be filed semiannually by Group I air carriers with annual operating revenues below $20 million.

(b) Each carrier shall insert in the space provided for ''OAG Code'' its carrier code as contained in the Official Airlines Guide (OAG). If the OAG does not contain a carrier code for the reporting carrier, a code will be provided by the Office of Airline Information upon request. This code will then be inserted in the space provided for ''carrier code.''

(c) This schedule shall show the account balances at the close of business on June 30 or December 31, as applicable, of each semiannual reporting period.

(d) ''Current Assets'' shall include all resources that may reasonably be expected to be realized in cash or sold or consumed within one year. This group of assets is classified into three basic accounts:

(1) ''Cash and Equivalents'' shall include cash on hand and on deposit, U.S. Government securities, and other temporary cash investments.

(2) ''Notes and Accounts Receivable-Net'' shall include general traffic accounts receivable, government receivables, notes and receivables from associated companies, officers, employees and others, and a deduction for a reasonable allowance for bad debts.

(3) ''Other Current Assets'' shall contain all other current assets not provided for in the above classifications. This account shall include, but is not limited to, short-term prepayments, expendable spare parts, supplies and other inventories of flight equipment replacement parts that are usually replaced rather than repaired, and materials and supplies held in stock, such as fuel and oil, expendable tools, office supplies and food service supplies. Spare parts may be reduced by an allowance for obsolescence to provide for losses in value.

(e) ''Property and Equipment'' shall be segregated into that which is owned and that which is leased under capital leases. All property and equipment, with the deception of land, shall be reported net of accumulated depreciation or amortization.

(f) ''Other Assets'' shall included all assets not included in the above categories, such as long-term investments, long-term prepayments, long-term receivables, deferred charges, intangible assets, equipment purchase deposits, and construction work in progress.

(g) ''Current Liabilities'' shall include all obligations, the liquidation of which is reasonably expected to require the use of existing resources within one year. This group of liabilities is classified into three basic accounts:

(1) ''Notes and Accounts Payable'' shall include any payments on long-term debt, short-term notes and accounts payable, and accrued expenses that are payable within one year.

(2) ''Accrued Taxes'' shall include tax liabilities, such as those imposed on income,

property and payroll, which are reasonably expected to be liquidated within one year.

(3) ''Other Current Liabilities'' shall include all current liabilities which are not provided for elsewhere, such as air traffic liabilities for unused transportation sold (includes sales of transportation on both the reporting carrier and other carriers).

(h) ''Long-Term Debt'' shall include all obligations which are not reasonably expected to be liquidated within one year. Typical examples include bonds payable, long-term notes payable, lease obligations, and pension obligations.

(i) ''Other Liabilities'' shall include any debts or obligations which are not properly listed in the ''Current Liabilities'' or ''Long-Term Debt'' sections.

(j) ''Deferred Credits'' shall include all credit balances of a general clearing nature, including credits held in suspense pending receipt of further information necessary for final disposition. Included in this account are deferred income taxes and deferred investment tax credits.

(k) ''Stockholder's Equity'' shall be reported as follows:

(1) ''Capital Stock'' shall be segregated as between common and preferred. The number of shares outstanding, along with the par or stated value of the stock, shall be reported. In the case of no-par stock without stated value, the full consideration received shall be reported.

(2) ''Other Paid-In Capital'' shall include the difference between the price at which the capital stock is sold and the par or stated value of the stock.

(3) ''Retained Earnings'' shall represent the net income or loss from all operations of the corporate entity less dividends.

(4) ''Treasury Stock'' shall represent the cost of stock issued by the carrier and reacquired by it but not retired or cancelled.

(l) The statement of certification shall be signed by the carrier's chief accounting officer.

(m) All substantive matters that may materially influence interpretations or conclusions in regard to the financial condition or the earnings position of the air carrier which are not clearly identified in the body of the schedule or which represent information that cannot be expressed adequately in monetary terms shall be completely and clearly stated in a note attached to this schedule and cross-referenced to the affected account or accounts.

Schedule B–7 Airframe and Aircraft Engine Acquisitions and Retirements

(a) This schedule shall be filed by all Group II and Group III air carriers.

(b) Data applicable to acquisitions and data applicable to retirements shall be grouped and reported separately. The data reported within each group (acquisitions; retirements) shall be further subgrouped and reported as follows:

(1) Acquisitions: the indicated data shall be reported for each individual airframe, identified by type, model, and design of cabin as to use for passengers exclusively, cargo exclusively, or both passengers and cargo in combination. Data pertaining to aircraft engines shall be reported in aggregate for each type or model; however, leased aircraft engines shall be separately reported under captions entitled: Capital Leases—Aircraft Engines; and Operating Leases—Aircraft Engines. Airframe units leased from others for a period of more than 90 days shall be reported in a separate subsection of this schedule, captioned as follows: Capital Leases—Airframe Units; and Operating Leases—Airframe Units. In addition, a notation shall be made by license number of airframe units of the air carrier returned after lease to others for a period of more than 90 days. Airframe units obtained through interchange lease arrangements shall not be so reported.

(2) Retirements: The indicated data shall be reported for the sale or retirement of each airframe, each type of aircraft engine (stating the number of units retired) and, to the extent retired along with airframes and engines, in aggregates by accounts, operating property and equipment included in accounts 1607 and 1608 and nonoperating property and equipment included in accounts 1707 and 1708. Disposition of properties in accounts 1608 and 1708 not related to airframe and aircraft engine retirements shall be reported in a separate group for each account. Airframe units leased from others for a period of more than 90 days shall be reported, upon return to the lessor, in a separate subsection of this schedule and captioned as follows: Capital Leases—Airframe Units; and Operating Leases—Airframe Units. In addition, a notation shall be made by license number and name of lessee of airframe units leased to others for a period of more than 90 days; moreover, airframe units leased to others under sales-type or direct financing leases shall be separately captioned and reported on this schedule. Airframe units leased under interchange arrangements shall not be so reported. Aircraft engines leased from others for a period of more than 90 days shall be reported, upon return to the lessor, in a separate subsection of this schedule and captioned as follows: Capital Leases—Aircraft Engines; and Operating Leases—Aircraft Engines. In addition, a notation shall be made by model number, number of units, and name of lessee of aircraft engines leased to others for a period of more than 90 days; moreover, aircraft engines leased to others under sales-type or direct financing leases shall be separately captioned and reported on this schedule. Aircraft engines leased under interchange arrangements shall not be so reported.

(c) All dates shall indicate the day, the month and the year; shall be provided on a unit basis for airframes only, and, shall be reported for each aircraft engine group by date of transaction.

(d) Column 1, ''Year of First Delivery—Airframe,'' shall reflect, for each reported airframe, the year that the airframe was first delivered by its manufacturer.

(e) Column 2, ''Airframe Manufacturer's Serial Number,'' shall reflect the serial number assigned to each reported airframe by its manufacturer.

(f) Column 4, ''Acquisitions or Retirements,'' shall be used to indicate, for each item entered, whether it represents an acquisition or retirement. This shall be indicated by inserting in Column 4 an ''A'' for acquisition or an ''R'' for retirement.

(g) Column 8, ''Maximum Seating Capacity,'' shall reflect the number of passenger seats installed in each airframe acquired. When airframes are designed for multiple adjustable seating configurations, the maximum number of seats for which designed shall be reported. When the seating configuration of airframes is modified subsequent to original acquisition, the revised passenger capacity of each airfame shall be reported in the quarter in which modified and referenced to identify original capacity reported.

(h) Column 9, ''Cost,'' shall reflect the book cost of reported airframe and aircraft engine acquisitions and retirements.

(i) Column 10, ''Amortization/Depreciated Cost,'' shall reflect the book cost, less amortization or depreciation expense, for airframes and aircraft engines that have been retired.

(j) Column 11, ''Realization,'' shall reflect the proceeds from the disposition of airframes and aircraft engines, including any insurance proceeds.

(k) Column 12, ''Acquired From/Disposition,'' shall reflect: (1) for acquisitions: the name of the person or organization from which airframes and aircraft engines are acquired and (2) for dispositions (retirements): the name of the person or organization to which airframes and aircraft engines are sold or a notation as to the nature of the retirement and the account to which any depreciated cost has been charged, if not sold. Items included in accounts 1607, 1608, 1707, and 1708, sold as a part of an airframe or aircraft sales transaction, shall also be identified by the name of the buyer. Other sales of items included in these accounts shall be reported in a separate group in aggregate for each property account affected.

Schedule B–12—Statement of Cash Flows

(a) This Schedule shall be filed quarterly by all Group II and Group III air carriers and Group I air carriers that have annual operating revenues of $20 million or more.

(b) This schedule shall be filed for the overall or system operations of the air carrier.

(c) The statement of cash flows shall separately disclose the amount of net cash provided or used during the reporting period from the carrier's operating activities, investing activities and financing activities. The effect on cash and cash equivalents of the total amount of net cash provided or used during the quarter from each of the above activities shall be clearly disclosed so as to reconcile beginning and ending cash and cash equivalents.

(d) Carriers may use either the direct or indirect method of reporting cash flows. Under either method, the reporting of cash flows from investing and financing activities will remain the same. However, the reporting of cash flows from operating activities does differ between the two methods.

(e) For carriers electing to use the direct method, cash flows from operating activities are reported as gross amounts of the principal components of cash receipts and cash payments from operating activities, such as cash received from passengers and shippers, cash paid to suppliers, and cash paid to employees. Each carrier using the direct method shall provide as part of its statement of cash flows, a separate schedule that reconciles net income (as reported on Schedule P–1.2 in Account 9899) to cash flow from operating activities.

(f) For carriers electing to use the indirect method, cash flows from operating activities shall reflect net income (as reported on Schedule P–1.2 in Account 9899) along with the adjustments necessary to reconcile net income (Account 9899) to net cash for the period (Net Cash Provided or Used By Operating Activities).

(g) Regardless of the method used, the statement of cash flows shall reflect the amount of net cash flow provided or used by operating activities during the reporting period.

(h) The balance of ''Cash and Cash Equivalents,'' at the beginning and ending of the quarterly period covered by the report, should equal the sum of Accounts 1010, ''Cash,'' and 1100, ''Short-term Investments,'' as reported on the immediately preceding and current quarterly Schedule B–1, ''Balance Sheet.'' If the sum of these two accounts does not equal the total ''Cash and Cash Equivalents'' reported on the statement of cash flows, then a footnote explaining the difference shall be provided as part of the statement of cash flows.

Schedule B–43—Inventory of Airframes and Aircraft Engines

(a) This schedule shall be filed by all Group I, Group II and Group III air carriers.

(b) The indicated data shall be reported for each individual airframe, identified by type, model and design of cabin (main deck) as to

use for passengers exclusively, cargo exclusively, or both passengers and cargo in combination. Type and model refers to aircraft models such as B–707–100, B–707–200, DC–10–40, Beech–18, Piper PA–32, etc. Aircraft type designations are prescribed in Accounting and Reporting Directive No. 178, ''List of Aircraft Type Numeric Codes.'' Copies of this directive and subsequent updates to the list of aircraft type codes are available from the Department's Office of Airline Information. Airframes that are authorized for operation over water under FAA regulation FAR 121 shall be so indicated by asterisk.

(c) Data pertaining to aircraft engines shall be reported on a group basis by type of engine and by type of aircraft to which related.

(d) Data in this schedule shall be grouped and subtotaled as data pertaining to airframes and data pertaining to aircraft engines. Data pertaining to nonoperating airframes and aircraft engines shall be reported in a group below the data for operating equipment. Data pertaining to airframes and aircraft engines obtained under operating and capital leases shall be reported, by type of lease, in a separately captioned grouping below nonoperating airframes and aircraft engines and subgrouped within those groups according to operating and nonoperating equipment.

(e) Column 1, ''Year of First Delivery—Airframe,'' shall reflect, for each reported airframe, the year that the airframe was first delivered by its manufacturer.

(f) Column 2, ''Airframe Manufacturer's Serial Number,'' shall reflect the serial number assigned to each reported airframe by its manufacturer.

(g) Data pertaining to airframes and aircraft engines obtained under operating leases shall be listed in Columns 1 through 9; the cost of improvements to equipment under operating leases shall be reported in Columns 10 through 12.

(h) Column 9, ''Available Capacity (Weight),'' shall reflect, for each reported aircraft type, the available capacity (stated in pounds) that is used in computing the available ton-miles reported on Schedules T–100, T–1, and T–2.

(i) Column 10, ''Acquired Cost or Capitalized Value,'' shall include (1) the acquisition cost of owned airframes and aircraft engines; (2) the total capitalized cost of obtaining airframes and engines under capital leases; and (3) the cost of improvements to airframes and engines obtained under operating leases.

(j) Column 11, ''Allowance for Depreciation or Amortization,'' shall include (1) the accumulations of all provisions for losses due to use and obsolescence that are applicable to owned airframes and aircraft engines, (2) the amount of amortization recorded for amortizing the value of airframes and engines obtained under capital leases, and (3) the amount of amortization recorded for amortizing the value of improvements to airframes and aircraft engines obtained under operating leases.

(k) Column 12, ''Depreciated Cost or Amortized Value,'' shall be calculated as either (1) Acquired Cost (Column 10) less the Allowance for Depreciation (Column 11) or (2) Capitalized Value (Column 10) less Amortization (Column 11).

(l) Column 13, ''Estimated Residual Value,'' shall state, in dollars, the residual value assigned to owned and capital-leased airframes and aircraft engines, including any overhaul value not subject to depreciation.

(m) Column 14, ''Estimated Depreciable or Amortizable Life (Months),'' shall state the estimated depreciable or amortizable life from the date of acquisition of each airframe and each group of aircraft engines.

[ER–755, 37 FR 19726, Sept. 21, 1972]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting part 241, section 23, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

Section 24 Profit and Loss Elements

Schedule P–1.1—Statement of Operations

(a) This schedule shall be filed semiannually by Group I air carriers with annual operating revenues below $20 million. Data reported on this schedule shall be for the overall or system operations of the air carrier.

(b) This schedule shall show the results of operations for six-month periods ending June 30 and December 31. Data reported in the ''12 Months-to-Date'' column shall represent for each individual item the sum of the amount reported in the ''Current Period'' column and the next previous six-month period.

(c) Each carrier shall insert in the space provided for ''OAG Code'' its carrier code as contained in the Official Airlines Guide (OAG). If the OAG does not contain a carrier code for the reporting carrier, a code will be provided by the Office of Airline Information upon request. This code will then be placed in the space provided for ''carrier code.''

(d) ''Operating Revenue'' shall be put in categories as follows:

(1) ''Transport Revenue'' shall include the revenue generated by the performance of air transportation services. This category shall be subdivided as follows:

(i) ''Scheduled Service'' shall include all transport revenue derived from operations between pairs of points which are served on a regularly scheduled basis. Transport revenue received from scheduled service operations shall be subdivided as follows:

(A) *Passengers.* Revenue generated from the transportation of passengers shall be included in this category.

(B) *Other.* Revenue generated by the transportation of property and mail shall be included in this category.

(ii) ''Nonscheduled Service'' shall include all transport revenue derived from operations between pairs of points which are not served on a regularly scheduled basis.

(2) ''Transport-Related Revenue'' shall include monies received for providing air transportation facilities associated with the performance of services which flow from and are incidental to air transportation services performed by the air carrier. This category shall be subdivided as follows:

(i) *Public Service Revenue.* This category shall include amounts of compensation paid to the carrier under 49 U.S.C 41733.

(ii) *Other.* This category shall include other transport-related revenue such as in-flight sales, restaurant and food service (ground), rental of property or equipment, limousine service, interchange sales, and cargo pick-up and delivery charges.

(e) ''Operating Expense'' shall be segregated as follows:

(1) ''Flying Operations'' shall include expenses incurred directly in the in-flight operation of aircraft and expenses incurred in the holding of aircraft and aircraft operation personnel in readiness for assignment to an in-flight status.

(2) ''Maintenance'' shall include all expenses which are specifically identifiable with the repair and upkeep of property and equipment used in the performance of air transportation.

(3) ''General and Administrative'' shall include that portion of all expenses of a general corporate nature and all other expenses not provided for elsewhere which are related to air transport operations either directly or indirectly.

(4) ''Depreciation and Amortization'' shall include all depreciation and amortization expenses applicable to property and equipment used in providing air transportation services. These expenses shall be segregated between those applicable to owned property and equipment and those applicable to property and equipment which is leased.

(5) ''Transport-Related Expense'' shall include all expenses associated with the transport-related revenues reported on line 5 of this schedule.

(f) ''Operating Profit (Loss)'' shall be computed by subtracting the total operating expenses from the total operating revenues.

(g) ''Nonoperating Income and Expense'' shall include all revenues and expenses resulting from commercial ventures which are not inherently related to the performance of air transport services. For example, the revenues and expenses related to operating a hotel or motel would be reported under this category. This category shall also include the total interest expense incurred from all sources and shall be subdivided as follows:

(1) Interest Expense.

(2) Other Nonoperating (Net).

(h) ''Income Tax'' shall reflect the provisions for accruals of Federal, State, local, and foreign taxes based upon taxable income, and computed at the normal and surtax rates in effect during the current accounting year.

(i) ''Discontinued Operations, Extraordinary Items or Accounting Changes'' shall reflect any earnings or losses from discontinued operations, the net of the tax amount of extraordinary items, and the cumulative effect of any changes in accounting principles.

(j) Any air carrier that does not file Schedule P–1(a) in accordance with the filing option described in section 22—General Reporting Instructions shall, for the sixth month of any semi-annual period during which the option is exercised, type in the bottom margin of this statement of operations the total number of full-time and part-time employees to be labeled as such and calculated in accordance with paragraph (d) of the reporting instructions for Schedule P–1(a).

Schedule P–1.2—Statement of Operations

(a) This schedule shall be filed quarterly by all Group II and Group III air carriers and Group I air carriers that have annual operating revenues of $20 million or more.

(b) Route and charter carriers shall file separate statements of operations for each separate operating entity and for the overall, or system operations.

(c) Data reported on this schedule shall conform with the instructions pertaining to profit and loss classifications within this Uniform System of Accounts and Reports.

(d) Data reported in the ''12 Months-to-Date'' column shall represent for each item the sum of amounts reported in the ''Quarter'' column for the current and next previous three quarters.

(e) Group III air carriers shall subdivide total Transport Revenues-Passenger (Account 3901) between Accounts 3901.1, Passenger-Flight Class and Account 3901.2 Passenger-Coach, only for operations that are reported in the international entity (Atlantic, Pacific and Latin American). First class and coach passenger revenues associated with transport operations reported in the domestic entity shall be reported as a combined total in Account 3901 Transport Revenues-Passenger.

(f) All Group I and Group II air carriers shall report first class and coach passenger revenues as a combined total in Account 3901 Transport Revenues-Passenger, for both domestic and international entity operations. However, U.S. air carriers in any carrier group that elect to do so may continue to report first class and coach revenue data, if they consider such voluntary reporting to be less burdensome than changing their existing financial reporting system.

(g) Any air carrier that does not file Schedule P–1(a) in accordance with the filing option described in section 22—General Reporting Instructions shall, for the third month of any calendar quarter during which the option is exercised, type in the bottom margin of the system statement of operations the total number of full-time and part-time employees to be labeled as such and calculated in accordance with paragraph (d) of the reporting instructions for Schedule P–1(a).

Schedule P–1(a)—Interim Income Statement

(a) This schedule shall be filed by all air carriers.

(b) This schedule shall be filed for the overall or system operations of the air carrier.

(c) Data reported on this schedule shall reflect the results of operations for the month covered by the report and shall conform to the instructions pertaining to profit and loss classifications within this Uniform System of Accounts and Reports.

(d) Air carriers shall report on this schedule:

(1) Total operating revenues,

(2) Total operating expenses,

(3) Operating profit or loss,

(4) Net income,

(5) Passenger revenues—scheduled service,

(6) Public service revenues (subsidy) and other information on

(7) The total number of full-time and

(8) Part-time employees. Total number of full-time employees and total number of part-time employees shall reflect for the overall or system operations of the air carrier the total number of full-time and part-time employees, respectively, who worked or received pay for any part of the pay period(s) ending nearest the 15th day of the month. For the purposes of this part, ''part-time employees'' means those employees hired to work less than the number of hours that is customary or standard for their occupational specialty.

(e) In the event of a labor strike, the ''number of employees'' to be reported on this schedule shall be determined on and actual payroll basis. Actual payroll shall be determined in accordance with paragraph (d) of these reporting instructions. An air carrier that on October 24, 1978, held a certificate issued under 49 U.S.C. 41102 shall also report in a footnote on this schedule the number of full-time employees who were deprived of employment because of a strike (*i.e.,* the number of full-time employees who, but for a strike, would have been included in the number reported in accordance with paragraph (d)(7)).

Schedule P–2—Notes to BTS Form 41 Report

(a) This schedule shall be filed quarterly by all Group II and Group III air carriers and Group I air carriers that have annual operating revenues of $20 million or more.

(b) Route and charter air carriers shall file this schedule for each separate operating entity and for the overall, or system operations of the carrier.

(c) All substantive matters which may influence materially interpretations or conclusions in regard to the financial condition or the earnings position of the air carrier which are not clearly identified in the body of the Form 41 report or which represent information that cannot be expressed adequately in monetary terms shall be completely and clearly stated in this schedule and cross-referenced to the affected account or accounts. The informative disclosure on this schedule for the system operations of the air carrier shall conform, at the end of each carrier's fiscal or calendar year, with the footnotes prepared for audited financial statements.

(d) The amounts and estimated delivery dates of any purchase commitments of material size and not of a recurrent routine character shall be explained on this schedule. In the case of commitments involving flight equipment, the amount for each equipment type may be given in total, including any engines, airframes and spares; but the number of airframes and the number of engines by type shall be given, as well as the estimated delivery date for each complete aircraft. Reports on commitments other than for flight equipment are required only in the December 31 report of each calendar year.

(e) Each scheduled air carrier shall include on this schedule a description of each interruption in air transport operations, the aggregate effect of which is ten (10) percent or more of the scheduled revenue plane-miles which, except for the interruption, would have been operated during the month or either of 2 consecutive months affected. The information to be reported for each such interruption in operations shall consist of:

(1) For the report period in which partial or complete interruption first occurs, the nature of the interruption and dates of partial and/or complete cessation of operations, as applicable;

(2) For each report period until full resumption of operations, an estimate of the revenue plane-miles canceled in each month of the quarter because of the interruption; and

(3) For the report period in which scheduled operations are resumed, dates of partial and/or complete resumption, as applicable.

Schedule P–5.1—Aircraft Operating Expenses

(a) This schedule shall be filed by all Group I air carriers. Group I air carriers that have annual operating revenues of $20 million or more shall file this schedule quarterly and only report direct operating expense data (lines 1 thru 9). Group I air carriers with annual operating revenues below $20 million

shall file this schedule semiannually and report both direct and indirect operating expense data (lines 1 thru 16).

(b) Subject to the provisions of Section 22(a), quarterly reports are due on May 10, August 10, November 10 and February 10 for the first, second, third and fourth calendar quarters, respectively. Semiannual reports are due on August 10 and February 10.

(c) Each carrier shall indicate in the space provided its full corporate name and an ''X'' shall be inserted in the appropriate box to indicate whether the data being reported are quarterly or six months data. The period-ending data shall be indicated in the space provided.

(d) Route and charter air carriers subject to the quarterly filing requirement shall file this schedule for each operating entity of the air carrier. Air carriers subject to the semiannual filing requirement shall file this schedule for the overall or system operations of the air carrier.

(e) This schedule shall show the direct and indirect expenses incurred in aircraft operations plus total aircraft hours, gallons of fuel issued, and aircraft days assigned to service. Direct expense data applicable to each aircraft type operated by the carrier shall be reported in separate colums of this schedule. Each aircraft type reported shall be identified at the head of each column in the space provided. ''Aircraft Type'' refers to aircraft models such as B–707–100, B–707–200, DC–10–40, Beech–18, Piper PA–32, etc, Aircraft Type designations are prescribed in the Accounting and Reporting Directives, which is available from the Board's Information Management Division. In the space provided for ''Aircraft Code'' carriers shall insert the four digit code which is prescribed in the Accounting and Reporting Directives for the reported aircraft type.

(f) Direct aircraft operating expenses shall be reported in the following categories:

(1) Line 2 ''Flying Operations (Less Rental)'' shall be subdivided as follows:

(i) Line 3 ''Pilot and Copilot'' expense shall include pilots' and copilots' salaries, and related employee benefits, pensions, payroll taxes and personnel expenses.

(ii) Line 4 ''Aircraft Fuel and Oil'' expense shall include the cost of fuel and oil used in flight operations and nonrefundable aircraft fuel and oil taxes.

(iii) Line 5 ''Other'' expenses shall include general (hull) insurance, and all other expenses incurred in the in-flight operation of aircraft and holding of aircraft and aircraft operational personnel in readiness for assignment to an in-flight status that are not provided for otherwise on this schedule.

(2) Line 6 ''Total Flying Operations (Less Rentals)'' shall equal the sum of lines 3, 4 and 5.

(3) Line 7 ''Maintenance-Flight Equipment'' shall include the cost of labor, material and related overhead expended by the carrier to maintain flight equipment, general services purchased for flight equipment maintenance from associated or other outside companies, and provisions for flight equipment overhauls.

(4) Line 8 ''Depreciation and Rental-Flight Equipment'' expense shall include depreciation of flight equipment, amortization of capitalized leases for flight equipment, provision for obsolescence and deterioration of spare parts, and rental expense of flight equipment.

(5) Line 9 ''Total Direct Expense'' shall equal the sum of lines 6, 7 and 8.

(g) Line 10 Indirect aircraft operating expenses shall be reported only in total for all aircraft types and shall be segregated according to the following categories:

(1) Line 11 ''Flight Attendant Expense'' shall include flight attendants' salaries, and related employee benefits, pensions, payroll taxes and personnel expenses.

(2) Line 12 ''Traffic Related Expense'' shall include traffic solicitor salaries, traffic commissions, passenger food expense, traffic liability insurance, advertising and other promotion and publicity expenses, and the fringe benefit expenses related to all salaries in this classification.

(3) Line 13 ''Departure Related (Station) Expense'' shall include aircraft and traffic handling salaries, landing fees, clearance, customs and duties, related fringe benefit expenses and maintenance and depreciation on ground property and equipment.

(4) Line 14 ''Capacity Related Expense'' shall include salaries and fringe benefits for general management personnel, record-keeping and statistical personnel, lawyers, and law clerks, and purchasing personnel; legal fees and expenses; stationery; printing; uncollectable accounts; insurance purchased-general; memberships; corporate and fiscal expenses; and all other expenses which cannot be identified or allocated to some other specifically identified indirect cost category.

(h) Line 15 ''Total Indirect Expense'' shall equal the sum of lines 11, 12, 13 and 14.

(i) Line 16 ''Total Operating Expense'' shall equal the sum of lines 9 and 15.

(j) Line 17 ''Total Aircraft Hours'' shall equal the sum of revenue and nonrevenue aircraft hours.

(k) Line 18 ''Gallons of Fuel Issued'' shall equal the aircraft fuels issued (account Z921).

(l) Line 19 ''Aircraft Days Assigned to Service'' equals the number of days that aircraft owned or acquired through rental or lease are in the possession of the reporting air carrier and are available for service on the reporting carrier's routes plus the number of days such aircraft are in service on routes of others under wet-lease agreements. Includes days in overhaul, or temporarily out of service due to schedule cancellations. Excludes days that newly acquired aircraft

are on hand but not available for productive use, days dry-leased or rented to others, and days in possession but formally withdrawn from air transportation service.

Schedule P–5.2—Aircraft Operating Expenses and Related Statistics

(a) This schedule shall be filed by all Group II and Group III air carriers.

(b) Route and charter air carriers shall file this schedule for each operating entity of the air carrier.

(c) Data applicable to each aircraft type operated by the air carrier shall be reported in separate columns of this schedule. ''Aircraft Type'' refers to aircraft models (such as B–707–100, B–707–300, DC–9–30, etc.) that are prescribed in the *Accounting and Reporting Directives,* which is available from the Office of Airline Information. In the space provided for ''Aircraft Code'' carriers shall insert the four digit code which is prescribed in the *Accounting and Reporting Directives* for the reported aircraft type. For route air carriers, expenses of operating aircraft provided by other carriers under interchange agreements shall be separately reported in total for all such aircraft as if for a distinct aircraft type. Interchange expenses applicable to aircraft of the same type as those owned or operated by the air carrier shall be distributed in summary memo form as item 98.1 and 98.2 to each aircraft type owned or operated by that air carrier. Aircraft types not generally used in revenue service shall be separately reported. If more than one type of aircraft is involved, a separation of data relating to each type of aircraft shall not be required.

(d) Each aircraft type for which a report is being made shall be identified at the head of each column in the space provided. Data applicable to aircraft designed primarily for cargo services and only incidentally used for passenger services shall be reported in separate columns, and the word ''cargo'' shall be inserted after the aircraft type at the head of the column. The prescribed reporting by aircraft types may be reviewed from time to time upon request by individual air carriers, or upon the initiative of the BTS, and groupings of aircraft types for reporting purposes may be prescribed or amended in specific instances.

(e) Italicized codes and item titles do not constitute accounts or account numbers prescribed for air carrier accounting, but shall be used for reporting purposes only.

(f) Item 79.6 ''Applied Maintenance Burden'' shall reflect a memorandum allocation by each air carrier of the total expenses included in subfunction 5300 ''Maintenance Burden'' between maintenance of flight equipment, by aircraft type, and maintenance of ground property and equipment. The allocation of subfunction 5300 (maintenance burden) shall include the net effect of charges and credits to profit and loss account 5272 Flight Equiment Airworthiness Provisions.

(g) Item 73 ''Obsolescence and Deterioration—Expendable Parts'' shall reflect (for obsolescence and deterioration of flight equipment expandable parts) the gross provisions for losses in value of expendable parts during the current accounting period offset by any credits applicable to the current period for adjustments for excess inventory levels determined pursuant to section 6–1311.

(h) The total of function 5100 ''Flying Operations'' reported on this schedule shall agree with corresponding amounts reported on Schedule P–1.2.

Schedule P–6—Operating Expenses by Objective Groupings

(a) This schedule shall be filed quarterly by all Group II and Group III air carriers and Group I air carriers that have annual operating revenues of $20 million or more.

(b) Route and charter air carriers shall file this schedule for each separate operating entity.

(c) Line 36 ''Total Operating Expenses'' shall agree with the corresponding amount reported on Schedule P–1.

Schedule P–7—Operating Expenses by Functional Groupings—Group III Air Carriers

(a) This schedule shall be filed by all Group III air carriers.

(b) Route and charter air carriers shall file this schedule for each operating entity of the air carrier.

(c) Line 38 ''Total Operating Expenses'' shall agree with the corresponding amount reported on Schedule P–1.2.

Schedule P–10—Employment Statistics by Labor Category

(a) This schedule shall be filed annually by all Group II and Group III air carriers and Group I air carriers that have annual operating revenues of $20 million or more.

(b) Separate sets of this schedule shall be filed for each operating entity of the air carrier. Employees will be allocated to the reporting entities on a basis consistent with that used in the allocation of salaries for Form 41 financial reporting purposes.

(c) Column 3, ''Number of Employees,'' shall reflect, for each category in column 1, the weighted average number of full-time employees who received pay for any part of the calendar year. In determining the weighted average, all temporary or part-time employees shall be restated, based on their hours paid, as an equivalent number of full-time employees. The calculation shall be based on a standard full-time 2,080/hour year with overtime hours excluded from the computation.

(d) Labor category description—''Other personnel'' shall include all employees whose

salary is chargeable to accounts 30, 32, 34 and 35 in this Uniform System of Accounts and Reports.

(e) Labor category description—''Transport-related'' shall include all employees whose salary is not chargeable to one of the various salary accounts contained in the Uniform System of Accounts and Reports. For example, this category would include those employees who work in transport-related operations and other activities for which a separate payroll account is not prescribed. The number of employees reported as transport-related shall be calculated in accordance with paragraph (c) of these reporting instructions.

Schedule P–12(a)—Fuel Consumption by Type of Service and Entity

(a) This schedule shall be filed monthly by all Group II and Group III air carriers and Group I air carriers that have annual operating revenues of $20 million or more.

(b) A single copy (original only) of this schedule shall be filed to report monthly fuel consumption data by type of service and entity.

(c) For the purposes of this schedule, type of service shall be either scheduled service or nonscheduled service as those terms are defined in section 03 of part 241.

(d) For the purpose of this schedule, scheduled service shall be reported separately for: (1) Intra-Alaskan operations; (2) domestic operations, which shall include all operations within and between the 50 States of the United States (except Intra-Alaska), the District of Columbia, the Commonwealth of Puerto Rico and the United States Virgin Islands and Canadian transborder operations; (3) Atlantic operations (excluding Bermuda); (4) Pacific operations which shall include the North/Central Pacific, South Pacific (including Australia) and the Trust Territories; and (5) Latin American operations which shall include the Caribbean (including Bermuda and the Guianas), Mexico and South/Central America.

(e) For the purpose of this schedule, nonscheduled service shall be reported separately for domestic operations and international operations as defined in paragraph (d) above, except that domestic and international MAC operations shall be reported on separate lines.

(f) The cost data reported on each line shall represent the average cost of fuel, as determined at the station level, consumed in that entity.

(g) The cost of fuel shall include shrinkage but exclude (1) ''through-put'' and ''in to plane'' fees, *i.e.*, service charges or gallonage levies assessed by or against the fuel vendor or concessionaire and passed on to the carrier in a separately identifiable form and (2) nonrefundable Federal and State excise taxes. However, ''through-put'' and ''in to plane'' charges that cannot be identified or segregated from the cost of fuel shall remain a part of the cost of fuel as reported on this schedule.

(h) Each air carrier shall maintain records for each station showing the computation of fuel inventories and consumption for each fuel type. The periodic average cost method shall be used in computing fuel inventories and consumption. Under this method, an average unit cost for each fuel type shall be computed by dividing the total cost of fuel available (Beginning Inventory plus Purchases) by the total gallons available. The resulting unit cost shall then be used to determine the ending inventory and the total consumption costs to be reported on this schedule.

(i) Where amounts reported for a specific entity include other than Jet A fuel, a footnote shall be added indicating the number of gallons and applicable costs of such other fuel included in amounts reported for that entity.

(j) Where any adjustment(s) recorded on the books of the carrier results in a material distortion of the current month's schedule, carriers shall file a revised schedule P–12(a) for the month(s) affected.

(k) Data reported on this schedule shall be withheld from public release until the quarterly Form 41 P schedules for the calendar quarter to which the monthly schedules relate are due at the BTS. However, aggregate data may be released before that time without identifying individual carriers. Provisions governing the due dates for submitting the quarterly P schedules are contained in paragraphs (a) and (b) of section 22 of this part. Individual carrier fuel data withheld from public disclosure may be disclosed by the BTS to:

(1) Parties to any proceeding before the DOT to the extent such material is relevant and material to the issues in the proceeding upon a determination to this effect by the administrative law judge assigned to the case or by the DOT;

(2) Agencies and other components of the Federal Government for their internal use only; and

(3) Such persons and in such circumstances as the BTS determines to be in the public interest or consistent with its regulatory functions and responsibilities.

(Approved by the Office of Management and Budget under control number 2138–0013)

[ER–755, 37 FR 19726, Sept. 21, 1972, as amended by 241–58, 54 FR 5597, Feb. 6, 1989]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting part 241 section 24, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

TRAFFIC REPORTING REQUIREMENTS

Section 25 Traffic and Capacity Elements

General Instructions. (a) All prescribed reporting for traffic and capacity elements shall conform with the data compilation standards set forth in section 19—Uniform Classification of Operating Statistics.

(b) Carriers submitting Schedule T–100 shall use magnetic computer tape or IBM compatible disk for transmitting the prescribed data to the Department. Upon good cause shown, OAI may approve the request of a U.S. air carrier, under section 1–2 of this part, to use hardcopy data input forms or submit data via e-mail.

Schedule T–8—Report of all-cargo operations.

(a) This schedule shall be filed annually by all air carriers that conduct all-cargo operations under certificates issued under 49 U.S.C. 41103.

(b) Data reported on this schedule shall include only results of operations conducted in all-cargo aircraft. Data shall be segregated between domestic all-cargo operations conducted within the geographic limitations of section 418 certificates and all other all-cargo operations.

(c) *Statement of operations.* This statement shall include the following elements:

(1) Total operating revenue, categorized as follows:

(i) Transport revenues from the carriage of property in scheduled and nonscheduled service;

(ii) Transport revenues from the carriage of mail in scheduled and nonscheduled service; and

(iii) Transport-related revenues.

(2) Total operating expenses; and

(3) Operating profit or loss, computed by subtracting the total operating expenses from the total operating revenues.

(d) Summary of traffic and capacity statistics. This summary shall include the following elements:

(1) Total revenue ton-miles, which are the aircraft miles flown on each flight stage times the number of tons of revenue traffic carried on that stage. They shall be categorized as follows:

(i) Property; and

(ii) Mail.

(2) Revenue tons enplaned, reflecting the total revenue tons of cargo loaded on aircraft during the annual period;

(3) Available ton-miles, reflecting the total revenue ton-miles available for all-cargo service during the annual period, and computed by multiplying aircraft miles flown on each flight stage by the number of tons of aircraft capacity available for that stage;

(4) Aircraft miles flown, reflecting the total number of aircraft miles flown in cargo service during the annual period;

(5) Aircraft departures performed, reflecting the total number of take-offs performed in cargo service during the annual period; and

(6) Aircraft hours airborne, reflecting the aircraft hours of flight (from take-off to landing) performed in cargo service during the annual period.

Schedule T–100 U.S. Air Carrier Traffic and Capacity Data By Nonstop Segment and On-Flight Market

(a) Schedule T–100 collects detailed on-flight market and nonstop segment data on all revenue flights flown by U.S. certificated air carriers. This schedule is filed monthly. Separate data shall be reported for each operating entity (Latin America, Atlantic, Pacific; International, or Domestic) of the air carrier. Data for each operating entity shall be reported using the five digit entity code prescribed under section 19–5(c) of this part.

(b) Guidelines for reporting the automated monthly Schedule T–100 are included in the Appendix to this section.

(c) Reported data shall be compiled as aggregates of the basic data elements and service classes contained in sections 19–4 and 19–5 of this part.

(d) *Joint-service operations.* The air carrier in operational control of the aircraft (the carrier that uses its flight crews under its own FAA operating authority) must report joint-service operations.

Schedule T–100(f) Foreign Air Carrier Traffic Data by Nonstop Segment and On-Flight Market

(a) This Schedule T–100(f) collects detail on-flight market and nonstop segment data. This schedule shall be filed monthly by each foreign (non-U.S.) air carrier conducting operations to or from the United States with large aircraft pursuant to Section 41302 permits or exemption authority. Reported traffic data shall include all services affecting the United States, as prescribed in this part.

(b) Guidelines for reporting the monthly Schedule T–100(f) are included in the Appendix to §217.10 of this chapter. Copies of these instructions are provided to each foreign air carrier submitting the traffic data. Copies are also available from the Office of Airline Information, K–25, Room 4125, U.S. Department of Transportation, 400 Seventh St., SW., Washington, DC 20590.

(c) The reported data shall be compiled as aggregates of the basic data elements and service classes prescribed in sections 19–4 and 19–5 of this part.

APPENDIX TO SECTION 241.25 OF 14 CFR PART 241-INSTRUCTIONS TO U.S. AIR CARRIERS FOR REPORTING TRAFFIC AND CAPACITY DATA ON FORM 41 SCHEDULE T–100

(a) *Applicability*. Each large U.S. air carrier that holds a 49 U.S.C. ''41102 certificate must file the monthly Schedule T–100.

(b) Schedules, Frequency, and entity: (1) Schedule T–100 collects summarized flight stage data by reporting entity for scheduled and nonscheduled passenger, and cargo operations. The term entity refers to the geographic location designator prescribed by the Department in ''241.19–5(c)(2). Thus, domestic entity operations are distinguished from international entity operations.

(2) [Reserved]

(c) *Format of reports:*

(1) *Automatic Data Processing (ADP) magnetic tape.* Refer to paragraph (f) of this appendix for instructions pertaining to mainframe and minicomputer reporting. The Department will issue ''Accounting and Reporting Directives'' to make necessary technical changes to these T–100 instructions. Technical changes which are minor in nature do not require public notice and comment.

(2) *Microcomputer diskette*—(i) *Optional specification*. If an air carrier desires to use its personal computers (PC's), rather than mainframe or minicomputers to prepare its data submissions, the following specifications for filing data on diskette media apply:

(ii) *Reporting medium.* Microcomputer ADP data submission of T–100 information must be on IBM compatible disks. Carriers wishing to use a different ADP procedure must obtain written approval to do so from the BTS Assistant Director—Airline Information. Requests for approval to use alternate methods must disclose and describe the proposed data transmission methodology. Refer to paragraph (k) of this appendix for microcomputer record layouts.

(iii) Microcomputer file characteristics. The files will be created in ASCII delimited format, sometimes called Data Interchange Format (DIF). This form of recording data provides for variable length fields (data elements) which, in the case of alphabetic data, are enclosed by quotation marks (‘‘) and separated by a comma (,) or tab. Numeric data elements that are recorded without editing symbols are also separated by a comma (,) or tab. The data are identified by its juxtaposition within a given record. Therefore, each record must contain the exact number of data elements, all of which must be juxtapositionally correct. Personal computer software including most spreadsheets, data base management programs, and BASIC are capable of producing files in this format.

(d) *Filing date for reports.* The reports must be received at BTS within 30 days following the end of each reporting period.

(e) Address for filing: Data Administration Division, K–14, Room 4125, Office of Airline Information, Bureau of Transportation Statistics, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590–0001.

(f) *ADP format for magnetic tape*—(1) *Magnetic tape specifications.* IBM compatible 9-track EBCDIC recording. Recording density of 6250 or 1600 bpi. The order of recorded information is:

Volume label
Header label
Data records
Trailer label

(2) [Reserved]

(g) External tape label information:

Carrier name
Report date
File identification
Carrier address for return of tape reel

(h) *Standards.* It is the policy of the Department to be consistent with the American National Standards Institute and the Federal Standards Activity in all data processing and telecommunications matters. It is our intention that all specifications in this application be in compliance with standards promulgated by these organizations.

(i) *Volume, header, and trailer label formats:*

(1) Use standard IBM label formats. The file identifier field of the header labels should be ''T–100.SYSTEM''.

(2) [Reserved]

(j) *Magnetic tape record layouts for T–100*—(1) *Nonstop segment record layout:*

Field No.	Positions	Mode	Description
1	1	1T	Record type code (S = nonstop segment).
2	2–6	5T	Carrier entity code.
3	7–12	6T	Report date (YYYYMM).
4	13–15	3T	Origin airport code.
5	16–18	3T	Destination airport code.
6	19	1T	Service class code (F, G, L, N, P or R).
7	20–23	4T	Aircraft type code.
8	24–28	5N	Revenue departures performed (F, G, L, N, P, R510).
9	29–38	10N	Available capacity payload (lbs) (F, G, L, N, P, R270).
10	39–45	7N	Available seats (F, L, N310).
11	46–52	7N	Passengers transported (F, L, N130).
12	53–62	10N	Rev freight transported (F, G, L, N, P, R237)(in lbs).
13	63–72	10N	Revenue mail transported (F, G, L, N, P, R239) (in lbs).
14	73–77	5N	Revenue aircraft departures scheduled (F, G520).

Field No.	Positions	Mode	Description
15	78–87	10N	Rev hrs, ramp-to-ramp (F, G, L, N, P, R630) (in minutes).
16	88–97	10N	Rev hrs, airborne (F, G, L, N, P, R610) (in minutes).

T= Text.
N= Numeric.

(2) On-flight market record layout:

Field No.	Positions	Mode	Description
1	1	1T	Record type: M = on-flight market record.
2	2–6	5T	Carrier entity code.
3	7–12	6T	Report date (YYYYMM).
4	13–15	3T	Origin airport code.
5	16–18	3T	Destination airport code.
6	19	1T	Service class code (F, G, L, N, P or R).
7	20–26	7N	Total passengers in market (F, L, N110).
8	27–36	10N	Rev freight in market (F, G, L, N, P, R217) (in lbs).
9	37–46	10N	Revenue mail in market (F, G, L, N, P, R219) (in lbs).

T=Text.
N-Numeric.

(k) *Record layouts for microcomputer diskettes.* The record layouts for diskettes are generally identical to those shown for magnetic tape, with the exception that delimiters (quotation marks, tabs and commas) are used to separate fields. It is necessary that the order of fields be maintained in all records.

(1) *File characteristics.* The files will be created in ASCII delimited format, sometimes called Data Interchange Format (DIF). This form of recording data provides for variable length fields (data elements) which, in the case of alphabetic data, are enclosed by quotation marks (‘‘) and separated by a comma (,) or tab. Numeric data elements that are recorded without editing symbols are also separated by a comma (,) or tab. The data are identified by their juxtaposition within a given record. Therefore, it is critical that each record contain the exact number of data elements, all of which must be juxtapositionally correct. PC software including most spreadsheets, data base management programs, and BASIC produce minidisk files in this format.

(2) *File naming conventions for diskettes.* For microcomputer reports, each record type shall be contained in a separate DOS file on the same physical diskette. The following DOS naming conventions should be followed:

Record type S = SEGMENT.DAT
Record type M = MARKET.DAT

(l) Discussion of Reporting Concept. (1) Schedule T–100 collects summarized flight stage data and on-flight market data. All traffic statistics shall be compiled in terms of each revenue flight stage as actually performed. The detail T–100 data shall be maintained in such a manner as to permit monthly summarization and organization into two basic groupings. The first grouping, the nonstop segment information, is to be summarized by equipment type, within class of service, within pair-of-points, without regard to individual flight number. The second grouping requires that the enplanement/deplanement information be broken out into separate units called on-flight market records, which shall be summarized by class of service, within pair-of-points, without regard for equipment type or flight number.

(2) [Reserved]

(m) *Joint Service.* (1) *Joint-service operations.* The Department may authorize joint-service operations between two direct air carriers. Examples of these joint-service operations are: Blocked-space agreements; part-charter agreements; code-sharing agreements; wet-lease agreements, and other similar arrangements.

(i) Joint-service operations are reported by the carrier in operational control of the flight, i.e., the carrier that uses its flight crews under its own FAA operating authority. The traffic moving under these agreements is reported on Schedule T–100 the same way as any other traffic on the aircraft.

(ii) If there are questions about reporting a joint-service operation, contact the BTS Assistant Director—Airline Information (fax no. 202 366–3383, telephone no. 202 366–4373).

(iii) *Operational control.* The air carrier in operational control of the aircraft (the carrier that uses its flight crew under its own FAA operating authority) must report joint-service operations.

(2) [Reserved]

(n) Glossary of data elements. §241.19–5 and §241.03.

(Approved by the Office of Management and Budget under control number 2138–0013)

[ER–755, 37 FR 19726, Sept. 21, 1972]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting part 241, section 25, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

PART 243—PASSENGER MANIFEST INFORMATION

Sec.

243.1 Purpose.
243.3 Definitions.
243.5 Applicability.
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243.9 Procedures for collecting and maintaining the information.
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243.13 Filing requirements.
243.15 Conflicts with foreign laws.
243.17 Enforcement.

AUTHORITY: 49 U.S.C. 40101, 40101nt., 40105, 40113, 40114, 41708, 41709, 41711, 41501, 41702, 41712, 44909, 46301, 46310, 46316; section 203 of Pub. L. 101–604, 104 Stat. 3066 (22 U.S.C. 5501–5513), Title VII of Pub. L. 104–264, 110 Stat. 3213 (22 U.S.C. 5501–5513) and Pub. L. 105–148, 111 Stat. 2681 (49 U.S.C. 41313.)

SOURCE: Docket No. OST–95–950, 63 FR 8280, Feb. 18, 1998, unless otherwise noted.

§ 243.1 Purpose.

The purpose of this part is to ensure that the U.S. government has prompt and adequate information in case of an aviation disaster on covered flight segments.

§ 243.3 Definitions.

Air piracy means any seizure of or exercise of control over an aircraft, by force or violence or threat of force or violence, or by any other form of intimidation, and with wrongful intent.

Aviation disaster means:

(1) An occurrence associated with the operation of an aircraft that takes place between the time any passengers have boarded the aircraft with the intention of flight and the time all such persons have disembarked or have been removed from the aircraft, and in which any person suffers death or serious injury, and in which the death or injury was caused by a crash, fire, collision, sabotage or accident;

(2) A missing aircraft; or

(3) An act of air piracy.

Contact means a person not on the covered flight or an entity that should be contacted in case of an aviation disaster. The contact need not have any particular relationship to a passenger.

Covered airline means:

(1) certificated air carriers, and

(2) foreign air carriers, except those that hold Department of Transportation authority to conduct operations in foreign air transportation using only small aircraft (i.e., aircraft designed to have a maximum passenger capacity of not more than 60 seats or a maximum payload capacity of not more than 18,000 pounds).

Covered flight segment means a passenger-carrying flight segment operating to or from the United States (i.e., the flight segment where the last point of departure or the first point of arrival is in the United States). A covered flight segment does not include a flight segment in which both the point of departure and point of arrival are in the United States.

Full name means the given name, middle initial or middle name, if any, and family name or surname as provided by the passenger.

Passenger means every person aboard a covered flight segment regardless of whether he or she paid for the transportation, had a reservation, or occupied a seat, except the crew. For the purposes of this part, passenger includes, but is not limited to, a revenue and non-revenue passenger, a person holding a confirmed reservation, a standby or walkup, a person rerouted from another flight or airline, an infant held upon a person's lap and a person occupying a jump seat. Airline personnel who are on board but not working on that particular flight segment would be considered passengers for the purpose of this part.

United States means the States comprising the United States of America, the District of Columbia, and the territories and possessions of the United States, including the territorial sea and the overlying airspace.

U.S. citizen means United States nationals as defined in 8 U.S.C. 1101(a)(22).

§ 243.5 Applicability.

This part applies to covered flight segments operated by covered airlines. (See § 243.3 of this part)

§ 243.7 Information collection requirements.

(a) For covered flight segments, each covered airline shall:

(1) Collect, or cause to be collected, the full name for each passenger who is a U.S. citizen. U.S.-citizen passengers for whom this information is not obtained shall not be boarded;

(2) Solicit, or cause to be solicited, a name and telephone number of a contact from each passenger who is a U.S. citizen; and

(3) Maintain a record of the information collected pursuant to this section.

(b) The covered airline operating the flight segment shall be responsible for ensuring compliance with paragraph (a) of this section.

§ 243.9 Procedures for collecting and maintaining the information.

Covered airlines may use any method or procedure to collect, store and transmit the required information, subject to the following conditions:

(a) Information on individual passengers shall be collected before each passenger boards the aircraft on a covered flight segment.

(b) The information shall be kept until all passengers have disembarked from the covered flight segment.

(c) The contact information collected pursuant to section 243.7(a)(2) of this part shall be kept confidential and released only to the U.S. Department of State, the National Transportation Safety Board (upon NTSB's request), and the U.S. Department of Transportation pursuant to oversight of this part. This paragraph does not preempt other governments or governmental agencies that have an independent, legal right to obtain this information.

(d) The contact information collected pursuant to section 243.7(a)(2) of this part shall only be used by covered airlines for notification of family members or listed contacts following an aviation disaster. The information shall not be used for commercial or marketing purposes.

§ 243.11 Transmission of information after an aviation disaster.

(a) Each covered airline shall inform the Managing Director of Overseas Citizen Services, Bureau of Consular Affairs, U.S. Department of State immediately upon learning of an aviation disaster involving a covered flight segment operated by that carrier. The Managing Director may be reached 24 hours a day through the Department of State Operations Center at (202) 647–1512.

(b) Each covered airline shall transmit a complete and accurate compilation of the information collected pursuant to §243.7 of this part to the U.S. Department of State as quickly as possible, but not later than 3 hours, after the carrier learns of an aviation disaster involving a covered flight segment operated by that carrier.

(c) Upon request, a covered airline shall transmit a complete and accurate compilation of the information collected pursuant to §243.7 of this part to the Director, Family Support Services, National Transportation Safety Board.

§ 243.13 Filing requirements.

(a) Each covered airline that operates one or more covered flight segments shall file with the U.S. Department of Transportation a brief statement summarizing how it will collect the passenger manifest information required by this part and transmit the information to the Department of State following an aviation disaster. This description shall include a contact at the covered airline, available at any time the covered airline is operating a covered flight segment, who can be consulted concerning information gathered pursuant to this part.

(b) Each covered airline shall file any contact change as well as a description of any significant change in its means of collecting or transmitting manifest information on or before the date the change is made.

(c) All filings under this section should be submitted to OST Docket 98–3305, Dockets Facility (SVC–121.30), U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. The statement shall be filed by July 1, 1998, or, for covered airlines beginning operations after July 1, 1998, prior to the date a covered airline operates a covered flight segment.

§ 243.15 Conflict with foreign laws.

(a) If a covered airline obtains a waiver in the manner described in this section, it will not be required to solicit, collect or transmit information under this part in countries where such solicitation or collection would violate applicable foreign law, but only to the extent it is established by the carrier that such solicitation or collection would violate applicable foreign law.

(b) Covered airlines that claim that such solicitation, collection or transmission would violate applicable foreign law in certain foreign countries shall file a petition requesting a waiver in the Docket Facility, on or before October 1, 1998, or on or before beginning service between that country and United States. Such petition shall include copies of the pertinent foreign law, as well as a certified translation, and shall include opinions of appropriate legal experts setting forth the basis for the conclusion that collection would violate such foreign law. Statements from foreign governments on the application of their laws will also be accepted.

(c) The U.S. Department of Transportation will notify the covered airline of the extent to which it has been satisfactorily established that compliance with all or part of the data collection requirements of this part would constitute a violation of foreign law.

(d) The U.S. Department of Transportation will maintain an up-to-date listing in OST Docket 98–3305 of countries where adherence to all or a portion of this part is not required because of a conflict with applicable foreign law.

[Doc. No. OST–95–950, 63 FR 8280, Feb. 18, 1998; 63 FR 9413, Feb. 25, 1998]

§ 243.17 Enforcement.

The U.S. Department of Transportation may at any time require a covered airline to produce a passenger manifest including emergency contacts and phone numbers for a specified covered flight segment to ascertain the effectiveness of the carrier's system. In addition, it may require from any covered airline further information about collection, storage and transmission procedures at any time. If the Department finds a covered airline's system to be deficient, it will require appropriate modifications, which must be implemented within the period specified by the Department. In addition, a covered airline not in compliance with this part may be subject to enforcement action by the Department.

PART 247—DIRECT AIRPORT-TO-AIRPORT MILEAGE RECORDS

AUTHORITY: 49 U.S.C. chapter 401.

SOURCE: Amdt. 247–2, 56 FR 67170, Dec. 30, 1991, unless otherwise noted.

§ 247.1 Official mileage record of the Department of Transportation.

The direct airport-to-airport mileage record now maintained, and as hereafter amended or revised from time to time by the Office of Airline Information of the Bureau of Transportation Statistics of the Department of Transportation in the regular performance of its duties, is hereby adopted as the official mileage record of the Department and the mileages set forth therein shall be used in all instances where it shall be necessary to determine direct airport-to-airport mileages pursuant to the provisions of Titles IV and X of the Federal Aviation Act of 1958, as amended, or any rule, regulation, or order of the Department pursuant thereto.

[Amdt. 247–2, 56 FR 67170, Dec. 30, 1991, as amended at 60 FR 66725, Dec. 26, 1995]

PART 248—SUBMISSION OF AUDIT REPORTS

Sec.

248.1 Applicability.
248.2 Filing of audit reports.
248.4 Time for filing reports.
248.5 Withholding from public disclosure.

AUTHORITY: 49 U.S.C. 329 and chapters 401, 411, 417.

SOURCE: ER–420, 29 FR 13799, Oct. 7, 1964, unless otherwise noted.

§ 248.1 Applicability.

The requirements of this part shall be applicable to all air carriers subject to the requirements of part 241 of this subchapter.

§ 248.2 Filing of audit reports.

(a) Whenever any air carrier subject to § 248.1 shall have caused an annual audit of its books, records, and accounts to be made by independent public accountants, such air carrier shall file with the Office of Airline Information, in duplicate, a special report consisting of a true and complete copy of the audit report submitted by such independent public accountants, including all schedules, exhibits, and certificates included in, attached to, or submitted with or separately as a part of, the audit report.

(b) Each air carrier subject to § 248.1 that does not cause an annual audit to be made of its books, records, and accounts for any fiscal year shall, at the close of such fiscal year file with the Board's Office of the Comptroller, as a part of its periodic reports, a statement that no such audit has been performed.

(Approved by the Office of Management and Budget under control number 2138–0004)

[ER–1351, 48 FR 32756, July 19, 1983, as amended by ER–1362, 48 FR 46265, Oct. 12, 1983; 60 FR 66725, Dec. 26, 1995]

§ 248.4 Time for filing reports.

The report required by this part shall be filed with the Office of Airline Information within 15 days after the due date of the appropriate periodic BTS Form 41 Report, filed for the 12-month period covered by the audit report, or the date the accountant submits its audit report to the air carrier, whichever is later.

[ER–1351, 48 FR 32756, July 19, 1983, as amended at 60 FR 66725, Dec. 26, 1995]

§ 248.5 Withholding from public disclosure.

The special reports required to be filed by § 248.2 shall be withheld from public disclosure, until further order of the BTS, if such treatment is requested by the air carrier at the time of filing.

[ER–420, 29 FR 13799, Oct. 7, 1964, as amended at 60 FR 66725, Dec. 26, 1995]

PART 249—PRESERVATION OF AIR CARRIER RECORDS

Subpart A—General Instructions

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249.1 Applicability.
249.2 Definitions.
249.3 Preservation of records.
249.4 Photographic copies.
249.5 Storage of records.
249.6 Destruction of records.
249.7 Restrictions on record destruction.
249.8 Premature loss or destruction of records.
249.9 Carriers going out of business.
249.10 Waiver of requirements.

Subpart B—Preservation of Records by Carrier

249.20 Preservation of records by certificated air carriers.
249.21 Preservation of records by public charter operators and overseas military personnel charter operators.

Subpart C—Regulations Relating to the Truth-in-Lending Act

249.30 Applicability.
249.31 Preservation and inspection of evidence of compliance.

AUTHORITY: 49 U.S.C. 329 and chapters 401, 411, 413, 417.

SOURCE: ER–1214, 46 FR 25415, May 6, 1981, unless otherwise noted.

NOTE: The recordkeeping requirements contained in this part have been approved by the Office of Management and Budget under control number 2138–0006.

Subpart A—General Instructions

§ 249.1 Applicability.

Subparts A and B of this part apply to:

(a) Air carriers, as defined in 49 U.S.C. 40102, that hold either certificates of public convenience and necessity or certificates for all-cargo air service.

(b) Public charter operators, as defined in part 380 of this chapter.

(c) Overseas military personnel charter operators, as defined in part 372 of this chapter.

[ER–1214, 46 FR 25415, May 6, 1981, as amended at 60 FR 66725, Dec. 26, 1995]

§ 249.2 Definitions.

For the purposes of this part:

Authorized representatives of the DOT means any persons, including special agents and auditors, designated by the DOT to perform inspections, audits, or examinations within the purview of the DOT's authority.

Certificated air carrier means the holder of a certificate of public convenience and necessity issued by the Department of Transportation under 49 U.S.C. 41102 or a certificate for all-cargo air service issued by the Department of Transportation under 49 U.S.C. 41103.

Final adjudication means the expiration date of the last possible period of review or reconsideration of a given case, by the DOT or by a court, that is provided by applicable statute or regulation.

Open mail rate period means the time interval between the date of institution of a new mail rate proceeding or the start of service over a new route for which no mail rate has previously been fixed, and the date upon which a DOT order setting the final mail rate becomes legally effective.

Pending case means any case that the DOT is empowered to hear before its final adjudication.

Records include all documents that are related to, or constitute integral links in developing the history of, or facts regarding, financial transactions or physical operations of a particular segment, operating division, or entire system of the carrier's operations. The term includes any copy of initially prepared documents which bear approvals, comments, or notations which were added and are of significance to a full explanation of recorded facts or information. The term *records* means not only accounting records in a limited technical sense but all other evidentiary accounts of events such as memoranda, correspondence, working sheets, tabulating equipment listings punched cards, computer-produced listings, microfilm, and magnetic storage media (*i.e.*, magnetic tapes, disks). The term *records* also means microform and/or tape reproductions of documents made as authorized by this subpart. In addition, the term *records* includes any of the above-described materials coming into the possession of the air carrier through merger, consolidation, succession, transfer, or other acquisition.

Supporting papers (records) means any group of documentary papers, such as memoranda, correspondence, working sheets, etc., that assist in upholding the accuracy or clarity of related records.

[ER–1214, 46 FR 25415, May 6, 1981, as amended at 60 FR 66725, Dec. 26, 1995]

§249.3 Preservation of records.

(a) All records listed in §§249.20 and 249.21 may be preserved on either paper or nonerasable microfilm (see §249.4). However, a paper or microfilm record need not be created to satisfy the requirements of this part if the record is initially prepared in a machine-readable medium such as punched cards, magnetic tapes, and disks. The records maintained in machine-readable media and the underlying data used in their preparation shall be preserved for the periods prescribed in §§249.20 and 249.21. A paper or microfilm record shall not be destroyed after transfer to a machine-readable medium before expiration of the prescribed period: however, a waiver permitting the early destruction of paper or microfilm records transferred to a machine-readable medium may be granted by the Director, Office of Airline Information, when it is demonstrated by the requesting carrier that the substantive purpose of the retention requirement will be met by retention of the information in machine-readable form (see §249.10).

(b) Each record kept in a machine-readable medium shall be accompanied by a statement clearly indicating the type of data included in the record and certifying that the information contained in it is complete and accurate. This statement shall be executed by a person having personal knowledge of the facts contained in the records. The records shall be indexed and retained in such a manner so that they are easily accessible, and the carrier shall have the facilities available to locate, identify and reproduce the records in readable form without loss of clarity. Authorized representatives of the DOT shall be given immediate access to the carrier's facilities upon request.

(c) If any record which must be retained under the provisions of §§249.20

and 249.21 is included as an exhibit to another document which must also be retained, the carrier need only keep in its files one copy of the record to satisfy these record retention requirements. In these cases, the carrier shall establish adequate cross-references to assist in locating the record.

(d) The provisions in this part do not excuse noncompliance with requirements of any other governmental body, Federal or State, prescribing longer retention periods for any records.

[ER–1214, 46 FR 25415, May 6, 1981, as amended at 60 FR 66725, Dec. 26, 1995]

§ 249.4 Photographic copies.

(a) Any record may be transferred to nonerasable microfilm (including microfiche, computer output microfilm, and aperture cards) at any time. Records so maintained on microfilm shall satisfy the minimum requirements listed in paragraphs (b) through (f) of this section.

(b) The microfilm shall be of a quality that can be easily read and that can be reproduced in paper similar in size to an original without loss of clarity or detail during the periods the records are required to be retained in §§ 249.20 and 249.21.

(c) Microfilm records shall be indexed and retained in such a manner as will render them readily accessible, and the company shall have facilities available to locate, identify and read the microfilm and reproduce in paper form. Authorized representatives of the DOT shall be given immediate access to these facilities upon request.

(d) Any significant characteristic, feature, or other attribute which microfilm will not preserve shall be clearly indicated at the beginning of each roll of film or series of microfilm records if applicable to all records on the roll or series, or on the individual record, as appropriate.

(e) The printed side of printed forms need not be microfilmed for each record if nothing has been added to the printed matter common to all such forms, but an identified specimen of the form shall be on the film for reference.

(f) Each roll of film or series of microfilm records shall include a microfilm of a certificate stating that the photographs are direct and facsimile reproductions of the original records and they have been made in accordance with prescribed regulations. Such a certificate shall be executed by a person having personal knowledge of these facts. Where the microfilm is computer output, the microfilm certificate shall state that the information is complete and accurate. [ER–1214, 46 FR 25415, May 6, 1981, as amended at 60 FR 66725, Dec. 26, 1995]

§ 249.5 Storage of records.

Each carrier shall provide reasonable protection from damage by fire, floods, and other hazards for records subject to the provisions of this part.

§ 249.6 Destruction of records.

(a) Upon the expiration of the period of preservation prescribed in this regulation, records may be destroyed at the option of the carrier.

(b) Unless otherwise specified, duplicate copies of records may be destroyed at any time if they contain no significant information not shown on the originals.

§ 249.7 Restrictions on record destruction.

(a) Each carrier that has been named a party to a pending mail rate case shall retain all records remaining in its custody as of the beginning of an ''open mail rate period'' until the occurrence of one of the following contingencies, whichever is first:

(1) Final adjudication of a DOT order fixing the final mail compensation payable for services rendered during an ''open mail rate period.''

(2) Receipt of a notice issued by the Director, Office of Airline Information in response to a written application filed by the carrier, authorizing the destruction of specifically identified categories of records. An application should be filed when the carrier believes that certain categories of records are not relevant to the proper processing of a pending mail proceeding. The application should list those categories of records which the carrier wants to destroy and its reasons for believing that the records are not necessary or useful in determining its satutory mail pay.

(b) Each carrier shall preserve records supporting the computation of subsidy mail pay in accordance with the provisions of §249.20 unless the carrier has been advised that these computations are subject to further review and disposition by the Board. When the DOT is still reviewing the compensation amount after expiration of the normal retention period specified in §249.20, these records must be retained until the carrier is notified by the Director, Office of Airline Information, that the records may be destroyed.

(c) Each carrier that has been named a party to an enforcement proceeding or against whom a third-party complaint has been filed shall retain all records relating to the case until the receipt of formal notification from the Director, Office of Airline Information, following a written application from the carrier, which authorizes the destruction of these records.

(d) Each carrier that has been named a party to a pending case which is not of a type discussed in paragraphs (a), (b), and (c) of this section, shall preserve all records according to the provisions of §249.20 unless the Director, Office of Airline Information, notifies the carrier in writing that specific records shall be preserved until final adjudication of the pending case.

(e) Each carrier that is a party to litigation in a Federal court of which the DOT is also a party shall retain all records relating to the case until the receipt of formal notification from the Director, Office of Airline Information, following a written application from the carrier, which authorizes the destruction of these records.

[ER–1214, 46 FR 25415, May 6, 1981, as amended at 60 FR 66725, Dec. 26, 1995]

§249.8 Premature loss or destruction of records.

If records are destroyed or lost before the expiration of the prescribed retention period, a statement shall be prepared and submitted to the Director, Office of Airline Information, which lists, as accurately as possible, the unavailable records and describes the circumstances under which they became unavailable.

[ER–1214, 46 FR 25415, May 6, 1981, as amended at 60 FR 66725, Dec. 26, 1995]

§249.9 Carriers going out of business.

The records referred to in these regulations may be destroyed after the business is discontinued and the carrier is completely liquidated. The records may not be destroyed until dissolution is final and all transactions and litigations are completed. When a carrier is merged with another company which is regulated by the DOT, the successor company shall preserve records of the merged company in accordance with these regulations.

[ER–1214, 46 FR 25415, May 6, 1981, as amended at 60 FR 66725, Dec. 26, 1995]

§249.10 Waiver of requirements.

A waiver from any provision of this regulation may be made by the Director, Office of Airline Information, upon the Director's own initiative or upon submission of a written request by a carrier or group of carriers. Each request for waiver shall demonstrate that unusual circumstances warrant a departure from prescribed retention periods, procedures, or techniques, or that compliance with the prescribed requirements would impose an unreasonable burden on the carrier, and that granting the waiver would be in the public interest.

[ER–1214, 46 FR 25415, May 6, 1981, as amended at 60 FR 66726, Dec. 26, 1995]

Subpart B—Preservation of Records by Carrier

§249.20 Preservation of records by certificated air carriers.

Each certificated air carrier shall retain its records according to the provisions of this section. Unless otherwise specified in the ''Schedule of Records,'' each retention period shall begin on the date when the records are created or otherwise come into the possession of the carrier.

SCHEDULE OF RECORDS

[See footnote at end of table]

Category of records	Retention period
1. General and subsidiary ledgers or their equivalents:	
(a) General ledgers; subsidiary or auxiliary ledgers	3 years.
(b) Indexes to general and subsidiary ledgers	Do.
2. Journals and journal vouchers:	
(a) General and subsidiary journals, and journal vouchers	3 years.
(b) Papers forming a part of, or necessary to explain, journal entries; entry numbers	Do.
3. Voucher distribution registers or their equivalent	Do.
4. Accounts receivables and payables:	
(a) Traffic accounts receivable or payable, detailed journals and ledgers or their equivalents, together with supporting papers.	Do.
(b) General accounts receivable or payable, detailed journals and ledgers or their equivalents, together with supporting papers.	Do.
(c) Copies of invoices issued by the carrier which have been settled and all supporting papers.	1 year.
(d) Copies of Postal Service Forms: Weekly Summary of Airmail Dispatch (No. 2729) and POD Airmail Exemption Record (No. 2734) supporting mail pay claims which have been settled.	30 days.
5. Subsidy records:	
(a) For each calendar year, all monthly records of operations, such as tabulations and summaries of miles flown and passenger-miles flown, pertaining to or part of operational records relevant to computation of subsidy mail pay.	3 years.
(b) For each calendar year, all basic original documents, such as pilots' flight logs and passenger lists relevant to a determination of the validity of a carrier's operations described in item (a) above.	Do.
6. The papers, records, or other evidence supporting financial and statistical reports to the BTS. These should include among others the following specific records: Internal administrative or operating reports; system reports of aircraft movements by trip number, showing arrivals, departures, flight delays and related information; bonds and other long-term debt records; stock records; corporate organization records; financial data in support of subsidy claims; minutes of meetings; carrier internal reports on internal controls and other internal audits and procedural studies; operational, management, accounting, financial, and legal service contracts and agreements; records and agreements relating to the lease or purchase and sale of company assets, including title papers, deeds, and similar records; insurance records; property and equipment records; tax records; accountants' and auditors' reports; records of receipts and disbursements including bank statements, check registers and cancelled checks; payroll registers of salaries and wages paid; cost accounting records for work orders; inventories of materials and supplies; and other source documents.	Do.
7. Funds reports and estimates of funds	1 year.
8. Consumer complaints:	
(a) Initial correspondence and record of action taken	3 years.
(b) Initial trip reports:	
(1) Traffic Data: Basic documents showing the number of passengers, and pounds of mail and property carried.	(1).
(c) Reservations reports and records:	
(1) Cards and charts constituting original source of passengers' names, telephone numbers, etc.	2 months.
(2) Telegrams and radio messages relating to the clearance of space, passenger dispatching, etc.	1 month.
(d) System report of airplane movements by trip number showing arrivals, departures, delays and related information.	3 years.
(e) Sales reports:	
(1) Sales ticket or other similar reports from stations, offices and agents	2 years.
(f) Auditors' coupons	1 year.
(g) Air waybills	Do.
(h) Flight coupons	Do.
(i) Ticket refund claims records and reports	Do.
(j) Records and reports relating to errors, oversales, irregularities and delays in handling passengers.	Do.
9. All documents which relate to the furnishing of transportation to candidates for political office or persons acting on their behalf which are required to be maintained following § 374a.7 of the subchapter.	2 years.

SCHEDULE OF RECORDS—Continued

[See footnote at end of table]

Category of records	Retention period
10. Correspondence and working papers relating to rate and route proceedings	3 years.

[1] One year-mail-property; 2 years-passengers.

[ER–1214, 46 FR 25415, May 6, 1981, as amended at 60 FR 66726, Dec. 26, 1995]

§ 249.21 Preservation of records by public charter operators and overseas military personnel charter operators.

Each operator authorized under parts 372 and 380 of this chapter shall retain the following records for 6 months after completion or cancellation of the flight or series of flights. The records shall be made available upon request of an authorized representative of the DOT.

(a) All receipts and statements of travel agents and all other documents which show deposits made by each charter participant or which show refunds to charter participants.

(b) All receipts and statements of travel agents and all other documents which show or reflect commissions received, paid to, or deducted by travel agents in connection with the flight or series of flights.

(c) All statements, invoices, bills, and receipts from suppliers for furnishing of goods or services in connection with the tour or series of tours.

(d) All customer reservations records for each flight.

(e) All contracts with individual tour participants.

(f) All bank statements and reconciliations for escrow bank accounts opened and maintained in accordance with DOT regulations.

[ER–1214, 46 FR 25415, May 6, 1981, as amended at 60 FR 66726, Dec. 26, 1995]

Subpart C—Regulations Relating to the Truth-in-Lending Act

§ 249.30 Applicability.

This subpart is applicable to all air carriers and foreign air carriers as defined in 49 U.S.C. 40102, including, without limitation, direct carriers, air taxi operators registered under part 298 of this chapter, indirect air carriers registered under part 296 of this chapter, charter operators authorized under parts 372 and 380 of this chapter, and foreign air carriers holding permits to engage in indirect foreign air transportation issued under 49 U.S.C. 41302.

[ER–1214, 46 FR 25415, May 6, 1981, as amended at 60 FR 66726, Dec. 26, 1995]

§ 249.31 Preservation and inspection of evidence of compliance.

Air carriers and foreign air carriers shall preserve evidence of compliance with the requirements imposed under Regulation Z of the Board of Governors of the Federal Reserve System (12 CFR part 226), implementing the provisions of Title I (Truth in Lending) and Title V (General Provisions) of the Consumer Credit Protection Act, as amended (15 U.S.C. 1601 *et seq.*) other than the advertising requirements under § 226.10 of regulation Z. This evidence shall be preserved for no less than 2 years after the date each disclosure is required to be made and shall be made available for inspection by authorized representatives of the DOT.

[ER–1214, 46 FR 25415, May 6, 1981, as amended at 60 FR 66726, Dec. 26, 1995]

PART 250—OVERSALES

Sec.

250.1 Definitions.
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250.2a Policy regarding denied boarding.
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250.3 Boarding priority rules.
250.5 Amount of denied boarding compensation for passengers denied boarding involuntarily.
250.6 Exceptions to eligibility for denied boarding compensation.
250.7 [Reserved]
250.8 Denied boarding compensation.

250.9 Written explanation of denied boarding compensation and boarding priorities.
250.10 Report of passengers denied confirmed space.
250.11 Public disclosure of deliberate overbooking and boarding procedures.

AUTHORITY: 49 U.S.C. chapters 401, 411, 413, 417.

SOURCE: ER–1306, 47 FR 52985, Nov. 24, 1982, unless otherwise noted.

§ 250.1 Definitions.

Airport means the airport at which the direct or connecting flight, on which the passenger holds confirmed reserved space, is planned to arrive or some other airport serving the same metropolitan area, provided that transportation to the other airport is accepted (i.e., used) by the passenger.

Carrier means: (1) A direct air carrier, except a helicopter operator, holding a certificate issued by the Department of Transportation pursuant to 49 U.S.C. 41102 (formerly sections 401(d)(1), 401(d)(2), 401(d)(5) and 401(d)(8) of the Federal Aviation Act of 1958), or an exemption from 49 U.S.C. 41101 (formerly section 401(a) of the Act), authorizing the transportation of persons, or

(2) A foreign route air carrier holding a permit issued by the Department pursuant to 49 U.S.C. 41301 through 41306 (formerly section 402 of the Act), or an exemption from the appropriate provision of 49 U.S.C. 41301 through 41306, authorizing the scheduled foreign air transportation of persons.

Comparable air transportation means transportation provided to passengers at no extra cost by a carrier as defined above.

Confirmed reserved space, means space on a specific date and on a specific flight and class of service of a carrier which has been requested by a passenger and which the carrier or its agent has verified, by appropriate notation on the ticket or in any other manner provided therefor by the carrier, as being reserved for the accommodation of the passenger.

Large aircraft means any aircraft that has a passenger capacity of more than 60 seats.

Stopover means a deliberate interruption of a journey by the passenger, scheduled to exceed 4 hours, at a point between the place of departure and the final destination.

Sum of the values of the remaining flight coupons means the sum of the applicable one-way fares, including any surcharges and air transportation taxes, less any applicable discounts.

[ER–1306, 47 FR 52985, Nov. 24, 1982, as amended by ER–1337, 48 FR 29680, June 28, 1983; 68 FR 52836, Sept. 8, 2003]

§ 250.2 Applicability.

This part applies to every carrier, as defined in § 250.1, with respect to flight segments with large aircraft in (1) interstate air transportation and (2) foreign air transportation originating at a point within the United States.

[ER–1306, 47 FR 52985, Nov. 24, 1982, as amended at 68 FR 52836, Sept. 8, 2003]

§ 250.2a Policy regarding denied boarding.

In the event of an oversold flight, every carrier shall ensure that the smallest practicable number of persons holding confirmed reserved space on that flight are denied boarding involuntarily.

§ 250.2b Carriers to request volunteers for denied boarding.

(a) In the event of an oversold flight, every carrier shall request volunteers for denied boarding before using any other boarding priority. A ''volunteer'' is a person who responds to the carrier's request for volunteers and who willingly accepts the carriers' offer of compensation, in any amount, in exchange for relinquishing the confirmed reserved space. Any other passenger denied boarding is considered for purposes of this part to have been denied boarding involuntarily, even if that passenger accepts the denied boarding compensation.

(b) If an insufficient number of volunteers come forward, the carrier may deny boarding to other passengers in accordance with its boarding priority rules. However, the carrier may not deny boarding to any passenger involuntarily who was earlier asked to volunteer without having been informed

about the danger of being denied boarding involuntarily and the amount of DOT-mandated compensation.

[ER–1337, 48 FR 29680, June 28, 1983, as amended at 68 FR 52836, Sept. 8, 2003]

§ 250.3 Boarding priority rules.

(a) Every carrier shall establish priority rules and criteria for determining which passengers holding confirmed reserved space shall be denied boarding on an oversold flight in the event that an insufficient number of volunteers come forward. Such rules and criteria shall reflect the obligations of the carrier set forth in §§ 250.2a and 250.2b to minimize involuntary denied boarding and to request volunteers, and shall be written in such manner as to be understandable and meaningful to the average passenger. Such rules and criteria shall not make, give, or cause any undue or unreasonable preference or advantage to any particular person or subject any particular person to any unjust or unreasonable prejudice or disadvantage in any respect whatsoever.

(b) [Reserved]

[ER–1306, 47 FR 52985, Nov. 24, 1982, as amended by ER–1337, 48 FR 29680, June 28, 1983]

§ 250.5 Amount of denied boarding compensation for passengers denied boarding involuntarily.

(a) Subject to the exceptions provided in § 250.6, a carrier as defined in § 250.1, shall pay compensation to passengers denied boarding involuntarily from an oversold flight at the rate of 200 percent of the sum of the values of the passenger's remaining flight coupons up to the passenger's next stopover, or if none, to the passenger's final destination, with a maximum of $400. However, the compensation shall be one-half the amount described above, with a $200 maximum, if the carrier arranges for comparable air transporation, or other transportation used by the passenger that, at the time either such arrangement is made, is planned to arrive at the airport of the passenger's next stopover or if none, at the airport of the passenger's destination, not later than 2 hours after the time the direct or connecting flight on which confirmed space is held is planned to arrive in the case of interstate air transportation, or 4 hours after such time in the case of foreign air transportation.

(b) Carriers may offer free or reduced rate air transportation in lieu of the cash due under paragraph (a) of this section, if (1) the value of the transportation benefit offered is equal to or greater than the cash payment otherwise required, and (2) the carrier informs the passenger of the amount of cash compensation that would otherwise be due and that the passenger may decline the transportation benefit and receive the cash payment.

[ER–1337, 48 FR 29680, June 28, 1983, as amended at 68 FR 52836, Sept. 8, 2003]

§ 250.6 Exceptions to eligibility for denied boarding compensation.

A passenger denied boarding involuntarily from an oversold flight shall not be eligible for denied boarding compensation if:

(a) The passenger does not comply fully with the carrier's contract of carriage or tariff provisions regarding ticketing, reconfirmation, check-in, and acceptability for transportation;

(b) The flight for which the passenger holds confirmed reserved space is unable to accommodate that passenger because of substitution of equipment of lesser capacity when required by operational or safety reasons;

(c) The passenger is offered accommodations or is seated in a section of the aircraft other than that specified on the ticket at no extra charge, except that a passenger seated in a section for which a lower fare is charged shall be entitled to an appropriate refund; or

(d) The carrier arranges comparable air transportation, or other transportation used by the passenger at no extra cost to the passenger, that at the time such arrangements are made is planned to arrive at the airport of the passenger's next stopover or, if none, at the airport of the final destination not later than 1 hour after the planned arrival time of the passenger's original flight or flights.

[ER–1337, 48 FR 29680, June 28, 1983]

§ 250.7 [Reserved]

§ 250.8 Denied boarding compensation.

(a) Every carrier shall tender to a passenger eligible for denied boarding compensation, on the day and place the denied boarding occurs, except as provided in paragraph (b), cash or an immediately negotiable check for the appropriate amount of compensation provided in § 250.5.

(b) Where a carrier arranges, for the passenger's convenience, alternate means of transportation that departs before the payment can be prepared and given to the passenger, tender shall be made by mail or other means within 24 hours after the time the denied boarding occurs.

[ER–1394, 49 FR 43625, Oct. 31, 1984]

§ 250.9 Written explanation of denied boarding compensation and boarding priorities.

(a) Every carrier shall furnish passengers who are denied boarding involuntarily from flights on which they hold confirmed reserved space immediately after the denied boarding occurs, a written statement explaining the terms, conditions, and limitations of denied boarding compensation, and describing the carriers' boarding priority rules and criteria. The carrier shall also furnish the statement to any person upon request at all airport ticket selling positions which are in the charge of a person employed exclusively by the carrier, or by it jointly with another person or persons, and at all boarding locations being used by the carrier.

(b) The statement shall read as follows:

COMPENSATION FOR DENIED BOARDING

If you have been denied a reserved seat on (name of air carrier), you are probably entitled to monetary compensation. This notice explains the airline's obligation and the passenger's rights in the case of an oversold flight, in accordance with regulations of the U.S. Department of Transportation.

VOLUNTEERS AND BOARDING PRIORITIES

If a flight is oversold (more passengers hold confirmed reservations than there are seats available), no one may be denied boarding against his or her will until airline personnel first ask for volunteers who will give up their reservation willingly, in exchange for a payment of the airline's choosing. If there are not enough volunteers, other passengers may be denied boarding involuntarily in accordance with the following boarding priority of (name of air carrier): (In this space carrier inserts its boarding priority rules or a summary thereof, in a manner to be understandable to the average passenger.)

COMPENSATION OF INVOLUNTARY DENIED BOARDING

If you are denied boarding involuntarily, you are entitled to a payment of ''denied boarding compensation'' from the airline unless:

(1) You have not fully complied with the airline's ticketing, check-in, and reconfirmation requirements, or you are not acceptable for transportation under the airline's usual rules and practices, or (2) you are denied boarding because the flight is canceled; or (3) you are denied boarding because a smaller capacity aircraft was substituted for safety or operational reasons; or (4) you are offered accommodations in a section of the aircraft other than specified in your ticket, at no extra charge, (a passenger seated in a section for which a lower fare is charged must be given an appropriate refund); or (5) the airline is able to place you on another flight or flights that are planned to reach your final destination within one hour of the scheduled arrival of your original flight.

AMOUNT OF DENIED BOARDING COMPENSATION

Passengers who are eligible for denied boarding compensation must be offered a payment equal to the sum of the face values of their ticket coupons, with a $200 maximum. However, if the airline cannot arrange ''alternate transportation'' (see below) for the passenger, the compensation is doubled ($400 maximum). The ''value'' of a ticket coupon is the one-way fare for the flight shown on the coupon including any surcharge and air transportation tax, minus any applicable discount. All flight coupons, including connecting flights, to the passenger's final destination or first 4-hour stopover are used to compute the compensation.

''Alternate transportation'' is air transportation (by an airline licensed by DOT) or other transportation used by the passenger which, at the time the arrangement is made, is planned to arrive at the passenger's next scheduled stopover (of 4 hours or longer) or final destination no later than 2 hours (for flights within U.S. points, including territories and possessions) or 4 hours (for international flights) after the passenger's originally scheduled arrival time.

METHOD OF PAYMENT

The airline must give each passenger who qualifies for denied boarding compensation a payment by cash or check for the amount specified above, on the day and place the involuntary denied boarding occurs. However, if the airline arranges alternate transportation for the passenger's convenience that departs before the payment can be made, the payment will be sent to the passenger within 24 hours. The air carrier may offer free tickets in place of the cash payment. The passenger may, however, insist on the cash payment, or refuse all compensation and bring private legal action.

PASSENGER'S OPTIONS

Acceptance of the compensation may relieve (name of air carrier) from any further liability to the passenger caused by its failure to honor the confirmed reservation. However, the passenger may decline the payment and seek to recover damages in a court of law or in some other manner.

(Approved by the Office of Management and Budget under control number 3024–0003)

[ER–1306, 47 FR 52985, Nov. 24, 1982, as amended by ER–1337, 48 FR 29681, June 28, 1983; ER–1392, 49 FR 40401, Oct. 16, 1984; ER–1394, 49 FR 43625, Oct. 31, 1984; 68 FR 52836, Sept. 8, 2003]

§ 250.10 Report of passengers denied confirmed space.

Every carrier shall file, on a quarterly basis, the information specified in BTS Form 251. The reporting basis shall be flights originating or terminating at, or servicing, a point within the United States. The reports are to be submitted within 30 days after the quarter covered by the report. The calendar quarters end March 31, June 30, September 30 and December 31. ''Total Boardings'' on line 7 of Form 251 shall include only passengers on flights for which confirmed reservations are offered. No reports need be filed for inbound international flights on which the protections of this part do not apply.

(Approved by the Office of Management and Budget under control number 2138–0018)

[Doc. No. 43872, 51 FR 30475, Aug. 27, 1986, as amended at 60 FR 66726, Dec. 26, 1995]

§ 250.11 Public disclosure of deliberate overbooking and boarding procedures.

(a) Every carrier shall cause to be displayed continuously in a conspicuous public place at each desk, station, and position in the United States which is in the charge of a person employed exclusively by it, or by it jointly with another person, or by any agent employed by such air carrier or foreign air carrier to sell tickets to passengers, a sign located so as to be clearly visible and clearly readable to the traveling public, which shall have printed thereon the following statement in boldface type at least one-fourth of an inch high:

NOTICE—OVERBOOKING OF FLIGHTS

Airline flights may be overbooked, and there is a slight chance that a seat will not be available on a flight for which a person has a confirmed reservation. If the flight is overbooked, no one will be denied a seat until airline personnel first ask for volunteers willing to give up their reservation in exchange for a payment of the airline's choosing. If there are not enough volunteers the airline will deny boarding to other persons in accordance with its particular boarding priority. With few exceptions persons denied boarding involuntarily are entitled to compensation. The complete rules for the payment of compensation and each airline's boarding priorities are available at all airport ticket counters and boarding locations. Some airlines do not apply these consumer protections to travel from some foreign countries, although other consumer protections may be available. Check with your airline or your travel agent.

(b) Every carrier shall include with each ticket sold in the United States the notices set forth in paragraph (a) of this section, printed in at least 12-point type. The notice may be printed on a separate piece of paper, on the ticket stock, or on the ticket envelope. The last two sentences of the notice shall be printed in a type face contrasting with that of the rest of the notice.

(c) It shall be the responsibility of each carrier to ensure that travel agents authorized to sell air transportation for that carrier comply with the notice provisions of paragraphs (a) and (b) of this section.

(d) [Reserved]

(e) Any air carrier or foreign air carrier engaged in foreign air transportation that complies fully with this part for inbound traffic to the United

States need not use the last two sentences of the notices required by paragraph (a) of this subsection.

(Approved by the Office of Management and Budget under control number 3024–0018)

[ER–1306, 47 FR 52985, Nov. 24, 1982, as amended by ER–1392, 49 FR 40401, Oct. 16, 1984]

PART 252—SMOKING ABOARD AIRCRAFT

Sec.
252.1 Purpose.
252.2 Applicability.
252.3 Smoking ban: air carriers
252.5 Smoking ban: foreign air carriers.
252.7 No-smoking sections.
252.8 Extent of smoking restrictions
252.9 Ventilation systems.
252.11 Aircraft on the ground.
252.13 Small aircraft.
252.15 Cigars and pipes.
252.17 Enforcement.
252.19 Single-entity charters.

AUTHORITY: Pub. L 101–164; 49 U.S.C. 40102, 40109, 40113, 41701, 41702, 41706, as amended by section 708 of Pub. L 106–181, 41711, and 46301.

CROSS REFERENCE: For smoking rules of the Federal Aviation Administration, see 14 CFR 121.317(c), 121.571(a)(1)(i), 129.29, 135.117(a)(1), and 135.127(a).

SOURCE: Docket No. OST–2000–7473, 65 FR 36775, June 9, 2000, unless otherwise noted.

§ 252.1 Purpose.

This part implements a ban on smoking of tobacco products on air carrier and foreign air carrier flights in scheduled intrastate, interstate and foreign air transportation, as required by 49 USC 41706. It also addresses smoking on charter flights. Nothing in this regulation shall be deemed to require air carriers or foreign air carriers to permit the smoking of tobacco products aboard aircraft.

NOTE TO §252.1: As defined in 49 U.S.C. 40102, an ''air carrier'' is a citizen of the United States undertaking to provide air transportation, and a ''foreign air carrier'' is a person, not a citizen of the United States, undertaking to provide foreign air transportation.

§ 252.2 Applicability.

This part applies to all operations of air carriers engaged in interstate, intrastate and foreign air transportation and to foreign air carriers engaged in foreign air transportation, but does not apply to the on-demand services of air taxi operators.

§ 252.3 Smoking ban: air carriers.

Air carriers shall prohibit smoking on all scheduled passenger flights.

§ 252.5 Smoking ban: foreign air carriers.

(a) Foreign air carriers shall prohibit smoking on all scheduled passenger flight segments:

(1) Between points in the United States, and

(2) Between the U.S. and any foreign point.

(b) A foreign government objecting to the application of paragraph (a) of this section on the basis that paragraph (a) provides for extraterritorial application of the laws of the United States may request and obtain a waiver of paragraph (a) from the Assistant Secretary of Transportation for Transportation Policy, provided that an alternative smoking prohibition resulting from bilateral negotiations is in effect.

§ 252.7 No-smoking sections.

(a) Except as provided in paragraph (b) of this section, air carriers operating nonstop flight segments to which §§252.3 and 252.13 do not apply shall provide, at a minimum:

(1) A no-smoking section for each class of service;

(2) A sufficient number of seats in each no-smoking section to accommodate all persons in that class of service who wish to be seated there;

(3) Expansion of no-smoking sections to meet passenger demand; and

(4) Special provisions to ensure that if a no-smoking section is placed between smoking sections, the nonsmoking passengers are not unreasonably burdened.

(b) On flights for which passengers may make confirmed reservations and on which seats are assigned before boarding, an air carrier need not provide a seat in a no-smoking section to a passenger who has not met the carrier's requirements as to time and method of obtaining a seat on the

flight, or who does not have a confirmed reservation. If a seat is available in the established no-smoking section, however, an air carrier shall seat there any enplaning passenger who so requests, regardless of boarding time or reservation status.

§ 252.8 Extent of smoking restrictions.

The restrictions on smoking described in §§ 252.3 through 252.7 shall apply to all locations within the aircraft.

§ 252.9 Ventilation systems.

Air carriers shall prohibit smoking whenever the ventilation system is not fully functioning. Fully functioning for this purpose means operating so as to provide the level and quality of ventilation specified and designed by the manufacturer for the number of persons currently in the passenger compartment.

§ 252.11 Aircraft on the ground.

(a) Air carriers shall prohibit smoking whenever the aircraft is on the ground.

(b) With respect to the restrictions on smoking described in § 252.5, foreign air carriers shall prohibit smoking from the time an aircraft begins enplaning passengers until the time passengers complete deplaning.

§ 252.13 Small aircraft.

Air carriers shall prohibit smoking on aircraft designed to have a passenger capacity of 30 or fewer seats.

NOTE TO § 252.13: This section, like the rest of this part, does not apply to on-demand services of air taxi operators; see § 252.2 in this part.

§ 252.15 Cigars and pipes.

Air carriers shall prohibit the smoking of cigars and pipes aboard aircraft.

§ 252.17 Enforcement.

Air carriers and foreign air carriers shall take such action as is necessary to ensure that smoking by passengers or crew is not permitted in the passenger cabin or lavatories on no-smoking flight segments. Air carriers shall take such action as is necessary to ensure that smoking by passengers or crew is not permitted in no-smoking sections or at other times or places where smoking is prohibited by this part, and to maintain required separation of passengers in smoking and no-smoking areas.

§ 252.19 Single-entity charters.

On single-entity charters operated pursuant to §§ 207.50 or 208.300 of this title, air carriers need not comply with the procedures of this part 252 if such a request is made by the charterer, provided that each passenger on such flights is given notice of the smoking procedures for the flight at the time he or she first makes arrangements to take the flight.

PART 253—NOTICE OF TERMS OF CONTRACT OF CARRIAGE

Sec.

253.1 Purpose.
253.2 Applicability.
253.3 Definitions.
253.4 Incorporation by reference in the contract of carriage.
253.5 Notice of incorporated terms.
253.6 Explanation of incorporated terms.
253.7 Direct notice of certain terms.
253.8 Qualifications to notice requirements.

AUTHORITY: Secs. 204, 403, 404, and 411, Pub. L. 85–726, as amended, 72 Stat. 743, 758, 760, 769; 49 U.S.C. 1324, 1373, 1374, 1381.

SOURCE: ER–1302, 47 FR 52134, Nov. 19, 1982, unless otherwise noted.

§ 253.1 Purpose.

The purpose of this rule is to set uniform disclosure requirements, which preempt any State requirements on the same subject, for terms incorporated by reference into contracts of carriage for scheduled service in interstate and overseas passenger air transportation.

§ 253.2 Applicability.

This rule applies to all scheduled direct air carrier operations in interstate and overseas air transportation. It applies to all contracts with passengers, for those operations, that incorporate terms by reference.

[ER–1323, 48 FR 6318, Feb. 11, 1983]

§ 253.3 Definitions.

Large aircraft means any aircraft designed to have a maximum passenger capacity of more than 60 seats.

Passenger means any person who purchases, or who contacts a ticket office or travel agent for the purpose of purchasing, or considering the purchase of, air transportation.

Ticket office means station, office, or other location where tickets are sold that is under the charge of a person employed exclusively by the carrier, or by it jointly with another person.

§ 253.4 Incorporation by reference in the contract of carriage.

(a) A ticket or other written instrument that embodies the contract of carriage may incorporate contract terms by reference (i.e., without stating their full text), and if it does so shall contain or be accompanied by notice to the passenger as required by this part. In addition to other remedies at law, an air carrier may not claim the benefit as against the passenger of, and the passenger shall not be bound by, any contract term incorporated by reference if notice of the term has not been provided to that passenger in accordance with this part.

(b) Each air carrier shall make the full text of each term that it incorporates by reference in a contract of carriage available for public inspection at each of its airport and city ticket offices.

(c) Each air carrier shall provide free of charge by mail or other delivery service to passengers, upon their request, a copy of the full text of its terms incorporated by reference in the contract. Each carrier shall keep available at all times, free of charge, at all locations where its tickets are sold within the United States information sufficient to enable passengers to order the full text of such terms.

(The notice requirements contained in paragraphs (b) and (c) were approved by the Office of Management and Budget under control number 3024–0061)

[ER–1302, 47 FR 52134, Nov. 19, 1982, as amended by ER–1309, 47 FR 54764, Dec. 6, 1982]

§ 253.5 Notice of incorporated terms.

Except as provided in § 253.8, each air carrier shall include on or with a ticket, or other written instrument given to a passenger, that embodies the contract of carriage and incorporates terms by reference in that contract, a conspicuous notice that:

(a) Any terms incorporated by reference are part of the contract, passengers may inspect the full text of each term incorporated by reference at the carrier's airport or city ticket offices, and passengers have the right, upon request at any location where the carrier's tickets are sold within the United States, to receive free of charge by mail or other delivery service the full text of each such incorporated term;

(b) The incorporated terms may include and passengers may obtain from any location where the carrier's tickets are sold within the United States further information concerning:

(1) Limits on the air carrier's liability for personal injury or death of passengers, and for loss, damage, or delay of goods and baggage, including fragile or perishable goods;

(2) Claim restrictions, including time periods within which passengers must file a claim or bring an action against the carrier for its acts or omissions or those of its agents;

(3) Rights of the carrier to change terms of the contract. (Rights to change the price, however, are governed by § 253.7);

(4) Rules about reconfirmation of reservations, check-in times, and refusal to carry;

(5) Rights of the carrier and limitations concerning delay or failure to perform service, including schedule changes, substitution of alternate air carrier or aircraft, and rerouting.

(Approved by the Office of Management and Budget under control number 3024–0061)

[ER–1302, 47 FR 52134, Nov. 19, 1982, as amended by ER–1309, 47 FR 54764, Dec. 6, 1982; ER–1370, 48 FR 54591, Dec. 6, 1983; ER–1375, 49 FR 5064, Feb. 10, 1984]

§ 253.6 Explanation of incorporated terms.

Each air carrier shall ensure that any passenger can obtain from any location where its tickets are sold within the United States a concise and immediate explanation of any terms incorporated by reference, concerning the subjects listed in § 253.5(b).

(Approved by the Office of Management and Budget under control number 3024–0061)

[ER–1302, 47 FR 52134, Nov. 19, 1982, as amended by ER–1309, 47 FR 54764, Dec. 6, 1982]

§ 253.7 Direct notice of certain terms.

A passenger shall not be bound by any terms restricting refunds of the ticket price, imposing monetary penalties on passengers, or permitting the carrier to raise the price, unless the passenger receives conspicuous written notice of the salient features of those terms on or with the ticket.

(Approved by the Office of Management and Budget under control number 3024–0061)

[ER–1302, 47 FR 52134, Nov. 19, 1982, as amended by ER–1309, 47 FR 54764, Dec. 6, 1982]

§ 253.8 Qualifications to notice requirements.

(a) If notice is not provided in accordance with § 253.5 at a ticket sales location outside of the United States that is not a U.S. air carrier ticket office, the price paid for the portion of such ticket that is for interstate and overseas air transportation shall be refundable without penalty if the passenger refuses transportation by the carrier. Each air carrier shall ensure that passengers who have bought tickets at those locations without the notice required in § 253.5 are given that notice not later than check-in for the travel in interstate or overseas air transportation, and that conspicuous notice is included on or with the ticket stating that the price for that travel is refundable without penalty.

(b) An air taxi operator (including a commuter air carrier) not operating under subpart I of part 298 of this chapter shall not be considered to have incorporated terms by reference into its contract of carriage merely because a passenger has purchased a flight segment on that carrier that appears on ticket stock that contains a statement that terms have been incorporated by reference. However, such an air taxi operator may not claim the benefit as against the passenger of, and the passenger shall not be bound by, any contract term incorporated by reference if notice of the term has not been provided to the passenger in accordance with this part.

[ER–1370, 48 FR 54591, Dec. 6, 1983]

PART 254—DOMESTIC BAGGAGE LIABILITY

Sec.
254.1 Purpose.
254.2 Applicability.
254.3 Definitions.
254.4 Carrier liability.
254.5 Notice requirement.
254.6 Periodic adjustments.

AUTHORITY: 49 U.S.C. 40113, 41501, 41504, 41510, 41702, and 41707.

SOURCE: ER–1374, 49 FR 5071, Feb. 10, 1984, unless otherwise noted.

§ 254.1 Purpose.

The purpose of this part is to establish rules for the carriage of baggage in interstate and intrastate air transportation. The part sets permissible limitations of air carrier liability for loss, damage, or delay in the carriage of passenger baggage and requires air carriers to provide certain types of notice to passengers.

[ER–1374, 49 FR 5071, Feb. 10, 1984, as amended at 64 FR 70575, Dec. 17, 1999]

§ 254.2 Applicability.

This part applies to any air carrier that provides charter or scheduled passenger service in interstate or intrastate air transportation.

[ER–1374, 49 FR 5071, Feb. 10, 1984, as amended at 64 FR 70575, Dec. 17, 1999]

§ 254.3 Definitions.

Large aircraft means any aircraft designed to have a maximum passenger capacity of more than 60 seats.

§ 254.4 Carrier liability.

On any flight segment using large aircraft, or on any flight segment that is included on the same ticket as another flight segment that uses large aircraft, an air carrier shall not limit

its liability for provable direct or consequential damages resulting from the disappearance of, damage to, or delay in delivery of a passenger's personal property, including baggage, in its custody to an amount less than $2,800 for each passenger.

[69 FR 56693, Sept. 22, 2004]

§ 254.5 Notice requirement.

In any flight segment using large aircraft, or on any flight segment that is included on the same ticket as another flight segment that uses large aircraft, an air carrier shall provide to passengers, by conspicuous written material included on or with its ticket, either:

(a) Notice of any monetary limitation on its baggage liability to passengers; or

(b) The following notice: ''Federal rules require any limit on an airline's baggage liability to be at least $2,800 per passenger.''

[69 FR 56693, Sept. 22, 2004]

§ 254.6 Periodic adjustments.

The Department of Transportation will review the minimum limit of liability prescribed in this part every two years. The Department will use the Consumer Price Index for All Urban Consumers as of July of each review year to calculate the revised minimum liability amount. The Department will use the following formula:

$2500 × (a/b) rounded to the nearest $100 where:

a = July CPI-U of year of current adjustment
b = Most current CPI-U figure when final rule is issued.

[64 FR 70575, Dec. 17, 1999]

PART 255—AIRLINE COMPUTER RESERVATIONS SYSTEMS

Sec.
255.1 Purpose.
255.2 Applicability.
255.3 Definitions.
255.4 Display of information.
255.5 Contracts with participating carriers.
255.6 Exceptions.
255.7 Prohibition against carrier bias.
255.8 Sunset Date.

AUTHORITY: 49 U.S.C. 40101, 40102, 40105, 40113, 41712.

SOURCE: 69 FR 1032, Jan. 7, 2004, unless otherwise noted.

§ 255.1. Purpose.

(a) The purpose of this part is to set forth requirements for the operation of computer reservations systems used by travel agents and certain related air carrier distribution practices so as to prevent unfair, deceptive, predatory, and anticompetitive practices in air transportation and the sale of air transportation.

(b) Nothing in this part operates to exempt any person from the operation of the antitrust laws set forth in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12).

§ 255.2. Applicability.

This part applies to firms that operate computerized reservations systems for travel agents in the United States, and to the sale in the United States of interstate, overseas, and foreign air transportation through such systems.

§ 255.3. Definitions.

''Availability'' means information provided in displays with respect to the seats a carrier holds out as available for sale on a particular flight.

''Carrier'' means any air carrier, any foreign air carrier, and any commuter air carrier, as defined in 49 U.S.C. 40102(3), 49 U.S.C. 40102(22), and 14 CFR 298.2(f), respectively, that is engaged directly in the operation of aircraft in passenger air transportation.

''Display'' means the system's presentation of carrier schedules, fares, rules or availability to a subscriber by means of a computer terminal.

''Integrated display'' means any display that includes the schedules, fares, rules, or availability of all or a significant proportion of the system's participating carriers.

''On-time performance code'' means a single-character code supplied by a carrier to the system in accordance with the provisions of 14 CFR Part 234 that reflects the monthly on-time performance history of a nonstop flight or one-stop or multi-stop single plane operation held out by the carrier in a CRS.

''Participating carrier'' means a carrier that has an agreement with a system for display of its schedules, fares,

or seat availability, or for the making of reservations or issuance of tickets through a system.

''*Subscriber*'' means a ticket agent, as defined in 49 U.S.C. 40102(40), that holds itself out as a source of information about, or reservations for, the air transportation industry and that uses a system.

''*System*'' means a computerized reservations system offered to subscribers for use in the United States that contains information about schedules, fares, rules or availability of carriers and provides subscribers with the ability to make reservations, if it charges any carrier a fee for system services. It does not mean direct connections between a ticket agent and the internal reservations systems of individual carriers.

§ 255.4 Display of information.

(a) All systems shall provide at least one integrated display that includes the schedules, fares, rules, and availability of all participating carriers in accordance with the provisions of this section. This display shall be at least as useful for subscribers, in terms of functions or enhancements offered and the ease with which such functions or enhancements can be performed or implemented, as any other displays maintained by the system vendor. No system shall make available to subscribers any integrated display unless that display complies with the requirements of this section.

(1) Each system must offer an integrated display that uses the same editing and ranking criteria for both on-line and interline connections and does not give on-line connections a system-imposed preference over interline connections. This display shall be at least as useful for subscribers, in terms of functions or enhancements offered and the ease with which such functions or enhancements can be performed or implemented, as any other display maintained by the system vendor.

(2) Each integrated display offered by a system must either use elapsed time as a significant factor in selecting service options from the database or give single-plane flights a preference over connecting services in ranking services in displays.

(b) In ordering the information contained in an integrated display, systems shall not use any factors directly or indirectly relating to carrier identity.

(1) Systems may order the display of information on the basis of any service criteria that do not reflect carrier identity and that are consistently applied to all carriers and to all markets.

(2) When a flight involves a change of aircraft at a point before the final destination, the display shall indicate that passengers on the flight will change from one aircraft to another.

(3) Each system shall provide to any person upon request the current criteria used in editing and ordering flights for the integrated displays and the weight given to each criterion and the specifications used by the system's programmers in constructing the algorithm.

(c) Systems shall not use any factors directly or indirectly relating to carrier identity in constructing the display of connecting flights in an integrated display.

(1) Systems shall select the connecting points (and double connect points) to be used in the construction of connecting flights for each city pair on the basis of service criteria that do not reflect carrier identity and that are applied consistently to all carriers and to all markets.

(2) Systems shall select connecting flights for inclusion (''edit'') on the basis of service criteria that do not reflect carrier identity and that are applied consistently to all carriers.

(3) Systems shall provide to any person upon request current information on:

(i) All connecting points and double connect points used for each market;

(ii) All criteria used to select connecting points and double connect points;

(iii) All criteria used to ''edit'' connecting flights; and

(iv) The weight given to each criterion in paragraphs (c)(3)(ii) and (iii) of this section.

(4) Participating carriers shall be entitled to request that a system use up to five connect points (and double connect points) in constructing connecting flights for the display of service in a

market. The system may require participating carriers to use specified procedures for such requests, but no such procedures may be unreasonably burdensome, and any procedures required of participating carriers must be applied without unreasonable discrimination between participating airlines.

(5) When a system selects connecting points and double connect points for use in constructing connecting flights it shall use at least fifteen points and six double connect points for each city-pair, except that a system may select fewer such connect or double connect points for a city-pair where:

(i) Fewer than fifteen connecting points and six double connect points meet the service criteria described in paragraph (c)(1) of this section; and

(ii) The system has used all the points that meet those criteria, along with all additional connecting points and double connect points requested by participating carriers.

(6) If a system selects connecting points and double connect points for use in constructing connecting flights it shall use every point requested by a participating carrier up to the maximum number of points that the system can use. The system may use fewer than all the connect points requested by participating carriers to the extent that:

(i) Points requested by participating carriers do not meet the service criteria described in paragraph (c)(1) of this section; and

(ii) The system has used all the points that meet those criteria.

(d) Each system shall apply the same standards of care and timeliness to loading information concerning every participating carrier. Each system shall display accurately information submitted by participating carriers. Each system shall provide to any person upon request all current data base update procedures and data formats.

(e) Systems shall use or display information concerning on-time performance of flights as follows:

(1) Within 10 days after receiving the information from participating carriers or third parties, each system shall include in all integrated schedule and availability displays the on-time performance code for each nonstop flight segment and one-stop or multi-stop single plane flight, for which a participating carrier provides a code.

(2) A system shall not use on-time flight performance as a ranking factor in ordering information contained in an integrated display.

(f) Each participating carrier shall ensure that complete and accurate information is provided each system in a form such that the system is able to display its flights in accordance with this section.

(g) A system may make available to subscribers the internal reservations system display of a participating carrier, provided that a subscriber and its employees may see any such display only by requesting it for a specific transaction.

§ 255.5 Contracts with participating carriers.

(a) No system may require a carrier to maintain any particular level of participation or buy any enhancements in its system on the basis of participation levels or enhancements selected by that carrier in any other foreign or domestic computerized reservations system, as a condition to participation in the system.

(b) No system may require any carrier as a condition to participation to provide it with fares that the carrier has chosen not to sell through that system.

§ 255.6 Exceptions.

The obligations of a system under § 255.4 shall not apply with respect to a carrier that refuses to enter into and comply with a participating airline contract with that system.

§ 255.7 Prohibition against Carrier Bias.

No carrier may induce or attempt to induce a system to create a display that would not comply with the requirements of § 255.4.

§ 255.8 Sunset Date.

Unless extended by a document published in the FEDERAL REGISTER, these rules shall terminate on July 31, 2004.

PART 256—DISPLAY OF JOINT OPERATIONS IN CARRIER-OWNED COMPUTER RESERVATIONS SYSTEMS

Sec.
256.1 Purpose.
256.2 Applicability.
256.3 Definitions.
256.4 Display of information.

AUTHORITY: Secs. 102, 204, 404, 411, 412, 419, 1102 Pub. L. 85–726 as amended, 72 Stat. 740, 743, 760, 769, 770, 797; 92 Stat. 1732; 94 Stat. 42; 49 U.S.C. 1302, 1324, 1374, 1381, 1382, 1389, 1502.

SOURCE: ER–1377, 49 FR 12677, Mar. 30, 1984, unless otherwise noted.

§ 256.1 Purpose.

The purpose of this part is to set forth a requirement for operation by air carriers of computer reservation systems used by travel agents so as to prevent unfair, predatory, and anticompetitive practices in air transportation.

§ 256.2 Applicability.

This rule applies to air carriers or foreign air carriers that own, control, or operate computerized reservation systems for travel agent subscribers in the United States, and the sale in the United States of interstate, overseas, and foreign passenger air transportation through such systems.

§ 256.3 Definitions.

Carrier means any air carrier, any foreign air carrier, and any commuter air carrier, as defined in 49 U.S.C. 1301(3), 49 U.S.C 1301(22), and § 298.2(f) of this chapter, respectively that is engaged directly in the operation of aircraft in passenger air transportation.

Display means the system's presentation of carrier schedules, fares, rules or availability to a subscriber by means of computer terminal.

Subscriber means a ticket agent, as defined in 49 U.S.C. 1301(40) of the Act, that holds itself out as a neutral source of information about, or tickets for, the air transportation industry in general, and that has entered into an agreement for the use of a system.

System means a computerized airline reservation system offered by a carrier to subscribers, for use in the United States that contains information about schedules, fares, rules or availability of other carriers and that provides subscribers with the ability to issue tickets.

System vendor means a carrier that owns, controls or operates a system.

Designator code means the airline designations allotted and administered pursuant to Agreements CAB 24606 and 26056.

§ 256.4 Display of information.

(a) A system vendor shall not deny access to its system to two or more carriers whose flights share a single designator code, absent a determination by the Board that the use of the code constitutes a violation of 49 U.S.C. 1381.

(b) A system vendor shall not discriminate against any carrier on the basis of that carrier's using the same designator code as another carrier, either by display bias, or any other means relating to providing the system.

PART 257—DISCLOSURE OF CODE-SHARING ARRANGEMENTS AND LONG-TERM WET LEASES

Sec.
257.1 Purpose.
257.2 Applicability.
257.3 Definitions.
257.4 Unfair and deceptive practice.
257.5 Notice requirement.
257.6 Effective and compliance dates.

AUTHORITY: 49 U.S.C. 40113(a) and 41712.

SOURCE: 64 FR 12851, Mar. 15, 1999, unless otherwise noted.

§ 257.1 Purpose.

The purpose of this part is to ensure that ticket agents doing business in the United States, air carriers, and foreign air carriers tell consumers clearly when the air transportation they are buying or considering buying involves a code-sharing arrangement or a long-term wet lease, and that they disclose to consumers the transporting carrier's identity.

§ 257.2 Applicability.

This part applies to the following:

(a) Direct air carriers and foreign air carriers that participate in code-sharing arrangements or long-term wet

leases involving scheduled passenger air transportation; and

(b) Ticket agents doing business in the United States that sell scheduled passenger air transportation services involving code-sharing arrangements or long-term wet leases.

§ 257.3 Definitions.

As used in this part:

(a) *Air transportation* means foreign air transportation or interstate air transportation as defined in 49 U.S.C. 40102 (a)(23) and (25) respectively.

(b) *Carrier* means any air carrier or foreign air carrier as defined in 49 U.S.C. 40102(2) or 49 U.S.C. 40102(21), respectively, that is engaged directly in scheduled passenger air transportation, including by wet lease.

(c) *Code-sharing arrangement* means an arrangement whereby a carrier's designator code is used to identify a flight operated by another carrier.

(d) *Designator code* means the airline designations originally allotted and administered pursuant to Agreements CAB 24606 and 26056.

(e) *Long-term wet lease* means a lease by which the lessor provides both an aircraft and crew dedicated to a particular route(s), and which either:

(1) Lasts more than 60 days; or

(2) Is part of a series of such leases that amounts to a continuing arrangement lasting more than 60 days.

(f) *Ticket agent* has the meaning ascribed to it in 49 U.S.C. 40102(40).

(g) *Transporting carrier* means the carrier that is operating the aircraft in a code-sharing arrangement or long-term wet lease.

§ 257.4 Unfair and deceptive practice.

The holding out or sale of scheduled passenger air transportation involving a code-sharing arrangement or long-term wet lease is prohibited as unfair and deceptive in violation of 49 U.S.C. 41712 unless, in conjunction with such holding out or sale, carriers and ticket agents follow the requirements of this part.

§ 257.5 Notice requirement.

(a) *Notice in schedules.* In written or electronic schedule information provided by carriers in the United States to the public, the Official Airline Guides and comparable publications, and, where applicable, computer reservations systems, carriers involved in code-sharing arrangements or long-term wet leases shall ensure that each flight in scheduled passenger air transportation on which the designator code is not that of the transporting carrier is identified by an asterisk or other easily identifiable mark and that the corporate name of the transporting carrier and any other name under which that service is held out to the public is also disclosed.

(b) *Oral notice to prospective consumers.* In any direct oral communication in the United States with a prospective consumer and in any telephone calls placed from the United States concerning a flight that is part of a code-sharing arrangement or long-term wet lease, a ticket agent doing business in the United States or a carrier shall tell the consumer, before booking transportation, that the transporting carrier is not the carrier whose designator code will appear on the ticket and shall identify the transporting carrier by its corporate name and any other name under which that service is held out to the public.

(c) *Written notice.* Except as specified in paragraph (c)(3) of this section, at the time of purchase, each selling carrier or ticket agent shall provide each consumer of scheduled passenger air transportation sold in the United States that involves a code-sharing arrangement or long-term wet lease with the following notice:

(1) If an itinerary is issued, there shall appear in conjunction with the listing of any flight segment on which the designator code is not that of the transporting carrier a legend that states ''Operated by'' followed by the corporate name of the transporting carrier and any other name in which that service is held out to the public. In the case of single-flight-number service involving a segment or segments on which the designator code is not that of the transporting carrier, the notice shall clearly identify the segment or segments and the transporting carrier by its corporate name and any other name in which that service is held out to the public. The following form of statement will satisfy

the requirement of this paragraph (c)(1):

IMPORTANT NOTICE: Service between XYZ City and ABC City will be operated by Jane Doe Airlines d/b/a QRS Express.

(2) If no itinerary is issued, the selling carrier or ticket agent shall provide a separate written notice that clearly identifies the transporting carrier by its corporate name and any other name under which that service is held out to the public for any flight segment on which the designator code is not that of the transporting carrier. The following form of notice will satisfy the requirement of this paragraph (c)(2):

IMPORTANT NOTICE: Service between XYZ City and ABC City will be operated by Jane Doe Airlines d/b/a QRS Express.

(3) If transportation is purchased far enough in advance of travel to allow for advance delivery of the ticket by mail or otherwise, the written notice required by this part shall be delivered in advance along with the ticket. If time does not allow for advance delivery of the ticket, or in the case of ticketless travel, the written notice required by this part shall be provided no later than the time that they check in at the airport for the first flight in their itinerary.

(4) At the purchaser's request, the notice required by this part may be delivered in person or by telecopier, electronic mail, or any other reliable method of transmitting written material.

(d) *Advertising.* In any printed advertisement published in or mailed to or from the United States for service in a city-pair market that is provided under a code-sharing arrangement or long-term wet lease, the advertisement shall clearly indicate the nature of the service in reasonably sized type and shall identify the transporting carrier[s] by corporate name and by any other name under which that service is held out to the public. In any radio or television advertisement broadcast in the United States for service in a city-pair market that is provided under a code-sharing arrangement or long-term wet lease, the advertisement shall include at least a generic disclosure statement, such as ''Some services are provided by other airlines.''

§ 257.6 Effective and compliance dates.

(a) This Part is effective as of August 25, 1999.

(b) Compliance with the following sections is mandatory as of August 25, 1999:

(1) § 257.1, § 257.2, § 257.3, § 257.4, § 257.5(d), and § 257.6.

(2) § 257.5(b) to the extent that it requires sellers of air transportation to give consumers oral notice before booking transportation involving a code-share arrangement

(i) Of the fact that the selling carrier is not the transporting carrier and

(ii) Of the transporting carrier's identity (as shown by its two-letter designator code in CRS displays).

(c) Compliance with the following sections is mandatory as of March 15, 2000:

(1) § 257.5(a) and § 257.5(c) in their entirety.

(2) § 257.5(b) insofar as it requires sellers of air transportation to give consumers

(i) Oral notice before booking transportation involving a code-share arrangement of the transporting carrier's corporate name and any other name under which the service is held out to the public and

(ii) The same disclosures for long-term wet leases as for code-sharing arrangements.

[64 FR 46821, Aug. 27, 1999]

PART 258—DISCLOSURE OF CHANGE-OF-GAUGE SERVICES

Sec.

258.1 Purpose.
258.2 Applicability.
258.3 Definitions.
258.4 Unfair and deceptive practice.
258.5 Notice requirement.
258.6 Effective and compliance dates.

AUTHORITY: 49 U.S.C. 40113(a) and 41712.

SOURCE: 64 FR 12860, Mar. 15, 1999, unless otherwise noted.

§ 258.1 Purpose.

The purpose of this part is to ensure that consumers are adequately informed before they book air transportation or embark on travel involving change-of-gauge services that these services require a change of aircraft en route.

§ 258.2 Applicability.

This part applies to the following:

(a) Direct air carriers and foreign air carriers that sell or issue tickets in the United States for scheduled passenger air transportation on change-of-gauge services or that operate such transportation; and

(b) Ticket agents doing business in the United States that sell or issue tickets for scheduled passenger air transportation on change-of-gauge services.

§ 258.3 Definitions.

As used in this part:

(a) *Air transportation* has the meaning ascribed to it in 49 U.S.C. 40102(5).

(b) *Carrier* means any air carrier or foreign air carrier as defined in 49 U.S.C. 40102(2) or 49 U.S.C. 40102(21), respectively, that engages directly in scheduled passenger air transportation.

(c) *Change-of-gauge service* means a service that requires a change of aircraft en route but has only a single flight number.

(d) *Ticket agent* has the meaning ascribed to it in 49 U.S.C. 40102(40).

§ 258.4 Unfair and deceptive practice.

The holding out or sale of scheduled passenger air transportation that involves change-of-gauge service is prohibited as an unfair or deceptive practice or an unfair method of competition within the meaning of 49 U.S.C. 41712 unless, in conjunction with such holding out or sale, carriers and ticket agents follow the requirements of this part.

§ 258.5 Notice requirement.

(a) *Notice in schedules.* Carriers holding out or operating change-of-gauge services to, from, or within the United States shall ensure that in the written and electronic schedule information they provide to the public, to the Official Airline Guide and comparable publications, and to computer reservations systems, these services are shown as requiring a change of aircraft.

(b) *Oral notice to prospective consumers.* In any direct oral communication with a consumer in the United States concerning a change-of-gauge service, any carrier or ticket agent doing business in the United States shall tell the consumer before booking scheduled passenger air transportation to, from, or within the United States that the service requires a change of aircraft en route.

(c) *Written notice.* At the time of sale in the United States of transportation that includes a change-of-gauge service to, from, or within the United States, or, if no ticket is issued, no later than the time when the passenger checks in at the airport for the first flight in an itinerary that includes such a service, the selling carrier or ticket agent shall provide the following written notice:

NOTICE: CHANGE OF AIRCRAFT REQUIRED

For at least one of your flights, you must change aircraft en route even though your ticket may show only one flight number and have only one flight coupon for that flight. Further, in the case of some travel, one of your flights may not be identified at the airport by the number on your ticket, or it may be identified by other flight numbers in addition to the one on your ticket. At your request, the seller of this ticket will give you details of your change of aircraft, such as where it will occur and what aircraft types are involved.

§ 258.6 Effective and compliance dates.

(a) This Part is effective as of August 25, 1999.

(b) Compliance with the following sections is mandatory as of August 25, 1999: § 258.1, § 258.2, § 258.3, § 258.4, § 258.5(a), § 258.5(b), and § 258.6.

(c) Compliance with § 258.5(c) is mandatory as of March 15, 2000.

[64 FR 46821, Aug. 27, 1999]

PART 271—GUIDELINES FOR SUBSIDIZING AIR CARRIERS PROVIDING ESSENTIAL AIR TRANSPORTATION

Sec.

271.1 Purpose.

271.2 Definitions.
271.3 Carrier subsidy need.
271.4 Carrier costs.
271.5 Carrier revenues.
271.6 Profit element.
271.7 Subsidy payout formula.
271.8 Rate period.
271.9 Discrimination prohibited.

AUTHORITY: 49 U.S.C. Chapters 401, 417.

SOURCE: ER–1398, 49 FR 49846, Dec. 24, 1984, unless otherwise noted.

§ 271.1 Purpose.

This part establishes the guidelines required by 49 U.S.C. 41736 to be used by the Department in establishing the fair and reasonable amount of compensation needed to ensure the continuation of essential air service to an eligible place under 49 U.S.C. 41731 and 41734. These guidelines are intended to cover normal carrier selection cases and rate renewal cases, and not necessarily emergency carrier selection cases.

[60 FR 43524, Aug. 22, 1995]

§ 271.2 Definitions.

As used in this part:

Eligible place means a place in the United States that—

(1) Was an eligible point under section 419 of the Federal Aviation Act of 1958 as in effect before October 1, 1988;

(2) Received scheduled air transportation at any time between January 1, 1990, and November 4, 1990; and

(3) Is not listed in Department of Transportation Orders 89–9–37 and 89–12–52 as a place ineligible for compensation under Subchapter II of Chapter 417 of the Statute.

Essential air service is that air transportation which the Department has found to be essential under Subchapter II of Chapter 417 of the Statute.

[60 FR 43524, Aug. 22, 1995]

§ 271.3 Carrier subsidy need.

In establishing the subsidy for an air carrier providing essential air service at an eligible place, the Department will consider the following:

(a) The reasonable projected costs of a carrier in serving that place;

(b) The carrier's reasonable projected revenues for serving that place;

(c) The appropriate size of aircraft for providing essential air service at that place; and

(d) A reasonable profit for a carrier serving that place.

[ER–1398, 49 FR 49846, Dec. 24, 1984, as amended at 60 FR 43524, Aug. 22, 1995]

§ 271.4 Carrier costs.

(a) The reasonable costs projected for a carrier providing essential air service at an eligible place will be evaluated:

(1) For costs attributable to the carrier's flying operations (direct expenses), by comparing the projected costs submitted by the carrier with the following:

(i) The carrier's historical direct operating costs with the same or similar aircraft types;

(ii) The direct operating unit costs of similar carriers using the same or similar equipment; and

(iii) Data supplied by the manufacturer of the carrier's aircraft.

(2) For other costs, by one or more of the following methods:

(i) By direct assignment where the indirect costs are attributable to the carrier's operations at the eligible place;

(ii) By comparing the carrier's systemwide indirect operating expenses to those submitted by the carrier for the eligible place; or

(iii) By comparing the indirect operating expenses submitted by the carrier with the ratio of indirect to direct costs that have been experienced by the carrier in other markets or to costs that are representative of the industry.

(3) By considering the unique circumstances of the carrier or the community being served that justify deviations from the costs that would otherwise be established for that carrier under this paragraph.

(4) By determining whether the aircraft to be used by the carrier at the eligible place, and on which its costs are derived, are appropriate for providing essential air service there. The appropriateness of the aircraft to be used is based on the following characteristics of the eligible place:

(i) Traffic levels;

(ii) The level of air service that the Department has decided is essential for the eligible place;

(iii) Distance to the designated hub;

(iv) The altitude at which the carrier must fly to the designated hub; and

(v) Other operational elements involved.

(b) When the essential air service would be made part of the carrier's linear system, the Department might, instead of the factors in paragraph (a) of this section, consider only the incremental costs that the carrier will incur in adding that service to its system.

[ER–1398, 49 FR 49846, Dec. 24, 1984, as amended at 60 FR 43524, 43525, Aug. 22, 1995]

§ 271.5 Carrier revenues.

(a) The projected passenger revenue for a carrier providing essential air service at an eligible place will be calculated by multiplying the following:

(1) A reasonable projected net fare, which is the standard fare expected to be charged for service between the eligible place and the designated hub less any dilution caused by joint fare arrangements, discount fares that it offers, or prorates of fares for through one-line passengers; and

(2) The traffic (including both local and beyond traffic) projected to flow between the eligible place and the designated hub or hubs, which is based on the carrier's own estimates, Department estimates, and on traffic levels in the market at issue when such data are available.

(b) The reasonableness of a carrier's passenger revenue projections will be evaluated by:

(1) Comparing the carrier's proposed fare with the fare charged in other city-pair markets of similar distances and traffic densities; and

(2) Comparing the carrier's proposed pricing structure with historical pricing practices in the market at issue, with the pricing practices of that carrier in other markets, and with any standard industry pricing guidelines that may be available.

(c) An estimate of freight and other transport-related revenue will be included as a component of projected revenues and will be based on recent experience in the market involved and on the experience of the carrier involved in other markets.

[ER–1398, 49 FR 49846, Dec. 24, 1984, as amended at 60 FR 43524, Aug. 22, 1995]

§ 271.6 Profit element.

The reasonable return for a carrier for providing essential air service at an eligible place generally will be set at a flat percentage, typically 5 percent of that carrier's projected operating costs as established under § 271.4, plus any applicable interest expenses on flight equipment.

[ER–1398, 49 FR 49846, Dec. 24, 1984, as amended at 60 FR 43524, 43525, Aug. 22, 1995]

§ 271.7 Subsidy payout formula.

(a) Subsidy will be paid by the Department to the air carrier monthly, based on the subsidy rate established by the Department for the carrier under this part. Payments will not vary except as provided in this section.

(b) While a carrier's subsidy rate will not vary even if actual revenues or costs differ from projections, the actual amount of each payment may vary depending on the following factors:

(1) Seasonal characteristics of the carrier's operations at the eligible place;

(2) The actual number of flights completed, aircraft miles flown, available seat-miles flown, or variations in other operational elements upon which the subsidy rate is based; or

(3) Adjustments to the carrier's subsidy required by § 271.8(b).

(c) Payments will continue for the duration of the rate term established under § 271.8 provided that the carrier continues to provide the required service.

[ER–1398, 49 FR 49846, Dec. 24, 1984, as amended at 60 FR 43524, 43525, Aug. 22, 1995]

§ 271.8 Rate period.

(a) The subsidy rate generally will be set for a 2-year period, or two consecutive 1-year periods. The Department may set the rate for a shorter period in the following situations:

(1) A commuter air carrier is replacing a larger certificated carrier at the eligible place;

(2) Traffic at the eligible place has substantially decreased;

(3) The Department considers the cost or revenue projections of the carrier for the second year to be unrealistic;

(4) It is likely that there will be changes in the eligible place essential air service level; or

(5) The uncertainties of the market or other circumstances warrant a shorter rate period.

(b) The subsidy rate established for a carrier under this part will not be changed during the rate period unless an adjustment is required in the public interest.

(c) At the end of the rate period, the carrier will not have a continuing right to receive subsidy for providing essential air service at the eligible place.

[ER–1398, 49 FR 49846, Dec. 24, 1984, as amended at 60 FR 43524, 43525, Aug. 22, 1995]

§ 271.9 Discrimination prohibited.

(a) All air carriers receiving subsidy under this part shall comply with the following:

(1) The Age Discrimination Act of 1975;

(2) The Civil Rights Act of 1964 and 49 CFR part 21; and

(3) The Rehabilitation Act of 1973, 49 CFR part 27, and part 382 of this chapter.

(b) Within 1 year after it first receives a subsidy under this part, the carrier shall evaluate its practices and procedures for accommodating the handicapped in accordance with § 382.23 of this chapter.

(c) All air carriers seeking a subsidy under this part shall include in their subsidy application the assurances required by 49 CFR parts 20, 21, 27 and 29, and § 382.21 of this chapter.

[ER–1398, 49 FR 49846, Dec. 24, 1984, as amended at 60 FR 43525, Aug. 22, 1995]

PART 272—ESSENTIAL AIR SERVICE TO THE FREELY ASSOCIATED STATES

Sec.

272.1 Purpose.
272.2 Applicability.
272.3 Places eligible for guaranteed essential air service.
272.4 Applicability of procedures and policies under 49 U.S.C. 41731–42.
272.5 Determination of essential air service.
272.6 Considerations in the determination of essential air service.
272.7 Notice of discontinuance of service.
272.8 Obligation to continue service.
272.9 Selection of a carrier to provide essential air service and payment of compensation.
272.10 Conditions applicable to carriers serving a subsidized market.
272.11 Effective date of provisions.
272.12 Termination.

AUTHORITY: 49 U.S.C. Chapters 401, 402, 416, 461, 1102; sec. 221(a)(5) of the Compact of Free Association, and paragraph 5 of Article IX of the Federal Programs and Services Agreement in implementation of that Compact (Pub. L. 99–239; Pub. L. 99–658); Pub. L. 101–219.

SOURCE: Amdt. No. 272–1, 52 FR 5443, Feb. 23, 1987, unless otherwise noted.

§ 272.1 Purpose.

Paragraph 5 of Article IX of the Federal Programs and Services Agreement implementing section 221(a)(5) of the Compact of Free Association between the United States and the Governments of the Federated States of Micronesia, the Marshall Islands and Palau (the Freely Associated States) provides, among other things, for the Department of Transportation (Department), as successor to the Civil Aeronautics Board (Board), to guarantee essential air service, with compensation if necessary, to certain places in these islands. Subparagraph 5(h) of the Agreement provides that the Department shall adopt rules to implement the provisions of paragraph 5 as it in its discretion deems appropriate. Section 221(a)(5) of the Compact, which was adopted by Congress as public laws (Pub. L. 99–239, Jan. 14, 1986; Pub. L. 99–658, Nov. 14, 1986), provides that the Department (as successor to the Board) has the authority to implement the provisions of paragraph 5 of the Agreement. This part implements these provisions of paragraph 5.

[Amdt. No. 272–1, 52 FR 5443, Feb. 23, 1987, as amended at 60 FR 43525, Aug. 22, 1995]

§ 272.2 Applicability.

This part establishes the provisions applicable to the Department's guarantee of essential air service to places in the Federated States of Micronesia, the Marshall Islands and Palau, and the payment of compensation for such services. The rule applies to U.S. air carriers and Freely Associated State

Air Carriers providing essential air service to these places.

[Amdt. No. 272–1, 52 FR 5443, Feb. 23, 1987, as amended at 60 FR 43525, Aug. 22, 1995]

§ 272.3 Places eligible for guaranteed essential air service.

(a) Subject to the provisions of this part, and paragraph 5 of Article IX of the Federal Programs and Services Agreement, the Department will make provision for the operation of essential air service, with compensation if necessary, to the following places in the Freely Associated States:

In the *Federated States of Micronesia:* Ponape, Truk and Yap.

In the *Marshall Islands:* Majuro and Kwajalein.

In *Palau:* Koror.

(b) The places specified herein in the Federated States of Micronesia, the Marshall Islands or Palau, respectively, shall cease to be eligible places under this part if any of those Governments withdraw from the subsidy provisions of Article IX of the Federal Programs and Services Agreement in accordance with paragraph 8 of Article IX or Article XII of that Agreement.

[Amdt. No. 272–1, 52 FR 5443, Feb. 23, 1987, as amended at 60 FR 43525, Aug. 22, 1995]

§ 272.4 Applicability of procedures and policies under 49 U.S.C. 41731–42.

Since the authority of the Department to guarantee essential air service is derived from the Federal Programs and Services Agreement and the Compact of Free Association, the provisions and procedures utilized by the Department in implementation of 49 U.S.C. 41731–42 will be followed only to the extent determined by the Department to be consistent with the obligations assumed by the United States in the Agreement and Compact, and the provisions of this part.

[Amdt. No. 272–1, 52 FR 5443, Feb. 23, 1987, as amended at 60 FR 43525, Aug. 22, 1995]

§ 272.5 Determination of essential air service.

Procedures for the determination of essential air service under this section, and review of that determination, shall, except to the extent otherwise directed by the Department, be governed by §325.4 (except the application of 49 U.S.C. 41737 in §325.4(b)); §325.6(a); §§325.8–325.11; §325.12 (provided that all documents shall be served on the President and the designated authorities of the Freely Associated State concerned); and §§325.13 and 325.14 of this chapter.

[Amdt. No. 272–1, 52 FR 5443, Feb. 23, 1987, as amended at 60 FR 43525, Aug. 22, 1995]

§ 272.6 Considerations in the determination of essential air service.

(a) In the determination of essential air service to an eligible Freely Associated State place, the Department shall consider, among other factors, the following:

(1) The demonstrated level of traffic demand;

(2) The amount of compensation necessary to maintain a level of service sufficient to meet that demand;

(3) The extent to which the demand may be accommodated by connecting or other services of U.S., Freely Associated State, or foreign carriers by air—through U.S., Freely Associated State, or foreign places—that provide access to the U.S. air transportation system;

(4) Alternative modes of transportation that may be available; and

(5) The peculiar needs of the Freely Associated States for air transportation services.

(b) The Guidelines for Individual Determinations of essential air service set forth in part 398 of this chapter shall be applied only to the extent the Department concludes that they are applicable to the special circumstances affecting transportation to the Freely Associated States and reflective of the provisions of this part.

(c) Nothing in this part shall be construed as providing for a level of essential air service that would exceed the level of service justified by the considerations set forth in paragraph (a) of this section.

[Amdt. No. 272–1, 52 FR 5443, Feb. 23, 1987, as amended at 60 FR 43525, Aug. 22, 1995]

§ 272.7 Notice of discontinuance of service.

(a) An air carrier or Freely Associated State Air Carrier shall not terminate, suspend, or reduce air service to any eligible Freely Associated State place, unless it has given notice as

specified in this section, if as a result of the reduction of such service the aggregate of the remaining air service provided to such place would be below:

(1) If the Department has not made a determination of essential air service for such place, the level of service specified in Order 80–9–63; and

(2) If the Department has made a determination of essential air service for such place, that level of essential air service.

(b) An air carrier or Freely Associated State Air Carrier wishing to terminate, suspend or reduce air service under paragraph (a) shall file a notice of such proposed reduction in service at least 90 days prior to such service reduction, in accordance with the procedures specified in §§323.4, 323.6, and 323.7 of this chapter.

(c) The notice shall be served on the President and the designated Authorities of the Freely Associated State concerned, in addition to the persons specified in §323.7.

(d) The procedures specified in §§323.9–323.18, to the extent applicable to 90-day notices filed by certificated air carriers, shall also be applicable to notices of terminations, suspensions or reductions in service filed under this section.

[Amdt. No. 272–1, 52 FR 5443, Feb. 23, 1987, as amended at 60 FR 43525, Aug. 22, 1995]

§ 272.8 Obligation to continue service.

(a) If the Department finds that a proposed termination, suspension, or reduction in service by an air carrier or Freely Associated State Air Carrier will, or may, reduce service to an eligible Freely Associated State place below the level of essential air service to such place, whether or not the Department has previously determined the level of essential air service to such place, the Department may direct the air carrier or Freely Associated State Air Carrier concerned to maintain service to such place at a level the Department determines will ensure essential air service to such place, pending the commencement of alternative service as required to maintain the level of essential air service previously, or thereafter, determined by the Department.

(b) During any period the Department requires an air carrier or Freely Associated State Air Carrier to maintain a level of service proposed to be terminated, suspended or reduced, following the filing of a 90 day notice in accordance with §272.7, the Department will provide for the payment of compensation to such carrier for any losses incurred by that carrier as a result of such required continuation of service in accordance with the procedures set forth in part 271 of this chapter. If the carrier is already receiving compensation pursuant to §272.9 of this part, the Department will continue to direct payment of such compensation during any period the carrier is required to maintain service. Such payments shall be made by the Department of Interior from funds appropriated for this purpose.

(c) The Department will review its order from time to time and will revise the level of required service as necessary to maintain only the level of essential air service determined by the Department for that place, considering all other service to such place in accordance with §272.6(a)(3).

(d) During the period any such air carrier or Freely Associated State Air Carrier is required to maintain service under this section, the Department will make every effort to obtain alternative service, with compensation if necessary, as required to maintain essential air service to such place.

[Amdt. No. 272–1, 52 FR 5443, Feb. 23, 1987, as amended at 60 FR 43525, Aug. 22, 1995]

§ 272.9 Selection of a carrier to provide essential air service and payment of compensation.

(a) If the Department finds that essential air service will not be maintained to an eligible Freely Associated State place, the Department shall invite applications to provide the service required to maintain essential air service to such place.

(b) If the Department determines that essential air service will not be provided to such place in the absence of the payment of subsidy compensation to a carrier or carriers, the Department shall determine the compensation necessary, considering all other service to such place in accordance

with §272.6(a)(3), to maintain the level of essential air service determined by the Department under §272.5, and the times and manner of the payment of such compensation.

(c) The compensation determined by the Department to be necessary to maintain essential air service to such place shall be paid by the Department of Interior out of funds appropriated for that purpose, to the carrier or carriers selected by the Department.

(d) The Department shall continue to specify compensation to be paid to a carrier or carriers under this section only as long as the Department determines that essential air service will not be provided to the Freely Associated State in the absence of the payment of such compensation.

(e) Except as permitted in paragraph (f) of this section, the Department shall select a U.S. air carrier or carriers to provide essential air service for compensation.

(f) The Department may select a Freely Associated State Air Carrier, holding a foreign air carrier permit issued in accordance with subpart D of part 211 of this chapter, to provide essential air service for compensation, only if—

(1) No U.S. air carrier is available to provide the required essential air service; or

(2) The compensation necessary for the provision of the required essential air service would be substantially less than the compensation necessary if such essential air service were to be provided by a U.S. air carrier.

(g) Any order of the Department selecting a Freely Associated State Air Carrier to provide such essential air service shall be submitted to the President of the United States not less than 10 days prior to its effective date and shall be subject to stay or disapproval by the President.

(h) Among the criteria that will be considered by the Department in its determination of the carrier or carriers to be selected to perform the required essential air service are:

(1) The desirability of developing an integrated linear system of air transportation whenever such a system most adequately meets the air transportation needs of the Freely Associated States concerned;

(2) The experience of the applicant in providing scheduled air service in the vicinity of the Freely Associated States for which essential air service is proposed to be provided;

(3) The amount of compensation that will be required to provide the proposed essential air service;

(4) The impact of the proposed service on service provided to other Freely Associated State points; and

(5) The views of the Governments of the Freely Associated States concerned.

(i) The Department may from time to time, on its own motion, or upon application of any carrier or government, review and change its selection of a carrier to provide essential air service, or its determination as to the compensation necessary to provide such essential air service.

(j) All applications or other documents filed or issued in proceedings under this section shall be served upon the President of the Freely Associated State concerned and the Authorities designated by that Government(s) in accordance with Article II, paragraph 10, of the Federal Programs and Services Agreement supplemental to the Compact of Free Association, and such Government shall be a party to any such proceeding. In reaching its determination, the Department will carefully consider any views of such Government that have been submitted.

[Amdt. No. 272–1, 52 FR 5443, Feb. 23, 1987, as amended at 60 FR 43525, Aug. 22, 1995]

§272.10 Conditions applicable to carriers serving a subsidized market.

(a) The Department may, after providing an opportunity for comment by the carrier or carriers affected, impose service, fare or rate conditions on any U.S., Freely Associated State, foreign air carrier, or foreign carrier by air as a precondition to the payment of compensation necessary to maintain essential air service, whether or not the affected carrier is itself receiving subsidy compensation in the market, if it finds that:

(1) Essential air service in a Freely Associated State market or markets

will not be provided in the absence of the payment of compensation;

(2) Specified service, rate or fare conditions are or will be necessary or desirable to minimize the required subsidy compensation; and

(3) The imposition of such conditions will not unduly impair the service provided in the market.

(b) To the extent the carrier or carriers upon whom the conditions are imposed pursuant to paragraph (a) of this section do not hold a certificate, permit, or other authority from the Department that may be amended to effectively implement the specified conditions, the Department may notify the Government(s) of the Freely Associated States concerned that the imposition of such conditions on those carriers by those Governments shall be a precondition to the payment of the subsidy compensation required to maintain essential air service in the market in question.

(c) The Department may withhold or suspend its provision for the payment of subsidy compensation required to maintain essential air service unless and until the Freely Associated State(s) concerned take the necessary action to impose the specified conditions on the carriers referred to in paragraph (b) of this section, and those carriers have complied with the specified conditions.

(d) Any order of the Department imposing conditions, or requiring the imposition of conditions, pursuant to this paragraph shall be submitted to the President for review not less than 10 days prior to its effective date, and shall be subject to stay or disapproval by the President.

[Amdt. No. 272–1, 52 FR 5443, Feb. 23, 1987, as amended at 60 FR 43525, Aug. 22, 1995]

§ 272.11 Effective date of provisions.

The provisions of this part shall not become effective for Palau until the Compact of Free Association and Article IX of the Federal Programs and Services Agreement become effective for Palau.

§ 272.12 Termination.

These provisions shall terminate on October 1, 1998, unless the program of essential air service to the Federated States of Micronesia, the Marshall Islands, and Palau is specifically extended by Congress.

This amendment is issued under the authority of 49 CFR 1.57(l).

[Amdt. 272–2, 56 FR 1732, Jan. 7, 1991, as amended at 60 FR 43525, Aug. 22, 1995]

PART 291—CARGO OPERATIONS IN INTERSTATE AIR TRANSPORTATION

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291.60 Public disclosure of data.

AUTHORITY: 49 U.S.C. 329 and chapters 411 and 417.

SOURCE: ER–1080, 43 FR 53635, Nov. 16, 1978, unless otherwise noted.

Subpart A—General

§ 291.1 Applicability.

This part applies to cargo operations in interstate air transportation by air carriers certificated under section 41102 or 41103 of the Statute. It also applies to applicants for an all-cargo air transportation certificate under section 41103 of the Statute.

[60 FR 43525, Aug. 22, 1995]

§ 291.2 Definitions.

All-cargo air transportation means the transportation by aircraft in interstate air transportation of only property or only mail, or both.

Interstate air transportation means the transportation of passengers or property by aircraft as a common carrier for compensation, or the transportation of mail by aircraft—

(1) Between a place in—

(i) A State, territory, or possession of the United States and a place in the District of Columbia or another State, territory, or possession of the United States;

(ii) Hawaii and another place in Hawaii through the airspace over a place outside Hawaii;

(iii) The District of Columbia and another place in the District of Columbia; or

(iv) A territory or possession of the United States and another place in the same territory or possession; and

(2) When any part of the transportation is by aircraft.

Reporting carrier for Schedule T–100 purposes means the air carrier in operational control of the aircraft, i.e., the carrier that uses its flight crew under its own FAA operating authority.

Section 41102 carrier means an air carrier certificated under section 41102 of the Statute to transport persons, property and mail or property and mail only.

Section 41103 carrier means an air carrier holding a certificate issued under section 41103 of the Statute to provide all-cargo air transportation.

Service, scheduled cargo means transport service operated pursuant to published flight schedules including extra sections. There is no requirement on the number of weekly flights nor is there a requirement that the schedule be published in the Official Airline Guide.

Wet-Lease Agreement means an agreement under which one carrier leases an aircraft with flight crew to another air carrier.

[60 FR 43525, Aug. 22, 1995, as amended at 67 FR 49226, July 30, 2002]

Subpart B—All-Cargo Air Transportation Certificates

§ 291.10 Applications.

Applications for all-cargo air service certificates shall comply with the provisions of part 201 and subpart B of part 302 of this chapter with regard to filing procedures, and with the provisions of part 204 of this chapter with regard to evidentiary requirements.

(Approved by the Office of Management and Budget under control number 2106–0023)

[Docket No. 47582, 57 FR 38770, Aug. 27, 1992, as amended at 65 FR 6456, Feb. 9, 2000]

Subpart C—General Rules for All-Cargo Air Transportation

§ 291.20 Applicability.

The rules in this subpart apply to cargo operations in interstate air transportation performed by air carriers certificated under sections 41102 or 41103 of the Statute. Section 41103 carriers that operate passenger-only or combination aircraft under section 41102, part 298 of this chapter, or other Department authority, must comply with the rules in this subpart in connection with cargo operations in interstate air transportation, whether provided on all-cargo or combination aircraft, operated pursuant to this authority or otherwise. In case a carrier may operate a particular flight under either a section 41102 certificate or a section 41103 certificate, the flight is presumed to be operated under the carrier's section 41103 authority.

[60 FR 43526, Aug. 22, 1995]

§ 291.22 Aircraft accident liability insurance requirement.

No air carrier shall operate all-cargo aircraft or provide all-cargo air transportation unless such carrier has and

maintains in effect aircraft accident liability coverage that meets the requirements of part 205 of this chapter.

[ER–1255, 46 FR 52583, Oct. 27, 1981, as amended at 60 FR 43526, Aug. 22, 1995]

§ 291.23 Record retention.

(a) The provisions of 14 CFR part 249, *Preservation of air carrier accounts, records and memoranda,* shall apply to all carriers, except that records pertaining to transportation provided on aircraft eligible to be operated under part 298 of this title, and records concerning transportation outside the geographic scope of interstate air transportation, need not be maintained unless required by other Department regulations.

(b) Each carrier shall retain for 1 year a copy of each rate sheet, airwaybill contract, and other document reflecting changed, new, or other previously unreported general or special prices or rules governing the carriage of freight in interstate air transportation (except mail), unless the transportation was performed in accordance with an effective tariff on file with the Department. Each carrier shall retain for 1 year a copy of any formula based on standard weight, mileage, or other method used to determine an individual airbill or contract.

(Approved by the Office of Management and Budget under control number 3024–0022)

[ER–1080, 43 FR 53635, Nov. 16, 1978, as amended by ER–1270, 46 FR 63220, Dec. 31, 1981; Docket No. 47582, 57 FR 38770, Aug. 27, 1992; 60 FR 43526, Aug. 22, 1995]

§ 291.24 Waiver of Department Economic Regulations.

Except for this part and those parts of the Department's Economic Regulations (parts 200 through 299 of this title) specifically referred to in this part, carriers providing cargo operations in interstate air transportation are, with respect to that transportation, relieved from all obligations imposed on air carriers by those economic regulations. Flights operated entirely within interstate air transportation shall be free from those obligations, even though they may also carry shipments to or from points outside that geographic area. This waiver shall not apply to the requirements of part 239 of this title.

[ER–1080, 43 FR 53635, Nov. 16, 1978, as amended by Docket No. 47582, 57 FR 38770, Aug. 27, 1992; 60 FR 43526, Aug. 22, 1995]

Subpart D—Exemptions for Cargo Operations in Interstate Air Transportation

§ 291.30 General.

The following exemptions, except as otherwise specifically noted, apply only to cargo operations in interstate air transportation. They do not relieve a carrier from obligations derived from other transportation.

[ER–1080, 43 FR 53635, Nov. 16, 1978, as amended at 60 FR 43526, Aug. 22, 1995]

§ 291.31 Exemptions from the Statute.

(a) Each section 41102 or 41103 air carrier providing cargo operations in interstate air transportation is, with respect to such transportation, exempted from the following portions of the Statute only if and so long as it complies with the provisions of this part and the conditions imposed herein, and to the extent necessary to permit it to conduct cargo operations in interstate air transportation:

(1) Sections 41310, 41705,

(2) Chapter 415, and

(3) Chapter 419 for all-cargo operations under section 41103.

(b) Each air carrier providing cargo operations in interstate air transportation under section 41103 of the Statute is exempted from the provisions of section 41106(a) of the Statute to the extent necessary to permit it to compete for and operate cargo charters in interstate air transportation for the Department of Defense under contracts of more than 30 days' duration.

(c) The Department of Defense is exempted from section 41106(a) of the Statute to the extent necessary to permit it to negotiate and enter into contracts of more than 30 days' duration with any section 41103 carrier for operation of cargo charters in interstate air transportation.

[60 FR 43526, Aug. 22, 1995]

Subpart E—Reporting Rules

§ 291.40 [Reserved]

§ 291.41 Financial and statistical reporting—general.

(a) Carriers providing cargo operations in interstate air transportation that also conduct other operations under section 41102 shall comply with the provisions of part 241 of this title.

(b) Carriers providing cargo operations in interstate air transportation under section 41103 certificates shall comply with § 291.42.

(c) Carriers providing cargo operations in interstate air transportation under section 41103, and also providing other services under part 298 of this title, shall report their cargo operations in interstate air transportation operations in accordance with § 291.42, and shall report all other traffic in accordance with the provisions of subpart F of part 298.

[ER–1080, 43 FR 53635, Nov. 16, 1978, as amended at 60 FR 43526, Aug. 22, 1995]

§ 291.42 Section 41103 financial and traffic reporting.

(a) *General instructions.* Carriers operating under section 41103 certificates that are not subject to part 241 of this chapter shall file Form 291–A, ''Statement of Operations for Section 41103 Operations'', Schedule T–100, ''U.S. Air Carrier Traffic and Capacity Data by Nonstop Segment and On-Flight Market'', and Schedule P–12(a), ''Fuel Consumption by Type of Service and Entity'' with the Department's Bureau of Transportation Statistics (BTS).

(1) A single copy of the BTS Form 291–A report shall be filed annually with the Office of Airline Information (OAI) for the year ended December 31, to be received on or before February 10 of the immediately following year. A single copy of the monthly BTS Schedule P–12(a) is due at OAI within 20 days after the end of each month. An electronic filing of the monthly Schedule T–100 is due at OAI within 30 days after the end of each month. Due dates falling on a Saturday, Sunday or Federal holiday will become effective on the next work day.

(2) Reports required by this section shall be filed at the Office Airline Information, K–14, Room 4125, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

(b) *Statement of Operations and Statistics Summary for section 41103 operations.* This statement shall include the following elements:

(1) Total operating revenue, categorized as follows:

(i) Transport revenues from the carriage of property in scheduled and nonscheduled service;

(ii) Transport revenue from the carriage of mail in scheduled and nonscheduled service; and

(iii) Transport-related revenues.

(2) Total operating expenses;

(3) Operating profit or loss, computed by subtracting the total operating expenses from the total operating revenues; and

(4) Net income, computed by subtracting the total operating and nonoperating expenses, including interest expenses and income taxes, from the total operating and nonoperating revenues.

(c) *Summary of traffic and capacity statistics.* This summary shall include the following elements:

(1) Total revenue ton-miles, which are the aircraft miles flown on each flight stage times the number of tons of revenue traffic carried on that stage. They shall be categorized as follows:

(i) Property; and

(ii) Mail.

(2) Revenue tons enplaned, reflecting the total revenue tons of cargo loaded on aircraft during the annual period;

(3) Available ton-miles, reflecting the total revenue ton-miles available for all-cargo service during the annual period, and computed by multiplying aircraft miles flown on each flight stage by the number of tons of aircraft capacity available for that stage;

(4) Aircraft miles flown, reflecting the total number of aircraft miles flown in cargo service during the annual period;

(5) Aircraft departures performed, reflecting the total number of take-offs performed in cargo service during the annual period; and

(6) Aircraft hours airborne, reflecting the aircraft hours of flight (from take-off to landing) performed in cargo service during the annual period.

[ER–1350, 48 FR 32757, July 19, 1983, as amended by Docket No. 47582, 57 FR 38770, Aug. 27, 1992; 60 FR 43526, Aug. 22, 1995; 60 FR 66726, Dec. 26, 1995; 67 FR 49226, July 30, 2002]

§ 291.43 Statement of operation for section 41103 operations.

Form 291–A contains the following data elements:

(a) Total operating revenue, categorized as follows:

(1) Transport revenues from the carriage of property in scheduled and nonscheduled service;

(2) Transport revenues from the carriage of mail in scheduled and nonscheduled service; and

(3) Transport-related revenues;

(b) Total operating expenses;

(c) Operating profit or loss, computed by subtracting the total operating expenses from the total operating revenues; and

(d) Net income, computed by subtracting the total operating and nonoperating expenses, including interest expenses and income taxes, from the total operating and nonoperating revenues.

[Doc. No. OST 98–4043, 67 FR 49227, July 30 2002]

§ 291.44 BTS Schedule P–12(a), Fuel Consumption by Type of Service and Entity.

(a) For the purposes of BTS schedule P–12(a), type of service shall be either scheduled service or nonscheduled service as those terms are defined in § 291.45(c)(2) and (3).

(b) For the purpose of this schedule, scheduled service shall be reported separately for:

(1) Intra-Alaskan operations;

(2) Domestic operations, which shall include all operations within and between the 50 States of the United States (except Intra-Alaska), the District of Columbia, the Commonwealth of Puerto Rico and the United States Virgin Islands, or a U.S. territory or possession to a place in any State of the United States the District of Columbia, the Commonwealth of Puerto Rico and the United States Virgin Islands, or a U.S. territory or possession;

(3) International operations are flight stages with one or both terminals outside the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the United States Virgin Islands, or a U.S. territory or possession.

(c) For the purpose of this schedule, nonscheduled service shall be reported separately for domestic operations and international operations as defined in paragraphs (b)(2) and (b)(3) of this section, except that domestic and international Military Airlift Command (MAC) operations shall be reported on separate lines.

(d) The cost data reported on each line shall represent the average cost of fuel, as determined at the station level, consumed in that geographic entity.

(e)(1) The cost of fuel shall include shrinkage, but excludes:

(i) ''Throughput'' and ''in to plane'' fees, i.e., service charges or gallonage levies assessed by or against the fuel vendor or concessionaire and passed on to the carrier in a separately identifiable form; and

(ii) Nonrefundable Federal and State excise taxes.

(2) However, ''through-put'' and ''in to plane'' charges that cannot be identified or segregated from the cost of fuel shall remain a part of the cost of fuel as reported on this schedule.

(f) Each air carrier shall maintain records for each station showing the computation of fuel inventories and consumption for each fuel type. The periodic average cost method shall be used in computing fuel inventories and consumption. Under this method, an average unit cost for each fuel type shall be computed by dividing the total cost of fuel available (Beginning Inventory plus Purchases) by the total gallons available. The resulting unit cost shall then be used to determine the ending inventory and the total consumption costs to be reported on this schedule.

(g) Where amounts reported for a specific entity include other than Jet A fuel, a footnote shall be added indicating the number of gallons and applicable costs of such other fuel included in amounts reported for that entity.

(h) Where any adjustment(s) recorded on the books of the carrier results in a material distortion of the current month's schedule, carriers shall file a revised Schedule P–12(a) for the month(s) affected.

[Doc. No. OST 98–4043, 67 FR 49227, July 30, 2002]

§ 291.45 BTS Schedule T–100, U.S. Air Carrier Traffic and Capacity Data by Nonstop Segment and On-Flight Market.

(a) Each section 41103 all-cargo air carrier shall file Schedule T–100, ''U.S. Air Carrier Traffic and Capacity Data by Nonstop Segment and On-Flight Market''.

(b) Schedule T–100 shall be filed monthly.

(1) Schedule T–100 collects summarized flight stage data and on-flight market data for revenue flights. All traffic statistics shall be compiled in terms of each flight stage as actually performed. The detail T–100 data shall be maintained in such a manner as to permit monthly summarization and organization into two basic groupings. First, the nonstop segment information which is to be summarized by equipment type, within class of service, within pair-of-points, without regard to individual flight number. The second grouping requires that the enplanement/deplanement information be broken out into separate units called on-flight market records, which shall be summarized by class of service, within pair-of-points, without regard for equipment type or flight number.

(2) *Joint-service operations.* The Department may authorize joint-service operations between two direct air carriers. Examples of these joint-service operations are: blocked-space agreements; part-charter agreements; code-sharing agreements; wet-lease agreements, and similar arrangements.

(i) Joint-service operations are reported by the carrier in operational control of the flight, i.e., the carrier that uses its flight crews under its own FAA operating authority. The traffic moving under these agreements is reported on Schedule T–100 the same way as any other traffic on the aircraft.

(ii) If there are questions about reporting a joint-service operation, contact the BTS Assistant Director—Airline Information (fax no. 202 366–3383, telephone no. 202 366–4373). Joint-service operations are reported in Schedule T–100 in accordance with this paragraph (b).

(iii) *Operational control.* The air carrier in operational control of the aircraft (the carrier that uses its flight crews under its own FAA operating authority) must report joint services.

(c) *Service classes.*(1) The statistical classifications are designed to reflect the operating characteristics attributable to each distinctive type of service offered. The combination of scheduled and nonscheduled operations with passenger, all-cargo, and military services are placed into service classes as follows:

Code	Type of service
F	Scheduled Passenger/Cargo.
G	Scheduled All-Cargo.
L	Nonscheduled Civilian Passenger/Cargo/
P	Nonscheduled Civilian Cargo.
N	Nonscheduled Military Passenger/Cargo.
R	Nonscheduled Military Cargo.

(2) Scheduled services include traffic and capacity elements applicable to air transportation provided pursuant to published schedules and extra sections of scheduled flights. Scheduled Passenger/Cargo (Service Class F) is a composite of first-class, coach, and mixed passenger/cargo service.

(3) Nonscheduled services include all traffic and capacity elements applicable to the performance of nonscheduled aircraft charters, and other air transportation services not constituting an integral part of services performed pursuant to published flight schedules.

(d) *Air transport traffic and capacity elements.* Within each of the service classifications, carriers shall report air transport traffic and capacity elements. The elements are reported on segment and/or market records as follows:

Code	Description	Segment	Market	Computed by DOT
	Carrier, carrier entity code	S	M	
	Reporting period date	S	M	
	Origin airport code	S	M	
	Destination airport code	S	M	
	Service class code	S	M	
	Aircraft type code	S		
110	Revenue passengers enplaned		M	

Code	Description	Segment	Market	Computed by DOT
130	Revenue passengers transported.	S		
140	Revenue passenger-miles			CFD*
210	Revenue cargo tons enplaned			CFD*
217	Enplaned freight		M	
219	Enplaned mail		M	
230	Revenue tons transported			CFD*
237	Transported freight	S		
239	Transported mail	S		
240	Revenue ton-miles			CFD*
241	Revenue ton-miles passenger ..			CFD*
247	Revenue ton-miles freight			CFD*
249	Revenue ton-miles mail			CFD*
270	Available capacity payload	S		
280	Available ton-miles			CFD*
310	Available seats, total	S		
320	Available seat-miles			CFD*
410	Revenue aircraft miles flown			CFD*
430	Revenue aircraft miles scheduled.			CFD*
501	Inter-airport distance			CFD*
510	Revenue aircraft departures performed.	S		
520	Revenue aircraft departures scheduled.	S		
610	Revenue aircraft hours (airborne).	S		
630	Aircraft hours (ramp-to-ramp) ...	S		
650	Total aircraft hours (airborne) ...	S		

*CFD = Computed by DOT from detail Schedule T–100 and T–100(f) data.

(e) These reported items are further described as follows:

(1) *Reporting period date.* The year and month to which the reported data are applicable.

(2) *Carrier, Carrier entity code.* Each air carrier shall report its name and entity code (a five digit code assigned by BTS that identifies both the carrier and its entity) for its particular operations. The Office of Airline Information (OAI) will assign or confirm codes upon request. OAI's address is Office of Airline Information, Bureau of Transportation Statistics, DOT, Room 4125, K–14, 400 Seventh Street, SW., Washington, DC 20590–0001.

(3) *Service class code.* The service class codes are prescribed in section 298.45(c). In general, classes are divided into two broad categories, either scheduled or nonscheduled, where scheduled = F + G and nonscheduled = L + N + P + R.

(4) *Record type code.* This code indicates whether the data pertain to nonstop segment (record type S) or on-flight market (record type M).

(5) *Aircraft type code.* This code represents the aircraft types, as described in the BTS' Accounting and Reporting Directives.

(6) *Origin, Destination airport code(s).* These codes represent the industry designators. An industry source of these industry designator codes is the Official Airline Guide (OAG). OAI assigns codes, upon request, if not listed in the OAG.

(7) *110 Revenue passengers enplaned.* The total number of revenue passengers enplaned at the origin point of a flight, boarding the flight for the first time; an unduplicated count of passengers in a market.

(8) *130 Revenue passengers transported.* The total number of revenue passengers transported over a single flight stage, including those already on the aircraft from a previous flight stage.

(9) *140 Revenue passenger-miles.* Computed by multiplying the inter-airport distance of each flight stage by the number of passengers transported on that flight stage.

(10) *210 Revenue cargo tons enplaned.* The total number of cargo tons enplaned. This data element is a sum of the individual on-flight market figures for each of the following categories: 217 Freight and 219 Mail. This element represents an unduplicated count of the revenue traffic in a market.

(11) *217 Enplaned freight.* The total weight of revenue freight enplaned at the origin point of a flight, loaded onto the flight for the first time; an unduplicated count of freight in a market.

(12) *219 Enplaned mail.* The total weight of mail enplaned at the origin point of a flight, loaded onto the flight for the first time; an unduplicated count of mail in a market.

(13) *230 Revenue tons transported.* The number of tons of revenue traffic transported. This element is the sum of the following elements: 231 Passengers transported-total, 237 Freight, and 239 Mail.

(14) *237 Transported freight.* The total weight of freight transported over a single flight stage, including freight already on the aircraft from a previous flight stage.

(15) *239 Transported mail.* The total weight of mail transported over a single flight stage, including mail already on the aircraft from a previous flight stage.

(16) *240 Revenue ton-miles—total.* Ton-miles are computed by multiplying the revenue aircraft miles flown (410) on each flight stage by the number of tons transported on that stage. This element is the sum of 241 through 249.

(17) *241 Revenue ton-miles—passenger.* Equals the number of passengers times 200, times inter-airport distance, divided by 2000. A standard weight of 200 pounds per passenger, including baggage, is used for all operations and service classes.

(18) *247 Revenue ton-miles—freight.* Equals the volume of freight in whole tons times the inter-airport distance.

(19) *249 Revenue ton-miles—mail.* Equals the volume of mail in whole tons times the inter-airport distance.

(20) *270 Available capacity-payload.* The available capacity is collected in pounds. This figure shall reflect the payload or total available capacity for passengers, mail and freight applicable to the aircraft with which each flight stage is performed.

(21) *280 Available ton-miles.* The aircraft miles flown on each flight stage multiplied by the available capacity on the aircraft in tons.

(22) *310 Available seats.* The number of seats available for sale. This figure reflects the actual number of seats available, excluding those blocked for safety or operational reasons. In the domestic entity, report the total available seats in item 130. Scheduled and nonscheduled available seats are reported in item 130.

(23) *320 Available seat-miles.* The aircraft miles flown on each flight stage multiplied by the seat capacity available for sale.

(24) *410 Revenue aircraft miles flown.* Revenue aircraft miles flown are computed based on the airport pairs between which service is actually performed; miles are generated from the data for scheduled aircraft departures (Code 520) times the inter-airport distances (Code 501).

(25) *430 Revenue aircraft miles scheduled.* The number of revenue aircraft miles scheduled. All such data shall be maintained in conformity with the airport pairs between which service is scheduled, whether or not in accordance with actual performance.

(26) *501 Inter-airport distance.* The great circle distance, in official statute miles as prescribed in part 247 of this chapter, between airports served by each flight stage. Official inter-airport mileage may be obtained from the Office of Airline Information.

(27) *510 Revenue aircraft departures performed.* The number of revenue aircraft departures performed.

(28) *520 Revenue aircraft departures scheduled.* The number of revenue aircraft departures scheduled, whether or not actually performed.

(29) *610 Revenue aircraft hours (airborne).* The elapsed time, computed from the moment the aircraft leaves the ground until its next landing.

(30) *630 Aircraft hours (ramp-to-ramp).* The elapsed time, computed from the moment the aircraft first moves under its own power from the boarding ramp at one airport to the time it comes to rest at the ramp for the next point of landing. This data element is also referred to as 'block' and 'block-to-block' aircraft hours.

(31) *650 Total aircraft hours (airborne).* The elapsed time, computed from the moment the aircraft leaves the ground until it touches down at the next landing. This includes flight training, testing, and ferry flights.

(f) *Public availability of Schedule T–100 data.* Detailed domestic on-flight market and nonstop segment data in Schedule T–100, except military data, shall be publicly available after processing. Domestic data are defined as data from air transportation operations from a place in any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the Virgin Islands, or a U.S. territory or possession to a place in any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the Virgin Islands, or a U.S. territory or possession.

APPENDIX TO § 291.45—INSTRUCTIONS TO U.S. AIR CARRIERS FOR REPORTING TRAFFIC AND CAPACITY DATA ON SCHEDULE T–100

(a) *Format of reports*—(1) *Automatic Data Processing (ADP) magnetic tape.* Refer to paragraph (d) of this appendix for instructions pertaining to mainframe and minicomputer reporting. The Department will issue ''Accounting and Reporting Directives'' to make necessary technical changes to these T–100

instructions. Technical changes which are minor in nature do not require public notice and comment.

(2) *Microcomputer diskette*—(i) *Optional specification.* If an air carrier desires to use its personal computers (PC's), rather than mainframe or minicomputers to prepare its data submissions, the following specifications for filing data on diskette media apply.

(ii) *Reporting medium.* Microcomputer ADP data submission of T–100 information must be on IBM compatible disks. Carriers wishing to use a different ADP procedure must obtain written approval to do so from the BTS Assistant Director—Airline Information. Requests for approval to use alternate methods must disclose and describe the proposed data transmission methodology. Refer to paragraph (i) of this appendix for microcomputer record layouts.

(iii) *Microcomputer file characteristics.* The files will be created in ASCII delimited format, sometimes called Data Interchange Format (DIF). This form of recording data provides for variable length fields (data elements) which, in the case of alphabetic data, are enclosed by quotation marks (‘‘) and separated by a comma (,) or tab. Numeric data elements that are recorded without editing symbols are also separated by a comma (,) or tab. The data are identified by their juxtaposition within a given record. Therefore, each record must contain the exact number of data elements, all of which must be juxtapositionally correct. Personal computer software including most spreadsheets, data base management programs, and BASIC are capable of producing files in this format.

(b) *Filing date for reports.* The reports must be received at BTS within 30 days following the end of each reporting period.

(c) *Address for filing.* Data Administration Division, K–14, Room 4125, Office of Airline Information, Bureau of Transportation Statistics, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590–0001.

(d) *ADP format for magnetic tape.*

(1) *Magnetic tape specifications.* IBM compatible 9-track EBCDIC recording. Recording density of 6250 or 1600 bpi. The order of recorded information is:

(i) Volume label.
(ii) Header label.
(iii) Data records.
(iv) Trailer label.
(2) [Reserved]

(e) *External tape label information.*

(1) Carrier name.
(2) Report date.
(3) File identification.
(4) Carrier address for return of tape reel.

(f) *Standards.* It is the policy of the Department to be consistent with the American National Standards Institute and the Federal Standards Activity in all data processing and telecommunications matters. It is our intention that all specifications in this application are in compliance with standards promulgated by these organizations.

(g) *Volume, header, and trailer label formats.*

(1) *Use standard IBM label formats.* The file identifier field of the header labels should be ‘‘T–100.SYSTEM’’.

(h) *Magnetic tape record layouts for T–100.*

(1) *Nonstop segment record layout.*

Field No.	Positions	Mode	Description
1	1	1T ...	Record type code (S = nonstop segment).
2	2–6	5T ...	Carrier entity code.
3	7–12	6T ...	Report date (YYYYMM).
4	13–15	3T ...	Origin airport code.
5	16–18	3T ...	Destination airport code.
6	19	1T ...	Service class code (F, G, L, N, P or R).
7	20–23	4T ...	Aircraft type code.
8	24–28	5N ...	Revenue departures performed (F, G, L, N, P, R510).
9	29–38	10N	Available capacity payload (lbs) (F, G, L, N, P, R270).
10 ..	39–45	7N ...	Available seats (F, L, N310).
11 ..	46–52	7N ...	Passengers transported (F, L, N130).
12 ..	53–62	10N	Rev freight transported (F, G, L, N, P, R237) (in lbs).
13 ..	63–72	10N	Revenue mail transported (F, G, L, N, P, R239) (in lbs).
14 ..	73–77	5N ...	Revenue aircraft departures scheduled (F, G520).
15 ..	78–87	10N	Rev hrs, ramp-to-ramp (F, G, L, N, P, R630) (in minutes).
16 ..	88–97	10N	Rev hrs, airborne (F, G, L, N, P, R610) (in minutes).

T=Text.
N=Numeric.

(2) *On-flight market record layout.*

Field No.	Positions	Mode	Description
1	1	1T ...	Record type: M = on-flight market record.
2	2–6	5T ...	Carrier entity code.
3	7–12	4T ...	Report date (YYYYMM).
4	13–15	3T ...	Origin airport code.
5	16–18	3T ...	Destination airport code.
6	19	1T ...	Service class code (F, G, L, N, P or R).
7	20–26	7N ...	Total passengers in market (F, L, N110).
8	27–36	10N	Rev freight in market (F, G, L, N, P, R217) (in lbs).
9	37–46	10N	Revenue mail in market (F, G, L, N, P, R219) (in lbs).

T=Text.
N=numeric.

(i) *Record layouts for microcomputer diskettes.* The record layouts for diskette are generally identical to those shown for magnetic tape, with the exception that delimiters (quotation marks, tabs and commas) are used to separate fields. It is necessary that the order of fields be maintained in all records.

(1) *File characteristics.* The files will be created in ASCII delimited format, sometimes called Data Interchange Format (DIF). This

form of recording data provides for variable length fields (data elements) which, in the case of alphabetic data, are enclosed by quotation marks (‘‘) and separated by a comma (,) or tab. Numeric data elements that are recorded without editing symbols are also separated by a comma (,) or tab. The data are identified by their juxtaposition within a given record. Therefore, it is critical that each record contain the exact number of data elements, all of which must be juxtapositionally correct. PC software including most spreadsheets, data base management programs, and BASIC produce minidisk files in this format.

(2) *File naming conventions for diskettes.* For microcomputer reports, each record type should be contained in a separate DOS file on the same physical diskette. The following DOS naming conventions should be followed:

(i) Record type S = SEGMENT.DAT

(ii) Record type M = MARKET.DAT

[Doc. No. OST 98–4043, 67 FR 49227, July 30, 2002]

Subpart F—Enforcement

§ 291.50 Enforcement.

In case of any violation of any of the provisions of the Statute, or this part, or any other rule, regulation, or order issued under the Statute, the violator may be subject to a proceeding pursuant to section 46101 of the Statute before the Department, or sections 46106 through 46108 of the Statute before a U.S. District Court, as the case may be, to compel compliance therewith; or to civil penalties pursuant to the provisions of section 46301 of the Statute.

[60 FR 43526, Aug. 22, 1995]

Subpart G—Public Disclosure of Data

§ 291.60 Public disclosure of data.

(a) Detailed domestic on-flight market data and nonstop segment data, except military data, shall be made publicly available after processing. Domestic data are defined as data from air transportation operations from a place in any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the Virgin Islands, or a U.S. territory or possession to a place in any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the Virgin Islands, or a U.S. territory or possession. Domestic military operations are reported under service codes N or R.

(b) Detailed international on-flight market and nonstop segment data in Schedule T–100 and Schedule T–100(f) reports, except military data, shall be publicly available immediately following the Department’s determination that the database is complete, but no earlier than six months after the date of the data. Military operations are reported under service codes N or R. Data for on-flight markets and nonstop segments involving no U.S. points shall not be made publicly available for three years. Industry and carrier summary data may be made public before the end of six months or the end of three years, as applicable, provided there are three or more carriers in the summary data disclosed. The Department may, at any time, publish international summary statistics without carrier detail. Further, the Department may release nonstop segment and on-flight market detail data by carrier before the end of the confidentiality period as follows:

(1) To foreign governments as provided in reciprocal arrangements between the foreign country and the U.S. Government for exchange of on-flight market and/or nonstop segment data submitted by air carriers of that foreign country and U.S. carriers serving that foreign country.

(2) To parties to any proceeding before the Department under Title IV of the Federal Aviation Act of 1958, as amended, as required by an Administrative Law Judge or other decision-maker of the Department. Parties may designate agents or consultants to receive the data in their behalf, provided the agents or consultants agree to abide by the disclosure restrictions. Any data to which access is granted pursuant to this provision may be introduced into evidence, subject to the normal rules of admissibility.

(3) To agencies or other components of the U.S. Government for their internal use only.

[Doc. No. OST 98–4043, 67 FR 49230, July 30, 2002]

PART 292—INTERNATIONAL CARGO TRANSPORTATION

Subpart A—General

Sec.
292.1 Applicability.
292.2 Definitions.

Subpart B—Exemption From Filing Tariffs

292.10 Exemption.
292.11 Revocation of exemption.

Subpart C—Effect of Exemption

292.20 Rule of construction.
292.21 Incorporation of contract terms by reference.
292.22 Effectiveness of tariffs on file.

AUTHORITY: 49 U.S.C. 40101, 40105, 40109, 40113, 40114, 41504, 41701, 41707, 41708, 41709, 41712, 46101; 14 CFR 1.56(j)(2)(ii).

SOURCE: Docket No. 48827, 60 FR 61478, Nov. 30, 1995, unless otherwise noted.

Subpart A—General

§ 292.1 Applicability.

This part applies to direct air carriers providing scheduled transportation of cargo in foreign air transportation.

§ 292.2 Definitions.

For purposes of this part:

Cargo means property other than baggage accompanied or checked by passengers, or mail.

Cargo tariff means a tariff containing rates, charges or provisions governing the application of such rates or charges, or the conditions of service, applicable to the scheduled transportation of cargo in foreign air transportation.

Direct air carrier means an air carrier or foreign air carrier directly engaged in the operation of aircraft under a certificate, regulation, order, exemption or permit issued by the Department or its predecessor, the Civil Aeronautics Board.

Subpart B—Exemption From Filing Tariffs

§ 292.10 Exemption.

Direct air carriers are exempted from the requirement to file cargo tariffs with the Department of Transportation provided in 49 U.S.C. 41504 and 14 CFR Part 221.

§ 292.11 Revocation of exemption.

(a) The Department, upon complaint or upon its own initiative, may, immediately and without hearing, revoke, in whole or in part, the exemption granted by this part with respect to a carrier or carriers, when such action is in the public interest.

(b) Any such action will be taken in an order issued by the Assistant Secretary for Aviation and International Affairs, and will identify:

(1) The tariff matter to be filed; and

(2) The deadline for carrier compliance.

(c) Revocations under this section will have the effect of reinstating all applicable tariff requirements and procedures specified in the Department's regulations for the tariff material to be filed, unless otherwise specified by Department order.

Subpart C—Effect of Exemption

§ 292.20 Rule of construction.

Carriers holding an effective exemption from the duty to file tariffs under this part shall not, unless otherwise directed by order of the Department, be subject to tariff posting, notification or subscription requirements set forth in 49 U.S.C. 41504 or 14 CFR part 221, *except* as provided in § 292.21 of this part.

§ 292.21 Incorporation of contract terms by reference.

(a) Carriers holding an effective exemption from the duty to file tariffs under this part may incorporate contract terms by reference (*i.e.* without stating their full text) into the waybill or other document embodying the contract of carriage for the scheduled transportation of cargo in foreign air transportation, *provided that:*

(1) The notice, inspection, explanation and other requirements set forth in 14 CFR 221.177(a)(1), (a)(2), (a)(4), (b), (c) and (d) are complied with, to the extent applicable, except that the notice required under 14 CFR 221.177(b)(1) shall refer to the title or general nature of the publication(s) or document(s) containing the full text of

the referenced terms rather than to ''terms and conditions filed in public tariffs with U.S. authorities'';

(b) In addition to other remedies at law, a carrier may not claim the benefit as against a shipper or consignee of, and a shipper or consignee shall not be bound by, any contract term which is incorporated by reference under this part unless the requirements of paragraph (a)(1) of this section are complied with, to the extent applicable; and

(c) The purpose of this section is to set uniform disclosure requirements, which preempt any State requirements on the same subject, for terms incorporated by reference into contracts of carriage for the scheduled transportation of cargo in foreign air transportation.

§ 292.22 Effectiveness of tariffs on file.

(a) Cargo rate tariffs on file with the Department, including related classification and/or applicability rules, cease to be effective as tariffs under 49 U.S.C. 41504 and 41510, as well as under the provisions of 14 CFR Part 221, and they are canceled by operation of law.

(b) As of March 1, 1996, all remaining cargo tariffs on file with the Department cease to be effective as tariffs under 49 USC 41504 and the provisions of 14 CFR part 221, and are cancelled by operation of law. Any such tariffs may be cancelled voluntarily prior to that date. With respect to terms expressly agreed in the contract of carriage, carriers, agents and other persons are relieved from the requirement of adherence to filed tariffs in 49 USC 41510 and the related provisions of 14 CFR part 221 as of November 30, 1995.

(c) Applications for filing and/or effectiveness of any cargo tariffs pending on November 30, 1995 are dismissed by operation of law. No new filings or applications will be permitted except as provided under § 292.11.

PART 293—INTERNATIONAL PASSENGER TRANSPORTATION

Subpart A—General

Sec.
293.1 Applicability.
293.2 Definitions.

Subpart B—Exemption From Filing of Tariffs

293.10 Exemption.
293.11 Required statement.
293.12 Revocation of exemption.

Subpart C—Effect of Exemption

293.20 Rule of construction.
293.21 Incorporation of contract terms by reference.
293.22 Effectiveness of tariffs on file.

AUTHORITY: 49 U.S.C. 40101, 40105, 40109, 40113, 40114, 41504, 41701, 41707, 41708, 41709, 41712, 46101; 14 CFR 1.56(j)(2)(ii).

SOURCE: 64 FR 40674, July 27, 1999, unless otherwise noted.

Subpart A—General

§ 293.1 Applicability.

This part applies to air carriers and foreign air carriers providing scheduled transportation of passengers and their baggage in foreign air transportation.

§ 293.2 Definitions.

For purposes of this part the definitions in § 221.3 of this chapter apply.

Subpart B—Exemption From Filing Tariffs

§ 293.10 Exemption.

(a) Air carriers and foreign air carriers are exempted from the duty to file passenger tariffs with the Department of Transportation, as required by 49 U.S.C. 41504 and 14 CFR part 221, as follows:

(1) The Assistant Secretary for Aviation and International Affairs will, by notice, issue and periodically update a list establishing the following categories of markets:

(i) In Category A markets, carriers are exempted from the duty to file all passenger tariffs unless they are nationals of countries listed in Category C, or are subject to the provisions of paragraph (c) of this section.

(ii) In Category B markets, carriers are exempted from the duty to file all passenger tariffs except those setting forth one-way economy-class fares and governing provisions thereto, unless they are nationals of countries listed in Category C, or are subject to the provisions of paragraph (c) of this section.

(iii) In Category C markets, carriers shall continue to file all passenger tariffs, except as provided in § 293.10(b);

(2) The Assistant Secretary will list country-pair markets falling in Categories A and C, taking into consideration the factors in paragraphs (a)(2) (i) through (iv) of this section. All country-pair markets not listed in Categories A or C shall be considered to be in Category B and need not be specifically listed.

(i) Whether the U.S. has an aviation agreement in force with that country providing double-disapproval treatment of prices filed by the carriers of the Parties;

(ii) Whether the country's Government has disapproved or deterred U.S. carrier price leadership or matching tariff filings in any market;

(iii) Whether the country's Government has placed significant restrictions on carrier entry or capacity in any market; and

(iv) Whether the country's government is honoring the provisions of the bilateral aviation agreement and there are no significant bilateral problems.

(b) By notice of the Assistant Secretary, new country-pair markets will be listed in the appropriate category, and existing country-pair markets may be transferred between categories.

(c) Notwithstanding a determination that a country is in Category A or B, if the Assistant Secretary finds that effective price leadership opportunities for U.S. carriers are not available between that country and any third country, carriers that are nationals of such country may be required to file tariffs, as provided under part 221 or as otherwise directed in the notice, for some or all of their services between the U.S. and third countries.

(d) Air carriers and foreign air carriers are exempted from the duty to file governing rules tariffs containing general conditions of carriage with the Department of Transportation, as required by 49 U.S.C. 41504 and 14 CFR part 221. A description of the general conditions of carriage will be included in the Assistant Secretary's initial notice.

(e) Notwithstanding paragraph (d) of this section, air carriers and foreign air carriers shall file and maintain a tariff with the Department to the extent required by 14 CFR 203.4 and other implementing regulations.

(f) Authority for determining what rules are covered by paragraph (d) of this section and for determining the filing format for the tariffs required by paragraph (e) of this section is delegated to the Director of the Office of International Aviation.

§ 293.11 Required statement.

Each governing rules tariff shall include the following statements:

(a) ''Rules herein containing general conditions of carriage are not part of the official U.S. D.O.T. tariff.''

(b) ''The rules and provisions contained herein apply only to the passenger fares and charges that the U.S. Department of Transportation requires to be filed as tariffs.''

§ 293.12 Revocation of exemption.

(a) The Department, upon complaint or upon its own initiative, may, immediately and without hearing, revoke, in whole or in part, the exemption granted by this part with respect to a carrier or carriers, when such action is in the public interest.

(b) Any such action will be taken in a notice issued by the Assistant Secretary for Aviation and International Affairs, and will identify the tariff matter to be filed, and the deadline for carrier compliance.

(c) Revocations under this section will have the effect of reinstating all applicable tariff requirements and procedures specified in the Department's Regulations for the tariff material to be filed, unless otherwise specified by the Department.

Subpart C—Effect of Exemption

§ 293.20 Rule of construction.

To the extent that a carrier holds an effective exemption from the duty to file tariffs under this part, it shall not, unless otherwise directed by order of the Department, be subject to tariff posting, notification or subscription requirements set forth in 49 U.S.C. 41504 or 14 CFR part 221, except as provided in § 293.21.

§ 293.21 Incorporation of contract terms by reference.

Carriers holding an effective exemption from the duty to file tariffs under this part may incorporate contract terms by reference (*i.e.*, without stating their full text) into the passenger ticket or other document embodying the contract of carriage for the scheduled transportation of passengers in foreign air transportation, provided that:

(a) The notice, inspection, explanation and other requirements set forth in 14 CFR 221.107, paragraphs (a), (b), (c) and (d) are complied with, to the extent applicable;

(b) In addition to other remedies at law, a carrier may not claim the benefit under this section as against a passenger, and a passenger shall not be bound by incorporation of any contract term by reference under this part, unless the requirements of paragraph (a), of this section are complied with, to the extent applicable; and

(c) The purpose of this section is to set uniform disclosure requirements, which preempt any State requirements on the same subject, for incorporation of terms by reference into contracts of carriage for the scheduled transportation of passengers in foreign air transportation.

§ 293.22 Effectiveness of tariffs on file.

(a) One hundred and eighty days after the date of effectiveness of the Assistant Secretary's notice, passenger tariffs on file with the Department covered by the scope of the exemption will cease to be effective as tariffs under 49 U.S.C. 41504 and 41510, and the provisions of 14 CFR part 221, and will be canceled by operation of law.

(b) One hundred and eighty days after the date of effectiveness of the Assistant Secretary's notice, pending applications for filing and/or effectiveness of any passenger tariffs covered by the scope of the exemption, will be dismissed by operation of law. No new filings or applications will be permitted after the date of effectiveness of the Assistant Secretary's notice except as provided under § 293.12.

PART 294—CANADIAN CHARTER AIR TAXI OPERATORS

Subpart A—General

Sec.

294.1 Applicability and purpose.
294.2 Definitions.
294.3 General requirements for Canadian charter air taxi operators.

Subpart B—Exemption

294.10 Exemption authority.

Subpart C—Registration for Exemption

294.20 Applying for registration.
294.21 Procedure on receipt of registration form.
294.22 Notification to the Department of change in operations or identifying information.

Subpart D—General Rules for Registrants

294.30 Scope of service and equipment authorized.
294.31 Use of business name.
294.32 Security arrangements for operating Public Charters.
294.33 Compliance with the regulations of the Federal Aviation Administration.
294.34 Advance approval by the Department.

Subpart E—Insurance Requirements

294.40 Aircraft accident liability insurance requirements.

Subpart F—Cancellation of Registration and Presidential Review

294.50 Cancellation, revocation, or suspension of registration.
294.51 Presidential review.

Subpart G—Authorizations and Waivers

294.60 Applications for authorization to conduct individual operations or programs not otherwise permitted by this part.
294.61 Waivers.

Subpart H—Violations

294.70 Enforcement.

Subpart I—Terms, Conditions, and Limitations of This Part

294.80 Waiver of sovereign immunity.
294.81 Local traffic prohibited.
294.82 Third-country traffic prohibited.
294.83 Compliance with certain international agreements.
294.84 Air competency requirements.
294.85 Charterworthiness standards.

294.86 Industrial/agricultural/other non-transport air operations prohibited.
294.87 Compliance with Canadian licenses.
294.88 Northwest Ontario restriction.
294.89 Uplift ratio.

AUTHORITY: 49 U.S.C. Chapters 401, 417.

SOURCE: ER–1257, 46 FR 52591, Oct. 27, 1981, unless otherwise noted.

Subpart A—General

§294.1 Applicability and purpose.

This part establishes a classification of foreign air carriers known as ''Canadian charter air taxi operators,'' and establishes registration procedures for these carriers operating or seeking to operate transborder services between Canada and the United States. This part also exempts Canadian charter air taxi operators from certain provisions of the Subtitle VII of Title 49 of the United States Code (Transportation), and establishes rules applicable to their operations in the United States. This part does not provide exemption from the safety regulatory provisions of the Statute that are administered by the U.S. Department of Transportation through the Federal Aviation Administration (FAA), and Canadian charter air taxi operators in the conduct of their operations must observe all applicable safety standards and requirements.

[ER–1257, 46 FR 52591, Oct. 27, 1981, as amended at 60 FR 43526, Aug. 22, 1995]

§294.2 Definitions.

As used in this part:

(a) *Agreement* means the U.S.-Canada Nonscheduled Air Services Agreement signed May 8, 1974, and any amendments, supplements, reservations, or supersessions to it.

(b) *Canadian charter air taxi operator* means a foreign air carrier that is substantially owned and effectively controlled by Canadian citizens, the Government of Canada, or both, whose foreign air transportation operations are limited to charter air service between points in Canada and points in the United States, and that does not use large aircraft in those operations.

(c) *Charter air service* means nonscheduled commercial air transportation of persons and their accompanied baggage, and of property, on a time, mileage, or trip basis where the entire planeload capacity of one or more aircraft has been engaged, or the transportation of mail by aircraft.

(d) *Large aircraft* means any aircraft that are not *small aircraft* as defined in this section.

(e) *Maximum authorized takeoff weight* has the meaning assigned to it in regulations of the Canadian Transport Commission.

(f) *Maximum certificated takeoff weight* means the maximum takeoff weight authorized by the terms of the aircraft airworthiness certificate. This weight may be found in the airplane operating record or in the airplane flight manual that is incorporated by regulation into the airworthiness certificate.

(g) *Maximum passenger capacity* means the maximum number of passenger seats for which an aircraft is configured.

(h) *Maximum payload capacity* means the maximum certificated takeoff weight of an aircraft less the empty weight as defined in section 03 of part 241 of this chapter, less all justifiable aircraft equipment, and less the operating load (consisting of minimum fuel load, oil, flight crew, steward's supplies, etc.). For purposes of this part, the allowance for weight of the crew, oil and fuel is as follows:

(1) Crew—200 pounds per crew member required under FAA regulations, (2) oil—350 pounds, (3) fuel—the minimum weight of fuel required under FAA regulations for a flight between domestic points 200 miles apart, assuming VFR weather conditions and flights not involving extended overwater operations. However, in the case of aircraft for which a maximum zero fuel weight is prescribed by the FAA, maximum payload capacity means the maximum zero fuel weight less the empty weight, less all justifiable aircraft equipment, and less the operating load (consisting of minimum flight crew, steward's supplies, etc., but not including disposable fuel or oil).

(2) [Reserved]

(i) *Small aircraft* means any aircraft designed to have:

(1) A maximum passenger capacity of not more than 30 seats and a maximum

payload capacity of not more than 7,500 pounds, and/or

(2) maximum authorized takeoff weight on wheels not greater than 35,000 pounds.

[ER–1257, 46 FR 52591, Oct. 27, 1981, as amended by Doc. No. 47939, 57 FR 40102, Sept. 2, 1992; 60 FR 43526, Aug. 22, 1995]

§ 294.3 General requirements for Canadian charter air taxi operators.

A Canadian charter air taxi operator shall conduct charter air service between the United States and Canada only if it:

(a) Has been registered by the Department under this part;

(b) Does not directly or indirectly utilize large aircraft in charter air services;

(c) Has and maintains in effect liability insurance coverage that complies with the requirements set forth in subpart E of this part and has and maintains a current certificate of insurance evidencing such coverage on file with the Department;

(d) Has and maintains in effect and on file with the Department a signed counterpart of Agreement 18900 (OST Form 4523) and complies with all other requirements of part 203 of this chapter;

(e) Has been designated by the Canadian Government under the Agreement;

(f) Has been granted Federal Aviation Administration operations specifications required under part 129 of the Federal Aviation Regulations;

(g) Is substantially owned and effectively controlled by Canadian citizens, or the Government of Canada, or a combination of both; and

(h) Complies with the terms, conditions, and limitations of this part.

(The reporting requirements contained in paragraph (d) were approved by the Office of Management and Budget under control number 3024–0064)

[ER–1257, 46 FR 52591, Oct. 27, 1981, as amended by ER–1332, 48 FR 8051, Feb. 25, 1983; ER–1342, 48 FR 31015, July 6, 1983; Docket No. 47939, 57 FR 40102, Sept. 2, 1992]

Subpart B—Exemption

§ 294.10 Exemption authority.

Canadian charter air taxi operators registered under this part are exempt from the following provisions of the Statute to the extent necessary to perform charter air service between the United States and Canada, and as long as they comply with the terms, conditions, and limitations of this part:

(a) Section 41302 (permits).

(b) Section 41501 (carrier's duty to observe reasonable rates).

(c) Section 41310 (discrimination).

[ER–1257, 46 FR 52591, Oct. 27, 1981, as amended at 60 FR 43526, Aug. 22, 1995]

Subpart C—Registration for Exemption

§ 294.20 Applying for registration.

To apply for registration under this part, a Canadian charter air taxi operator shall file with the Department's Office of Aviation Analysis, Special Authorities Division, the following:

(a) A currently effective certificate of insurance (see § 294.40); and

(b) Three copies of OST Forms 4523 and 4505, which may be obtained from the Department's Office of Aviation Analysis, Special Authorities Division. All the information required by OST Form 4505 shall be filled in, and it shall be certified by a responsible officer of the applicant Canadian charter air taxi operator.

(Approved by the Office of Management and Budget under control number 3024–0051)

[ER–1257, 46 FR 52591, Oct. 27, 1981; 46 FR 62054, Dec. 22, 1981, as amended by ER–1363, 48 FR 46265, Oct. 12, 1983; Docket No. 47939, 57 FR 40102, Sept. 2, 1992; 60 FR 43526, Aug. 22, 1995]

§ 294.21 Procedure on receipt of registration form.

(a) The Department will list the names and addresses of all persons applying for registration under this part in its Weekly Summary of Filings.

(b) Any person objecting to the registration of a Canadian charter air taxi operator shall file an objection with the Office of Aviation Analysis, Special Authorities Division and serve a copy on the registrant within 28 days after

the Department receives the properly completed registration application. Objections shall include any facts and arguments upon which the person relies to support its objection.

(c) Any answers to objections shall be filed within 14 days after the date that the objections were due.

(d) After receipt of OST Form 4505, the Department may request additional information.

(e) After the period for objections and answers has expired, the Department will take one of the following actions:

(1) Issue the registration by stamping its effective date on OST Form 4505 and sending a copy of it to the carrier and to the FAA as evidence of registration under this part. The FAA will return its copy of OST Form 4505 to the Office of Aviation Analysis, Special Authorities Division, after the carrier has been granted FAA operations specifications under part 129 of the Federal Aviation Regulations;

(2) Reject the application for failure to comply with this part;

(3) Issue the registration subject to such terms, conditions, or limitations as may be consistent with the public interest; or

(4) Institute evidentiary proceedings to consider whether the registration should be issued.

(f) An action described in paragraph (e) of this section will normally be taken within 60 days after the registration application is received. The Department will consider requests for faster action that include a full explanation of the need for expedited action.

(g) A registration will not become effective until the United States Government receives from the Canadian Government written designation of the registrant under the Agreement.

(h) Rejection of an application for registration will not preclude the filing of a new application by the same carrier.

[ER–1257, 46 FR 52591, Oct. 27, 1981, as amended by Docket No. 47939, 57 FR 40102, Sept. 2, 1992; 60 FR 43526, Aug. 22, 1995]

§ 294.22 Notification to the Department of change in operations or identifying information.

Each Canadian charter air taxi operator shall refile three copies of OST Form 4505 with the Department's Office of Aviation Analysis, Special Authorities Division, upon any of the following events. The refilings shall be mailed, or otherwise delivered, so as to be received by the Department not later than 30 days after the reported event has occurred.

(a) The carrier changes its name. When a carrier refiles OST Form 4505 to indicate a change of name:

(1) The registration becomes ineffective unless the Canadian Government amends the carrier's designation under the Agreement to reflect the carrier's new name within 60 days of its name change;

(2) The registrant must also refile three copies of Agreement 18900 (OST Form 4523) under its new name;

(3) The registrant must also refile its certificate of insurance under its new name; and

(4) The registrant must also advise the appropriate FAA office referred to in § 294.33 of the carrier's new name.

(b) The carrier changes its designated agent.

(c) A change occurs in the carrier's ownership and control resulting in a person acquiring a beneficial or voting interest in the registrant of 10 percent or more. The name(s), address(es), citizenship(s), and percentages of ownership of the new owners shall be indicated on the form. Acquisition of ownership interest by persons who are not citizens of the country of citizenship of the registrant may invalidate the registration.

(d) The carrier temporarily or permanently ceases operations.

(Approved by the Office of Management and Budget under control number 3024–0051)

[ER–1257, 46 FR 52591, Oct. 27, 1981, as amended by ER–1363, 48 FR 46265, Oct. 12, 1983; Doc. No. 47939, 57 FR 40102, Sept. 2, 1992; 60 FR 43526, Aug. 22, 1995]

Subpart D—General Rules for Registrants

§ 294.30 Scope of service and equipment authorized.

(a) Upon fulfillment of the requirements of § 294.3 of this part, the registrant will have Department authority to engage in charter air services between any point or points in Canada

and any point or points in the United States using small aircraft.

(b) Nothing in this part shall be construed as authorizing the operation of large aircraft in charter air service, and the exemption provided by this part to Canadian charter air taxi operators that register with the Department extends only to the direct operations of charter air service in accordance with the limitations and conditions of this part using aircraft designed to have:

(1) A maximum passenger capacity of no more than 30 seats and a maximum payload capacity of no more than 7,500 pounds, and/or

(2) A maximum authorized takeoff weight on wheels not greater than 35,000 pounds.

(c) A Canadian charter air taxi operator shall not use large aircraft for charter air service until it has been granted a permit by the Department under section 41302 of the Statute or granted an exemption under section 41701 of the Statute. Its application for such a permit or exemption should refer to the registration under this part. Registration under this part will be canceled when a section 41302 permit has been granted by the Department for the use of large aircraft in foreign charter air service.

[ER–1257, 46 FR 52591, Oct. 27, 1981, as amended by Doc. No. 47939, 57 FR 40102, Sept. 2, 1992; 60 FR 43526, Aug. 22, 1995]

§ 294.31 Use of business name.

(a) A Canadian charter air taxi operator, in holding out charter air service to the public and performing its charter operations, shall do so only in the names in which its registration is issued under this part. The Department may require a Canadian charter air taxi operator to change such names where they appear to be inconsistent with the public interest.

(b) [Reserved]

§ 294.32 Security arrangements for operating Public Charters.

When a Canadian charter air taxi operator performs a Public Charter under part 380 of this chapter, either:

(a) The Canadian charter air taxi operator shall meet the bonding or escrow requirements applicable to foreign air carriers as set forth in §212.12 of this chapter; or

(b) The Canadian charter air taxi operator shall ensure that it does not receive any payments for the charter until after the charter has been completed. In this case, its contracts with the charter operator and the charter operator's depository bank, if any, shall state that the charter operator or bank, as applicable, shall retain control of and responsibility for all participant funds intended for payment for charter air service until after the charter has been completed, notwithstanding any provision of part 380.

§ 294.33 Compliance with the regulations of the Federal Aviation Administration.

(a) Registrants under this part shall obtain FAA operations specifications required under part 129 or other applicable rules of the Federal Aviation Regulations prior to beginning operations into the United States. Registrants should write to the FAA office at one of the following addresses to obtain instructions on how to apply for FAA authority.

(b) If the registrant's business address is located on or east of 76 degrees West Longitude (in or east of Ottawa, Ontario) it should write to: Federal Aviation Administration, General Aviation District Office No. 1, Albany County Airport, Albany, New York 12211.

(c) If the registrant's business address is located on or east of 100 degrees West Longitude (in or east of Winnipeg, Manitoba) and west of 76 degrees West Longitude (west of, but not including, Ottawa, Ontario) it should write to: Federal Aviation Administration, Flight Standards District Office, 1 Airport Way, Rochester, New York 14624.

(d) If the registrant's business address is west of Winnipeg, Manitoba, it should write to: Federal Aviation Administration, General Aviation District Office, 1601 Lind Avenue, SW., Renton, Washington 98055.

[ER–1257, 46 FR 52591, Oct. 27, 1981, as amended by Docket No. 47939, 57 FR 40102, Sept. 2, 1992]

§ 294.34 Advance approval by the Department.

The Department, by order or regulation and without hearing, may require advance approval of individual charter trips conducted by the registrant under the authority granted by this part, if it finds such action to be consistent with the public interest.

Subpart E—Insurance Requirements

§ 294.40 Aircraft accident liability insurance requirements.

No Canadian charter air taxi operator shall engage in charter air service unless such carrier has and maintains in effect aircraft accident liability coverage that meets the requirements of part 205 of this chapter. Evidence of such insurance coverage, in the form of a certificate of insurance, as required in part 205 of this chapter, shall be maintained on file with the Department's Office of Aviation Analysis, Special Authorities Division, at all times.

(Approved by the Office of Management and Budget under control number 3024–0050)

[ER–1257, 46 FR 52591, Oct. 27, 1981, as amended by ER–1342, 48 FR 31015, July 6, 1983; Docket No. 47939, 57 FR 40102, Sept. 2, 1992; 60 FR 43526, Aug. 22, 1995]

Subpart F—Cancellation of Registration and Presidential Review

§ 294.50 Cancellation, revocation, or suspension of registration.

The registration of a carrier subject to this part may be revoked, canceled, suspended, modified, or otherwise subjected to additional terms and conditions by the Department if:

(a) The carrier files with the Department a written notice that it is discontinuing operations;

(b) The carrier is the holder of a section 41302 permit to perform large aircraft charters under the Agreement;

(c) Substantial ownership or effective control is acquired by persons who are not (1) citizens of Canada, (2) the Government of Canada, or (3) a combination of both;

(d) The Canadian Government withdraws the registrant's designation under the Agreement;

(e) The Agreement between the two countries is terminated;

(f) The registrant fails to have proper insurance coverage, or fails to file or keep a current insurance certificate on file with the Department;

(g) The registrant fails to comply with the terms, conditions, or limitations of this part;

(h) The carrier's operations specifications issued by the FAA are suspended or terminated;

(i) The Department finds that it is in the public interest to do so.

[ER–1257, 46 FR 52591, Oct. 27, 1981, as amended at 60 FR 43526, Aug. 22, 1995]

§ 294.51 Presidential review.

A Department order under § 294.50 (e), (g) or (i) shall be subject to stay or disapproval by the President within 60 days.

Subpart G—Authorizations and Waivers

§ 294.60 Applications for authorization to conduct individual operations or programs not otherwise permitted by this part.

(a) Where the terms, conditions, or limitations of this part, particularly §§ 294.81, 294.82, 294.88, and 294.89, require prior approval of individual flights or charter programs, the registrant shall apply for such approval by filing three copies of OST Form 4540 with the Office of International Aviation, Foreign Air Carrier Licensing Division. OST Form 4540 may be obtained from the Foreign Air Carrier Licensing Division.

(b) Action on the application for authorization filed under paragraph (a) of this section will normally be taken within 30 days after the application is filed. The Department will consider requests for faster action that include a full explanation of the need for expedited action.

[ER–1257, 46 FR 52591, Oct. 27, 1981, as amended by Docket No. 47939, 57 FR 40103, Sept. 2, 1992]

§ 294.61 Waivers.

The Department upon application or on its own initiative may waive any of the provisions of this part if it finds such action to be in the public interest.

Subpart H—Violations

§ 294.70 Enforcement.

In case of any violation of any of the provisions of the Statute, or this part, or any other rule, regulation, or order issued under the Statute, the violator may be subject to a proceeding under section 46101 of the Statute before the Department, or sections 46106 through 46108 of the Statute before a U.S. District Court, as the case may be, to compel compliance; or to impose civil penalties under the provisions of section 46301 of the Statute; or in the case of a willful violation, to impose criminal penalties under the provisions of section 46316 of the Statute; or to impose other lawful sanctions, including revocation of registration.

[ER–1257, 46 FR 52591, Oct. 27, 1981, as amended at 60 FR 43527, Aug. 22, 1995]

Subpart I—Terms, Conditions, and Limitations of This Part

§ 294.80 Waiver of sovereign immunity.

By accepting an approved registration under this part, a registrant waives any right it may possess to assert any defense of sovereign immunity in any action or proceeding instituted against it in any court or other tribunal in the United States based upon any claim arising out of its operations under this part.

§ 294.81 Local traffic prohibited.

(a) Except as set forth in paragraph (b) of this section or §294.60, a registrant shall not carry passengers, cargo, or mail between two or more United States points for compensation or hire.

(b) A registrant may grant stopover privileges at any point or points in the United States to passengers and their accompanied baggage on a flight that originates in Canada, if:

(1) The flight is operated under a contract for round-trip charter transportation that is to be provided solely by the registrant; and

(2) The same aircraft stays with the passengers throughout the journey.

§ 294.82 Third-country traffic prohibited.

Except as set forth in §294.60, a registrant shall not engage in foreign air transportation between the United States and any point that is not in Canada, or transport any property or persons whose journey includes a prior, subsequent, or intervening movement by air to or from a point not in the United States or Canada. This prohibition does not apply to passengers who are not moving as part of any group.

§ 294.83 Compliance with certain international agreements.

A registrant shall not operate any aircraft under this part unless it:

(a) Complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;

(b) Complies with all applicable provisions of the Agreement; and

(c) Complies with all applicable provisions of any treaty, convention, or agreement affecting international air transportation to which the United States and Canada are parties.

§ 294.84 Air competency requirements.

Registrants shall conform to the airworthiness and airman competency requirements prescribed by the Government of Canada for Canadian international air service.

§ 294.85 Charterworthiness standards.

(a) Registrants may perform U.S.-originating charters authorized under Annex B (III)(A) of the Agreement as follows: Commercial air transportation of passengers and their accompanied baggage, and of property, on a time, mileage, or trip basis, where the entire planeload capacity of one or more aircraft has been engaged by a person for his own use or by a person for the transportation of a group of persons and/or their property, as agent or representative of such group, or other small aircraft operations as may be authorized under any amendments, supplements, reservations, or supersessions of the Agreement.

(b) Registrants may perform Canadian-originating charters authorized by Annex B (III)(B) of the Agreement and any amendments, supplements, reservations or supersessions of it. Such charters may be performed only to the extent authorized by the Air Carrier Regulations of the Canadian Transport Commission applicable to operations by small aircraft.

§ 294.86 Industrial/agricultural/other nontransport air operations prohibited.

A registrant shall not engage in flights for the purpose of industrial or agricultural operations (e.g., crop dusting, pest control, pipeline patrol, mapping, surveying, banner towing, skywriting, aerial photography) within the United States unless it has obtained a permit from the Department under part 375 of this chapter.

§ 294.87 Compliance with Canadian licenses.

A registrant shall not, in the performance of operations authorized by this part, use any aircraft or conduct any operations except in accordance with the authority and conditions contained in the registrant's applicable Canadian licenses.

§ 294.88 Northwest Ontario restriction.

(a) Except as set forth in §294.60 or paragraph (b) of this section, registrants shall not engage in the carriage of persons in foreign air transportation between the United States and Canada to or from a point in Ontario, west of a line drawn due north from Blind River, Ontario (46° 11′ North Latitude, 82° 58′ West Longitude) and extending to the border between Ontario and Manitoba, unless:

(1) The point is a resort, camp, or outpost operated by a person duly licensed for such purpose by the Government of the Province of Ontario, or the licensed base of a Canadian charter air carrier, or a Canadian Customs port of entry;

(2) The registrant is required on each flight out of the restricted area to make a stop at a Canadian Customs port of entry or at the licensed base of a Canadian charter air carrier where officers of the Ontario Ministry of Natural Resources may be available to make such inspection as they consider desirable; and

(3) The registrant has available on its aircraft for inspection by the U.S. authorities satisfactory evidence that it has complied with these conditions.

(b) The prohibition set forth in paragraph (a) of this section does not apply to flights performed for medical evacuation or similar emergencies.

(c) A registrant shall clearly notify in writing all persons who contract for the registrant's service, and are affected by the restrictions of this section, of the limitations set forth in paragraph (a) of this section.

§ 294.89 Uplift ratio.

Except as set forth in §294.60, the aggregate number of all United States-originating charter flights performed by a registrant on or after May 8, 1974, shall not, at the end of any calendar quarter, exceed by more than one-third the aggregate number of all Canadian-originating charter flights performed by the registrant on or after May 8, 1974. For the purpose of making such computation, the following shall apply:

(a) A charter shall be considered to originate in the United States (or Canada) if the passengers or property are first taken on board in that country, and shall be considered as one flight whether the charter is one-way, round trip, circle tour, or open jaw, even if a separate contract is entered into for a return portion of the charter trip from Canada (or the United States).

(b) The computation shall be made separately for (1) ''small aircraft'' flights of persons; and (2) ''small aircraft'' flights of property.

(c) In the case of a lease of aircraft with crew for the performance of a charter flight on behalf and under the authority of another carrier, the flight shall be included in the computation if the registrant is the lessee, and shall not be included if the registrant is the lessor.

(d) There shall be excluded from the computation:

(1) Flights with aircraft having a maximum authorized takeoff weight on wheels (as determined by Canadian Transport Commission Regulations) not greater than 18,000 pounds; and

(2) Flights originating at a United States terminal point on a route listed in the Air Transport Services Agreement between the United States and Canada, signed January 17, 1966, as amended, or any agreement which may supersede it, or any supplementary agreement thereto which establishes obligations or privileges thereunder. These flights may be excluded from the computation only if, pursuant to any such agreement, the registrant also holds a foreign air carrier permit authorizing individually ticketed or individually waybilled service over that route, and provides some scheduled service on any route pursuant to any such agreement, and such flights serve either (i) a Canadian terminal point on such route, or (ii) any Canadian intermediate point authorized for service on the route by the foreign air carrier permit.

PART 296—INDIRECT AIR TRANSPORTATION OF PROPERTY

Subpart A—General

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296.20 Enforcement.

AUTHORITY: 49 U.S.C. Chapters 401, 417.

SOURCE: ER–1261, 46 FR 54727, Nov. 4, 1981, unless otherwise noted.

Subpart A—General

§ 296.1 Purpose.

This part establishes rules for the indirect air transportation of property. It creates a class of air carriers to provide this air transportation and grants exemptions from certain provisions of the Subtitle VII of Title 49 of the United States Code (Transportation).

[ER–1257, 46 FR 52591, Oct. 27, 1981, as amended at 60 FR 43527, Aug. 22, 1995]

§ 296.2 Applicability.

This part applies to air transportation of property by indirect cargo air carriers, and to persons entering into control relationships with indirect cargo air carriers.

§ 296.3 Indirect cargo air carrier.

An indirect cargo air carrier is any U.S. citizen who undertakes to engage indirectly in air transportation of property, and uses for the whole or any part of such transportation the services of an air carrier or a foreign air carrier that directly engages in the operation of aircraft under a certificate, regulation, order, or permit issued by the Department of Transportation or the Civil Aeronautics Board, or the services of its agent, or of another indirect cargo air carrier.

[ER–1261, 46 FR 54727, Nov. 4, 1981, as amended by Docket No. 47939, 57 FR 40103, Sept. 2, 1992]

§ 296.4 Joint loading.

Nothing in this part shall preclude joint loading, meaning the pooling of shipments and their delivery to a direct air carrier for transportation as one shipment, under an agreement between two or more indirect air carriers or foreign indirect air carriers.

§ 296.5 Agency relationships.

An indirect cargo air carrier may act as agent of a shipper, or of a direct air carrier that has authorized such agency, rather than as an air carrier, if it expressly reserves the option to do so when the shipment is accepted.

§ 296.6 Public disclosure of cargo liability limits and insurance.

Every indirect cargo air carrier shall give notice in writing to the shipper, when any shipment is accepted, of the existence or absence of cargo liability accident insurance, and of the limits on the extent of its liability, if any. The notice shall be clear and conspicuously included on or attached to all of its rate sheets and airwaybills.

Subpart B—Exemption for Indirect Air Transportation of Property

§ 296.10 Exemption from the Statute.

(a) Indirect cargo air carriers are exempted from the provisions of the Statute only if and so long as they comply with the provisions of this part and its conditions, and to the extent necessary to permit them to organize and arrange their air freight shipments to provide indirect air transportation, except for the following sections:

(1) Section 41510(b) (solicitation of rebates). However, indirect cargo air carriers are exempt from section 41510(b) to the extent necessary to permit them to solicit, accept, or receive fees from direct air carriers.

(2) Section 41702 to the extent required to provide safe service, equipment, and facilities in connection with air transportation.

(3) Section 41310 (nondiscrimination) with respect to foreign air transportation.

(4) Section 41708 (accounts, records, and reports) and section 41709 (inspection of accounts and property);

(5) Section 41712 (unfair or deceptive practices or method of competition);

(6) Section 40102(b) (form of control); and

(7) Section 41711 (inquiry into air carrier management).

(b)–(c) [Reserved]

(d) Direct air carriers are exempted from Chapter 415 of the Statute to the extent necessary to permit them to pay, directly or indirectly, fees to indirect cargo air carriers.

[ER–1261, 46 FR 54727, Nov. 4, 1981, as amended by ER–1335, 48 FR 22705, May 20, 1983; ER–1381, 49 FR 25226, June 20, 1984, 50 FR 31142, July 31, 1985; 60 FR 43527, Aug. 22, 1995]

Subpart C—Violations

§ 296.20 Enforcement.

In case of any violation of any of the provisions of the Statute, or of this part, or any other rule, regulation, or order issued under the Statute, the violator may be subject to a proceeding under section 46101 of the Statute before the Department, or sections 46106 through 46108 of the Statute before a U.S. District Court, as the case may be, to compel compliance. The violator may also be subject to civil penalties under the provisions of section 46301 of the Statute, or other lawful sanctions.

[ER–1261, 46 FR 54727, Nov. 4, 1981, as amended by Docket No. 47939, 57 FR 40103, Sept. 2, 1992; 60 FR 43527, Aug. 22, 1995]

PART 297—FOREIGN AIR FREIGHT FORWARDERS AND FOREIGN COOPERATIVE SHIPPERS ASSOCIATIONS

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Subpart E [Reserved]

Subpart F—Violations

297.50 Enforcement.

AUTHORITY: 49 U.S.C. Chapters 401, 417.

SOURCE: ER–1159, 44 FR 69635, Dec. 4, 1979, unless otherwise noted.

Subpart A—General

§ 297.1 Purpose.

This part establishes registration procedures and operating rules for foreign air carriers that engage indirectly in interstate or foreign air transportation of property. It relieves these carriers from certain provisions of Subtitle VII of Title 49 of the United States Code (Transportation), and establishes simplified reports for them.

[ER–1294, 47 FR 19684, May 7, 1982, as amended at 60 FR 43527, Aug. 22, 1995]

§ 297.2 Applicability.

This part applies to interstate air transportation of property and to foreign air transportation of property outbound from the United States by foreign indirect air carriers. It also applies to applications for registration as a foreign indirect air carrier of property.

[ER–1294, 47 FR 19684, May 7, 1982, as amended at 60 FR 43527, Aug. 22, 1995]

§ 297.3 Definitions.

For purpose of this part:

(a) *Foreign air freight forwarder* means a foreign indirect air carrier that is responsible for the transportation of property from the point of receipt to point of destination, and utilizes for the whole or any part of such transportation the services of a direct air carrier or its agent, of another foreign indirect cargo air carrier as defined in part 296 of this chapter.

(b) *Foreign cooperative shippers association* means a bona fide asociation of shippers operating as a foreign indirect air carrier on a nonprofit basis that undertakes to ship property by air for the account of such association or its members, and utilizes for the whole or any part of such transportation the services of a direct air carrier or its agent, of a foreign indirect cargo air carrier as defined in part 296 of this chapter.

(c) *Direct air carrier* means an air carrier or foreign air carrier directly engaged in the operation of aircraft under a certificate, regulation, order, or permit issued by the Department of Transportation or the Civil Aeronautics Board.

(d) *Foreign indirect air carrier* means any person, not a citizen of the United States, who undertakes indirectly to engage in the air transportation of property.

[ER–1159, 44 FR 69635, Dec. 4, 1979, as amended by ER–1294, 47 FR 19684, May 7, 1982; Docket No. 47939, 57 FR 40103, Sept. 2, 1992]

§ 297.4 Joint loading.

Nothing in this part shall preclude joint loading, meaning the pooling of shipments and their delivery to a direct air carrier for transportation as one shipment, under an agreement between two or more indirect air carriers or foreign indirect air carriers.

§ 297.5 Foreign air freight forwarder as agent.

A foreign air freight forwarder may act as agent of a shipper, or of a direct air carrier that has authorized such agency, if it expressly reserves the option to do so when the shipment is accepted. A foreign air freight forwarder shall not act as the agent of any direct air carrier with respect to shipments accepted for forwarding.

§ 297.6 Foreign cooperative shippers association as agent.

A foreign cooperative shippers association may act as agent of a shipper, or of a direct air carrier that has authorized such agency, if it expressly reserves the option to do so when the shipment is accepted. A cooperative shippers association shall not act as an agent of any direct air carrier with respect to shipments accepted in its capacity as an indirect air carrier.

[ER–1235, 46 FR 38496, July 28, 1981]

Subpart B—Exemption for Foreign Indirect Air Transportation of Property

§ 297.10 Exemption from the Statute.

(a) Foreign indirect air carriers with an effective registration under this part are exempted from the following provisions of the Statute only if and so long as they comply with the provisions of this part and the conditions imposed herein, and to the extent necessary to permit them to arrange their air freight shipments:

(1) Section 41302 (Permits);

(2) Sections 41504 and 41510(a) (Tariffs);

(3) Section 41510(b) (Solicitation of rebates) to the extent necessary to permit them to solicit, accept, or receive fees from direct air carriers;

(4) Section 41501 (Carrier's duty to establish just and reasonable rates, etc.); and

(5) If awarded interstate air transportation operating rights, any other provision of the Statute that would otherwise prohibit them from engaging in the interstate indirect air transportation of property.

(6) Section 41310 (nondiscrimination) with respect to interstate and overseas air transportation.

(b) Direct air carriers are exempted from Chapter 415 of the Statute to the extent necessary to permit them to pay, directly or indirectly, fees to foreign air freight forwarders and foreign cooperative shippers associations on consolidated shipments.

[ER–1336, 48 FR 22705, May 20, 1983, as amended by ER–1382, 49 FR 25226, June 20, 1984; Docket No. 47939, 57 FR 40103, Sept. 2, 1992; 60 FR 43527, Aug. 22, 1995]

§ 297.11 Disclaimer of jurisdiction.

The Department declines to exercise its jurisdiction over foreign indirect air carriers of property with respect to shipments that originate in a foreign country. The Department reserves the right to exercise its jurisdiction over any foreign indirect air carrier of property at any time it finds that such action is in the public interest.

§ 297.12 General requirements.

(a) The direct air transportation provided must be performed by direct air carriers that hold authority under section 41102, 41103, 41302, or 41701 of the Statute or are operating under part 298 of this chapter;

(b) Only U.S. citizen direct air carriers may provide direct air transportation operations in interstate air transportation.

(c) Foreign indirect air carriers that hold authority to engage in foreign air transportation must apply additionally for permission to consolidate freight in interstate air transportation.

[ER–1294, 47 FR 19684, May 7, 1982, as amended at 60 FR 43527, Aug. 22, 1995]

Subpart C—Registration for Foreign Air Freight Forwarders and Foreign Cooperative Shippers Associations

§ 297.20 Filing for registration.

(a) Not later than 60 days before the start of operations as a foreign indirect air carrier, every foreign air freight forwarder and foreign cooperative shippers association shall apply for registration with the Department, unless upon a showing of good cause, the Director, Office of Aviation Analysis, allows application at a later time.

(b) Application shall consist of filing with the Department's Office of Aviation Analysis, Special Authorities Division, two copies of completed OST Form 4506, which may be obtained from the Department of Transportation, Special Authorities Division.

[ER–1159, 44 FR 69635, Dec. 4, 1979, as amended by ER–1265, 46 FR 56602, Nov. 18, 1981; Docket No. 47939, 57 FR 40103, Sept. 2, 1992; 60 FR 43527, Aug. 22, 1995]

§ 297.21 Objections to registration application.

Persons objecting to registration by a foreign air freight forwarder or foreign cooperative shippers association shall file their objections with the Office of Aviation Analysis, Special Authorities Division, within 28 days of the filing date of the registration forms. The Department will list the names and nationality of all persons applying for registration in its Weekly Summary of Filings.

[ER–1159, 44 FR 69635, Dec. 4, 1979, as amended by Docket No. 47939, 57 FR 40103, Sept. 2, 1992; 60 FR 43527, Aug. 22, 1995]

§ 297.22 Procedure on receipt of registration application.

After review of a registration form filed under § 297.20, the Department will take one or more of the following actions:

(a) Indicate by stamp on OST Form 4506 the effective date of registration, and return to the carrier the duplicate

copy of OST Form 4506 as evidence of registration with the Department under this part;

(b) Reject an application for registration for failure to comply with this part, for reasons relating to the failure of effective reciprocity, or if the Department finds that it is in the public interest to do so.

(c) Request additional information from the applicant;

(d) Issue an order subjecting a carrier's exercise of authority under this part to such terms, conditions, or limitations as may be required by the public interest; or

(e) Institute a proceeding under section 41302 of the Statute.

[ER–1159, 44 FR 69635, Dec. 4, 1979, as amended by ER–1294, 47 FR 19685, May 7, 1982; Docket No. 47939, 57 FR 40103, Sept. 2, 1992; 60 FR 43527, Aug. 22, 1995]

§ 297.23 Waiver of sovereign immunity.

By accepting an approval registration form under this part, a carrier waives any right it may possess to assert any defense of sovereign immunity from suit in any action or proceeding instituted against the carrier in any court or other tribunal in the United States based upon any claim arising out of operations by the carrier under this part.

§ 297.24 Notification to the Department of change of operations.

(a) Not later than 30 days before any change in its name or address or any temporary or permanent cessation of operations, each foreign indirect air carrier shall notify the Department's Office of Aviation Analysis, Special Authorities Division, of the change by resubmitting OST Form 4506.

(b) The registrant shall apply for an amendment of its registration not later than 30 days after any person listed on its existing registration as owning or holding beneficial ownership of 10 percent or more of the registrant's stock no longer has an interest of 10 percent or more, or after any person not so listed becomes an owner or holder of 10 percent or more. Application for amendment shall be made by resubmitting OST Form 4506, but the existing registration shall remain valid pending Department action on the amendment.

[ER–1159, 44 FR 69635, Dec. 4, 1979, as amended by Docket No. 47939, 57 FR 40103, Sept. 2, 1992; 60 FR 43527, Aug. 22, 1995]

§ 297.25 Cancellation or conditioning of registration.

The registration of a foreign indirect air carrier may be canceled or subjected to additional terms, conditions or limitations if:

(a) It files with the Department a written notice that it is discontinuing foreign indirect air carrier activities;

(b) It fails to perform air transportation services as authorized;

(c) It fails to file the reports required by this part;

(d) A substantial ownership or control interest is acquired by persons who are not citizens of the country of citizenship of the registrant;

(e) There is a failure of effective reciprocity; or

(f) The Department finds that it is in the public interest to do so.

[ER–1159, 44 FR 69635, Dec. 4, 1979, as amended by ER–1294, 47 FR 19685, May 7, 1982]

Subpart D—General Rules for Foreign Indirect Air Carriers

§ 297.30 Public disclosure of cargo liability insurance.

Every foreign air freight forwarder shall give notice in writing to the shipper, when any shipment is accepted, of the limits of its cargo liability insurance, or of the absence of such insurance, and the limits of its liability, if any. The notice shall be included clearly and conspicuously on all of its rate sheets and airwaybills, and on any other documentation that is given to a shipper at the time of acceptance of the shipment.

§ 297.31 Preparation of airwaybills and manifests.

(a) Each registered foreign indirect air carrier shall prepare an accurate airwaybill describing completely all services rendered to or on behalf of the shipper, including the conditions under which the contract will be completed, in its capacity as a foreign indirect air carrier. A copy of the airwaybill shall

be given to the consignor and to the consignee.

(b) Each registered foreign indirect air carrier shall prepare an accurate manifest showing every individual shipment included in each shipment consigned for transportation to a direct air carrier.

(c) A waiver of paragraph (a) of this section may be granted by the Department upon a written application by the foreign indirect air carrier not less than 30 days before the shipment to which it relates is transported, if the waiver is in the public interest, and is warranted by special or unusual circumstances.

Subpart E [Reserved]

Subpart F—Violations

§ 297.50 Enforcement.

In case of any violation of any of the provisions of the Statute, or this part, or any other rule, regulation or order issued under the Statute, the violator may be subject to a proceeding under section 46101 of the Statute before the Department, or sections 46106 through 46108 of the Statute before a U.S. District Court, as the case may be, to compel to compliance; or to civil penalties under the provisions of section 46301 of the Statute; or in the case of willful violation, to criminal penalties under the provisions of section 46316 of the Statute; or other lawful sanctions including cancellation of registration.

[ER–1159, 44 FR 69635, Dec. 4, 1979, as amended at 60 FR 43527, Aug. 22, 1995]

PART 298—EXEMPTIONS FOR AIR TAXI AND COMMUTER AIR CARRIER OPERATIONS

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Subpart G—Public Disclosure of Data

298.70 Public disclosure of data.

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298.80 Enforcement.

AUTHORITY: 49 U.S.C. 329 and chapters 401, 411, 417.

SOURCE: ER–929, 40 FR 42855, Sept. 17, 1975, unless otherwise noted.

Subpart A—General

§ 298.1 Applicability of part.

This part establishes a classification of air carriers known as ''air taxi operators,'' provides certain exemptions to them from some of the economic regulatory provisions of Subtitle VII of Title 49 of the United States Code

(Transportation) and specifies procedures by which such air carriers may obtain authority to conduct operations, and establishes rules applicable to their operations in interstate and/or foreign air transportation in all States, Territories and possessions of the United States. This part also establishes reporting requirements for commuter air carriers and small certificated air carriers.

[ER–1399, 50 FR 19, Jan. 2, 1985, as amended by Docket No. 47939, 57 FR 40103, Sept. 2, 1992; 60 FR 43527, Aug. 22, 1995]

§ 298.2 Definitions.

As used in this part:

Aircraft-hours means the airborne hours of aircraft computed from the moment an aircraft leaves the ground until it touches the ground at the end of a flight stage.

Aircraft miles means the miles (computed in airport-to-airport distances) for each flight stage actually completed, whether or not performed in accordance with the scheduled pattern.

All-cargo air carrier or section 41103 carrier means an air carrier holding an all-cargo air transportation certificate issued under section 41103 of the Statute authorizing the transportation by aircraft in interstate air transportation of only property or only mail, or both.

Air taxi operator means an air carrier coming within the classification of *air taxi operators* established by § 298.3.

Air Transportation means interstate air transportation, foreign air transportation, or the transportation of mail by aircraft as defined by the Statute.[1]

Certificated carrier means an air carrier holding a certificate issued under section 41102 of the Statute.

Commuter air carrier means an air taxi operator that carries passengers on at least five round trips per week on at least one route between two or more points according to its published flight schedules that specify the times, days of the week, and places between which those flights are performed.

Departure means takeoff from an airport.

Flight stage means the operation of an aircraft from takeoff to landing.

Large aircraft means any aircraft designed to have a maximum passenger capacity of more than 60 seats or a maximum payload capacity of more than 18,000 pounds.

Maximum certificated takeoff weight means the maximum takeoff weight authorized by the terms of the aircraft airworthiness certificate.[2]

Maximum passenger capacity means the maximum number of passenger seats for which an aircraft is configured.

Maximum payload capacity means the maximum certificated take- off weight of an aircraft, less the empty weight,[3]

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[1] ''Interstate air transportation'' is defined in section 40102(a)(25) as the transportation of passengers or property by aircraft as a common carrier for compensation, or the transportation of mail by aircraft (1) between a place in (i) a State, territory, or possession of the United States and a place in the District of Columbia or another State, territory, or possession of the United States; (ii) Hawaii and another place in Hawaii through the airspace over a place outside Hawaii; (iii) the District of Columbia and another place in the District of Columbia; or (iv) a territory or possession of the United States and another place in the same territory or possession; and (2) when any part of the transportation is by aircraft. NOTE: Operations wholly within the geographic limits of a single State are not considered ''interstate air transportation'' if in those operations the carrier transports no more than a *de minimus* volume of passengers or property moving as part of a continuous journey to or from a point outside the State.

''Foreign air transportation'' is defined in section 40102(a)(23) of the Statute as the transportation of passengers or property by aircraft as a common carrier for compensation, or the transportation of mail by aircraft, between a place in the United States and a place outside the United States when any part of the transportation is by aircraft.

Air transportation also is defined to include ''the transportation of mail by aircraft.'' Section 5402 of the Postal Reorganization Act, 39 U.S.C. 5402, authorizes the carriage of mail by air taxi operators in some circumstances under contract with the Postal Service.

[2] This weight may be found in the airplane operating record or in the airplane flight manual which is incorporated by regulation into the airworthiness certificate.

[3] Empty weight is defined in section 03 of part 241 as follows: *the weight of the airframe, engines, propellers, and fixed equipment. Empty weight excludes the weight of the crew and payload, but includes the weight of all fixed ballast,*

less all justifiable aircraft equipment, and less the operating load (consisting of minimum fuel load, oil, flight crew, steward's supplies, etc.). For purposes of this part, the allowance for the weight of the crew, oil, and fuel is as follows:

(1) Crew—200 pounds per crew member required under FAA regulations,

(2) Oil—350 pounds,

(3) Fuel—the minimum weight of fuel required under FAA regulations for a flight between domestic points 200 miles apart,[4]

Provided, however, That in the case of aircraft for which a maximum zero fuel weight is prescribed by the FAA,[5] maximum payload capacity means the maximum zero fuel weight, less the empty weight, less all justifiable aircraft equipment, and less the operating load (consisting of minimum flight crew, steward's supplies, etc., but not including disposable fuel or oil).

Mile means a statute mile, i.e., 5,280 feet.

Nonrevenue passenger means a person traveling free or under token charges, except those expressly named in the definition of revenue passenger; a person traveling at a fare or discount available only to employees or authorized persons of air carriers or their agents or only for travel on the business of the carriers; and an infant who does not occupy a seat. (This definition is for 14 CFR part 298 traffic reporting purposes and may differ from the definitions used in other parts by the Federal Aviation Administration and the Transportation Security Administration for the collection of Passenger Facility Charges and Security Fees.) The definition includes, but is not limited to, the following examples of passengers when traveling free or pursuant to token charges:

(1) Directors, officers, employees, and others authorized by the air carrier operating the aircraft;

(2) Directors, officers, employees, and others authorized by the air carrier or another carrier traveling pursuant to a pass interchange agreement;

(3) Travel agents being transported for the purpose of familiarizing themselves with the carrier's services;

(4) Witnesses and attorneys attending any legal investigation in which such carrier is involved;

(5) Persons injured in aircraft accidents, and physicians, nurses, and others attending such persons;

(6) Any persons transported with the object of providing relief in cases of general epidemic, natural disaster, or other catastrophe;

(7) Any law enforcement official, including any person who has the duty of guarding government officials who are traveling on official business or traveling to or from such duty;

(8) Guests of an air carrier on an inaugural flight or delivery flights of newly-acquired or renovated aircraft;

(9) Security guards who have been assigned the duty to guard such aircraft against unlawful seizure, sabotage, or other unlawful interference;

(10) Safety inspectors of the National Transportation Safety Board or the FAA in their official duties or traveling to or from such duty;

(11) Postal employees on duty in charge of the mails or traveling to or from such duty;

(12) Technical representatives of companies that have been engaged in the manufacture, development or testing of a particular type of aircraft or aircraft equipment, when the transportation is provided for the purpose of inflight observation and subject to applicable FAA regulations;

(13) Persons engaged in promoting air transportation;

(14) Air marshals and other Transportation Security officials acting in their official capacities and while traveling to and from their official duties; and

(15) Other authorized persons, when such transportation is undertaken for promotional purpose.

Passengers carried means passengers on board each flight stage.

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unusable fuel supply, undrainable oil, total quantity of engine coolant, and total quantity of hydraulic fluid.

[4] Assumes VFR weather conditions and flights not involving extended overwater operations.

[5] The maximum zero fuel weight is the maximum permissible weight of an airplane with no disposable fuel or oil. The zero fuel weight figure may be found in the FAA's type certificate data sheets, and/or in FAA-approved flight manuals.

Point when used in connection with any territory or possession of the United States, or the States of Alaska and Hawaii, means any airport or place where aircraft may be landed or taken off, including the area within a 25-mile radius of such airport or place; when used in connection with the continental United States, except Alaska, it shall have the same meaning except be limited to the area within a 3-mile radius of such airport or place: *Provided,* That for the purposes of this part, West 30th Street Heliport and Pan Am Building Heliport, both located in New York City, shall be regarded as separate points.

Reporting carrier for Schedule T–100 purposes means the air carrier in operational control of the flight, i.e., the carrier that uses its flight crews under its own FAA operating authority.

Revenue passenger means a passenger for whose transportation an air carrier receives commercial remuneration. (This definition is for 14 CFR part 298 traffic reporting purposes and may differ from the definitions used in other parts by the Federal Aviation Administration and the Transportation Security Administration for the collection of Passenger Facility Charges and Security Fees.) This includes, but is not limited to, the following examples:

(1) Passengers traveling under publicly available tickets including promotional offers (for example two-for-one) or loyalty programs (for example, redemption of frequent flyer points);

(2) Passengers traveling on vouchers or tickets issued as compensation for denied boarding or in response to consumer complaints or claims;

(3) Passengers traveling at corporate discounts;

(4) Passengers traveling on preferential fares (Government, seamen, military, youth, student, etc.);

(5) Passengers traveling on barter tickets; and

(6) Infants traveling on confirmed-space tickets.

Revenue passenger-mile means one revenue passenger transported one mile. Revenue passenger-miles are computed by multiplying the aircraft miles flown on each flight stage by the number of revenue passengers carried on that flight stage.

Revenue seat-miles available means the aircraft-miles flown on each flight stage multiplied by the number of seats available for sale on that flight stage.

Revenue ton-mile means one ton of revenue traffic transported one mile. Revenue ton-miles are computed by multiplying the aircraft-miles flown on each flight stage by the number of pounds of revenue traffic carried on that flight stage and converted to ton-miles by dividing total revenue pound-miles by 2,000 pounds.

Revenue ton-miles available means the aircraft-miles flown on each flight stage multiplied by the number of pounds of aircraft capacity available for use on that stage and converted to ton-miles by dividing total pound-miles available by 2,000 pounds.

Scheduled service means transport service operated over routes pursuant to published flight schedules or pursuant to mail contracts with the U.S. Postal Service.

Small aircraft means any aircraft that is not a large aircraft, as defined in this section.

Small certificated air carrier means an air carrier holding a certificate issued under section 41102 of the Statute that provides scheduled passenger air service within and between only the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands with small aircraft as defined in this section.

Ton means a short ton, i.e., 2,000 pounds.

Wet-Lease Agreement means an agreement under which one carrier leases an aircraft with flight crew to another air carrier.

[ER–929, 40 FR 42855, Sept. 17, 1975]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §298.2, see the List of CFR Sections Affected which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 298.3 Classification.

(a) There is hereby established a classification of air carriers, designated as

''air taxi operators,'' which directly engage in the air transportation of persons or property or mail or in any combination of such transportation and which:

(1) Except as provided in § 298.5, do not directly or indirectly utilize large aircraft in air transportation;

(2) Except as provided in § 298.5, do not hold a certificate of public convenience and necessity or economic authority issued by the Department or the CAB other than that provided by this part;

(3) Have registered with the Department in accordance with subpart C of this part;

(4) Have and maintain in effect liability insurance coverage in compliance with the requirements set forth in part 205 of this chapter and have and maintain a current certificate of insurance evidencing such coverage on file with the Department; and

(5) If operating as a commuter air carrier or in foreign air transportation or participating in an interline agreement, have and maintain in effect and on file with the Department a signed counterpart of Agreement 18900 (OST Form 4523 or OST Form 4506)) and comply with all other requirements of part 203 of this chapter.

(b) Except as provided in § 298.5, a person who does not observe the conditions set forth in paragraph (a) of this section shall not be an air taxi operator or commuter air carrier within the meaning of this part with respect to any operations conducted while such conditions are not being observed, and during such periods is not entitled to any of the exemptions set forth in this part.

[ER–929, 40 FR 42855, Sept. 17, 1975, as amended by ER–1039, 43 FR 1490, Jan. 10, 1978; ER–1213, 46 FR 12478, Feb. 17, 1981; ER–1333, 48 FR 8051, Feb. 25, 1983; Docket No. 47939, 57 FR 40103, Sept. 2, 1992]

§ 298.4 Requests for statement of authority.

In any instance where an air taxi operator or commuter air carrier is required by a foreign government to produce evidence of its authority to engage in foreign air transportation under the laws of the United States, the Director, Office of Aviation Analysis will, upon request, furnish the carrier with a written statement, outlining its general operating privileges under this part for presentation to the proper authorities of the foreign government.

[ER–929, 40 FR 42855, Sept. 17, 1975, as amended by Docket No. 47939, 57 FR 40103, Sept. 2, 1992]

§ 298.5 Dual operations—air taxi or commuter air carrier and all-cargo air service.

Any person having or obtaining authority to operate as an all-cargo air service carrier shall not thereby lose, or be disqualified from obtaining, authority under this part to engage also in operations as an air taxi operator or commuter air carrier, regardless of the size of aircraft utilized in such all-cargo air service operations. The operations which such person conducts as an air taxi operator or commuter air carrier shall be subject to the conditions and entitled to the exemptions set forth in this part, and the operations which he conducts as an all-cargo air service carrier shall be subject to the conditions and entitled to the exemptions set forth in part 291 of this chapter.

[ER–1039, 43 FR 1490, Jan. 10, 1978, as amended by Docket No. 47939, 57 FR 40103, Sept. 2, 1992]

Subpart B—Exemptions

§ 298.11 Exemption authority.

Air taxi operators and commuter air carriers are hereby relieved from the following provisions of the Statute only if and so long as they comply with the provisions of this part and the conditions imposed herein, and to the extent necessary to permit them to conduct air taxi or commuter air carrier operations:

(a) Section 41101;

(b) Section 41504; except that the requirements of that section shall apply to: (1) Tariffs for through rates, fares, and charges filed jointly by air taxi operators or commuter air carriers with air carriers or with foreign air carriers subject to the tariff-filing requirements of Chapter 415; and (2) Tariffs required to be filed by air taxi operators

or commuter air carriers which embody the provisions of the counterpart to Agreement 18900 as specified in part 203 of this chapter;

(c) Section 41702, except for the requirements that air taxi operators and commuter air carriers shall:

(1) Provide safe service, equipment, and facilities in connection with air transportation;

(2) Provide adequate service insofar as that requires them to comply with parts 252 and 382 of this chapter;

(3) Observe and enforce just and reasonable joint rates, fares, and charges, and just and reasonable classifications, rules, regulations and practices as provided in tariffs filed jointly by air taxi operators or commuter air carriers with certificated air carriers or with foreign air carriers; and

(4) Establish just, reasonable, and equitable divisions of such joint rates, fares, and charges as between air carriers participating therein which shall not unduly prefer or prejudice any of such participating air carriers;

(d) Section 41310, except that the requirements of that subsection shall apply to through service provided pursuant to tariffs filed jointly by air taxi operators or commuter air carriers with certificated air carriers or with foreign air carriers and to transportation of the handicapped to the extent that that is required by part 382 of this chapter;

(e) Section 41902;

(f) Section 41708.

[ER–929, 40 FR 42855, Sept. 17, 1975, as amended by ER–1251, 46 FR 51374, Oct. 20, 1981; ER–1278, 47 FR 608, Jan. 6, 1982; ER–1295, 47 FR 25936, June 16, 1982; ER–1389, 50 FR 31142, July 31, 1985; Docket No. 47939, 57 FR 40103, Sept. 2, 1992; 60 FR 43528, Aug. 22, 1995]

§ 298.12 [Reserved]

§ 298.13 Duration of exemption.

The exemption from any provision of the Statute provided by this part shall continue in effect only until such time as the Department shall find that enforcement of that provision would be in the public interest, at which time the exemption shall terminate or be conditioned with respect to the person, class of persons, or service (*e.g.,* limited-entry foreign air transportation market) subject to the finding.

[ER–1278, 47 FR 608, Jan. 6, 1982, as amended at 60 FR 43528, Aug. 22, 1995]

Subpart C—Registration and Reregistration for Exemption

§ 298.21 Filing for registration by air taxi operators and commuter air carriers.

(a) Every air taxi operator (whether or not he is also a commuter air carrier as defined in this part) who plans to commence operations under this part shall register with the Department not later than 30 days prior to the commencement of such operations, unless, upon a showing of good cause satisfactory to the Director, Office of Aviation Analysis, registration within a lesser period of time is allowed.

(b) The registration of an air taxi operator or commuter air carrier shall remain in effect until it is amended by the carrier or canceled by the Department.

(c) Registration by all commuter air carriers, and by those air taxi operators with a mailing address in any U.S. State or Territory except Alaska, shall be accomplished by filing with the Department's Office of Aviation Analysis (or with the Department's Alaska Aviation Field Office, 222 West Seventh Street, Box 27, Anchorage, Alaska 99513, for air taxi operators that are not also commuter air carriers and that have a mailing address in the State of Alaska) the following:

(1) OST Form 4507, executed in duplicate.[6] This form shall be certified by a responsible official and shall include the following information:

(i) The name of the carrier and its mailing address;

(ii) The carrier's principal place of business, if different from its mailing address, and its area code and telephone number;

(iii) The carrier's FAA certificate number, if any, and the address and telephone number of the carrier's local FAA office;

[6] OST Form 4507 is filed as part of the original document and can be obtained from the Office of Aviation Analysis, Special Authorities Division.

(iv) The type of service the carrier will offer (scheduled passenger, scheduled cargo, mail under a U.S. Postal Service contract, on-demand passenger, on-demand cargo, or other service such as air ambulance operations, firefighting or seasonal operations);

(v) A list of the aircraft that the carrier proposes to operate, or, in the case of an amendment to the registration, the aircraft that it is currently operating in its air taxi or commuter air carrier operations, and the aircraft type, FAA registration number and passenger capacity of each aircraft;

(vi) For initial registration, the proposed date of commencement of air taxi or commuter air carrier operations;

(vii) For amendments, whether the carrier has carried passengers in foreign air transportation during the previous 12 months;

(viii) Whether the carrier is a U.S. citizen;

(2) A certificate of insurance which is currently effective (or in case of initial registration, is to become effective), as defined in part 205 of this chapter;

(3) An 8 (in the case of commuters, 670) dollar registration filing fee in the form of a check, draft, or postal money order payable to the Department of Transportation.

(4) For air taxi operators that (i) are commuter air carriers, (ii) engage in foreign air transportation, or (iii) participate in an interline agreement, a signed counterpart of Agreement 18900 (OST Form 4523), which may be the revised registration form (OST Form 4507)), as required by part 203 of this chapter. These forms can be obtained from the Office of Aviation Analysis, Special Authorities Division.

(d) No air taxi operator shall provide scheduled passenger service as a commuter air carrier at an eligible place unless it has registered with the Department as a commuter air carrier and has been found by the Department to be fit, willing, and able to conduct such service.

(The reporting requirements contained in paragraph (c)(2) were approved by the Office of Management and Budget under control number 3024–0007. The reporting requirements contained in paragraph (c)(1) were approved under control number 3024–0008. The reporting requirements contained in paragraph (c)(4) were approved under control number 3024–0064.)

[ER–929, 40 FR 42855, Sept. 17, 1975, as amended by ER–954, 41 FR 25890, June 23, 1976; 41 FR 27314, July 2, 1976; 41 FR 28786, July 13, 1976; ER–1208, 46 FR 8444, Jan. 27, 1981; ER–1213, 46 FR 12478, Feb. 17, 1981; ER–1318, 48 FR 3718, Jan. 27, 1983; ER–1333, 48 FR 8051, Feb. 25, 1983; 49 FR 28240, July 11, 1984; Docket No. 47939, 57 FR 40103, 40104, Sept. 2, 1992; 60 FR 43528, Aug. 22, 1995]

§ 298.22 Processing by the Department.

After examination of the Form 298–A submitted by the carrier, the Department will stamp the effective date of the registration on the form and return the duplicate copy to the carrier to confirm that it has registered with the Department as required by this part. The effective date of the registration shall not be earlier than the effective date of the insurance policy or policies named in the certificate of insurance filed by the carrier under § 298.21(c)(2).

[ER–1213, 46 FR 12478, Feb. 17, 1981, as amended by Docket No. 47939, 57 FR 40104, Sept. 2, 1992]

§ 298.23 Notifications to the Department of change in operations.

(a) An air taxi operator or commuter air carrier shall submit an amendment to its registration not later than 30 days after any of the following events:

(1) A change in its name or address;

(2) A change in its type of operations (passenger, cargo, mail, scheduled, etc.);

(3) A temporary or permanent cessation of its operations; or

(4) A change in the type of aircraft operated.

(b) An amendment shall be made by resubmitting OST Form 4507 to the Department's Office of Aviation Analysis. If the air taxi operator has a mailing address in the State of Alaska, the form shall be mailed to the Department's Alaska Aviation Field Office,

222 West Seventh Avenue, Box 27, Anchorage, Alaska 99513.

(The reporting requirements in paragraph (b) were approved by the Office of Management and Budget under control number 3024–0008.)

[ER–1213, 46 FR 12478, Feb. 17, 1981, as amended at 49 FR 28240, July 11, 1984; Docket No. 47939, 57 FR 40103, 40104, Sept. 2, 1992]

§ 298.24 Cancellation of the registration.

The registration of an air taxi operator or commuter air carrier may be canceled by the Department if any of the following occur:

(a) The operator notifies the Department that it is ceasing operations;

(b) The operator's insurance coverage changes or lapses;

(c) The operator fails to file an amended registration when required by § 298.23;

(d) The operator's operating authorization is revoked by the Federal Aviation Administration;

(e) In the case of a commuter air carrier, the Department finds that the carrier is not fit, willing, and able to conduct scheduled service.

[ER–1213, 46 FR 12478, Feb. 17, 1981, as amended by Docket No. 47939, 57 FR 40103, Sept. 2, 1992]

Subpart D—Limitations and Conditions on Exemptions and Operations

§ 298.30 Public disclosure of policy on consumer protection.

(a) Every air taxi and commuter air carrier shall cause to be displayed continuously in a conspicuous public place at each desk, station and position in the United States that is in charge of a person employed exclusively by it, or by it jointly with another person, or by any agent employed by it to sell tickets to passengers, a sign located so as to be clearly visible and readable to the traveling public, containing a statement setting forth the air taxi and commuter air carrier's policy on baggage liability and denied boarding compensation.

(b) An air taxi or commuter air carrier shall provide a written notice on or with a passenger's ticket concerning baggage liability as provided in § 254.5 of this chapter. These ticket notices are required only for passengers whose ticket includes a flight segment that uses large aircraft (more than 60 seats).

(c) If the substantive terms of the counter sign and ticket notice required by this section differ, the terms contained in the required ticket notice govern.

(Approved by the Office of Management and Budget under control number 3024–0074)

[ER–1378, 49 FR 14086, Apr. 10, 1984, as amended at 49 FR 28240, July 11, 1984; Docket No. 47939, 57 FR 40103, Sept. 2, 1992]

§ 298.31 Scope of service and equipment authorized.

Nothing in this part shall be construed as authorizing the operation of large aircraft in air transportation, and the exemption provided by this part to air taxi operators and commuter air carriers that register with the Department extends only to the direct operation in air transportation in accordance with the limitations and conditions of this part of aircraft designed to have a maximum passenger capacity of 60 seats or less or a maximum payload capacity of 18,000 pounds or less.

[ER–1213, 46 FR 12478, Feb. 17, 1981, as amended by Docket No. 47939, 57 FR 40103, Sept. 2, 1992]

§§ 298.32–298.34 [Reserved]

§ 298.35 Limitations on carriage of mail.

An air taxi operator or commuter air carrier is not authorized to carry mail except pursuant to contract with the Postal Service entered into pursuant to section 5402 of the Postal Reorganization Act (39 U.S.C. 5402).

[Docket No. 47939, 57 FR 40104, Sept. 2, 1992]

§ 298.36 Limitation on use of business name.

(a) An air taxi operator or commuter air carrier in holding out to the public and in performing its services in air transportation shall do so only in the name or names in which its air carrier certificate is issued pursuant to section 44702 of the Statute by the Federal Aviation Administration, and in which

it is registered with the Department under this part.

(b) Slogans shall not be considered names for the purposes of this section, and their use is not restricted hereby.

(c) Commuter air carriers are subject to the provisions of part 215 of this chapter with regard to the use and change of air carrier names.

(d) Neither the provisions of this section nor the grant of a permission hereunder shall be deemed to constitute a finding for purposes other than for this section, or to effect a waiver of, or exemption from, any provisions of the Act or orders, rules or regulations issued thereunder.

[ER–929, 40 FR 42855, Sept. 17, 1975, as amended at 53 FR 17924, May 19, 1988; Docket No. 47939, 57 FR 40103, 40104, Sept. 2, 1992; 60 FR 43528, Aug. 22, 1995]

§ 298.37 Prohibition of services not covered by insurance.

An air taxi operator or commuter air carrier shall not operate in air transportation or provide or offer to provide air transportation unless there is in effect liability insurance which covers such transportation and which is evidenced by a current certificate of insurance on file with the Department as required by part 205 of this chapter.

[ER–929, 40 FR 42855, Sept. 17, 1975, as amended by Docket No. 47939, 57 FR 40103, 40104, Sept. 2, 1992]

§ 298.38 Security arrangements for operating Public Charters.

When an air taxi operator or commuter air carrier performs a Public Charter under part 380 of this chapter, either:

(a) The air taxi operator or commuter air carrier shall meet the bonding or escrow requirements applicable to certificated carriers as set forth in § 207.17 of this chapter; or

(b) The air taxi operator or commuter air carrier shall ensure that it does not receive any payments for the charter until after the charter has been completed. In this case, its contracts with the charter operator and the charter operator's depository bank, if any, shall state that the charter operator or bank, as applicable, shall retain control of and responsibility for all participant funds intended for payment for air transportation until after the charter has been completed, notwithstanding any provision of part 380.

[ER–1140, 44 FR 49444, Aug. 23, 1979, as amended by Docket No. 47939, 57 FR 40103, Sept. 2, 1992]

Subpart E [Reserved]

Subpart F—Reporting Requirements

§ 298.60 General reporting instructions.

(a) Each commuter air carrier and each small certificated air carrier shall file with the Department's Bureau of Transportation Statistics (BTS) the applicable schedules of BTS Form 298-C, A Report of Financial and Operating Statistics for Small Aircraft Operators' and Schedule T–100, AU.S. Air Carrier Traffic and Capacity Data by Nonstop Segment and On-Flight Market'' as required by this section.

(b) A single copy of the BTS Form 298-C report shall be filed quarterly with the Office of Airline Information (OAI) for the periods ended March 31, June 30, September 30 and December 31 of each year to be received on or before May 10, August 10, November 10, and February 10, respectively. An electronic filing of the monthly Schedule T–100 is due at OAI within 30 days after the end of each month. Due dates falling on a Saturday, Sunday or Federal holiday will become effective on the next work day.

(c) All reports should be addressed as follows: Office of Airline Information, K–25, Room 4125, U.S. Department of Transportation, 400 Seventh St., SW., Washington, DC 20590.

(d) All information included in BTS Form 298–C schedules shall be typed or neatly printed.

(e) BTS Form 298–C schedules can be obtained from the above address or by telephone (202) 366–9059.

[ER–1399, 50 FR 19, Jan. 2, 1985, as amended by Docket No. 47939, 57 FR 40104, Sept. 2, 1992; 60 FR 66726, Dec. 26, 1995; 67 FR 49231, July 30, 2002]

§ 298.61 Reporting of traffic statistics.

(a) Each commuter air carrier and small certificated air carrier shall file

Schedule T–100, AU.S. Air Carrier Traffic and Capacity Data by Nonstop Segment and On-Flight Market.''

(b) Schedule T–100 shall be filed monthly as set forth in ''298.60.

(1) Schedule T–100 collects summarized flight stage data and on-flight market data from revenue flights. All traffic statistics shall be compiled in terms of each flight stage as actually performed. The detail T–100 data shall be maintained in such a manner as to permit monthly summarization and organization into two basic groupings. The first grouping, the nonstop segment information, is to be summarized by equipment type, within class of service, within pair-of-points, without regard to individual flight number. The second grouping requires that the enplanement/deplanement information be broken out into separate units called on-flight market records, which shall be summarized by class of service, within pair-of-points, without regard for equipment type or flight number.

(2) *Joint-service operations.* The Department may authorize joint service operations between two direct air carriers. Examples of these joint-service operations are: blocked-space agreements; part-charter agreements; code-sharing agreements; wet-lease agreements, and similar arrangements.

(i) Joint-service operations are reported by the carrier in operational control of the flight, i.e., the carrier that uses its flight crews under its own FAA operating authority. The traffic moving under these agreements is reported on Schedule T–100 the same way as any other traffic on the aircraft.

(ii) If there are questions about reporting a joint-service operation, contact the BTS Assistant Director—Airline Information (fax no. 202 366–3383, telephone no. 202 366–4373). Joint-service operations are reported in Schedule T–100 in accordance with this paragraph (b).

(iii) *Operational control.* The air carrier in operational control of the aircraft (the carrier that uses its flight crews under its own FAA operating authority) must report joint-service operations.

(c) *Service classes.* (1) The statistical classifications are designed to reflect the operating characteristics attributable to each distinctive type of service offered. The combination of scheduled and nonscheduled operations with passenger, all-cargo, and military services are placed into service classes as follows:

Code	Type of Service
F	Scheduled Passenger/Cargo
G	Scheduled All-Cargo
L	Nonscheduled Civilian Passenger/Cargo
P	Nonscheduled Civilian Cargo
N	Nonscheduled Military Passenger/Cargo
R	Nonscheduled Military Cargo

(2) Scheduled services include traffic and capacity elements applicable to air transportation provided pursuant to published schedules and extra sections of scheduled flights. Scheduled Passenger/Cargo (Service Class F) is a composite of first class, coach, and mixed passenger/cargo service.

(3) Nonscheduled services include all traffic and capacity elements applicable to the performance of nonscheduled aircraft charters, and other air transportation services not constituting an integral part of services performed pursuant to published flight schedules.

(d) *Air transport traffic and capacity elements.* (1) Within each of the service classifications, carriers shall report air transport traffic and capacity elements. The elements are reported on segment or market records as follows:

Code	Description	Segment	Market	Computed by DOT
	Carrier, carrier entity code	S	M	
	Reporting period date	S	M	
	Origin airport code	S	M	
	Destination airport code	S	M	
	Service class code	S	M	
	Aircraft type code	S		
110	Revenue passengers enplaned		M	
130	Revenue passengers transported.	S		
140	Revenue passenger-miles			CFD*
210	Revenue cargo tons enplaned			CFD*
217	Enplaned freight		M	
219	Enplaned mail		M	
230	Revenue tons transported			CFD*
237	Transported freight	S		
239	Transported mail	S		
240	Revenue ton-miles			CFD*
241	Revenue ton-miles passenger			CFD*
247	Revenue ton-miles freight			CFD*
249	Revenue ton-miles mail			CFD*
270	Available capacity payload	S		
280	Available ton-miles			CFD*
310	Available seats, total	S		
320	Available seat-miles			CFD*
410	Revenue aircraft miles flown			CFD*

Code	Description	Segment	Market	Computed by DOT
430	Revenue aircraft miles scheduled.			CFD*
501	Inter-airport distance			CFD*
510	Revenue aircraft departures performed.	S		
520	Revenue aircraft departures scheduled.	S		
610	Revenue aircraft hours (airborne).	S		
630	Aircraft hours (ramp-to-ramp) ...	S		
650	Total aircraft hours (airborne) ...	S		

*CFD = Computed by DOT from detail Schedule T–100 and T–100(f) data.

(2) [Reserved]

(e) These reported items are further described as follows:

(1) *Reporting period date.* The year and month to which the reported data are applicable.

(2) Carrier, Carrier entity code. Each air carrier shall report its name and entity code (a five digit code assigned by BTS that identifies both the carrier and its entity) for its particular operations. The Office of Airline Information (OAI) will assign or confirm codes upon request; OAI's address is Office of Airline Information, BTS, DOT Room 4125, K–14, 400 Seventh Street, SW., Washington, DC 20590–0001.

(3) *Service class code.* The service class codes are prescribed in section 298.61(c). In general, classes are divided into two broad categories, either scheduled or nonscheduled, where scheduled = F + G and nonscheduled = L + N + P + R.

(4) *Record type code.* This code indicates whether the data pertain to nonstop segment (record type S) or on-flight market (record type M).

(5) *Aircraft type code.* This code represents the aircraft types, as described in the BTS' Accounting and Reporting Directives.

(6) *Origin, Destination airport code(s).* These codes represent the industry designators. An industry source of these industry designator codes is the Official Airline Guide (OAG). OAI assigns codes upon request if not listed in the OAG.

(7) *110 Revenue passengers enplaned.* The total number of revenue passengers enplaned at the origin point of a flight, boarding the flight for the first time; an unduplicated count of passengers in a market. Under the T–100 system of reporting, these enplaned passengers are the sum of the passengers in the individual on-flight markets. In the domestic entity, report only the total revenue passengers enplaned in item 110.

(8) *130 Revenue passengers transported.* The total number of revenue passengers transported over a single flight stage, including those already on the aircraft from a previous flight stage. In the domestic entity, report only the total revenue passengers transported in item 130.

(9) *140 Revenue passenger-miles.* Computed by multiplying the inter-airport distance of each flight stage by the number of passengers transported on that flight stage.

(10) *210 Revenue cargo tons enplaned.* The total number of cargo tons enplaned. This data element is a sum of the individual on-flight market figures for each of the following categories: 217 Freight and 219 Mail. This element represents an unduplicated count of the revenue traffic in a market.

(11) *217 Enplaned freight.* The total weight of revenue freight enplaned at the origin point of a flight, loaded onto the flight for the first time; an unduplicated count of freight in a market.

(12) *219 Enplaned mail.* The total weight of mail enplaned at the origin point of a flight, loaded onto the flight for the first time; an unduplicated count of mail in a market.

(13) *230 Revenue tons transported.* The number of tons of revenue traffic transported. This element is the sum of the following elements: 231 Passengers transported-total, 237 Freight, and 239 Mail.

(14) *237 Transported freight.* The total weight of freight transported over a single flight stage, including freight already on the aircraft from a previous flight stage.

(15) *239 Transported mail.* The total weight of mail transported over a single flight stage, including mail already on the aircraft from a previous flight stage.

(16) *240 Revenue ton-miles—total.* Ton-miles are computed by multiplying the revenue aircraft miles flown (410) on each flight stage by the number of tons transported on that stage. This element is the sum of 241 through 249.

(17) *241 Revenue ton-miles—passenger.* Equals the number of passengers times 200, times inter-airport distance, divided by 2000. A standard weight of 200 pounds per passenger, including baggage, is used for all operations and service classes.

(18) *247 Revenue ton-miles—freight.* Equals the volume of freight in whole tons times the inter-airport distance.

(19) *249 Revenue ton-miles—mail.* Equals the volume of mail in whole tons times the inter-airport distance.

(20) *270 Available capacity-payload.* The available capacity is collected in pounds. This figure shall reflect the payload or total available capacity for passengers, mail, and freight applicable to the aircraft with which each flight stage is performed.

(21) *280 Available ton-miles.* The aircraft miles flown on each flight stage multiplied by the available capacity on the aircraft in tons.

(22) *310 Available seats.* The number of seats available for sale. This figure reflects the actual number of seats available, excluding those blocked for safety or operational reasons. In the domestic entity, report the total available seats in item 130. Scheduled and nonscheduled available seats are reported in item 130.

(23) *320 Available seat-miles.* The aircraft miles flown on each flight stage multiplied by the seat capacity available for sale.

(24) *410 Revenue aircraft miles flown.* Revenue aircraft miles flown are computed based on the airport pairs between which service is actually performed; miles are generated from the data for scheduled aircraft departures (Code 520) times the inter-airport distances (Code 501).

(25) *430 Revenue aircraft miles scheduled.* The number of revenue aircraft miles scheduled. All such data shall be maintained in conformity with the airport pairs between which service is scheduled, whether or not in accordance with actual performance.

(26) *501 Inter-airport distance.* The great circle distance, in official statute miles as prescribed in part 247 of this chapter, between airports served by each flight stage. Official inter-airport mileage may be obtained from the Office of Airline Information.

(27) *510 Revenue aircraft departures performed.* The number of revenue aircraft departures performed.

(28) *520 Revenue aircraft departures scheduled.* The number of revenue aircraft departures scheduled, whether or not actually performed.

(29) *610 Revenue aircraft hours (airborne).* The elapsed time, computed from the moment the aircraft leaves the ground until its next landing.

(30) *630 Aircraft hours (ramp-to-ramp).* The elapsed time, computed from the moment the aircraft first moves under its own power from the boarding ramp at one airport to the time it comes to rest at the ramp for the next point of landing. This data element is also referred to as 'block' and 'block-to-block' aircraft hours.

(31) *650 Total aircraft hours (airborne).* The elapsed time, computed from the moment the aircraft leaves the ground until it touches down at the next landing. This includes flight training, testing, and ferry flights.

(f) *Public availability of Schedule T–100 data.* Detailed domestic on-flight market and nonstop segment data in Schedule T–100, except military data, shall be publicly available after processing. Domestic data are defined as data from air transportation operations from a place in any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the Virgin Islands, or a U.S. territory or possession to a place in any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the Virgin Islands, or a U.S. territory or possession.

APPENDIX TO § 298.61—INSTRUCTIONS TO U.S. AIR CARRIERS FOR REPORTING TRAFFIC AND CAPACITY DATA ON SCHEDULE T–100

(a) *Format of reports.*

(1) *Automatic Data Processing (ADP) magnetic tape.* Refer to paragraph (f) of this appendix for instructions pertaining to mainframe and minicomputer reporting. The Department will issue ''Accounting and Reporting Directives'' to make necessary technical changes to these T–100 instructions. Technical changes which are minor in nature do not require public notice and comment.

(2) *Microcomputer diskette.*

(i) *Optional specification.* If an air carrier desires to use its personal computers (PC's), rather than mainframe or minicomputers to prepare its data submissions, the following

specifications for filing data on diskette media apply.

(ii) *Reporting medium.* Microcomputer ADP data submission of T–100 information must be on IBM compatible disks. Carriers wishing to use a different ADP procedure must obtain written approval to do so from the BTS Assistant Director—Airline Information. Requests for approval to use alternate methods must disclose and describe the proposed data transmission methodology. Refer to paragraph (k) of this appendix for microcomputer record layouts.

(iii) *Microcomputer file characteristics.* The files will be created in ASCII delimited format, sometimes called Data Interchange Format (DIF). This form of recording data provides for variable length fields (data elements) which, in the case of alphabetic data, are enclosed by quotation marks (‘‘) and separated by a comma (,) or tab. Numeric data elements that are recorded without editing symbols are also separated by a comma (,) or tab. The data are identified by their juxtaposition within a given record. Therefore, each record must contain the exact number of data elements, all of which must be juxtapositionally correct. Personal computer software including most spreadsheets, data base management programs, and BASIC are capable of producing files in this format.

(b)–(c) [Reserved]

(d) *Filing date for reports.* The reports must be received at BTS within 30 days following the end of each reporting period.

(e) *Address for filing.* Data Administration Division, K–14, Room 4125, Office of Airline Information, Bureau of Transportation Statistics, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590–0001.

(f) *ADP format for magnetic tape.*

(1) *Magnetic tape specifications.* IBM compatible 9-track EBCDIC recording. Recording density of 6250 or 1600 bpi. The order of recorded information is:

(i) Volume label.

(ii) Header label.

(iii) Data records.

(iv) Trailer label.

(g) External tape label information.

(1) Carrier name.

(2) Report date.

(3) File identification.

(4) Carrier address for return of tape reel.

(h) *Standards.* It is the policy of the Department to be consistent with the American National Standards Institute and the Federal Standards Activity in all data processing and telecommunications matters. It is our intention that all specifications in this application are in compliance with standards promulgated by these organizations.

(i) *Volume, header, and trailer label formats.*

(1) *Use standard IBM label formats.* The file identifier field of the header labels should be ‘‘T–100.SYSTEM’’.

(2) [Reserved]

(j) *Magnetic tape record layouts for T–100.*

(1) *Nonstop segment record layout.*

Field No.	Positions	Mode	Description
1	1	1T ...	Record type code (S = nonstop segment).
2	2–6	5T ...	Carrier entity code.
3	7–12	6T ...	Report date (YYYYMM).
4	13–15	3T ...	Origin airport code.
5	16–18	3T ...	Destination airport code.
6	19	1T ...	Service class code (F, G, L, N, P or R).
7	20–23	4T ...	Aircraft type code.
8	24–28	5N ...	Revenue departures performed (F, G, L, N, P, R510).
9	29–38	10N	Available capacity payload (lbs) (F, G, L, N, P, R270).
10 ..	39–45	7N ...	Available seats (F, L, N310).
11 ..	46–52	7N ...	Passengers transported (F, L, N130).
12 ..	53–62	10N	Rev freight transported (F, G, L, N, P, R237)(in lbs).
13 ..	63–72	10N	Revenue mail transported (F, G, L, N, P, R239) (in lbs).
14 ..	73–77	5N ...	Revenue aircraft departures scheduled (F, G520).
15 ..	78–87	10N	Rev hrs, ramp-to-ramp (F, G, L, N, P, R630) (in minutes).
16 ..	88–97	10N	Rev hrs, airborne (F, G, L, N, P, R610) (in minutes).

T=Text.
N=Numeric.

(2) *On-flight market record layout.*

Field No.	Positions	Mode	Description
1	1	1T ...	Record type: M = on-flight market record.
2	2–6	5T ...	Carrier entity code.
3	7–12	6T ...	Report date (YYYYMM).
4	13–15	3T ...	Origin airport code.
5	16–18	3T ...	Destination airport code.
6	19	1T ...	Service class code (F, G, L, N, P or R).
7	20–26	7N ...	Total passengers in market (F, L, N110).
8	27–36	10N	Rev freight in market (F, G, L, N, P, R217) (in lbs).
9	37–46	10N	Revenue mail in market (F, G, L, N, P, R219) (in lbs).

T=Text.
N=Numeric.

(k) *Record layouts for microcomputer diskettes.* The record layouts for diskette are generally identical to those shown for magnetic tape, with the exception that delimiters (quotation marks and commas) are used to separate fields. It is necessary that the order of fields be maintained in all records.

(1) *File characteristics.* The files will be created in ASCII delimited format, sometimes called Data Interchange Format (DIF). This form of recording data provides for variable length fields (data elements) which, in the case of alphabetic data, are enclosed by quotation marks (‘‘) and separated by a comma (,) or tab. Numeric data elements that are recorded without editing symbols are also separated by a comma (,) or tab. The

data are identified by their juxtaposition within a given record. Therefore, it is critical that each record contain the exact number of data elements, all of which must be juxtapositionally correct. PC software including most spreadsheets, data base management programs, and BASIC produce minidisks files in this format.

(2) *File naming conventions for diskettes.* For microcomputer reports, each record type should be contained in a separate DOS file on the same physical diskette. The following DOS naming conventions shall be followed:

(i) Record type S = SEGMENT.DAT

(ii) Record type M = MARKET.DAT

[Doc. No. OST 98–4043, 67 FR 49231, July 30, 2002]

§ 298.62 Reporting of financial data.

(a) Each commuter air carrier and each small certificated air carrier shall file BTS Form 298–C, Schedule F–1 ''Report of Financial Data.'' This report shall be filed quarterly as set forth in § 298.60 of this part.

(b) Each carrier shall indicate in the space provided, its full corporate name and the quarter for which the report is filed.

(c) This schedule shall be used to report financial data for the overall or system operations of the carrier. At the option of the carrier, the data may be reported in whole dollars by dropping the cents. Financial data shall be reported in the following categories:

(1) Line 1 ''Total Operating Revenues'' shall include gross revenues accruing from services ordinarily associated with air transportation and air transportation-related services. This category shall include revenue derived from scheduled service operations, revenue derived from nonscheduled service operations, amounts of compensation paid to the carrier under section 41732 of the Statute and other transport-related revenue such as in-flight sales, restaurant and food service (ground), rental of property or equipment, limousine service, cargo pick-up and delivery charges, and fixed-base operations involving the selling or servicing of aircraft, flying instructions, charter flights, etc.

(2) Line 2 ''Total Operating Expenses'' shall include expenses of a character usually and ordinarily incurred in the performance of air transporation and air transportation services. This category shall include expenses incurred: directly in the in-flight operation of aircraft; in the holding of aircraft and aircraft personnel in readiness for assignment to an in-flight status; on the ground in controlling and protecting the in-flight movement of aircraft; landing, handling or servicing aircraft on the ground; selling transportation; servicing and handling traffic; promoting the development of traffic; and administering operations generally. This category shall also include expenses which are specifically identifiable with the repair and upkeep of property and equipment used in the performance of air transportation, all depreciation and amortization expenses applicable to property and equipment used in providing air transportation services, all expenses associated with the transport-related revenues included on line 1 of this schedule, and all other expenses not specifically mentioned which are related to transport operations. Interest expense and other nonoperating expenses attributable to financing or other activities which are extraneous to and not an integral part of air transportation or its incidental services shall not be included in this category.

(3) Line 3 ''Net Income or (Loss)'' shall reflect all operating and nonoperating items of profit and loss recognized during the period except for prior period adjustments.

(4) Line 4 ''Passenger Revenues-Scheduled Service'' shall include revenue generated from the transportation of passengers between pairs of points which are served on a regularly scheduled basis.

(d) Data reported on this schedule shall be withheld from public release for a period of 3 years after the close of the calendar quarter to which the report relates.

[ER–1399, 50 FR 20, Jan. 2, 1985, as amended by 53 FR 48528, Dec. 1, 1988; 60 FR 43528, Aug. 22, 1995; 60 FR 66726, Dec. 26, 1995; 67 FR 49234, July 30, 2002]

§ 298.63 Reporting of aircraft operating expenses and related statistics by small certificated air carriers.

(a) Each small certificated air carrier shall file BTS Form 298–C, Schedule F–

2 ''Report of Aircraft Operating Expenses and Related Statistics.'' This schedule shall be filed quarterly as prescribed in § 298.60. Data reported on this report shall be for the overall or system operations of the air carrier.

(b) Each carrier shall indicate in the space provided its full corporate name and the quarter for which the report is filed.

(c) This schedule shall show the direct and indirect expenses incurred in aircraft operations. Direct expense data applicable to each aircraft type operated by the carrier shall be reported in separate columns of this schedule. Each aircraft type reported shall be identified at the head of each column in the space provided for ''Aircraft Type.'' ''Aircraft Type'' refers to aircraft models such as Beech–18, Piper PA–32, etc. Aircraft Type designations are prescribed in the *Accounting and Reporting Directives,* which is available from the BTS' Office of Airline Information. In the space provided for ''Aircraft Code'' carriers shall insert the three digit code prescribed in the *Accounting and Reporting Directives* for the reported aircraft type. (NOTE: Aircraft of the same type but different cabin configuration may be grouped into a single classification; therefore, carriers are not required to report the fourth digit of an aircraft code indicating cabin configuration.)

(d) Line 1 Direct aircraft operating expenses shall be reported in the following categories:

(1) Line 2 ''Flying Operations (Less Rental)'' shall be subdivided as follows:

(i) Line 3 ''Pilot and Copilot'' expense shall include pilots' and copilots' salaries, and related employee benefits, pensions, payroll taxes and personnel expenses.

(ii) Line 4 ''Aircraft Fuel and Oil'' expense shall include the cost of fuel and oil used in flight operations and nonrefundable aircraft fuel and oil taxes.

(iii) Line 5 ''Other'' expenses shall include general (hull) insurance, and all other expenses incurred in the in-flight operation of aircraft and holding of aircraft and aircraft operational personnel in readiness for assignment to an in-flight status, which are not provided for otherwise on this schedule.

(2) Line 6 ''Total Flying Operations (Less Rentals)'' shall equal the sum of lines 3, 4 and 5.

(3) Line 7 ''Maintenance-Flight Equipment'' shall include the cost of labor, material and related overhead expended by the carrier to maintain flight equipment, general services purchased for flight equipment maintenance from associated or other outside companies, and provisions for flight equipment overhauls.

(4) Line 8 ''Depreciation and Rental-Flight Equipment'' expense shall include depreciation of flight equipment, amortization of capitalized leases for flight equipment, provision for obsolescence and deterioration of spare parts, and rental expense of flight equipment.

(5) Line 9 ''Total Direct Expense'' shall equal the sum of lines 6, 7 and 8.

(e) Line 10 Indirect aircraft operating expenses shall be reported only in total for all aircraft types and shall be segregated according to the following categories:

(1) Line 11 ''Flight Attendant Expense'' shall include flight attendants' salaries, and related employee benefits, pensions, payroll taxes and personnel expenses.

(2) Line 12 ''Traffic Related Expense'' shall include traffic solicitor salaries, traffic commissions, passenger food expense, traffic liability insurance, advertising and other promotion and publicity expenses, and the fringe benefit expenses related to all salaries in this classification.

(3) Line 13 ''Departure Related (Station) Expense'' shall include aircraft and traffic handling salaries, landing fees, clearance, customs and duties, related fringe benefit expenses and maintenance and depreciation on ground property and equipment.

(4) Line 14 ''Capacity Related Expense'' shall include salaries and fringe benefits for general management personnel, recordkeeping and statistical personnel, lawyers and law clerks, and purchasing personnel; legal fees and expenses; stationery; printing; uncollectible accounts; insurance purchased-general; memberships; corporate and fiscal expenses; and all other expenses which cannot be identified or allocated to some other specifically identified indirect cost category.

(f) Line 15 ''Total Indirect Expense'' shall equal the sum of lines 11, 12, 13 and 14.

(g) Line 16 ''Total Operating Expense'' shall equal the sum of lines 9 and 15.

(h) Line 17 ''Total Gallons of Fuel Issued'' shall include the gallons of fuel used in flight operations related to fuel cost reported in total and by aircraft type on Line 4.

[ER–1399, 50 FR 20, Jan. 2, 1985, as amended by Docket No. 47939, 57 FR 40104, Sept. 2, 1992; 60 FR 66726, Dec. 26, 1995; 67 FR 49234, July 30, 2002]

§ 298.65 Requests for extensions of time within which to file reports or for waivers from reporting requirements.

(a) If circumstances prevent the filing of BTS Form 298–C on or before the due date, a written request for an extension may be submitted. Except in cases of emergency, the request must be delivered to the BTS's Office of Airline Information in writing at least three days in advance of the due date. The request must state good and sufficient reason to justify the granting of the extension and the date when the reports can be filed. If the request is denied, the air carrier remains subject to the filing requirements to the same extent as if no request for extension of time had been made.

(b) The Office of Airline Information may waive any reporting requirements contained in § 298.61, § 298.62, § 298.63 and § 298.64 of this part, upon its own initiative or upon written request from any air carrier if the waiver is in the public interest and the request demonstrates that:

(1) Unusual circumstances warrant such a departure;

(2) A specifically defined alternative procedure or technique will result in a substantially equivalent or more accurate portrayal; and

(3) The application of the alternative procedure will maintain or improve uniformity in reporting between air carriers.

[ER–1399, 50 FR 21, Jan. 2, 1985, as amended by Docket No. 47939, 57 FR 40104, Sept. 2, 1992; 60 FR 66726, Dec. 26, 1995]

§ 298.66 Reporting exemption for State collection of data.

(a) The Office of Airline Information may exempt a commuter air carrier from the reporting requirements of § 298.61 of this part if a State government collects the information specified in that section and provides it to the Department by the dates specified. The data provided to the Department in this manner must be at least as reliable as if they were collected by the Department directly.

(b) The Office of Airline Information will provide assistance to any State agency interested in participating in this exemption program.

[ER–1399, 50 FR 21, Jan. 2, 1985, as amended by Docket No. 47939, 57 FR 40104, Sept. 2, 1992; 60 FR 66726, Dec. 26, 1995]

Subpart G—Public Disclosure of Data

§ 298.70 Public disclosure of data.

(a) Detailed domestic on-flight market data and nonstop segment data except military data shall be made publicly available after processing. Domestic data are defined as data from air transportation operations from a place in any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the Virgin Islands, or a U.S. territory or possession to a place in any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the Virgin Islands, or a U.S. territory or possession. Domestic military operations are reported under service codes N or R.

(b) Detailed international on-flight market and nonstop segment data in Schedule T–100 and Schedule T–100(f) reports, except military data, shall be publicly available immediately following the Department's determination that the database is complete, but no earlier than six months after the date of the data. Military operations are reported under service codes N or R. Data for on-flight markets and nonstop segments involving no U.S. points shall not be made publicly available for three years. Industry and carrier summary data may be made public before the end of six months or the end of

three years, as applicable, provided there are three or more carriers in the summary data disclosed. The Department may, at any time, publish international summary statistics without carrier detail.

(c) Schedule F–1 ''Report of Financial Data'' shall be withheld from public release for a period of 3 years after the close of the calendar quarter to which the report relates.

(d) The Department may release nonstop segment and on-flight market detail data by carrier or individual Schedule F–1 ''Report of Financial Data'' before the end of the confidentiality period as follows:

(1) To foreign governments as provided in reciprocal arrangements between the foreign country and the U.S. Government for exchange of on-flight market and/or nonstop segment data submitted by air carriers of that foreign country and U.S. carriers serving that foreign country.

(2) To parties to any proceeding before the Department under Title IV of the Federal Aviation Act of 1958, as amended, as required by an Administrative Law Judge or other decisionmaker of the Department. Parties may designate agents or consultants to receive the data in their behalf, provided the agents or consultants agree to abide by the disclosure restrictions. Any data to which access is granted pursuant to this provision may be introduced into evidence, subject to the normal rules of admissibility.

(3) To agencies or other components of the U.S. Government for their internal use only.

[Doc. No. OST 98–4043, 67 FR 49234, July 30, 2002]

Subpart H—Violations

§ 298.80 Enforcement.

In case of any violation of the provisions of the Statute, or this part, or any other rule, regulation, or order issued under the Statute, the violator may be subject to a proceeding pursuant to section 46101 of the Statute before the Department, or sections 46106 through 46108 of the Statute before a U.S. District Court, as the case may be, to compel compliance therewith; or to civil penalties pursuant to the provisions of section 46301 of the Statute; or, in the case of a willful violation, to criminal penalties pursuant to the provisions of section 46316 of the Statute; or other lawful sanctions including revocation of operating authority.

[ER–929, 40 FR 42855, Sept. 17, 1975, as amended at 60 FR 43528, Aug. 22, 1995]

SUBCHAPTER B—PROCEDURAL REGULATIONS

PART 300—RULES OF CONDUCT IN DOT PROCEEDINGS UNDER THIS CHAPTER

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300.19 Use of confidential information.
300.20 Violations.

AUTHORITY: 49 U.S.C. subtitle I and chapters 401, 411, 413, 415, 417, 419, 421, 449, 461, 463, and 465.

SOURCE: Docket No. 82, 50 FR 2380, Jan. 16, 1985, unless otherwise noted.

§ 300.0 Applicability.

The rules of conduct set forth in this part except as otherwise provided in this or any other DOT regulation shall govern the conduct of the parties and their representatives, and the relationships between the Office of the Secretary of Transportation, the Office of the Assistant Secretary for Aviation and International Affairs, and the Office of the General Counsel, including regular personnel, and officials, special Government employees, consultants, or experts under contract to the Department of Transportation (DOT) and administrative law judges (hereinafter referred to as ''DOT employee(s)'') and all other persons in all DOT matters involving aviation economic and enforcement proceedings.

[Docket No. 82, 50 FR 2380, Jan. 16, 1985, as amended by Amdt. 1–261, 59 FR 10061, Mar. 3, 1994; 60 FR 43528, Aug. 22, 1995]

§ 300.0a Applicability of 49 CFR part 99.

(a) Except as provided in paragraph (b) of this section, each DOT employee involved in matters covered by this chapter shall comply with the rules on ''Employee Responsibilities and Conduct'' in 49 CFR part 99.

(b) The rules in this part shall be construed as being consistent with those in 49 CFR part 99. If a rule in this part is more restrictive than a rule in 49 CFR part 99, the more restrictive rule shall apply.

§ 300.1 Judicial standards of practice.

Certain of DOT's functions involving aviation economic and enforcement proceedings are similar to those of a court, and parties to cases before DOT and those who represent such parties are expected—in fact and in appearance—to conduct themselves with honor and dignity as they would before a court. By the same token, any DOT employee or administrative law judge carrying out DOT's quasi-judicial functions and any DOT employee making recommendations or advising them are expected to conduct themselves with the same fidelity to appropriate standards of propriety that characterize a court and its staff. The standing and effectiveness of DOT in carrying out its quasi-judicial functions are in direct relation to the observance by DOT,

DOT employees, and the parties and attorneys appearing before DOT of the highest standards of judicial and professional ethics. The rules of conduct set forth in this part are to be interpreted in light of those standards.

[Docket No. 82, 50 FR 2380, Jan. 16, 1985, as amended at 60 FR 43528, Aug. 22, 1995]

§ 300.2 Prohibited communications.

(a) *Basic requirement.* Except as provided in paragraphs (c), (d) and (e) there shall be no substantive communication in either direction between any concerned DOT employee and any interested person outside DOT, concerning a public proceeding, until after final disposition of the proceeding, other than as provided by Federal statute or published DOT rule or order.

(b) *Definitions.* For purposes of this part:

(1) A ''substantive communication'' is any written or oral communication relevant to the merits of the proceeding.

(2) The ''DOT decisionmaker'' is defined in 14 CFR 302.2 and 302.18.

(3) A ''concerned DOT employee'' is a DOT employee who is or may reasonably be expected to be directly involved in a decision which is subject to a public proceeding.

(4) A ''public proceeding'' is one of the following:

(i) A hearing proceeding (i.e., proceeding conducted on-the record after notice and opportunity for an oral evidentiary hearing as provided in §§ 302.17– 302.38)

(ii) A rulemaking proceeding involving a hearing as described in paragraph (b)(4)(i) of this section or an exemption proceeding covered by this chapter. (Other rulemaking proceedings are covered by the ex parte communication policies of DOT Order 2100.2.)

(iii) A tariff filing after DOT has ordered an investigation or a complaint has been filed or docketed.

(iv) A proceeding initiated by DOT show-cause order, after the filing in the docket of an identifiable written opposition to the order's tentative findings.

(v) Any other proceeding initiated by a docket filing, other than a petition for generally applicable rulemaking, after the filing in the docket of an identifiable written opposition to the initiating document.

(c) *General exceptions.* Paragraph (a) of this section shall not apply to the following:

(1) Informal communications between legal counsel, including discussions about stipulations and other communications considered proper in Federal court proceedings.

(2) Information given to a DOT employee who is participating in a hearing case on behalf of an office that is a party, to another DOT employee who is reviewing that work, or to his or her supervisors within that office.

(3) Communications made in the course of an investigation to determine whether formal enforcement action should be begun.

(4) Settlement discussions and mediation efforts.

(5) Information given at the request of a DOT employee acting upon a specific direction of DOT, in a case other than a hearing proceeding as described in paragraphs (b)(4) (i) and (ii) (a ''nonhearing case''), where DOT has decided that emergency conditions exist and this rule would otherwise prevent the obtaining of needed information in a timely manner.

(6) Information given at the request of a DOT employee in a tariff matter after a complaint is filed but before an investigation is ordered.

(7) Nonhearing cases that are to be decided within 30 days after the filing of the initiating document.

(8) Nonhearing cases arising under 49 U.S.C. 41731–42.

(9) In nonhearing cases, communications with other Federal agencies not exempted by paragraph (e) of this section, provided the agencies have not participated as parties in the proceeding by making filings on-the-record.

(10) Information given at the request of a DOT career employee in the course of investigating or clarifying information filed, or pursuant to a waiver granted to an applicant or other interested person, in docketed proceedings involving determinations of fitness and/or U.S. citizenship only, for that portion of the proceeding that precedes the issuance of a show-cause order or

an order instituting a formal proceeding. Motions for such waivers and any answers shall be filed in the applicable docket in accordance with §302.11 of the Department's Procedural Regulations (14 CFR 302.11) and served upon all parties to the proceeding.

(d) *Status and expedition requests.* Paragraph (a) of this section shall not apply to oral or written communications asking about the status, or requesting expeditious treatment, of a public proceeding. However, any request for expeditious treatment should be made in accordance with the Rules of Practice, particularly Rule 11, §302.11 of this chapter.

(e) *National defense and foreign policy.* In nonhearing cases, paragraph (a) of this section shall not apply to communications concerning national defense or foreign policy matters, including international aviation matters. In hearing cases, any communications on those subjects that would be barred by paragraph (a) of this section are permitted if the communicator's position with respect thereto cannot otherwise be fairly presented, but such communications shall not be included as part of the record on which decisions must be made.

(f) *Communications not considered.* A communication in violation of this section shall not be considered part of a record, or included as available material, for decision in any proceeding.

[Docket No. 82, 50 FR 2380, Jan. 16, 1985, as amended by Amdt. No. 300–7, 52 FR 18904, May 20, 1987; 60 FR 10312, Feb. 24, 1995; 60 FR 43528, Aug. 22, 1995; 60 FR 43528, Aug. 22, 1995; 65 FR 6456, Feb. 9, 2000]

§300.3 Reporting of communications.

(a) *General.* The following types of substantive communication shall be reported as specified in paragraph (b) of this section:

(1) Any communication in violation of §300.2(a) of this chapter.

(2) Information given upon determination of an emergency under §300.2(c)(5) of this chapter.

(3) Information given at the request of a DOT employee in a tariff matter under §300.2(c)(6) of this chapter.

(4) Communications in nonhearing cases to be decided within 30 days under §300.2(c)(7) of this chapter.

(5) Communications in nonhearing cases arising under 49 U.S.C. 41731–42, made under §300.2(c)(8).

(b) *Public filing.* (1) A written communication shall be placed onto the electronic docket management system (DMS) in the file of the docket number corresponding to the proceeding, which shall be available for inspection and copying during business hours in Office of Docket Operations and Media Management.

(2) An oral communication shall be summarized by the DOT employee receiving it. One copy shall be put into a public file as described in paragraph (b)(1) of this section, and another copy shall be mailed to the communicator.

(3) Electronic copies of written communications and oral summaries shall be posted to the DOT's electronic docket. Such docketed materials may be searched, viewed, and downloaded through the Internet at *http://dms.dot.gov*.

(4) Copies of all filings under this part dealing with discontinuances or reductions of air transportation shall be mailed to the directly affected local communities, State agencies, and airport managers.

(c) *Status and expedition requests.* A DOT decisionmaker who receives a communication asking about the status or requesting expeditious treatment of a public proceeding, other than a communication concerning national defense or foreign policy (including international aviation), shall either:

(1) Refer the communicator to Office of Docket Operations and Media Management.

(2) If the DOT decisionmaker responds by advising on the status, put a memorandum describing the exchange in the public file as described in paragraph (b)(1) of this section.

[Docket No. 82, 50 FR 2380, Jan. 16, 1985, as amended at 60 FR 43528, Aug. 22, 1995; Doc. No. OST–2002–12200, 67 FR 30325, May 6, 2002]

§300.4 Separation of functions in hearing cases.

(a) This section applies after the initiation of a hearing or enforcement case by the Department.

(b) A DOT employee who is participating in a hearing case on behalf of an

office that is a party, another DOT employee who is in fact reviewing the position taken, or who has participated in developing the position taken in that case, or, in cases involving accusatory or disciplinary issues (including all enforcement cases) such employees' supervisors within that office, shall have no substantive communication with any DOT decisionmaker, administrative law judge in the case, or other DOT employee advising them, with respect to that or any factually related hearing case, except in accordance with a published DOT rule or order. In addition, each bureau or office supervisor of a DOT employee who is participating in a hearing case on behalf of that office when it is a party shall have no substantive communication with any administrative law judge in the case, or DOT employee advising the judge, in that or any factually related hearing case, except in accordance with a published DOT rule or order. For each hearing case, bureau or office heads shall maintain a publicly available record of those employees who are participating or are in fact reviewing the position taken, or who have participated in developing the position taken in that case.

(c) In hearing cases involving fares or rates, or applications for a certificate or permit under 49 U.S.C. 41102 and 41302, or applications by a holder for a change in a certificate or permit, a supervisor who would not be permitted to advise the DOT decisionmaker under paragraph (a) may advise the DOT decisionmaker in the following manner: The supervisor's advice must either be made orally in an open DOT meeting or by a memorandum placed in the docket or other public file of such matter. Oral advice must be summarized in writing by the supervisor and placed in the docket or file of the matter. A copy of such written memorandum or summary of oral advice must be served on each party to the proceeding within 3 business days after such advice is given to the concerned DOT decisionmaker. Each of the parties may comment in writing on such advice within 5 business days after service or the summary. In no event, however, may a supervisor advise the DOT decisionmaker if he or she acted as the office's counsel or witness in the matter.

(d) In enforcement cases, the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, under the supervision of the Deputy General Counsel, will conduct all enforcement proceedings and related investigative functions, while the General Counsel will advise the DOT decisionmaker in the course of the decisional process. The Office of the Assistant General Counsel for Aviation Enforcement and Proceedings will report to the Deputy General Counsel. To ensure the independence of these functions, this Office and the Deputy General Counsel, for the purpose of this section, shall be considered an ''office'' as that term is used in paragraph (a), separate from the General Counsel and the rest of the Office of the General Counsel.

[Docket No. 82, 50 FR 2380, Jan. 16, 1985, as amended at 60 FR 43528, Aug. 22, 1995]

§ 300.5 Prohibited conduct.

No person shall: (a) Attempt to influence the judgment of a concerned DOT employee by any unlawful means such as deception or the payment of money or other consideration; or

(b) Disrupt or interfere with the fair and orderly disposition of a DOT proceeding.

§ 300.6 Practitioners' standards of conduct.

Every person representing a client in matters before DOT in all contacts with DOT employees, should:

(a) Strictly observe the standards of professional conduct;

(b) Refrain from statements or other actions designed to mislead DOT or to cause unwarranted delay;

(c) Avoid offensive or intemperate behavior;

(d) Advise all clients to avoid improprieties and to obey the law as the attorney believes it to be; and

(e) Terminate the professional relationship with any client who persists in improprieties in proceedings before DOT.

§ 300.7 Conciseness.

Every oral or written statement made in a DOT proceding shall be as

concise as possible. Verbose or redundant presentations may be rejected.

§ 300.8 Gifts and hospitality and other conduct affecting DOT employees.

(a) No person, otherwise than as provided by law for the proper discharge of official duty, shall directly or indirectly give, offer, or promise anything of value to any DOT employee for or because of any official act performed or to be performed by such DOT employee (18 U.S.C. 201).

(b) Subject to 49 CFR part 99, it is improper for persons interested in the business of DOT to provide hospitality, gifts, entertainment, or favors to any DOT employee.

(c) Persons interested in the business of DOT should familiarize themselves with (49 CFR part 99), in order that they shall not encourage or cause any violation of the provisions of that part by any DOT employee.

§ 300.9 Permanent disqualification of employees from matters in which they personally participated before joining DOT or the Civil Aeronautics Board.

Any DOT employee shall permanently disqualify himself or herself from participation in every matter before the Department in which he or she previously personally and substantially participated for an interested person or entity, including other agencies of the United States Government, before joining the DOT or the Civil Aeronautics Board. Such disqualification shall be applicable also if a person is closely related to is a DOT employee as partner, associate, employer, or the like, personally and substantially participated in a matter before DOT prior to the employee's employment by the Department or the Civil Aeronautics Board and the circumstances were such that the DOT employee's subsequent participation in the matter as a DOT employee could fairly be said to create the appearance that his or her participation would be affected by his or her prior relationship. Notwithstanding the foregoing, the disqualification of any DOT employee, including any member of a DOT employee's personal staff or a special Government employee, whose prior personal and substantial participation in a DOT or Civil Aeronautics Board proceeding or whose relationship to one who so participated occurred on behalf of another agency of the United States Government shall only be applicable with respect to issues on which the prior governmental employer took a position in the proceeding unless participation could fairly be said to create the appearance that his or her participation would be affected by his or her prior relationship.

§ 300.10 Temporary disqualification of employees from matters in which they had official responsibility before joining DOT.

Any DOT employee shall temporarily disqualify himself or herself from participation in any matter before DOT if he or she represented, was associated with or was employed by an interested person or entity including other agencies of the United States Government before joining DOT, and, although he or she did not personally and substantially participate in the matter, the matter was within his or her ''official responsibility,'' as that term is defined in § 300.14 of this chapter except that the action referred to therein shall be private action as well as ''Government'' action. Such disqualification shall be applicable also if a person closely related to the DOT employee as partner, associate, employer, or the like, who, while not personally and substantially participating in the matter, had it within his or her ''official responsibility'' as that term is defined in § 300.14 of this chapter, and modified above, and the circumstances are such that the DOT employee's subsequent participation in the matter as a DOT employee could fairly be said to create the appearance that his or her participation would be affected by his or her prior relationship. Notwithstanding the foregoing, the disqualification of any DOT employee whose prior ''official responsibility'' or relationship to one with such responsibility occurred on behalf of another agency of the United States Government shall only be applicable with respect to issues on which the prior governmental employer took a position in the proceeding. The temporary disqualification shall run for a period of one year

from the date of the termination of the representation, association, or employment with the interested person or entity.

[Docket No. 82, 50 FR 2380, Jan. 16, 1985, as amended at 60 FR 43528, Aug. 22, 1995]

§ 300.10a Permanent and temporary disqualification of DOT employees.

The terms of §§ 300.9 and 300.10 shall not be construed to apply to DOT employees who previously personally and substantially participated in matters before the Board, which have become the subject of DOT proceedings.

[Docket No. 82, 50 FR 2380, Jan. 16, 1985, as amended at 60 FR 43528, Aug. 22, 1995]

§ 300.11 Disqualification of Government officers and employees.

No officer or employee of the Federal Government, other than a ''special Government employee'' as defined in 18 U.S.C. 202, shall represent anyone, otherwise than in the proper discharge of his or her official duties, in any DOT proceeding or matter in which the United States is a party or has a direct and substantial interest.

(18 U.S.C. 205)

§ 300.12 Practice of special Government employees permitted.

A special Government employee, who qualifies as such under the provisions of 18 U.S.C. 202(a), may participate in DOT proceedings only to the extent and in the manner specified in 18 U.S.C. 205.

§ 300.13 Permanent disqualification of former Civil Aeronautics Board members and employees and DOT employees from matters in which they personally participated.

No former Board member or employee or DOT employee shall act as agent or attorney before DOT for anyone other than the United States in connection with any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, or other particular matter, involving a specific party or parties, in which the United States is a party or has a direct and substantial interest and in which he or she participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise as a Board member or employee or DOT employee.

(18 U.S.C. 207(a))

§ 300.14 Temporary disqualification of former DOT employees from matters formerly under their official responsibility.

Within one year after termination of employment with DOT, no former DOT employee shall appear personally before DOT on behalf of any person other than the United States in any DOT proceeding or matter in which the United States is a party or has a direct and substantial interest and which was under his or her official responsibility at any time within one year preceding termination of such responsibility. The term ''official responsibility'' means the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action.

(18 U.S.C. 202(b), 207(b))

[Docket No. 82, 50 FR 2380, Jan. 16, 1985, as amended at 60 FR 43528, Aug. 22, 1995]

§ 300.15 Opinions or rulings by the General Counsel.

(a) The General Counsel is authorized to render opinions or rulings to the public on the application of the provisions of this part. When written request is made for such opinions and rulings, they shall be transmitted to DOT and shall be available to the public in the Documentary Services Division after any appeal to or review by the Secretary has been completed or after the time for review has expired. Identifying details shall normally be stricken from copies available to the public unless the public interest requires disclosure of such details.

(b) If any person is disqualified from a particular proceeding under the provisions of §§ 300.9, 300.10, 300.13, 300.14, and 300.17 of this chapter by a ruling of the General Counsel, or by such person's own action, such disqualification shall be memorialized in a writing filed

in the appropriate file of the matter by the General Counsel or such person.

§ 300.16 Waivers.

(a) A former Board member, Board employee or DOT employee with outstanding scientific or technological qualifications who is disqualified from acting in a representative capacity under the provisions of §300.13 or §300.14 of this chapter may nevertheless participate in a proceeding in a scientific or technological field pursuant to the terms of a certificate issued in compliance with the proviso following 18 U.S.C. 207 (a) and (b).

(b) An employee who believes his or her prior employment relationships will not affect the integrity of his or her services may request that the prohibition of §300.9 or §300.10 of this chapter be waived by the appropriate Ethics Counselor under 49 CFR 99.735–71.

§ 300.17 Disqualification of partners of DOT employees.

No partner of a DOT employee shall act as agent or attorney for anyone other than the United States in any DOT proceeding or matter in which such employee participates or has participated personally and substantially through decision, approval, disapproval, recommendation, rendering advice, investigation, or otherwise, or which is the subject of his or her official responsibility.

§ 300.18 Motions to disqualify DOT employee in review of hearing matters.

In cases to be determined on an evidentiary record, a party desiring that a concerned DOT employee disqualify himself or herself from participating in a DOT decision shall file a motion supported by an affidavit setting forth the grounds for such disqualification in the form and within the periods prescribed in §302.11 of this chapter. Where review of the administrative law judge's decision can be obtained only upon the filing of a petition for discretionary review, such motions must be filed on or before the date answers are due pursuant to §302.32. In cases where exceptions are filed to recommended, initial, or tentative decisions or where the DOT decisionmaker orders review of an initial or recommended decision on his or her own initiative, such motions must be filed on or before the date briefs are due pursuant to §302.35 or §302.218, as applicable. Failure to file a timely motion will be deemed a waiver of disqualification. Applications for leave to file an untimely motion seeking disqualification of a concerned DOT employee must be accompanied by an affidavit setting forth in detail why the facts relied upon as grounds for disqualification were not known and could not have been discovered with reasonable diligence within the prescribed time.

[Doc. No. OST–97–2090, 65 FR 6456, Feb. 9, 2000]

§ 300.19 Use of confidential information.

No former CAB member or employee or DOT employee, or any person associated with him or her, shall ever use or undertake to use in any DOT proceeding or matter any confidential facts or information which came into the possession of such Member or employee or to his or her attention by reason of his or her employment with the CAB or DOT without first applying for and obtaining the consent of the appropriate ethics counselor for the use of such facts or information.

§ 300.20 Violations.

(a) DOT may disqualify, and deny temporarily or permanently the privilege of appearing or practicing before it in any way to, any person who is found by DOT after written notice of charges and hearing to have engaged in unethical or improper professional conduct. Any violation of this part shall be deemed to be such conduct.

(b) When appropriate in the public interest, DOT may deny any application or other request of a party in a proceeding subject to this part where DOT finds after hearing that such party has, in connection with any DOT proceeding, violated any of the provisions of this part or any of the provisions of Chapter 11 of Title 18 of the United States Code. DOT may also condition its further consideration of such party's application or other request or the effectiveness of any order granting such application or other request upon

such party's first taking such action as DOT may deem necessary or appropriate to remedy the violation of this part or Chapter 11 of Title 18 of the United States Code to prevent or deter any repetition of such violation. DOT may in addition issue a cease and desist order against any repetition of such or similar misconduct.

(c) The actions authorized by this section may take place within the framework of the matter during or concerning which the violations occur or in a separate matter, as the DOT decisionmaker or the presiding administrative law judge may direct. A complaint alleging that a violation has occurred in the course of a matter shall be filed in the docket or appropriate public file of such matter unless such complaint is made after DOT's decision of the matter has become final, in which event such complaint may be filed pursuant to part 302, subpart D of the rules of practice. A violation in the course of a matter which may be attributable to or affect the fitness of a party will ordinarily either be disposed of within the framework of such matter or be considered within the context of any subsequent matter involving the interests of such party. Other violations will ordinarily be disposed of in a separate proceeding.

(d) In the case of any violation of the provisions of this part, the violator may be subject to civil penalties under the provisions of 49 U.S.C. 46301. The violator may also be subject to a proceeding brought under 49 U.S.C. 46101 before the Department, or sections 46106 through 46108 of the Statute before a U.S. District Court, as the case may be, to compel compliance with civil penalties which have been imposed.

[Docket No. 82, 50 FR 2380, Jan. 16, 1985, as amended at 60 FR 43528, Aug. 22, 1995; 65 FR 6456, Feb. 9, 2000]

PART 302—RULES OF PRACTICE IN PROCEEDINGS

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APPENDIX A TO PART 302—INDEX TO RULES OF PRACTICE

AUTHORITY: 39 U.S.C. 5402; 42 U.S.C., 4321, 49 U.S.C. Subtitle I and Chapters 401, 411, 413, 415, 417, 419, 461, 463, 471.

SOURCE: Docket No. OST–97–2090, 65 FR 6457, Feb. 9, 2000, unless otherwise noted.

§ 302.1 Applicability and description of part.

(a) *Applicability*. This part governs the conduct of all aviation economic proceedings before the Department whether instituted by order of the Department or by the filing with the Department of an application, complaint, petition, motion, or other authorized or required document. This part also contains delegations to administrative law judges and to the DOT decisionmaker of the Department's function to render the agency decision in certain cases and the procedures for review of those decisions. This part applies unless otherwise specified by order of the Department.

(b) *Description*. Subpart A of this part sets forth general rules applicable to all types of proceedings. Each of the other subparts of this part sets forth special rules applicable to the type of proceedings described in the title of the subpart. Therefore, for information as to applicable rules, reference should be made to subpart A and to the rules in the subpart relating to the particular type of proceeding, if any. In addition, reference should be made to Subtitle VII of Title 49 of the United States Code (Transportation) (''the Statute''), and to the substantive rules, regulations and orders of the Department relating to the proceeding. Wherever there is any conflict between one of the general rules in subpart A and a special rule in another subpart applicable to a particular type of proceeding, the special rule will govern.

(c) *Reference to part and method of citing rules.* This part may be referred to as the ''Rules of Practice''. Each section, and any paragraph or subparagraph thereof, may be referred to as a ''Rule''. The number of each rule need include only the numbers and letters at the right of the decimal point. For example, ''302.7 *Service of documents*'', may be referred to as ''Rule 7''.

§ 302.2 Definitions.

Administrative law judge as used in this part means an administrative law judge appointed pursuant to 5 U.S.C. 3105.

DOT Decisionmaker as used in this part is the official authorized to issue final decisions of the Department as set forth in § 302.18. This includes the Assistant Secretary for Aviation and International Affairs, the senior career official in the Office of the Assistant Secretary for Aviation and International Affairs, the Deputy Secretary, and the Secretary.

Hearing case or *oral hearing case* means any proceeding that the Department has determined will be conducted on the record using oral evidentiary procedures subject to 5 U.S.C. 556 and 557.

Non-hearing case means any proceeding not involving oral evidentiary procedures.

Party as used in this part includes the person initiating a proceeding, such as an applicant, complainant, or petitioner; any person filing an answer to such filing; and any other persons as set forth in § 302.10.

Statute when used in this chapter means Subtitle VII of Title 49 of the United States Code (Transportation).

Subpart A—Rules of General Applicability

§ 302.3 Filing of documents.

(a) *Filing address, date of filing, hours.* (1) Documents required by any section

of this part to be filed with the Department must be filed with Department of Transportation Dockets at the Department's offices in Washington, DC. Documents may be filed either on paper or by electronic means using the process set at the DOT Dockets Management System (DMS) internet website.

(2) Such documents will be deemed to be filed on the date on which they are actually received by the Department. Documents must be filed between the hours of 9:00 a.m. and 5:00 p.m., eastern standard or daylight savings time, whichever is in effect in the District of Columbia at the time, Monday to Friday, inclusive, except on legal holidays. Electronic filings may be made at any time under the process set by the Department. Electronic filings that are received after the specified Dockets Facility hours shall be deemed to be constructively received on the next Dockets Facility business day.

(b) *Formal specifications of documents.* (1) Documents filed under this part must be on white paper not larger than 8½ by 11 inches, including any tables, charts and other documents that may be included. Ink must be black to provide substantial contrast for scanning and photographic reproduction. Text must be double-spaced (except for footnotes and long quotations which may be single-spaced) using type not smaller than 12 point. The left margin must be at least 1½ inches; all other margins must be at least 1 inch. The title page and first page must bear a clear date and all subsequent pages must bear a page number and abbreviated heading. In order to facilitate automated processing in document sheet feeders, documents of more than one page should be held together with removable metal clips or similar retainers. Original documents may not be bound in any form or include tabs, except in cases assigned by order to an Administrative Law Judge for hearing, in which case the filing requirements will be set by order. Section 302.35 contains additional requirements as to the contents and style of briefs.

(2) Papers may be reproduced by any duplicating process, provided all copies are clear and legible. Appropriate notes or other indications must be used, so that the existence of any matters shown in color on the original will be accurately indicated on all copies.

(c) *Number of copies.* Unless otherwise specified, an executed original, along with the number of true copies set forth below for each type of proceeding, must be filed with Department of Transportation Dockets. The copies filed need not be signed, but the name of the person signing the original document, as distinguished from the firm or organization he or she represents, must also be typed or printed on all copies below the space provided for signature. Electronic filers need only submit one copy of the document, which must conform to the submission requirements given in the electronic filing instructions at the specified DOT DMS internet website and in this part, as applicable.

	Number of copies
Airport Fees	9
Agreements:	
International Air Transport Association (IATA)	6
Other (under 49 U.S.C. 41309)	9
Complaints:	
Enforcement	5
Mail Contracts	4
Rates, Fares and Charges in Foreign Air Transportation	6
Unfair Practices in Foreign Air Transportation	7
Employee Protection Program (14 CFR 314)	7
Exemptions:	
Computer Reservations Systems (14 CFR 255)	8
Slot Exemptions (under 49 U.S.C. 41714)	7
Tariffs (under 49 U.S.C. Chapter 415 or 14 CFR 221)	5
Other (under 49 U.S.C. 40109)	7
Foreign Air Carrier Permits/Exemptions	7
International Authority for U.S. Air Carriers (certificates, exemptions, allocation of limited frequencies, designations, or charters)	7
Mail Rate Proceedings	4
Name Change/Trade Name Registrations	4
Suspension of Service (14 CFR 323)	4
Tariff Justifications to exceed Standard International Fare Level	6
U.S. Air Carrier Certificates (involving Initial or Continuing Fitness)	6
Other matters	3

(d) *Prohibition and dismissal of certain documents.* (1) No document that is subject to the general requirements of this subpart concerning form, filing, subscription, service or similar matters will be accepted for filing by the Department, and will not be physically incorporated in the docket of the proceeding, unless:

(i) Such document and its filing by the person submitting it have been expressly authorized or required in the Statute, any other law, this part, other Department regulations, or any order, notice or other document issued by the DOT decisionmaker, the Chief Administrative Law Judge or an administrative law judge assigned to the proceeding, and

(ii) Such document complies with each of the requirements of this paragraph and 302.7, and for those electronically filed, the requirements specified at the DOT DMS internet website, and is submitted as a formal application, complaint, petition, motion, answer, pleading, or similar paper rather than as a letter, telegram, or other informal written communication; *Provided, however,* That for good cause shown, pleadings of any public body or civic organization or comments concerning tariff agreements that have not been docketed, may be submitted in the form of a letter.

(2) If any document initiating, or filed in, a proceeding is not in substantial conformity with the applicable rules or regulations of the Department as to the contents thereof, or is otherwise insufficient, the Department, on its own initiative, or on motion of any party, may reject, strike or dismiss such document, or require its amendment.

(e) *Official docket copy.* With respect to all documents filed under this part, the electronic record produced by the Department shall thereafter be the official docket copy of the document and any subsequent copies generated by the Department's electronic records system will be usable for admission as record copies in any proceeding before the Department.

(f) *Retention of documents by the Department.* All documents filed with or presented to the Department Dockets will be retained in the permanent docket of the Department of Transportation.

§ 302.4 General requirements as to documents.

(a) *Contents.* (1) In case there is no rule, regulation, or order of the Department that prescribes the contents of a formal application, petition, complaint, motion or other authorized or required document, such document shall contain a proper identification of the parties concerned, a concise but complete statement of the facts relied upon and the relief sought, and, where required, such document shall be accompanied by an Energy Statement, in conformity with the provisions of part 313 of this chapter.

(2)(i) Each document must include with or provide on its first page:

(A) The docket title and subject;

(B) The relevant operating administration before which the application or request is filed;

(C) The identity of the filer and its filing agent, if applicable;

(D) The name and mailing address of the designated agent for service of any documents filed in the proceeding, along with the telephone and facsimile numbers and, if available, electronic mail address of that person; and

(E) The title of the specific action being requested.

(ii) Department of Transportation Dockets has an Expedited Processing Sheet that filers can use to assist in preparing this index for submission of paper documents, and an electronic registration for electronic filing at the DOT DMS internet website.

(3) All documents filed under this part consisting of twenty (20) or more pages must contain a subject index of the matter in such document, with page references.

(b) *Verification:* The following certification shall be included with every pleading filed under this part: ''Pursuant to Title 18 United States Code Section 1001, I [*the individual signing the pleading, who shall be a principal owner, senior officer, or internal counsel of the pleader*], in my individual capacity and as the authorized representative of the pleader, have not in any manner knowingly and willfully falsified, concealed or failed to disclose any material fact or made any false, fictitious, or fraudulent statement or knowingly used any documents which contain such statements in connection with the preparation, filing or prosecution of the pleading. I understand that an individual who is found to have violated the provisions of 18 U.S.C. section 1001 shall be fined or imprisoned not more than five

years, or both.'' In addition, electronic subscription requirements shall be those specified at the DOT DMS internet website.

§ 302.5 Amendment of documents.

(a) An application may be amended prior to the filing of answers thereto, or, if no answer is filed, prior to the issuance of an order establishing further procedures, disposing of the application, or setting the case for hearing. Thereafter, applications may be amended only if leave is granted pursuant to the procedures set forth in § 302.11.

(b) Except as otherwise provided, if properly amended, a document and any statutory deadline shall be made effective as of the date of original filing but the time prescribed for the filing of an answer or any further responsive document directed towards the amended document shall be computed from the date of the filing of the amendment.

§ 302.6 Responsive documents.

(a) *Answers.* Answers to applications, complaints, petitions, motions or other documents or orders instituting proceedings may be filed by any person. In hearing cases, answers may be filed by any party to such proceedings or any person who has a petition for intervention pending. Except as otherwise provided, answers are not required.

(b) *Further responsive documents.* Except as otherwise provided, a reply to an answer, reply to a reply, or any further responsive document is not authorized.

(c) *Motions for leave to file otherwise unauthorized documents.* (1) The Department will accept otherwise unauthorized documents for filing only if leave has been obtained from the DOT decisionmaker or, if applicable, the administrative law judge, on written motion and for good cause shown.

(2) Such motions shall contain a concise statement of the matters relied upon as good cause and shall be attached to the pleading or other document for which leave to file is sought, or the written motion may be incorporated into the otherwise unauthorized document for which admission is sought. In such event, the document filed shall be titled to describe both the motion and the underlying documents.

(3) Where unauthorized responsive documents are not permitted, all new matter contained in an answer filed pursuant to paragraph (a) of this section shall be deemed controverted.

(d) *Time for filing.* Except as otherwise provided, an answer, motion, or other further responsive document shall be filed within seven (7) days after service of any document, order, or ruling to which the proposed filing is responsive and must be served on all parties to the proceeding.

§ 302.7 Service of documents.

(a) *Who makes service*—(1) *The Department.* Formal complaints, notices, orders, and similar documents issued by the Department will be served by the Department upon all parties to the proceeding.

(2) *The parties.* Answers, petitions, motions, briefs, exceptions, notices, protests, or memoranda, or any other documents filed by any party or other person with the Department shall be served by such party or other person upon all parties to the proceeding in which it is filed; including, where applicable, all persons who have petitioned for intervention in, or consolidation of applications with, such proceeding. Proof of service shall accompany all documents when they are filed. The Department may require additional service of any document(s).

(b) *How service may be made.* Service may be made by first class mail, express mail, priority mail, registered or certified mail, facsimile transmission, personal delivery, or by electronic mail. The Department may prescribe other means of service by order or notice. The means of service selected must be done in such manner so as to have the same attributes as section 46103 of the Statute, which provides for service of notices and processes in a proceeding by personal service or registered or certified mail.

(c) *Who may be served.* Service upon a party or person may be made upon an individual, or upon a member of a partnership or firm to be served, or upon the president or other officer of the corporation, company, firm, or association to be served, or upon the assignee

or legal successor of any of the foregoing, or upon any attorney of record for the party, or upon the agent designated by an air carrier or foreign air carrier under section 46103 of the Statute, but it shall be served upon a person designated by a party to receive service of documents in a particular proceeding in accordance with §302.4(a)(2)(iv) once a proceeding has been commenced.

(d) *Where service may be made.* Service shall be made at the principal place of business of the party to be served, or at his or her usual residence if he or she is an individual, or at the office of the party's attorney of record, or at the office or usual residence of the agent designated by an air carrier or foreign air carrier under section 46103 of the Statute, or at the post office or electronic address or facsimile number stated for a person designated to receive service pursuant to §302.4(a)(2)(iv).

(e) *Proof of service.* Proof of service of any document shall consist of one of the following:

(1) A certificate of mailing executed by the person mailing the document.

(2) A certificate of successful transmission executed by the person transmitting the document by facsimile or electronic mail, listing the facsimile numbers or electronic mail address to which the document was sent, and stating that no indication was received that any transmission had failed. In the event of an electronic transmission failure, any other authorized means of service may be substituted and the appropriate proof of service provided.

(f) *Date of service.* The date of service by post office or electronic mail is the date of mailing. Whenever proof of service by personal delivery or facsimile transmission is made, the date of such delivery or facsimile transmission shall be the date of service.

(g) *Freely Associated State Proceedings.* In any proceeding directly involving air transportation to the Federated States of Micronesia, the Marshall Islands, or Palau, the Department and any party or participant in the proceeding shall serve all documents on the President and the designated authorities of the government(s) involved. This requirement shall apply to all proceedings where service is otherwise required, and shall be in addition to any other service required by this chapter.

§302.8 Computation of time.

In computing any period of time prescribed or allowed by this part, by notice, order or regulation or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or legal holiday for the Department, in which event the period runs until the end of the next day that is neither a Saturday, Sunday, nor holiday. When the period of time prescribed is seven (7) days or fewer, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation, unless otherwise specified by the DOT decisionmaker or the administrative law judge assigned to the proceeding, as the case may be.

§302.9 Continuances and extensions of time.

(a) Whenever a party has the right or obligation to take action within a period prescribed by this part, by a notice given thereunder, or by an order or regulation, the DOT decisionmaker or the administrative law judge assigned to the proceeding, as appropriate, may:

(1) Before the expiration of the prescribed period, with or without notice, extend such period, or

(2) Upon motion, permit the act to be done after the expiration of the specified period, where good cause for the failure to act on time is clearly shown.

(b) Except where an administrative law judge has been assigned to a proceeding, requests for continuance or extensions of time, as described in paragraph (a) of this section, shall be directed to the DOT decisionmaker. Requests for continuances and extensions of time may be directed to the Chief Administrative Law Judge in the absence of the administrative law judge assigned to the proceeding.

§302.10 Parties.

(a) In addition to the persons set forth in §302.2, in hearing cases, parties

shall include Department staff designated to participate in the proceeding and any persons authorized to intervene or granted permission to participate in accordance with §§ 302.19 and 302.20. In any proceeding directly involving air transportation to the Federated States of Micronesia, the Marshall Islands or Palau, these governments or their designated authorities shall be a party.

(b) Upon motion and for good cause shown, the Department may order a substitution of parties, except that in case of the death of a party, substitution may be ordered without the filing of a motion.

(c) An association composed entirely or in part of air carriers may participate in any proceedings of the Department to which the Department's procedural regulations apply if the association represents members that are identified in any documents filed with the Department, and that have specifically authorized the positions taken by the association in that proceeding. The specific authorizations may be informal and evidence of them shall be provided only upon request of the Department. Upon motion of any interested person or upon its own initiative, the Department may issue an order requiring an association to withdraw from a case on the grounds of significant divergence of interest or position within the association.

§ 302.11 Motions.

(a) *Generally.* An application to the DOT decisionmaker or an administrative law judge for an order or ruling not otherwise specifically provided for in this part shall be by motion. If an administrative law judge is assigned to a proceeding and before the issuance of a recommended or initial decision or the certification of the record to the DOT decisionmaker, all motions shall be addressed to the administrative law judge. At all other times, motions shall be addressed to the DOT decisionmaker. All motions shall be made at an appropriate time depending upon the nature thereof and the relief requested therein. This paragraph should not be construed as authorizing motions in the nature of petitions for reconsideration.

(b) *Form and contents.* Unless made during a hearing, motions shall be made in writing in conformity with §§ 302.3 and 302.4, shall state their grounds and the relief or order sought, and shall be accompanied by any affidavits or other evidence desired to be relied upon. Motions made during hearings, answers to them, and rulings on them, may be made orally on the record unless the administrative law judge directs otherwise. Written motions shall be filed as separate documents, and shall not be incorporated in any other documents, except where incorporation of a motion in another document is specifically authorized by the Department, or where a document is filed that requests alternative forms of relief and one of these alternative requests is properly to be made by motion. In these instances the document filed shall be appropriately titled and identified to indicate that it incorporates a motion; otherwise, the motion will be disregarded.

(c) *Answers to motions.* Within seven (7) days after a motion is served, or such other period as the DOT decisionmaker or the administrative law judge may fix, any party to the proceeding may file an answer in support of or in opposition to the motion, accompanied by such affidavits or other evidence as it desires to rely upon. Except as otherwise provided, no reply to an answer, reply to a reply, or any further responsive document shall be filed.

(d) *Oral arguments; briefs.* No oral argument will be heard on motions unless the DOT decisionmaker or the administrative law judge otherwise directs. Written memoranda or briefs may be filed with motions or answers to motions, stating the points and authorities relied upon in support of the position taken.

(e) *Requests for expedition.* Any interested person may by motion request expedition of any proceeding or file an answer in support of or in opposition to such motions.

(f) *Effect of pendency of motions.* The filing or pendency of a motion shall not automatically alter or extend the time to take action fixed by this part or by any order of the Department or of an administrative law judge (or any extension granted thereunder).

(g) *Disposition of motions.* The DOT decisionmaker shall pass upon all motions properly submitted to him or her for decision. The administrative law judge shall pass upon all motions properly addressed to him or her, except that, if the administrative law judge finds that a prompt decision by the DOT decisionmaker on a motion is essential to the proper conduct of the proceeding, the administrative law judge may refer such motion to the DOT decisionmaker for decision.

(h) *Appeals to the DOT decisionmaker from rulings of administrative law judges.* Rulings of administrative law judges on motions may not be appealed to the DOT decisionmaker prior to his or her consideration of the entire proceeding except in extraordinary circumstances and with the consent of the administrative law judge. An appeal shall be disallowed unless the administrative law judge finds, either on the record or in writing, that the allowance of such an appeal is necessary to prevent substantial detriment to the public interest or undue prejudice to any party. If an appeal is allowed, any party may file a brief with the DOT decisionmaker within such period as the administrative law judge directs. No oral argument will be heard unless the DOT decisionmaker directs otherwise. The rulings of the administrative law judge on a motion may be reviewed by the DOT decisionmaker in connection with his or her final action in the proceeding or at any other appropriate time irrespective of the filing of an appeal or any action taken on it.

§ 302.12 Objections to public disclosure of information.

(a) *Generally.* Part 7 of the Office of the Secretary regulations, Public Availability of Information, governs the availability of records and documents of the Department to the public. (49 CFR 7.1 *et seq.*)

(b) *Information contained in written documents.* Any person who objects to the public disclosure of any information filed in any proceeding, or pursuant to the provisions of the Statute, or any Department rule, regulation, or order, shall segregate, or request the segregation of, such information into a separate submission and shall file it separately in a sealed envelope, bearing the caption of the enclosed submission, and the notation ''Confidential Treatment Requested Under § 302.12.'' At the time of filing such submission (or, when the objection is made by a person who is not the filer, within five (5) days after the filing of such submission), the objecting party shall file a motion to withhold the information from public disclosure, in accordance with the procedure outlined in paragraph (d) or (f) of this section, as appropriate. Notwithstanding any other provision of this section, copies of the filed submission and of the motion need not be served upon any other party unless so ordered by the Department.

(c) *Information contained in oral testimony.* Any person who objects to the public disclosure of any information sought to be elicited from a witness or deponent on oral examination shall, before such information is disclosed, make his or her objection known. Upon such objection duly made, the witness or deponent shall be compelled to disclose such information only in the presence of the administrative law judge or the person before whom the deposition is being taken, as the case may be, the official stenographer and such attorneys for and representative of each party as the administrative law judge or the person before whom the deposition is being taken shall designate, and after all present have been sworn to secrecy. The transcript of testimony containing such information shall be segregated and filed in a sealed envelope, bearing the title and docket number of the proceeding, and the notation ''Confidential Treatment Requested Under § 302.12 Testimony Given by (name of witness or deponent).'' Within five (5) days after such testimony is given, the objecting person shall file a motion in accordance with the procedure outlined in paragraph (d) of this section, to withhold the information from public disclosure. Notwithstanding any other provision of this section, copies of the segregated portion of the transcript and of the motion need not be served upon any other party unless so ordered by the Department.

(d) *Form of motion.* Motions to withhold from public disclosure information covered by paragraphs (b) and (c) of this section shall be filed with the Department in accordance with the following procedure:

(1) The motion shall include:

(i) An index listing the information or document sought to be withheld by an identifying number, and including its title, description and number of pages, and, if relevant, the specific location within a document;

(ii) A statement explaining how and why the information falls within one or more of the exemptions from the Freedom of Information Act (5 U.S.C. 552(b)(1)–(9)); and

(iii) A statement explaining how and why public disclosure of the information would adversely affect the interests of the objecting persons and is not required in the interest of the public.

(2) Such motion shall be filed with the person conducting the proceeding, or with the person with whom said application, report, or submission is required to be filed. Such motion will be denied when the complete justification required by this paragraph is not provided.

(3) During the pendency of such motion, the ruling official may, by notice or order, allow limited disclosure to parties' representatives, for purposes of participating in the proceeding, upon submission by them of affidavits swearing to protect the confidentiality of the documents at issue.

(e) *Conditions of disclosure.* The order, notice or other action of the Department containing its ruling upon each such motion will specify the extent to which, and the conditions upon which, the information may be disclosed to the parties and to the public, which ruling shall become effective upon the date stated therein, unless, within five (5) days after the date of the entry of the Department's order with respect thereto, a petition is filed by the objecting person requesting reconsideration by the Department, or a written statement is filed indicating that the objecting person in good faith intends to seek judicial review of the Department's order.

(f) *Objection by Government departments or representative thereof.* In the case of objection to the public disclosure of any information filed by or elicited from any United States Government department or agency, or representative thereof, under paragraph (b) or (c) of this section, the department or agency making such objection shall be exempted from the provisions of paragraphs (b), (c), and (d) of this section insofar as said paragraphs require the filing of a written objection to such disclosure. However, any department, agency, or representative thereof may, if it so desires, file a memorandum setting forth the reasons why it is claimed that a public disclosure of the information should not be made. If such a memorandum is submitted, it shall be filed and handled as is provided by this section in the case of a motion to withhold information from public disclosure.

§ 302.13 Consolidation of proceedings.

(a) *Initiation of consolidations.* The Department, upon its own initiative or upon motion, may consolidate for hearing or for other purposes or may contemporaneously consider two or more proceedings that involve substantially the same parties, or issues that are the same or closely related, if it finds that such consolidation or contemporaneous consideration will be conducive to the proper dispatch of its business and to the ends of justice and will not unduly delay the proceedings. Although the Department may, in any particular case, consolidate or contemporaneously consider two or more proceedings on its own motion, the burden of seeking consolidation or contemporaneous consideration of a particular application shall rest upon the applicant and the Department will not undertake to search its docket for all applications that might be consolidated or contemporaneously considered.

(b) *Time for filing.* Unless the Department has provided otherwise in a particular proceeding, a motion to consolidate or contemporaneously consider an application with any other application shall be filed within 21 days of the original application in the case of international route awards under section 41102 of the Statute (*see* § 302.212), or, where a proceeding has

been set for hearing before an administrative law judge, not later than the prehearing conference in the proceeding with which consolidation or contemporaneous consideration is requested. If made at such conference, the motion may be oral. All motions for consolidation or consideration of issues that enlarge, expand, or otherwise change the nature of the proceeding shall be addressed to the DOT decisionmaker, unless made orally at the prehearing conference, in which event the presiding administrative law judge shall present such motion to the DOT decisionmaker for his or her decision. A motion that is not timely filed, or that does not relate to an application pending at such time, shall be dismissed unless the movant shall clearly show good cause for failure to file such motion or application on time.

(c) *Answer.* If a motion to consolidate two or more proceedings is filed with the Department, any party to any of such proceedings, or any person who has a petition for intervention pending, may file an answer to such motion within such period as the DOT decisionmaker may permit. The administrative law judge may require that answers to such motions be stated orally at the prehearing conference in the proceeding with which the consolidation is proposed.

§ 302.14 Petitions for reconsideration.

(a) *Department orders subject to reconsideration; time for filing.* (1) Unless an order or a rule of the Department specifically provides otherwise:

(i) Any interested person may file a petition for reconsideration of any interlocutory order issued by the Department that institutes a proceeding; and

(ii) Any party to a proceeding may file a petition for reconsideration, rehearing, or reargument of final orders issued by the Department (*See* § 302.38), or an interlocutory order that defines the scope and issues of a proceeding or suspends a provision of a tariff on file with the Department.

(2) Unless otherwise provided, petitions for reconsideration shall be filed, in the case of a final order, within twenty (20) days after service thereof, and, in the case of an interlocutory order, within ten (10) days after service. However, neither the filing nor the granting of such a petition shall operate as a stay of such final or interlocutory order unless specifically so ordered by the DOT decisionmaker. Within ten (10) days after a petition for reconsideration, rehearing, or reargument is filed, any party to the proceeding may file an answer in support of or in opposition. Motions for extension of time to file a petition or answer, and for leave to file a petition or answer after the time for the filing has expired, will not be granted except on a showing of unusual and exceptional circumstances, constituting good cause for the movant's inability to meet the established procedural dates.

(b) *Contents of petition.* A petition for reconsideration, rehearing, or reargument shall state, briefly and specifically, the matters of record alleged to have been erroneously decided, the ground relied upon, and the relief sought. If a decision by the Secretary or Deputy Secretary is requested, the petition should describe in detail the reasons for such request and specify any important national transportation policy issues that are presented. If the petition is based, in whole or in part, on allegations as to the consequences that would result from the final order, the basis of such allegations shall be set forth. If the petition is based, in whole or in part, on new matter, such new matter shall be set forth, accompanied by a statement to the effect that petitioner, with due diligence, could not have known or discovered such new matter prior to the date the case was submitted for decision. Unless otherwise directed by the DOT decisionmaker upon a showing of unusual or exceptional circumstances, petitions for reconsideration, rehearing or reargument or answers thereto that exceed twenty-five (25) pages (including appendices) in length shall not be accepted for filing by Department of Transportation Dockets.

(c) *Successive petitions.* A successive petition for rehearing, reargument, reconsideration filed by the same party or person, and upon substantially the same ground as a former petition that has been considered or denied will not be entertained.

NON-HEARING PROCEEDINGS

§ 302.15 Non-hearing procedures.

In cases where oral evidentiary hearing procedures will not be used, § 302.17 through § 302.37, relating to hearing procedures, shall not be applicable except to the extent that the DOT decisionmaker shall determine that the application of some or all of such rules in the particular case will be conducive to the proper dispatch of its business and to the public interest. References in these and other sections of this part to powers or actions by administrative law judges shall not apply.

RULEMAKING PROCEEDINGS

§ 302.16 Petitions for rulemaking.

Any interested person may petition the Department for the issuance, amendment, modification, or repeal of any regulation, subject to the provisions of part 5, Rulemaking Procedures, of the Office of the Secretary regulations (49 CFR 5.1 *et seq.*).

ORAL EVIDENTIARY HEARING PROCEEDINGS

§ 302.17 Administrative law judges.

(a) *Powers and delegation of authority.* (1) An administrative law judge shall have the following powers, in addition to any others specified in this part:

(i) To give notice concerning and to hold hearings;

(ii) To administer oaths and affirmations;

(iii) To examine witnesses;

(iv) To issue subpoenas and to take or cause depositions to be taken;

(v) To rule upon offers of proof and to receive relevant evidence;

(vi) To regulate the course and conduct of the hearing;

(vii) To hold conferences before or during the hearing for the settlement or simplification of issues;

(viii) To rule on motions and to dispose of procedural requests or similar matters;

(ix) To make initial or recommended decisions as provided in § 302.31;

(x) To take any other action authorized by this part or by the Statute.

(2) The administrative law judge shall have the power to take any other action authorized by part 385 of this chapter or by the Administrative Procedure Act.

(3) The administrative law judge assigned to a particular case is delegated the DOT decisionmaker's function of making the agency decision on the substantive and procedural issues remaining for disposition at the close of the hearing in such case, except that this delegation does not apply in cases where the record is certified to the DOT decisionmaker, with or without an initial or recommended decision by the administrative law judge, or in cases requiring Presidential approval under section 41307 of the Statute. This delegation does not apply to the review of rulings by the administrative law judge on interlocutory matters that have been appealed to the DOT decisionmaker in accordance with the requirements of § 302.11.

(4) The administrative law judge's authority in each case will terminate either upon the certification of the record in the proceeding to the DOT decisionmaker, or upon the issuance of an initial or recommended decision, or when he or she shall have withdrawn from the case upon considering himself or herself disqualified.

(b) *Disqualification.* An administrative law judge shall withdraw from the case if at any time he or she deems himself or herself disqualified. If, prior to the initial or recommended decision in the case, there is filed with the administrative law judge, in good faith, an affidavit of personal bias or disqualification with substantiating facts and the administrative law judge does not withdraw, the DOT decisionmaker shall determine the matter, if properly presented by exception or brief, as a part of the record and decision in the case. The DOT decisionmaker shall not otherwise consider any claim of bias or disqualification. The DOT decisionmaker, in his or her discretion, may order a hearing on a charge of bias or disqualification.

§ 302.18 DOT decisionmaker.

(a) *Assistant Secretary for Aviation and International Affairs.* Except as provided in paragraphs (b) and (c) of this section, the Assistant Secretary for Aviation and International Affairs is the

DOT decisionmaker. The Assistant Secretary shall have all of the powers set forth in §302.17(a)(1) and those additional powers delegated by the Secretary. The Assistant Secretary may delegate this authority in appropriate non-hearing cases to subordinate officials.

(b) *Oral hearing cases assigned to the senior career official.* Carrier selection proceedings for international route authority that are set for oral hearing and such other oral hearing cases as the Secretary deems appropriate will be assigned to the senior career official in the Office of the Assistant Secretary for Aviation and International Affairs, who will serve as the DOT decisionmaker. In all such cases, the administrative law judge shall render a recommended decision to the senior career official, who shall have all of the powers set forth in §302.17(a)(1) and those additional powers delegated by the Secretary.

(1) Decisions of the senior career official are subject to review by, and at the discretion of, the Assistant Secretary for Aviation and International Affairs. Petitions for discretionary review of decisions of the senior career official will not be entertained. A notice of review by the Assistant Secretary will establish the procedures for review. Unless a notice of review is issued, the decision of the senior career official will be issued as a final decision of the Department and will be served fourteen (14) days after it is adopted by the senior career official.

(2) Final decisions of the senior career official may be reviewed upon a petition for reconsideration filed pursuant to §302.14. Such a petition shall state clearly the basis for requesting reconsideration and shall specify any questions of national transportation policy that may be involved. The Assistant Secretary will either grant or deny the petition.

(3) Upon review or reconsideration, the Assistant Secretary may either affirm the decision or remand the decision to the senior career official for further action consistent with such order of remand.

(4) Subject to the provisions of paragraphs (b)(1) through (3) of this section, final decisions of the senior career official will be transmitted to the President of the United States when required under 49 U.S.C. 41307.

(c) *Secretary and Deputy Secretary.* The Secretary or Deputy Secretary may exercise any authority of the Assistant Secretary whenever he or she believes a decision involves important questions of national transportation policy.

§302.19 Participation by persons not parties.

Any person, including any State, subdivision thereof, State aviation commission, or other public body, may appear at any hearing, other than in an enforcement proceeding, and present any evidence that is relevant to the issues. With the consent of the administrative law judge or the DOT decisionmaker, such person may also cross-examine witnesses directly. Such persons may also present to the administrative law judge a written statement on the issues involved in the proceeding. Such written statements shall be filed and served on all parties prior to the close of the hearing.

§302.20 Formal intervention.

(a) *Who may intervene.* Any person who has a statutory right to be made a party to an oral evidentiary hearing proceeding shall be permitted to intervene. Any person whose intervention will be conducive to the public interest and will not unduly delay the conduct of such proceeding may be permitted to intervene.

(b) *Considerations relevant to determination of petition to intervene.* In passing upon a petition to intervene, the following factors, among other things, will be considered and will be liberally interpreted to facilitate the effective participation by members of the public in Department proceedings:

(1) The nature of the petitioner's right under the statute to be made a party to the proceeding;

(2) The nature and extent of the property, financial or other interest of the petitioner;

(3) The effect of the order that may be entered in the proceeding on petitioner's interest;

(4) The availability of other means whereby the petitioner's interest may be protected;

(5) The extent to which petitioner's interest will be represented by existing parties;

(6) The extent to which petitioner's participation may reasonably be expected to assist in the development of a sound record; and

(7) The extent to which participation of the petitioner will broaden the issues or delay the proceeding.

(c) *Petition to intervene*—(1) *Contents.* Any person desiring to intervene in a proceeding shall file a petition in conformity with this part setting forth the facts and reasons why he or she thinks he or she should be permitted to intervene. The petition should make specific reference to the factors set forth in paragraph (b) of this section.

(2) *Time for filing.* Unless otherwise ordered by the Department:

(i) A petition to intervene shall be filed with the Department prior to the first prehearing conference, or, in the event that no such conference is to be held, not later than fifteen (15) days prior to the hearing.

(ii) A petition to intervene filed by a city, other public body, or a chamber of commerce shall be filed with the Department not later than the last day prior to the beginning of the hearing.

(iii) A petition to intervene that is not timely filed shall be dismissed unless the petitioner shall clearly show good cause for his or her failure to file such petition on time.

(3) *Answer.* Any party to a proceeding may file an answer to a petition to intervene, making specific reference to the factors set forth in paragraph (b) of this section, within seven (7) days after the petition is filed.

(4) *Disposition*. The decision granting, denying or otherwise ruling on any petition to intervene may be issued without receiving testimony or oral argument either from the petitioner or other parties to the proceeding.

(d) *Effect of granting intervention.* A person permitted to intervene in a proceeding thereby becomes a party to the proceeding. However, interventions provided for in this section are for administrative purposes only, and no decision granting leave to intervene shall be deemed to constitute an expression by the Department that the intervening party has such a substantial interest in the order that is to be entered in the proceeding as will entitle it to judicial review of such order.

§ 302.21 Appearances.

(a) Any party to a proceeding may appear and be heard in person or by a designated representative.

(b) No register of persons who may practice before the Department is maintained and no application for admission to practice is required.

(c) Any person practicing or desiring to practice before the Department may, upon hearing and good cause shown, be suspended or barred from practicing.

§ 302.22 Prehearing conference.

(a) *Purpose and scope of conference.* At the discretion of the administrative law judge, a prehearing conference may be called prior to any hearing. Written notice of the prehearing conference shall be sent by the administrative law judge to all parties to a proceeding and to other persons who appear to have an interest in such proceeding. The purpose of such a conference is to define the issues and the scope of the proceeding, to secure statements of the positions of the parties and amendments to the pleadings, to schedule the exchange of exhibits before the date set for hearing, and to arrive at such agreements as will aid in the conduct and disposition of the proceeding. For example, consideration will be given to:

(1) Matters that the DOT decisionmaker can consider without the necessity of proof;

(2) Admissions of fact and of the genuineness of documents;

(3) Requests for documents;

(4) Admissibility of evidence;

(5) Limitation of the number of witnesses;

(6) Reducing of oral testimony to exhibit form;

(7) Procedure at the hearing; and

(8) Use of electronic media as a basis for exchange of briefs, hearing transcripts and exhibits, etc., in addition to the official record copy.

(b) *Actions during prehearing conference.* The administrative law judge may require a further conference, or responsive pleadings, or both. If a party refuses to produce documents requested by another party at the conference, the administrative law judge may compel the production of such documents prior to a hearing by subpoena issued in accordance with the provisions of § 302.25 as though at a hearing. Applications for the production prior to hearing of documents in the Department's possession shall be addressed to the administrative law judge, in accordance with the provisions of § 302.25(g), in the same manner as provided therein for production of documents at a hearing. The administrative law judge may also, on his or her own initiative or on motion of any party, direct any party to the proceeding (air carrier or non-air carrier) to prepare and submit exhibits setting forth studies, forecasts, or estimates on matters relevant to the issues in the proceeding.

(c) *Report of prehearing conference.* The administrative law judge shall issue a report of prehearing conference, defining the issues, giving an account of the results of the conference, specifying a schedule for the exchange of exhibits and rebuttal exhibits, the date of hearing, and specifying a time for the filing of objections to such report. The report shall be served upon all parties to the proceeding and any person who appeared at the conference. Objections to the report may be filed by any interested person within the time specified therein. The administrative law judge may revise his or her report in the light of the objections presented. The revised report, if any, shall be served upon the same persons as was the original report. Exceptions may be taken on the basis of any timely written objection that has not been met by a revision of the report if the exceptions are filed within the time specified in the revised report. Such report shall constitute the official account of the conference and shall control the subsequent course of the proceeding, but it may be reconsidered and modified at any time to protect the public interest or to prevent injustice.

§ 302.23 Hearing.

The administrative law judge to whom the case is assigned or the DOT decisionmaker shall give the parties reasonable notice of a hearing or of the change in the date and place of a hearing and the nature of such hearing.

§ 302.24 Evidence.

(a) *Presenting evidence.* Presenting evidence at the hearing shall be limited to material evidence relevant to the issues as drawn by the pleadings or as defined in the report of prehearing conference, subject to such later modifications of the issues as may be necessary to protect the public interest or to prevent injustice, and shall not be unduly repetitious. Evidence shall be presented in such form by all parties as the administrative law judge may direct.

(b) *Objections to evidence.* Objections to the admission or exclusion of evidence shall be in short form, stating the grounds of objections relied upon, and the transcript shall not include argument or debate except as ordered by the administrative law judge. Rulings on such objections shall be a part of the transcript.

(c) *Exhibits.* When exhibits are offered in evidence, one copy must be furnished to each of the parties at the hearing, and two copies to the administrative law judge, unless the parties previously have been furnished with copies or the administrative law judge directs otherwise. If the administrative law judge has not fixed a time for the exchange of exhibits, the parties shall exchange copies of exhibits at the earliest practicable time, preferably before the hearing or, at the latest, at the commencement of the hearing. Copies of exhibits may, at the discretion of the administrative law judge or the DOT decisionmaker, be furnished by use of electronic media in lieu of or in addition to a paper record copy.

(d) *Substitution of copies for original exhibits.* In his or her discretion, the administrative law judge may permit a party to withdraw original documents offered in evidence and substitute true copies in lieu thereof.

(e) *Designation of parts of documents.* When relevant and material matter offered in evidence by any party is embraced in a book, paper, or document containing other matter not material or relevant, the party offering the same shall plainly designate the matter so offered. The immaterial and irrelevant parts shall be excluded and shall be segregated insofar as practicable. If the volume of immaterial or irrelevant matter would unduly encumber the record, such submission will not be received in evidence, but may be marked for identification, and, if properly authenticated, the relevant or material matter may be read into the record, or, if the administrative law judge so directs, a true copy of such matter, in proper form, shall be received as an exhibit, and like copies delivered by the party offering the same to opposing parties or their attorneys appearing at the hearing, who shall be afforded an opportunity to examine the submission, and to offer in evidence in like manner other portions of the exhibit.

(f) *Records in other proceedings.* In case any portion of the record in any other proceeding or civil or criminal action is offered in evidence, a true copy of such portion shall be presented for the record in the form of an exhibit unless:

(1) The portion is specified with particularity in such manner as to be readily identified;

(2) The party offering the same agrees unconditionally to supply such copies later, or when required by the DOT decisionmaker;

(3) The parties represented at the hearing stipulate upon the record that such portion may be incorporated by reference, and that any portion offered by any other party may be incorporated by like reference upon compliance with paragraphs (f)(1) and (2) of this section; and

(4) The administrative law judge directs such incorporation or waives the requirement in paragraph (f)(3) of this section with the consent of the parties.

(g) *Official notice of facts contained in certain documents.* (1) Without limiting, in any manner or to any extent, the discretionary powers of the DOT decisionmaker and the administrative law judge to notice other matters or documents properly the subject of official notice, facts contained in any document within the categories enumerated in this subdivision are officially noticed in all formal economic proceedings except those subject to subpart D of this part. Each such category shall include any document antedating the final Department decision in the proceeding where such notice is taken. The matters officially noticed under the provisions of this paragraph are:

(i) Air carrier certificates or applications therefor, together with any requests for amendment, and pleadings responding to applications when properly filed.

(ii) All Form 41 reports required to be filed by air carriers with the Department.

(iii) Reports of Traffic and Financial Data of all U.S. Air Carriers issued by the Civil Aeronautics Board (CAB) or the Department.

(iv) Airline Traffic Surveys and Passenger Origin-Destination Surveys, Domestic and International, compiled by the CAB or the Department and published and/or made available either to the public or to parties in proceedings.

(v) Compilations of data relating to competition in the airline industry and made available to the public by the CAB or the Department, such as the 1990 Airline Competition Study.

(vi) Passenger, mail, express, and freight data submitted to the CAB or the Department as part of ER–586 Service Segment Data by U.S. carriers, or similar data submitted to the Department by U.S. air carriers (T–100) or by foreign air carriers (T–100F) that is not confidential.

(vii) All tariffs, including the electronic versions, and amendments thereof, of all air carriers, on file with the Department.

(viii) Service Mail Pay and Subsidy for U.S. Certificated Air Carriers published by the CAB and any supplemental data and subsequent issues published by the CAB or the Department.

(ix) Airport Activity Statistics of Certificated Air Carriers compiled and published by the Federal Aviation Administration (FAA) or the Department.

(x) Air Traffic Activity Data issued by the FAA.

(xi) National Plan of Integrated Airport Systems (NPIAS) issued by the FAA.

(xii) Airport Facilities Directory, Form 5010, issued by the FAA.

(xiii) The Airman's Information Manual issued by the FAA.

(xiv) ICAO Statistical Summary, Preliminary Issues and Nos. 1 through 14, and Digest of Statistics, Nos. 15 through 71, prepared by ICAO, Montreal, Canada, with all changes and additions.

(xv) Monthly, quarterly and annual reports of the Immigration and Naturalization Service, U.S. Department of Justice.

(xvi) All forms and reports required by the U.S. Postal Service to be filed by air carriers authorized to transport mail.

(xvii) All orders of the Postmaster General designating schedules for the transportation of mail.

(xviii) Publications of the Bureau of the Census of the U.S. Department of Commerce (DOC) relating, but not necessarily limited, to population, manufacturing, business, statistics, and any yearbooks, abstracts, or similar publications published by DOC.

(xix) ABC World Airways Guide and all Official Airline Guides, including the North American, Worldwide, All-Cargo and quick reference editions, including electronic versions.

(xx) Official Guide of the Railways and Russell's Official National Motor Coach Guide.

(xxi) The Rand McNally Commercial Atlas and Marketing Guide, and the Rand McNally Road Atlas, United States, Canada, and Mexico.

(xxii) Survey of Buying Power published by Sales Management Magazine.

(2) Any fact contained in a document belonging to a category enumerated in paragraph (g)(1) of this section shall be deemed to have been physically incorporated into and made part of the record in such proceedings. However, such taking of official notice shall be subject to the rights granted to any party or intervener to the proceeding under section 7(d) of the Administrative Procedure Act (5 U.S.C. 557(d)).

(3) The decisions of the Department and its administrative law judges may officially notice any appropriate matter without regard to whether or not such items are contained in a document belonging to the categories enumerated in paragraph (g)(1) of this section. However, where the decision rests on official notice of a material fact or facts, it will set forth such items with sufficient particularity to advise interested persons of the matters that have been noticed.

(h) *Receipt of documents after hearing.* No document or other writings shall be accepted for the record after the close of the hearing except in accordance with an agreement of the parties and the consent of the administrative law judge or the DOT decisionmaker.

(i) *Exceptions.* Formal exceptions to the rulings of the administrative law judge made during the course of the hearing are unnecessary. For all purposes for which an exception otherwise would be taken, it is sufficient that a party, at the time the ruling of the administrative law judge is made or sought, makes known the action he or she desires the administrative law judge to take or his or her objection to an action taken, and his or her grounds therefor.

(j) *Offers of proof.* Any offer of proof made in connection with an objection taken to any ruling of the administrative law judge rejecting or excluding proffered oral testimony shall consist of a statement of the substance of the evidence that counsel contends would be adduced by such testimony, and if the excluded evidence consists of evidence in documentary or written form or of reference to documents or records, a copy of such evidence shall be marked for identification and shall constitute the offer of proof.

§ 302.25 Subpoenas.

(a) An application for a subpoena requiring the attendance of a witness at a hearing or the production of documentary evidence may be made without notice by any party to the administrative law judge or, in the event that an administrative law judge has not been assigned to a proceeding or is not available, to the DOT decisionmaker or the Chief Administrative Law Judge, for action.

(b) An application for a subpoena shall be in duplicate except that if it is

made during the course of a hearing, it may be made orally on the record with the consent of the administrative law judge.

(c) All such applications, whether written or oral, shall contain a statement or showing of general relevance and reasonable scope of the evidence sought, and shall be accompanied by two copies of a draft of the subpoena sought that, in the case of evidence, shall describe the documentary or tangible evidence to be subpoenaed with as much particularity as is feasible, or, in the case of a witness, the name of the witness and a general description of the matters concerning which the witness will be asked to testify.

(d) The administrative law judge or DOT decisionmaker considering any application for a subpoena shall issue the subpoena requested if the application complies with this section. No attempt shall be made to determine the admissibility of evidence in passing upon an application for a subpoena, and no detailed or burdensome showing shall be required as a condition to the issuance of a subpoena.

(e) Where it appears during the course of a proceeding that the testimony of a witness or documentary evidence is relevant to the issues in a proceeding, the administrative law judge, Chief Administrative Law Judge or DOT decisionmaker may issue on his or her own initiative a subpoena requiring such witness to attend and testify or requiring the production of such documentary evidence.

(f) Subpoenas issued under this section shall be served upon the person to whom directed in accordance with §302.7(b). Any person upon whom a subpoena is served may within seven (7) days after service or at any time prior to the return date thereof, whichever is earlier, file a motion to quash or modify the subpoena with the administrative law judge or, in the event an administrative law judge has not been assigned to a proceeding or is not available, to the DOT decisionmaker or the Chief Administrative Law Judge for action. If the person to whom the motion to modify or quash the subpoena has been addressed or directed, has not acted upon such a motion by the return date, such date shall be stayed pending his or her final action thereon. The DOT decisionmaker may at any time review, upon his or her own initiative, the ruling of an administrative law judge or the Chief Administrative Law Judge denying a motion to quash a subpoena. In such cases, the DOT decisionmaker may order that the return date of a subpoena be stayed pending action thereon.

(g) The provisions of this section are not applicable to the attendance of DOT employees or the production of documentary evidence in the custody thereof at a hearing. The attendance of DOT employees and the production of documentary evidence in their custody are governed by 49 CFR Parts 9 and 7, respectively.

§ 302.26 Depositions.

(a) For good cause shown, the DOT decisionmaker or administrative law judge assigned to a proceeding may order that the testimony of a witness be taken by deposition and that the witness produce documentary evidence in connection with such testimony. Ordinarily an order to take the deposition of a witness will be entered only if:

(1) The person whose deposition is to be taken would be unavailable at the hearing,

(2) The deposition is deemed necessary to perpetuate the testimony of the witness, or

(3) The taking of the deposition is necessary to prevent undue and excessive expense to a party and will not result in an undue burden to other parties or in undue delay.

(b) Any party desiring to take the deposition of a witness shall make application therefor in duplicate to the administrative law judge or, in the event that an administrative law judge has not been assigned to a proceeding or is not available, to the DOT decisionmaker or Chief Administrative Law Judge, setting forth the reasons why such deposition should be taken, the name and residence of the witness, the time and place proposed for the taking of the deposition, and a general description of the matters concerning

which the witness will be asked to testify. If good cause be shown, the administrative law judge, the DOT decisionmaker, or the Chief Administrative Law Judge, as the case may be, may, in his or her discretion, issue an order authorizing such deposition and specifying the witness whose deposition is to be taken, the general scope of the testimony to be taken, the time when, the place where, the designated officer (authorized to take oaths) before whom the witness is to testify, and the number of copies of the deposition to be supplied. Such order shall be served upon all parties by the person proposing to take the deposition a reasonable period in advance of the time fixed for taking testimony.

(c) Witnesses whose testimony is taken by deposition shall be sworn or shall affirm before any questions are put to them. Each question shall be recorded and the answers shall be taken down in the words of the witness.

(d) Objections to questions or evidence shall be in short form, stating the grounds of objection relied upon, but no transcript filed by the designated officer shall include argument or debate. Objections to questions or evidence shall be noted by the designated officer upon the deposition, but he or she shall not have power to decide on the competency or materiality or relevance of evidence, and he or she shall record the evidence subject to objection. Objections to questions or evidence not made before the designated officer shall not be deemed waived unless the ground of the objection is one that might have been obviated or removed if presented at that time.

(e) The testimony shall be reduced to writing by the designated officer, or under his or her direction, after which the deposition shall be signed by the witness unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign, and certified in usual form by the designated officer. If the deposition is not signed by the witness, the designated officer shall state on the record this fact and the reason therefor. The original deposition and exhibits shall be forwarded to Department of Transportation Dockets and shall be filed in the proceedings.

(f) Depositions may also be taken and submitted on written interrogatories in substantially the same manner as depositions taken by oral examination. Ordinarily such procedure will be authorized only if necessary to achieve the purposes of an oral deposition and to serve the balance of convenience of the parties. The interrogatories shall be filed in quadruplicate with two copies of the application and a copy of each shall be served on each party. Within seven (7) days after service any party may file with the person to whom application was made two copies of his or her objections, if any, to such interrogatories and may file such cross-interrogatories as he or she desires to submit. Cross-interrogatories shall be filed in quadruplicate, and a copy thereof together with a copy of any objections to interrogatories, shall be served on each party, who shall have five (5) days thereafter to file and serve his or her objections, if any, to such cross-interrogatories. Objections to interrogatories or cross-interrogatories, shall be served on the DOT decisionmaker or the administrative law judge considering the application. Objections to interrogatories shall be made before the order for taking the deposition issues and if not so made shall be deemed waived. When a deposition is taken upon written interrogatories, and cross-interrogatories, no party shall be present or represented, and no person other than the witness, a reporter, and the designated officer shall be present at the examination of the witness, which fact shall be certified by the designated officer, who shall ask the interrogatories and cross-interrogatories to the witness in their order and reduce the testimony to writing in the witness's own words. The provisions of paragraph (e) of this section shall be applicable to depositions taken in accordance with this paragraph.

(g) All depositions shall conform to the specifications of § 302.3 except that the filing of three copies thereof shall be sufficient. Any fees of a witness, the reporter, or the officer designated to take the deposition shall be paid by the person at whose instance the deposition is taken.

(h) The fact that a deposition is taken and filed in a proceeding as provided in this section does not constitute a determination that it is admissible in evidence or that it may be used in the proceeding. Only such part or the whole of a deposition as is received in evidence shall constitute a part of the record in such proceeding upon which a decision may be based.

§ 302.27 Rights of witnesses; attendance fees and mileage.

(a) Any person appearing as a witness in any proceeding governed by this part, whether in response to a subpoena or by request or permission of the Department, may be accompanied, represented, and advised by counsel and may be examined by that counsel after other questioning.

(b) Any person who submits data or evidence in a proceeding governed by this part, whether in response to a subpoena or by request or permission of the Department, may retain, or, on payment of lawfully prescribed costs, procure, a copy of any document so submitted or a copy of any transcript made of such testimony.

(c) No person whose attendance at a hearing or whose deposition is to be taken shall be obliged to respond to a subpoena unless upon a service of the subpoena he or she is tendered attendance fees and mileage by the party at whose instance he or she is called in accordance with the requirements of paragraphs (c)(1) and (2) of this section; *Provided,* That a witness summoned at the instance of the Department or one of its employees, or a salaried employee of the United States summoned to testify as to matters related to his or her public employment, need not be tendered such fees or mileage at that time.

(1) Witnesses who are not salaried employees of the United States, or such employees summoned to testify on matters not related to their public employment, shall be paid the same per diem, subsistence, and mileage fees paid to witnesses for like service in the courts of the United States that are in effect at the time of travel; *Provided,* That no employee, officer, or attorney of an air carrier who travels under the free or reduced rate provisions of section 41511 of the Statute shall be entitled to any fees or mileage; *And provided further,* That such fees and mileage shall not be applicable for witnesses summoned to testify in Alaska, and that, in Alaska, where permitted by section 41511 of the Statute, the witness may, at his or her option, accept a pass for travel by air. Such witnesses shall be furnished appropriate forms and instructions for the submission of claims for attendance fees, subsistence, and mileage from the Government before the close of the proceedings that they are required to attend. Only persons summoned by subpoena shall be entitled to claim attendance fees, subsistence, or mileage from the Government.

(2) Witnesses who are salaried employees of the United States and who are summoned to testify on matters relating to their public employment, irrespective of at whose instance they are summoned, shall be paid in accordance with applicable Government regulations.

§ 302.28 Transcripts of hearings.

(a) Hearings shall be recorded and transcribed under supervision of the administrative law judge, by a reporting firm under contract with the Department. Copies of the transcript that may, at the discretion of the administrative law judge, be furnished by use of electronic media in addition to the official copy, shall be supplied to the parties to the proceeding by said reporting firm, at the contract price for copies.

(b) The administrative law judge shall determine whether ''ordinary transcript'' or ''daily transcript'' (as those terms are defined in the contract) will be necessary and required for the proper conduct of the proceeding and the Department will pay the reporting firm the cost of reporting its proceedings at the contract price for such type of transcript. If the administrative law judge has determined that ordinary transcript is adequate, and has notified the parties of such determination (in the notice of hearings, or otherwise), then any party may request reconsideration of such determination and that daily transcript be

required. In determining what is necessary and required for the proper conduct of the proceeding, the administrative law judge shall consider, among other things:

(1) The nature of the proceeding itself;

(2) The DOT decisionmaker's needs as well as the reasonable needs of the parties;

(3) The cost to the Department; and

(4) The requirements of a fair hearing.

(c) If the administrative law judge has determined that ordinary transcript is adequate, or, upon reconsideration, has adhered to such determination, then any party may request the reporting firm to provide daily transcript. In that case, pursuant to its contract with the Department, the reporting firm will be obligated to furnish to the Department daily transcript upon the agreement by the requesting party to pay to the reporting firm an amount equal to the difference between the contract prices for ordinary transcript and daily transcript, provided that the requesting party makes such agreement with the reporting firm at least twenty-four (24) hours in advance of the date for which such transcript is requested.

(d) Any party may obtain from the Office of the Assistant Secretary for Administration, the name and address of the private reporting company with which the Department currently has a contract for transcripts and copies, as well as the contract prices then in effect for such services.

(e) Copies of transcripts ordered by parties other than the Department shall be prepared for delivery to the requesting person at the reporting firm's place of business, within the stated time for the type of transcript ordered. The requesting party and the reporting firm may agree upon some other form or means of delivery (mail, messenger, electronic media, etc.) and the reporting firm may charge for such special service, provided that such charge shall not exceed the reasonable cost of such service.

(f) Changes in the official transcript may be made only when they involve errors affecting substance. A motion to correct a transcript shall be filed with Department of Transportation Dockets, within ten (10) days after receipt of the completed transcript by the Department. If no objections to the motion are filed within ten (10) days thereafter, the transcript may, upon the approval of the administrative law judge, be changed to reflect such corrections. If objections are received, the motion and objections shall be submitted to the official reporter by the administrative law judge together with a request for a comparison of the transcript with the reporter's record of the hearing. After receipt of the report of the official reporter an order shall be entered by the administrative law judge settling the record and ruling on the motion.

§ 302.29 Argument before the administrative law judge.

(a) The administrative law judge shall give the parties to the proceeding adequate opportunity during the course of the hearing for the presentation of arguments in support of or in opposition to motions, and objections and exceptions to rulings of the administrative law judge.

(b) When, in the opinion of the administrative law judge, the volume of the evidence or the importance or complexity of the issues involved warrants, he or she may, either on his or her own motion or at the request of a party, permit the presentation of oral argument, and may impose such time limits on the argument as he or she may determine appropriate. Such argument shall be transcribed and bound with the transcript of testimony and will be available to the Department decisionmaker for consideration in deciding the case.

§ 302.30 Briefs to the administrative law judge.

Within such limited time after the close of the reception of evidence fixed by the administrative law judge, any party may, upon request and under such conditions as the administrative law judge may prescribe, file for his or her consideration briefs which may include proposed findings of fact and conclusions of law that shall contain exact references to the record and authorities relied upon.

§ 302.31 Initial and recommended decisions; certification of the record.

(a) *Action by administrative law judge after hearing.* Except where the DOT decisionmaker directs otherwise, after the taking of evidence and the receipt of briefs which may include proposed findings of fact and conclusions of law, if any, the administrative law judge shall take the following action:

(1) *Initial decision.* If the proceeding does not involve foreign air transportation, the administrative law judge shall render an ''initial decision.'' Such decision shall encompass the administrative law judge's decision on the merits of the proceeding and on all ancillary procedural issues remaining for disposition at the close of the hearing.

(2) *Recommended decision.* In cases where the action of the Department involves foreign air transportation and is subject to review by the President of the United States pursuant to section 41307 of the Statute, the administrative law judge shall render a ''recommended decision.'' Such decision shall encompass the administrative law judge's decision on the merits of the proceeding and on all ancillary procedural issues remaining for disposition at the close of the hearing.

(b) *Certification to the DOT decisionmaker for decision.* At any time prior to the close of the hearing, the DOT decisionmaker may direct the administrative law judge to certify any question or the entire record in the proceeding to the DOT decisionmaker for decision. In cases where the record is thus certified, the administrative law judge shall not render a decision but shall make a recommendation to the DOT decisionmaker as required by section 8(a) of the Administrative Procedure Act (5 U.S.C. 558(a)) unless advised by the DOT decisionmaker that he or she intends to issue a tentative decision.

(c) Every initial or recommended decision issued shall state the names of the persons who are to be served with copies of it, the time within which exceptions to, or petitions for review of, such decision may be filed, and the time within which briefs in support of the exceptions may be filed. In addition, every such decision shall recite that it is made under delegated authority, and contain notice of the provisions of paragraph (d) of this section. In the event the administrative law judge certifies the record to the DOT decisionmaker without an initial or recommended decision, he or she shall notify the parties of the time within which to file with the DOT decisionmaker briefs which may include proposed findings of fact and conclusions of law.

(d) Unless a petition for discretionary review is filed pursuant to § 302.32, exceptions are filed pursuant to § 302.217, or the DOT decisionmaker issues an order to review upon his or her own initiative, the initial decision shall become effective as the final order of the Department thirty (30) days after service thereof; in the case of a recommended decision, that decision shall be transmitted to the President of the United States under 49 U.S.C. 41307. If a petition for discretionary review or exceptions are timely filed or action to review is taken by the DOT decisionmaker upon his or her own initiative, the effectiveness of the initial decision or the transmission of the recommended decision is stayed until the further order of the DOT decisionmaker.

§ 302.32 Petitions for discretionary review of initial or recommended decisions; review proceedings.

(a) *Petitions for discretionary review.* (1) Review by the DOT decisionmaker pursuant to this section is not a matter of right but is at the sole discretion of the DOT decisionmaker. Any party may file and serve a petition for discretionary review by the DOT decisionmaker of an initial decision or recommended decision within twenty-one (21) days after service thereof, unless the DOT decisionmaker sets a different period for filing.

(2) Petitions for discretionary review shall be filed only upon one or more of the following grounds:

(i) A finding of a material fact is erroneous;

(ii) A necessary legal conclusion is without governing precedent or is a departure from or contrary to law, the Department's rules, or precedent;

(iii) A substantial and important question of law, policy or discretion is involved; or

(iv) A prejudicial procedural error has occurred.

(3) Each issue shall be separately numbered and plainly and concisely stated. Petitioners shall not restate the same point in repetitive discussions of an issue. Each issue shall be supported by detailed citations of the record when objections are based on the record, and by statutes, regulations or principal authorities relied upon. Any matters of fact or law not argued before the administrative law judge, but that the petitioner proposes to argue on brief to the DOT decisionmaker, shall be stated.

(4) Petitions for discretionary review shall be self-contained and shall not incorporate by reference any part of another document. Except by permission of the DOT decisionmaker, petitions shall not exceed twenty (20) pages including appendices and other papers physically attached to the petition.

(5) Requests for oral argument on petitions for discretionary review will not be entertained by the DOT decisionmaker.

(b) *Answers.* Within fifteen (15) days after service of a petition for discretionary review, any party may file and serve an answer of not more than fifteen (15) pages in support of or in opposition to the petition. If any party desires to answer more than one petition for discretionary review in the same proceeding, he or she shall do so in a single document of not more than twenty (20) pages.

(c) *Orders declining review.* The DOT decisionmaker's order declining to exercise the discretionary right of review will specify the date upon which the administrative law judge's decision shall become effective as the final decision of the Department. A petition for reconsideration of a Department order declining review will be entertained only when the order exercises, in part, the DOT decisionmaker's discretionary right of review, and such petition shall be limited to the single question of whether any issue designated for review and any issue not so designated are so inseparably interrelated that the former cannot be reviewed independently or that the latter cannot be made effective before the final decision of the Department in the review proceeding.

(d) *Review proceedings.* (1) The DOT decisionmaker may take review of an initial or recommended decision upon petition or on his or her own initiative or both. The DOT decisionmaker will issue a final order upon such review without further proceedings on any or all the issues where he or she finds that matters raised do not warrant further proceedings.

(2) Where the DOT decisionmaker desires further proceedings, he or she will issue an order for review that will:

(i) Specify the issues to which review will be limited. Only those issues specified in the order shall be argued on brief to the DOT decisionmaker, pursuant to § 302.35, and considered by the DOT decisionmaker;

(ii) Specify the portions of the administrative law judge's decision, if any, that are to be stayed as well as the effective date of the remaining portions thereof; and

(iii) Designate the parties to the review proceeding.

§ 302.33 Tentative decision of the DOT decisionmaker.

(a) Except as provided in paragraph (b) of this section, whenever the administrative law judge certifies the record in a proceeding directly to the DOT decisionmaker without issuing an initial or recommended decision in the matter, the DOT decisionmaker shall, after consideration of any briefs submitted by the parties, prepare a tentative decision and serve it upon the parties. Every tentative decision of the DOT decisionmaker shall state the names of the persons who are to receive copies of it, the time within which exceptions to such decision and briefs, if any, in support of or in opposition to the exceptions may be filed, and the date when such decision will become final in the absence of exceptions thereto. If no exceptions are filed to the tentative decision of the DOT decisionmaker within the period fixed, it shall become final at the expiration of such period unless the DOT decisionmaker orders otherwise.

(b) The DOT decisionmaker may, in his or her discretion, omit a tentative decision in proceedings under subpart

B. Final decisions of the DOT decisionmaker are subject to review as provided in § 302.18.

§ 302.34 Exceptions to tentative decisions of the DOT decisionmaker.

(a) *Time for filing.* Within ten (10) days after service of any tentative decision of the DOT decisionmaker, any party to a proceeding may file exceptions to such decision with the DOT decisionmaker.

(b) *Form and contents of exceptions.* Each exception shall be separately numbered and shall be stated as a separate point, and appellants shall not restate the same point in several exceptions. Each exception shall state, sufficiently identify, and be limited to, an ultimate conclusion in the decision to which exception is taken (such as, selection of one carrier rather than another to serve any point or points; points included in or excluded from a new route; imposition or failure to impose a given restriction; determination of a rate at a given amount rather than another). No specific exception shall be taken with respect to underlying findings or statements, but exceptions to an ultimate conclusion shall be deemed to include exceptions to all underlying findings and statements pertaining thereto; *Provided, however,* That exceptions shall specify any matters of law, fact, or policy that were not argued before the administrative law judge but will be set forth for the first time on brief to the DOT decisionmaker.

(c) *Effect of failure to file timely and adequate exceptions.* No objection may be made on brief or at a later time to an ultimate conclusion that is not expressly made the subject of an exception in compliance with the provisions of this section; *Provided, however,* That any party may file a brief in support of the decision and in opposition to the exceptions filed by any other party.

§ 302.35 Briefs to the DOT decisionmaker.

(a) *Time for filing.* Within such period after the date of service of any tentative decision by the DOT decisionmaker as may be fixed therein, any party may file a brief addressed to the DOT decisionmaker in support of his or her exceptions to such decision or in opposition to the exceptions filed by any other party. Briefs to the DOT decisionmaker on initial or recommended decisions of administrative law judges shall be filed only in those cases where the DOT decisionmaker grants discretionary review and orders further proceedings, pursuant to § 302.32(d)(2), and only upon those issues specified in the order. Such briefs shall be filed within thirty (30) days after date of service of the order granting discretionary review unless otherwise specified in the order. In cases where, because of the limited number of parties and the nature of the issues, the filing of opening, answering, and reply briefs will not unduly delay the proceeding and will assist in its proper disposition, the DOT decisionmaker may direct that the parties file briefs at different times rather than at the same time.

(b) *Effect of failure to restate objections in briefs.* In determining the merits of an appeal, the DOT decisionmaker will not consider the exceptions or the petition for discretionary review but will consider only the brief. Each objection contained in the exceptions or each issue specified in the DOT decisionmaker's order exercising discretionary review must be restated and supported by a statement and adequate discussion of all matters relied upon, in a brief filed pursuant to and in compliance with the requirements of this section.

(c) *Formal specifications of briefs*—(1) *Contents.* Each brief shall discuss every point of law, fact, or precedent that the party submitting it is entitled to raise and that it wishes the DOT decisionmaker to consider. Each brief shall include a summary of the argument not to exceed five (5) pages. Support and justification for every point raised shall include itemized references to the pages of the transcript of hearing, exhibit or other matter of record, and citations of the statutes, regulations, or principal authorities relied upon. If a brief or any point discussed in the brief is not in substantial conformity with the requirement for such support and justification, no motion to strike or dismiss such document shall be made but the DOT decisionmaker may disregard the points involved. Copies of

briefs may be furnished by use of electronic media in a format acceptable to the Department and the parties.

(2) *Incorporation by reference.* Briefs to the DOT decisionmaker shall be completely self-contained and shall not incorporate by reference any portion of any other brief or pleading; *Provided, however,* That instead of submitting a brief to the DOT decisionmaker a party may adopt by reference specifically identified pages or the whole of his or her prior brief to the administrative law judge if the latter complies with all requirements of this section. In such cases, the party shall file with Department of Transportation Dockets a letter exercising this privilege and serve all parties in the same manner as a brief to the DOT decisionmaker.

(3) *Length.* Except by permission or direction of the DOT decisionmaker, briefs shall not exceed fifty (50) pages including pages contained in any appendix, table, chart, or other document physically attached to the brief, but excluding maps and the summary of the argument. In this case ''map'' means only those pictorial representations of routes, flight paths, mileage, and similar ancillary data that are superimposed on geographic drawings and contain only such text as is needed to explain the pictorial representation.

§ 302.36 Oral argument before the DOT decisionmaker.

(a) If any party desires to argue a case orally before the DOT decisionmaker, he or she shall request leave to make such argument in his or her exceptions or brief. Such request shall be filed no later than the date when briefs before the DOT decisionmaker are due in the proceeding. The DOT decisionmaker will rule on such request, and, if oral argument is to be allowed, all parties to the proceeding will be advised of the date and hour set for such argument and the amount of time allowed to each party. Requests for oral argument on petitions for discretionary review will not be entertained.

(b) Pamphlets, charts, and other written data may be offered to the DOT decisionmaker at oral argument only in accordance with the following rules: All such material shall be limited to facts in the record of the case being argued and shall be served on all parties to the proceeding with four (4) copies transmitted to Department of Transportation Dockets at least five (5) calendar days in advance of the argument.

§ 302.37 Waiver of procedural steps after hearing.

The parties to any proceeding may agree to waive any one or more of the procedural steps provided in § 302.29 through § 302.36.

§ 302.38 Final decision of the DOT Decisionmaker.

When a case stands submitted to the DOT decisionmaker for final decision on the merits, he or she will dispose of the issues presented by entering an appropriate order that will include a statement of the reasons for his or her findings and conclusions. Such orders shall be deemed ''final orders'' within the purview of § 302.14(a), in the manner provided by § 302.18.

Subpart B—Rules Applicable to U.S. Air Carrier Certificate and Foreign Air Carrier Permit Licensing Proceedings

§ 302.201 Applicability.

(a) This subpart sets forth the specific rules applicable to proceedings on:

(1) U.S. air carrier certificates of public convenience and necessity and U.S. all-cargo air service certificates under Chapter 411 of the Statute, including renewals, amendments, modifications, suspensions and transfers of such certificates.

(2) Foreign air carrier permits under Chapter 413 of the Statute, including renewals, amendments, modifications, suspensions, and transfers of such permits.

(b) Except as modified by this subpart, the provisions of subpart A of this part apply.

§ 302.202 Contents of applications.

(a) Certificate applications filed under this subpart shall contain the information required by part 201 of this chapter and, where applicable, part 204 of this chapter, and foreign air carrier permit applications shall contain the information required by part 211 of this

chapter, along with any other information that the applicant desires the Department to notice officially.

(b) Applications shall include a notice on the cover page stating that any person may support or oppose the application by filing an answer and serving a copy of the answer on all persons served with the application. The notice shall also state the due date for answers. Amendments to applications will be considered new applications for the purpose of calculating the time limitations of this subsection.

(c) Applications shall include a list of the names and addresses of all persons who have been served in accordance with §302.203.

(d) Where required, each application shall be accompanied by an Energy Statement in conformity with part 313 of this chapter.

§302.203 Service of documents.

(a) *General requirements.* (1) Applicants shall serve on the persons listed in paragraph (b) of this section a notice that an application has been filed, and upon request shall promptly provide those persons with copies of the application and supporting documents. The notice must clearly state the authority sought and the due date for other pleadings.

(2) Applicants shall serve a complete copy of the application on the Manager of the FAA Flight Standards District Office responsible for processing the application for any FAA authority needed to conduct the proposed operations.

(3) After an order under §302.210 has been issued, parties need only serve documents on those persons listed in the service list accompanying the order.

(4) In the case of an application sought to be consolidated, the applicant shall serve the notice required in paragraph (a)(1) of this section on all persons served by the original applicant.

(b) *Persons to be served*—(1) *U.S. air carriers.* (i) In certificate proceedings, except for those proceedings that involve charter-only authority under section 41102(a)(3) of the Statute:

(A) Applicants for certificates to engage in interstate air transportation and other persons who file a pleading in the docket shall serve:

(*1*) The airport authority of each airport that the applicant initially proposes to serve, and

(*2*) Any other person who has filed a pleading in the docket.

(B) Applicants for certificates to engage in foreign air transportation and other persons who file a pleading in the docket shall serve:

(*1*) All U.S. air carriers (including commuter air carriers) that publish schedules in the *Official Airline Guide* or in the *Air Cargo Guide* for the country-pair market(s) specified in the application,

(*2*) The airport authority of each U.S. airport that the applicant initially proposes to serve, and

(*3*) Any other person who has filed a pleading in the docket.

(ii) In certificate proceedings involving charter-only authority under 41102(a)(3) of the Statute, applicants and other persons who file a pleading in the docket shall serve any other person who has filed a pleading in the docket.

(2) *Foreign air carriers.* (i) In permit proceedings, except for those proceedings involving charter-only authority, applicants and other persons who have filed a pleading in the docket shall serve:

(A) All U.S. air carriers (including commuter air carriers) that publish schedules in the *Official Airline Guide* or the *Air Cargo Guide* for the country-pair market(s) specified in the application,

(B) The U.S. Department of State,

(C) The airport authority of each U.S. airport that the applicant initially proposes to serve, and

(D) Any other person who has filed a pleading in the docket.

(ii) In foreign air carrier permit proceedings for charter-only authority, applicants and other persons who file a pleading in the docket shall serve the U.S. Department of State and any other person who has filed a pleading in the docket.

(c) *Additional service.* The Department may, at its discretion, order additional service upon such persons as the facts of the situation warrant. Where only

notices are required, parties are encouraged to serve copies of their actual pleadings where feasible. In any proceeding directly involving air transportation to the Federated States of Micronesia, the Marshall Islands or Palau, the Department and any party or participant in the proceeding shall serve all documents on the President and the designated authorities of the government(s) involved.

§ 302.204 Responsive documents.

(a) Any person may file an answer in support of or in opposition to any application. Answers shall set forth the basis for the position taken, including any economic data or other facts relied on. Except as otherwise provided in § 302.212(d), answers shall be filed within twenty one (21) days of the original or amended application and shall be served in accordance with § 302.203.

(b) Replies to answers shall be filed within fourteen (14) days after the filing of the answer.

(c) Persons having common interests shall, to the extent practicable, arrange for the joint preparation of pleadings.

§ 302.205 Economic data and other facts.

Whenever economic data and other facts are provided in any pleading, such information shall include enough detail so that final results can be obtained without further clarification. Sources, bases, and methodology used in constructing exhibits, including any estimates or judgments, shall be provided.

§ 302.206 Verification.

Any pleading filed under this subpart shall include a certification as provided in § 302.4(b).

DISPOSITION OF APPLICATIONS

§ 302.207 Cases to be decided on written submissions.

(a) Applications under this subpart will be decided on the basis of written submissions unless the DOT decisionmaker, on petition as provided in § 302.208 or on his or her own initiative, determines that an oral presentation or an administrative law judge's decision is required because:

(1) Use of written procedures will prejudice a party;

(2) Material issues of decisional fact cannot adequately be resolved without oral evidentiary hearing procedures; or

(3) Assignment of an application for oral evidentiary hearing procedures or an initial or recommended decision by an administrative law judge is otherwise required by the public interest.

(b) The standards employed in deciding cases under § 302.210(a)(1) or (5) shall be the same as the standards applied in cases decided under § 302.210(a)(4). These are the standards set forth in the Statute as interpreted and expanded upon under that Statute.

§ 302.208 Petitions for oral presentation or judge's decision.

(a) Any person may file a petition for oral evidentiary hearing, oral argument, an initial or recommended decision, or any combination of these. Petitions shall demonstrate that one or more of the criteria set forth in § 302.207 are applicable to the issues for which an oral presentation or judge's decision is requested. Such petitions shall be supported by a detailed explanation of the following:

(1) Why the evidence or argument to be presented cannot be submitted in the form of written evidence or briefs;

(2) Which issues should be examined by an administrative law judge and why such issues should not be presented directly to the DOT decisionmaker for decision;

(3) An estimate of the time required for the oral presentation and the number of witnesses whom the petitioner would present; and

(4) If cross-examination of any witness is desired, the name of the witness, if known, the subject matter of the desired cross-examination or the title or number of the exhibit to be cross-examined, what the petitioner expects to establish by the cross-examination, and an estimate of the time needed for it.

(b) Petitions for an oral hearing, oral argument, or an administrative law judge's decision shall be filed no later than the due date for answers in proceedings governed by § 302.211, § 302.212

and §302.213, and be accompanied with the information specified in paragraphs (a)(1) and (a)(2) of this section. Filing of the information required in paragraphs (a)(3) and (a)(4) of this section may be deferred until the DOT decisionmaker has decided to hold a formal proceeding.

(c) Where a stipulation of disputed facts would eliminate the need for an oral presentation or an administrative law judge's decision, parties shall include in their petitions an offer to withdraw the request should the stipulation be made.

§302.209 Procedures for deferral of applications.

Within twenty-eight (28) days after the filing of an application under this subpart, the DOT decisionmaker may defer further processing of the application until all of the information necessary to process that application is submitted. The time periods contained in this subpart with respect to the disposition of the application shall not begin to run until the application is complete. In addition, the DOT decisionmaker may defer action on a foreign air carrier permit application for foreign policy reasons.

§302.210 Disposition of applications; orders establishing further procedures.

(a) *General requirements.* The DOT decisionmaker will take one of the following actions with respect to all or any portion of each application:

(1) Issue an Order to Show Cause why the application should not be granted, denied or dismissed, in whole or in part.

(2) Issue a Final Order granting the application if the DOT decisionmaker determines that there are no material issues of fact that warrant further procedures for their resolution.

(3) Issue a Final Order dismissing or rejecting the application for lack of prosecution or if the application does not comply with this subpart or is otherwise materially deficient.

(4) Issue an order setting the application for oral evidentiary hearing. The order will establish the scope of the issues to be considered and the procedures to be employed, and will indicate whether one or more attorneys from the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings will participate as a party. All of the procedures set forth in §302.214 through §302.218 will apply unless the DOT decisionmaker decides otherwise.

(5) Begin to make a determination with respect to the application under simplified procedures without oral evidentiary hearing. In this event, the DOT decisionmaker may indicate which, if any, of the procedural steps set forth in §302.215 through §302.219 will be employed. The DOT decisionmaker may also indicate that other non-oral evidentiary hearing procedures will be employed.

(b) *Additional evidence.* An order establishing further procedures under paragraph (a)(1), (4) or (5) of this section may provide for the filing of additional evidence.

(c) *Petitions for reconsideration.* Petitions for reconsideration of an order issued under this section will not be entertained except to the extent that the order dismissed or rejected all or part of an application. If a petition for reconsideration results in the reinstatement of all or part of an application, the deadline for final Department decision established in §302.220 will be calculated from the date of the order reinstating the application.

§302.211 Procedures in certificate cases involving initial or continuing fitness.

(a) *Applicability.* This section applies to cases involving certificate authority under sections 41102 and 41103 of the Statute, including applications for new authority, renewals, amendments, modifications, suspensions, and transfers of such certificates, where the issues involve a determination of the applicant's fitness to operate. Where such applications propose the operation of scheduled service in limited entry international markets, the provisions of §302.212 also apply.

(b) *Order establishing further procedures.* Within 90 days after a complete application is filed, the DOT decisionmaker will take action as provided in §302.210.

§ 302.212 Procedures in certificate cases involving international routes.

(a) *Applicability.* This section applies to cases involving certificates under section 41102 of the Statute that involve international routes, including applications to obtain, renew, amend, transfer, or remove restrictions in such certificates.

(b) *Answers to applications.* Answers shall be filed within twenty one (21) days after the filing of the original application.

(c) *Conforming applications or motions to modify scope.* Any person may file an application for the same authority as sought in an application to obtain, renew, or amend a certificate filed under paragraph (a) of this section. Requests to modify the issues to be decided and to consolidate applications filed in other dockets shall be filed as a ''motion to modify scope.'' Motions and applications under this section shall include economic data, other facts, and any argument in support of the person's position and must be filed within twenty one (21) days after the original application is filed. Later-filed competing applications shall conform to the base and forecast years used by the original applicant and need not contain traffic and financial data for markets for which data have already been submitted by another person.

(d) *Answers to conforming applications or motions to modify scope.* Answers to conforming applications and motions to modify scope filed in accordance with paragraph (b) of this section shall be filed within fourteen (14) days after the filing of the conforming application or motion. Answers may argue that an application should be dismissed. Answers may also seek to consolidate an application filed in another docket if that application conforms to the scope of the proceeding proposed in the motion to modify scope and includes the information prescribed in § 302.202. Answers and applications shall not, however, propose the consideration of additional markets.

(e) *Order establishing further procedures.* Within 90 days after a complete application is filed, the DOT decisionmaker will issue an order as provided in § 302.210.

§ 302.213 Procedures in foreign air carrier permit cases.

(a) *Applicability.* This section applies to cases involving foreign air carrier permits under section 41302 of the Statute, including applications for new authority, renewals, amendments, modifications, suspensions, and transfers of such permits.

(b) *Executive departments.* In addition to the standards set forth in § 302.207(b), the views of other executive agencies, such as the Department of State, and the Federal Aviation Administration's evaluation of the applicant's operational fitness, may be sought in determining the appropriate action on applications filed under this section.

(c) *Order establishing further procedures.* As soon as possible after the date that answers are due and all information needed to reach a decision is filed, the DOT decisionmaker will issue an order as provided in § 302.210.

§ 302.214 Oral evidentiary hearing.

If the DOT decisionmaker determines under § 302.210(a)(4) that an oral evidentiary hearing should be held, the application or applications will be set for oral hearing before an administrative law judge. The issues will be those set forth in the order establishing further procedures. The procedures in § 302.17 to § 302.38 governing the conduct of oral evidentiary hearings will apply.

§ 302.215 Briefs to the administrative law judge.

Briefs to the administrative law judge shall be filed within the following periods, as applicable:

(a) Fourteen (14) days after the close of the oral evidentiary hearing, unless the administrative law judge determines that, under the circumstances of the case, briefs are not necessary or that the parties will require more time to prepare briefs; or

(b) Fourteen (14) days after the filing of additional evidence called for in the order establishing further procedures if no oral evidentiary hearing is called for, unless the DOT decisionmaker determines that some other period should be allowed.

§ 302.216 Administrative law judge's initial or recommended decision.

(a) In a case that has been set for oral evidentiary hearing under § 302.210(a)(4), the administrative law judge shall adopt and serve an initial or recommended decision within one hundred thirty-six (136) days after the issuance of the order establishing further procedures unless:

(1) The DOT decisionmaker, having found extraordinary circumstances, has by order delayed the initial or recommended decision by a period of not more than thirty (30) days; or

(2) An applicant has failed to meet the procedural schedule adopted by the judge or the DOT decisionmaker. In this case, the administrative law judge may, by notice, extend the due date for the issuance of an initial or recommended decision for a period not to exceed the period of delay caused by the applicant.

(b) In a case in which some of the issues have not been set for oral hearing under § 302.210(a)(4), the administrative law judge shall adopt and serve an initial or recommended decision within the time established by the DOT decisionmaker in the order establishing further procedures, except that that due date may be extended in accordance with paragraph (a)(2) of this section.

(c) The initial or recommended decision shall be issued by the administrative law judge fourteen (14) days after it is served. Unless exceptions are filed under § 302.217 or the DOT decisionmaker issues an order to review on his or her own initiative, an initial decision shall become effective as the final order of the Department the day it is issued. Where exceptions are timely filed or the DOT decisionmaker takes action to review on his or her own initiative, the effectiveness of the initial decision is stayed until further order of the DOT decisionmaker.

(d) In all other respects, the provisions of § 302.31 shall apply.

§ 302.217 Exceptions to administrative law judge's initial or recommended decision.

(a) Within seven (7) days after service of any initial or recommended decision of an administrative law judge, any party may file exceptions to the decision with the DOT decisionmaker.

(b) If timely and adequate exceptions are filed, review of the initial or recommended decision is automatic.

(c) In all other respects, the provisions of § 302.34 shall apply.

§ 302.218 Briefs to the DOT decisionmaker.

(a) In a case in which an initial or recommended decision has been served and exceptions have been filed, any party may file a brief in support of or in opposition to any exceptions. Such briefs shall be filed within fourteen (14) days after service of the initial or recommended decision.

(b) In a case in which no exceptions have been filed, briefs shall not be filed unless the DOT decisionmaker has taken review of the initial or recommended decision on his or her own initiative and has specifically provided for the filing of such briefs.

(c) In all other respect, the provisions of § 302.35 shall apply.

§ 302.219 Oral argument before the DOT decisionmaker.

If the order establishing further procedures provides for an oral argument, or if the DOT decisionmaker otherwise decides to hear oral argument, all parties will be notified of the date and hour set for that argument and the amount of time allowed each party. The provisions of § 302.36(b) shall also apply.

§ 302.220 Final decision of the Department.

In addition to the provisions of § 302.38, the following provisions shall apply:

(a) In the case of a certificate application that has been set for oral evidentiary hearing under § 302.210(a)(4), the Department will issue its final order within ninety (90) days after the initial or recommended decision is issued. If an application has failed to meet the procedural schedule established by the Department, the DOT decisionmaker may, by notice, extend the date for a final decision for a period equal to the period of delay caused by the applicant.

(b) If the DOT decisionmaker does not act in the time period established in paragraph (a) of this section:

(1) in the case of an application for a certificate to engage in foreign air transportation, the recommended decision shall be transmitted to the President of the United States under 49 U.S.C. 41307; or

(2) in the case of an application not subject to review by the President of the United States, the initial decision shall become effective as the final order of the Department.

(c) In the case of a certificate application that has been processed under §302.210(a)(1) or (5), the Department will issue its final order within one hundred eighty (180) days after the order establishing further procedures. If an applicant has failed to meet the procedural schedule established by the Department, the DOT decisionmaker may, by notice, extend the due date for a final decision for a period equal to the period of delay caused by the applicant.

Subpart C—Rules Applicable to Exemption and Certain Other Proceedings

§302.301 Applicability.

(a) This subpart sets forth the specific rules applicable to proceedings for exemptions under sections 40109 and 41714 of the Statute, including the granting of emergency exemptions, as well as applications for frequency allocations and other limited authority under international agreements. Except as modified by this subpart, the provisions of subpart A of this part apply.

(b) Proceedings for the issuance of exemptions by regulation are subject to the provisions governing rulemaking.

§302.302 Filing of applications.

(a) Except as provided in paragraphs (b) and (c) of this section, applications for exemption shall conform to the requirements of §§302.3 and 302.4.

(b) Applications for exemption from section 41101 or 41301 of the Statute (including those that incorporate an exemption from section 41504) that involve ten (10) or fewer flights may be submitted to the U.S. Air Carrier Licensing Division or the Foreign Air Carrier Licensing Division (as appropriate), Office of International Aviation, on OST Form 4536. However, that form may not be used for:

(1) Applications filed under section 40109(g) of the Statute;

(2) Applications by persons who do not have either:

(i) An effective air carrier certificate or foreign air carrier permit from the Department, or

(ii) A properly completed application for such a certificate or permit, and an effective exemption from the Department for operations similar to those proposed;

(3) Successive applications for the same or similar authority that would total more than ten (10) flights; or

(4) Any other application for which the Department decides the requirements of §§302.3 and 302.4 are more appropriate. Upon a showing of good cause, an application may be filed by cablegram, telegram, facsimile, electronic mail (when available), or telephone; all such telephonic requests must be confirmed by written application within three (3) business days of the original request.

(c) Applications for exemption from Chapter 415 of the Statute, from tariffs (except for waivers filed under subpart Q of part 221 of this chapter), or from Department regulations concerning tariffs may be submitted by letter. Three copies of such applications shall be sent to Department of Transportation Dockets. Upon a showing of good cause, the application may also be filed by cablegram, telegram, facsimile, electronic mail (when available), or telephone; all such requests must be confirmed by written application within three (3) business days of the original request.

(d) Applications filed under paragraph (a) of this section shall be docketed and any additional documents filed shall be identified by the assigned docket number.

(e) Applications filed under paragraph (b) or (c) of this section will normally not be docketed. The Department may require such applications to

be docketed if appropriate. The Department will publish a notice of such applications in its Weekly List of Applications Filed.

§ 302.303 Contents of applications.

(a) *Title.* An application filed under § 302.302(a) shall be entitled ''Application for . . .'' (followed by the type of authority request, e.g., exemption, frequency allocation) and, where applicable, shall state if the application involves renewal and/or amendment of existing exemption authority.

(b) *Factual statement.* Each application shall state:

(1) The section(s) of the Statute or the rule, regulation, term, condition, or limitation from which the exemption is requested;

(2) The proposed effective date and duration of the exemption;

(3) A description of how the applicant proposes to exercise the authority (for example, applications for exemption from section 41101 or 41301 of the Statute should include at least: places to be served; equipment types, capacity and source; type and frequency or service; and other operations that the proposed service will connect with or support); and

(4) Any other facts the applicant relies upon to establish that the proposed service will be consistent with the public interest.

(c) *Supporting evidence.* (1) Each application shall be accompanied by:

(i) A statement of economic data, or other matters or information that the applicant desires the Department to officially notice;

(ii) Affidavits, or statements under penalty of 18 U.S.C. 1001, establishing any other facts the applicant wants the Department to rely upon; and

(iii) Information showing the applicant is qualified to perform the proposed services.

(2) In addition to the information required by paragraph (c)(1) of this section, an application for exemption from section 41101 or 41301 of the Statute (except exemptions under section 40109(g)) shall state whether the authority sought is governed by a bilateral agreement or by principles of comity and reciprocity. Applications by foreign carriers shall state whether the applicant's homeland government grants U.S. carriers authority similar to that requested. If so, the application shall state whether the fact of reciprocity has been established by the Department and cite the pertinent finding. If the fact of reciprocity has not been established by the Department, the application shall include documentation to establish such reciprocity.

(d) *Emergency cabotage.* Applications under section 40109(g) of the Statute shall, in addition to the information required in paragraphs (b) and (c) of this section, contain evidence showing that:

(1) Because of an emergency created by unusual circumstances not arising in the normal course of business, traffic in the markets requested cannot be accommodated by air carriers holding certificates under section 41102 of the Statute;

(2) All possible efforts have been made to accommodate the traffic by using the resources of such air carriers (including, for example, the use of foreign aircraft, or sections of foreign aircraft, under lease or charter to such air carriers, and the use of such air carriers' reservation systems to the extent practicable);

(3) The authority requested is necessary to avoid unreasonable hardship for the traffic in the market that cannot be accommodated by air carriers; and

(4) In any case where an inability to accommodate traffic in a market results from a labor dispute, the grant of the requested exemption will not result in an unreasonable advantage to any party in the dispute.

(e) *Renewal applications.* An application requesting renewal of an exemption or other limited authority under this subpart that is intended to invoke the automatic extension provisions of 5 U.S.C. 558(c) shall comply with, and contain the statements and information required by part 377 of this chapter.

(f) *Record of service.* An application shall list the parties served as required by § 302.304.

§ 302.304 Service of documents.

(a) *General requirements.* (1) An application for exemption and responsive pleadings shall be served as provided by § 302.7.

(2) Applicants shall serve on the persons listed in paragraph (b) of this section a complete copy of the application and any supporting documents. Responsive pleadings shall be served on the same persons as applications.

(b) *Persons to be served.* (1) Applicants for scheduled interstate air transportation authority shall serve:

(i) All U.S. air carriers (including commuter air carriers) that publish schedules in the *Official Airline Guide* or the *Air Cargo Guide* for the city-pair market(s) specified in the application,

(ii) The airport authority of each U.S. airport that the applicant proposes to serve, and

(iii) Any other person who has filed a pleading in a related proceeding under section 41102, 41302, or 40109 of the Statute.

(2) Applicants for scheduled foreign air transportation authority shall serve:

(i) All U.S. air carriers (including commuter air carriers) that publish schedules in the *Official Airline Guide* or in the *Air Cargo Guide* for the country-pair market(s) specified in the application,

(ii)The airport authority of each U.S. airport that the applicant proposes to serve, and

(iii) Any other person who has filed a pleading in a related proceeding under section 41102, 41302, or 40109 of the Statute.

(3) Applicants for charter-only or nonscheduled-only authority shall serve any person who has filed a pleading in a related proceeding under section 41102, 41302, or 40109 of the Statute. However, applicants that file fewer than sixteen (16) days prior to the proposed start of service must also serve:

(i) Those U.S. carriers (including commuter carriers) that are known to be operating in the general market(s) at issue and

(ii) Those persons who may be presumed to have an interest in the subject matter of the application.

(4) Applicants for slot exemptions under section 41714 of the Statute shall serve:

(i) All U.S. air carriers (including commuter air carriers) that publish schedules in the *Official Airline Guide* or the *Air Cargo Guide* for the airport(s) specified in the application,

(ii) The manager of each of the affected airports,

(iii) The mayor of the city that each affected airport serves,

(iv) The Governor of the State in which each affected airport is located, and

(v) Any other person who has filed a pleading in a related proceeding under section 41714 of the Statute.

(5) *Additional service.* The Department may, in its discretion, order additional service upon any other person.

[Doc. No. OST–97–2090, 65 FR 6457, Feb. 9, 2000; 65 FR 7418, Feb. 14, 2000]

§ 302.305 Posting of applications.

A copy of every docketed application for exemption shall be posted in Department of Transportation Dockets and listed in the Department's Weekly List of Applications Filed. A copy of every undocketed application shall be posted in the Licensing Division's lobby of the Office of International Aviation.

§ 302.306 Dismissal or rejection of incomplete applications.

(a) *Dismissal or rejection.* The Department may dismiss or reject any application for exemption that does not comply with the requirements of this part.

(b) *Additional data.* The Department may require the filing of additional data with respect to any application for exemption, answer, or reply.

§ 302.307 Answers to applications.

Within fifteen (15) days after the filing of an application for exemption, any person may file an answer in support of or in opposition to the grant of a requested exemption. Such answer shall set forth in detail the reasons why the exemption should be granted or denied. An answer shall include a statement of economic data or other matters the Department is requested

to officially notice, and shall be accompanied by affidavits establishing any other facts relied upon.

§ 302.308 Replies to answers.

Within seven (7) days after the last day for filing an answer, any interested party may file a reply to one or more answers.

§ 302.309 Requests for hearing.

The Department will not normally conduct oral evidentiary hearings concerning applications for exemption. However, the Department may, in its discretion, order such a hearing on an application. Any applicant, or any person opposing an application, may request an oral evidentiary hearing. Such a request shall set forth in detail the reasons why the filing of affidavits or other written evidence will not permit the fair and expeditious disposition of the application. A request relying on factual assertions shall be accompanied by affidavits establishing such facts. If the Department orders an oral evidentiary hearing, the procedures in subpart A of this part shall apply.

§ 302.310 Exemptions on the Department's initiative.

The Department may grant exemptions on its own initiative when it finds that such exemptions are required by the circumstances and consistent with the public interest.

§ 302.311 Emergency exemptions.

(a) *Shortened procedures.* When required by the circumstances and consistent with the public interest, the Department may take action, without notice, on exemption applications prior to the expiration of the normal period for filing answers and replies. When required in a particular proceeding, the Department may specify a lesser time for the filing of answers and replies, and notify interested persons of this time period.

(b)(1) *Applications.* Applications for emergency exemption need not conform to the requirements of this subpart or of subpart A of this part (except as provided in this section and in § 302.303(d) concerning emergency cabotage requests). However, an application for emergency exemption must normally be in writing and must state in detail the facts and evidence that support the application, the grounds for the exemption, and the public interest basis for the authority sought. In addition, the application shall state specific reasons that justify departure from the normal exemption application procedures. The application shall also identify those persons notified as required by paragraph (c) of this section. The Department may require additional information from any applicant before acting on an application.

(2) *Oral requests.* The Department will consider oral requests, including telephone requests, for emergency exemption authority under this section in circumstances that do not permit the immediate filing of a written application. All oral requests must, however, provide the information required in paragraph (b)(1) of this section, except that actual evidence in support of the application need not be tendered when the request is made. All oral requests must be confirmed by written application, together with all supporting evidence, within three (3) business days of the original request.

(c) *Notice.* Except when the Department decides that no notice need be given, applicants for emergency exemption shall notify, as appropriate, those persons specified in § 302.304(b) of this subpart. Such notification shall be made in the same manner, contain the same information, and be dispatched at the same time, as the application made to the Department.

Subpart D—Rules Applicable to Enforcement Proceedings

§ 302.401 Applicability.

This subpart contains the specific rules that apply to Department proceedings to enforce the provisions of Subtitle VII of the Statute, and the rules, regulations, orders and other requirements issued by the Department, as well as the filing of informal and formal complaints. Except as modified by this subpart, the provisions of subpart A of this part apply.

§ 302.402 Definitions.

Assistant General Counsel, when used in this subpart, refers to the Assistant

General Counsel for Aviation Enforcement and Proceedings.

Complainant refers to the person filing a complaint.

Parties, when used in this subpart, include the Office of the Assistant General Counsel, the respondent, the complainant, and any other person permitted to intervene under § 302.20.

Respondent refers to the person against whom a complaint is filed.

§ 302.403 Informal complaints.

Any person may submit in writing to the Assistant General Counsel an informal complaint with respect to anything done or omitted to be done by any person in contravention of any provision of the Statute or any requirement established thereunder. Such informal complaints need not otherwise comply with the provisions of this part. Matters so presented may, if their nature warrants, be handled by correspondence or conference with the appropriate persons. Any matter not disposed of informally may be made the subject of an enforcement proceeding pursuant to this subpart. The filing of an informal complaint shall not bar the subsequent filing of a formal complaint.

§ 302.404 Formal complaints.

(a) *Filing.* Any person may make a formal complaint to the Assistant General Counsel about any violation of the economic regulatory provisions of the Statute or of the Department's rules, regulations, orders, or other requirements. Every formal complaint shall conform to the requirements of § 302.3 and § 302.4, concerning the form and filing of documents. The filing of a complaint shall result in the institution of an enforcement proceeding only if the Assistant General Counsel issues a notice instituting such a proceeding as to all or part of the complaint under § 302.406(a) or the Deputy General Counsel does so under § 302.406(c).

(b) *Amendment.* A formal complaint may be amended at any time before service of an answer to the complaint. After service of an answer but before institution of an enforcement proceeding, the complaint may be amended with the permission of the Assistant General Counsel. After institution of an enforcement proceeding, the complaint may be amended only on grant of a motion filed under § 302.11.

(c) *Insufficiency of formal complaint.* In any case where the Assistant General Counsel is of the opinion that a complaint does not sufficiently set forth matters required by any applicable rule, regulation or order of the Department, or is otherwise insufficient, he or she may advise the complainant of the deficiency and require that any additional information be supplied by amendment.

(d) *Joinder of complaints or complainants.* Two or more grounds of complaints involving substantially the same purposes, subject or state of facts may be included in one complaint even though they involve more than one respondent. Two or more complainants may join in one complaint if their respective causes of complaint are against the same party or parties and involve substantially the same purposes, subject or state of facts. The Assistant General Counsel may separate or split complaints if he or she finds that the joinder of complaints, complainants, or respondents will not be conducive to the proper dispatch of the Department's business or the ends of justice.

(e) *Service.* A formal complaint, and any amendments thereto, shall be served by the person filing such documents upon each party complained of, upon the Deputy General Counsel, and upon the Assistant General Counsel.

§ 302.405 Responsive documents.

(a) *Answers.* Within fifteen (15) days after the date of service of a formal complaint, each respondent shall file an answer in conformance with and subject to the requirements of § 302.408(b). Extensions of time for filing an answer may be granted by the Assistant General Counsel for good cause shown.

(b) *Offers to satisfy.* A respondent in a formal complaint may offer to satisfy the complaint through submission of facts, offer of settlement or proposal of adjustment. Such offer shall be in writing and shall be served, within fifteen (15) days after service of the complaint, upon the same persons and in the same manner as an answer. The submittal of

an offer to satisfy the complaint shall not excuse the filing of an answer.

(c) *Motions to dismiss.* Motions to dismiss a formal complaint shall not be filed prior to the filing of a notice instituting an enforcement proceeding with respect to such complaint or a portion thereof.

§ 302.406 Procedure for responding to formal complaints.

(a) Within a reasonable time after an answer to a formal complaint is filed, the Assistant General Counsel shall either:

(1) Issue a notice instituting a formal enforcement proceeding in accordance with § 302.407 or

(2) Issue an order dismissing the complaint in whole or in part, stating the reasons for such dismissal.

(b) An order dismissing a complaint issued pursuant to paragraph (a)(2) of this section shall become effective as a final order of the Department thirty (30) days after service thereof.

(c) Whenever the Assistant General Counsel has failed to act on a formal complaint within a reasonable time after an answer is due, the following motions may be addressed to the Deputy General Counsel:

(1) By the complainant to institute an enforcement proceeding by docketing the complaint upon a showing that it is in the public interest to do so; and

(2) By the respondent to dismiss the complaint upon a showing that it is in the public interest to do so.

(d) The Deputy General Counsel may grant, deny, or defer any of the motions, in whole or in part, and take appropriate action to carry out his or her decision.

§ 302.407 Commencement of enforcement proceeding.

(a) Whenever in the opinion of the Assistant General Counsel there are reasonable grounds to believe that any economic regulatory provision of the Statute, or any rule, regulation, order, limitation, condition, or other requirement established pursuant thereto, has been or is being violated, that efforts to satisfy a complaint as provided by § 302.405 have failed, and that the investigation of any or all of the alleged violations is in the public interest, the Assistant General Counsel may issue a notice instituting an enforcement proceeding before an administrative law judge.

(b) The notice shall incorporate by reference the formal complaint submitted pursuant to § 302.404 or shall be accompanied by a complaint by an attorney from the Office of the Assistant General Counsel. The notice and accompanying complaint, if any, shall be formally served upon each respondent and each complainant.

(c) The proceedings thus instituted shall be processed in regular course in accordance with this part. However, nothing in this part shall be construed to limit the authority of the Department to institute or conduct any investigation or inquiry within its jurisdiction in any other manner or according to any other procedures that it may deem necessary or proper.

(d) Whenever the Assistant General Counsel seeks an assessment of civil penalties in an enforcement proceeding, he or she shall serve on all parties to the proceeding a notice of the violations alleged and the amount of penalties for which the respondent may be liable. The notice may be included in the notice instituting a formal enforcement proceeding or in a separate document.

(e) In any proceeding in which civil penalties are sought, any decisions issued by the Department shall state the amount of any civil penalties assessed upon a finding of violation, and the time and manner in which payment shall be made to the United States.

§ 302.408 Answers and replies.

(a) Within fifteen (15) days after the date of service of a notice issued pursuant to § 302.407, the respondent shall file an answer to the complaint attached thereto or incorporated therein unless an answer has already been filed in accordance with § 302.405. Any requests for extension of time for filing of an answer to such complaint shall be filed in accordance with § 302.11.

(b) All answers shall be served in accordance with § 302.7 and shall fully and completely advise the parties and the

Department as to the nature of the defense and shall admit or deny specifically and in detail each allegation of the complaint unless the respondent is without knowledge, in which case, his or her answer shall so state and the statement shall operate as a denial. Allegations of fact not denied or controverted shall be deemed admitted. Matters alleged as affirmative defenses shall be separately stated and numbered and shall, in the absence of a reply, be deemed to be controverted. Any answer to a complaint, or response to a notice, proposing the assessment of civil penalties shall specifically present any matters that the respondent intends to rely upon in opposition to, or in mitigation of, such civil penalties.

(c) The DOT decisionmaker or the administrative law judge may, in his or her discretion, require or permit the filing of a reply in appropriate cases; otherwise, no reply may be filed.

§ 302.409 Default.

Failure of a respondent to file and serve an answer within the time and in the manner prescribed by § 302.408 shall be deemed to authorize the DOT decisionmaker or administrative law judge, as a matter of discretion, to find the facts alleged in the complaint incorporated in or accompanying the notice instituting a formal enforcement proceeding to be true and to enter such orders as may be appropriate without notice or hearing, or, as a matter of discretion, to proceed to take proof, without notice, of the allegations or charges set forth in the complaint or order; *Provided*, that the DOT decisionmaker or administrative law judge may permit late filing of an answer for good cause shown.

§ 302.410 Consolidation of proceedings.

The DOT decisionmaker or Chief Administrative Law Judge may, upon his or her own initiative, or upon motion of any party, consolidate for hearing or for other purposes, or may contemporaneously consider, two or more enforcement proceedings that involve substantially the same parties or issues that are the same or closely related, if he or she finds that such consolidation or contemporaneous hearing will be conducive to the dispatch of business and to the ends of justice and will not unduly delay the proceedings.

§ 302.411 Motions to dismiss and for summary judgment.

(a) At any time after an answer has been filed, any party may file with the DOT decisionmaker or the administrative law judge a motion to dismiss or a motion for summary judgment, including supporting affidavits. The procedure on such motions shall be in accordance with the Federal Rules of Civil Procedure (28 U.S.C.), particularly Rules 6(d), 7(b), 12, and 56, except that answers and supporting papers to a motion to dismiss or for summary judgment shall be filed within seven (7) days after service of the motion.

(b) Parties may petition the DOT decisionmaker to review any action by the administrative law judge granting summary judgment or dismissing an enforcement proceeding under the procedure established for review of an initial decision in § 302.32.

§ 302.412 Admissions as to facts and documents.

(a) At any time after an answer has been filed, any party may file with the DOT decisionmaker or administrative law judge and serve upon the opposing side a written request for the admission of the genuineness and authenticity of any relevant documents described in and exhibited with the request or for the admission of the truth of any relevant matters of fact stated in the request with respect to such documents.

(b) Each of the matters of which an admission is requested shall be deemed admitted unless within a period designated in the request, not less than ten (10) days after service thereof, or within such further time as the DOT decisionmaker or the administrative law judge may allow upon motion and notice, the party to whom the request is directed serves upon the requesting party a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he or she cannot truthfully either admit or deny such matters.

(c) Service of such request and answering statement shall be made as provided in § 302.7. Any admission made by a party pursuant to such request is only for the purposes of the pending proceeding, or any proceeding or action instituted for the enforcement of any order entered therein, and shall not constitute an admission by him or her for any other purpose or be used against him or her in any other proceeding or action.

§ 302.413 Evidence of previous violations.

Evidence of previous violations by any person or of any provision of the Statute or any requirement thereunder found by the Department or a court in any other proceeding or criminal or civil action may, if relevant and material, be admitted in any enforcement proceeding involving such person.

§ 302.414 Prehearing conference.

A prehearing conference may be held in an enforcement proceeding whenever the administrative law judge believes that the fair and expeditious disposition of the proceeding requires one. If a prehearing conference is held, it shall be conducted in accordance with § 302.22.

§ 302.415 Hearing.

After the issues have been formulated, whether by the pleadings or otherwise, the administrative law judge shall give the parties reasonable written notice of the time and place of the hearings. Except as may be modified by the provisions of this subpart, the procedures in § 302.17 to § 302.38 governing the conduct of oral evidentiary hearings will apply.

§ 302.416 Appearances by persons not parties.

With consent of the administrative law judge, appearances may be entered without request for or grant of permission to intervene by interested persons who are not parties to the proceeding. Such persons may, with the consent of the administrative law judge, cross-examine a particular witness or suggest to any party or counsel therefor questions or interrogations to be asked witnesses called by any party, but may not otherwise examine witnesses and may not introduce evidence or otherwise participate in the proceeding. However, such persons may present to both the administrative law judge and the DOT decisionmaker an oral or written statement of their position on the issues involved in the proceeding.

§ 302.417 Settlement of proceedings.

(a) The Deputy General Counsel and the respondent may agree to settle all or some of the issues in an enforcement proceeding at any time before a final decision is issued by the DOT decisionmaker. The Deputy General Counsel shall serve a copy of any proposed settlement on each party and shall submit the proposed settlement to the administrative law judge for approval. The submission of a proposed settlement shall not automatically delay the proceeding.

(b) Any party to the proceeding may submit written comments supporting or opposing the proposed settlement within ten (10) days from the date of service.

(c) The administrative law judge shall approve the proposed settlement, as submitted, if it appears to be in the public interest, or otherwise shall disapprove it.

(d) Information relating to settlement offers and negotiations will be withheld from public disclosure if the Deputy General Counsel determines that disclosure would interfere with the likelihood of settlement of an enforcement proceeding.

§ 302.418 Motions for immediate suspension of operating authority pendente lite.

All motions for the suspension of the economic operating authority of an air carrier during the pendency of proceedings to revoke such authority shall be filed with, and decided by, the DOT decisionmaker. Proceedings on the motion shall be in accordance with § 302.11. In addition, the DOT decisionmaker shall afford the parties an opportunity for oral argument on such motion.

§ 302.419 Modification or dissolution of enforcement actions.

Whenever any party to a proceeding, in which an order of the Department has been issued pursuant to section 46101 of the Statute or an injunction or other form of enforcement action has been issued by a court of competent jurisdiction pursuant to section 46106 of the Statute, believes that changed conditions of fact or law or the public interest require that said order or judicial action be modified or set aside, in whole or in part, such party may file with the Department a motion requesting that the Department take such administrative action or join in applying to the appropriate court for such judicial action, as the case may be. The motion shall state the changes desired and the changed circumstances warranting such action, and shall include the materials and argument in support thereof. The motion shall be served on each party to the proceeding in which the enforcement action was taken. Within thirty (30) days after the service of such motion, any party so served may file an answer thereto. The Department shall dispose of the motion by such procedure as it deems appropriate.

§ 302.420 Saving clause.

Repeal, revision or amendment of any of the economic regulatory provisions of the Statute or of the Department's rules, regulations, orders, or other requirements shall not affect any pending enforcement proceeding or any enforcement proceeding initiated thereafter with respect to causes arising or acts committed prior to said repeal, revision or amendment, unless the act of repeal, revision or amendment specifically so provides.

Subpart E—Rules Applicable to Proceedings With Respect to Rates, Fares and Charges for Foreign Air Transportation

§ 302.501 Applicability.

This subpart sets forth the special rules applicable to proceedings with respect to rates, fares and charges in foreign air transportation under Chapter 415 of the Statute. Except as modified by this subpart, the provisions of subpart A apply.

§ 302.502 Institution of proceedings.

A proceeding to determine the lawfulness of rates, fares, or charges for the foreign air transportation of persons or property by aircraft, or the lawfulness of any classification, rule, regulation, or practice affecting such rates, fares or charges, may be instituted by the filing of a petition or complaint by any person, or by the issuance of an order by the Department.

§ 302.503 Contents and service of petition or complaint.

(a) If a petition or complaint is filed it shall state the reasons why the rates, fares, or charges, or the classification, rule, regulation, or practice complained of are unlawful and shall support such reasons with a full factual analysis.

(b) A petition or complaint shall be served by the petitioner or complainant upon the air carrier against whose tariff provision the petition or complaint is filed.

(c) Answers to complaints, other than those filed under § 302.506, shall be filed within seven (7) working days after the complaint is filed.

§ 302.504 Dismissal of petition or complaint.

If the Department is of the opinion that a petition or complaint does not state facts that warrant an investigation or action on its part, it may dismiss such petition or complaint without hearing.

§ 302.505 Order of investigation.

The Department, on its own initiative, or if it is of the opinion that the facts stated in a petition or complaint warrant it, may issue an order instituting an investigation of the lawfulness of any present or proposed rates, fares, or charges for the foreign air transportation of persons or property by aircraft or the lawfulness of any classification, rule, regulation, or practice affecting such rates, fares, or charges, and may assign the proceeding for hearing before an administrative law judge. If a hearing is held, except

as modified by this subpart, the provisions of §302.17 through §302.38 of this part shall apply.

§302.506 Complaints requesting suspension of tariffs; answers to such complaints.

(a) Formal complaints seeking suspension of tariffs pursuant to section 41509 of the Statute shall fully identify the tariff and include reference to:

(1) The issued or posting date,

(2) The effective date,

(3) The name of the publishing carrier or agent,

(4) The Department number, and

(5) Specific items or particular provisions protested or complained against. The complaint should indicate in what respect the tariff is considered to be unlawful, and state what complainant suggests by way of substitution.

(b) A complaint requesting suspension of a tariff ordinarily will not be considered unless made in conformity with this section and filed no more than ten (10) days after the issued date contained within such tariff.

(c) A complaint requesting suspension, pursuant to section 41509 of the Statute, of an existing tariff for foreign air transportation may be filed at any time. However, such a complaint must be accompanied by a statement setting forth compelling reasons for not having requested suspension within the time limitations provided in paragraph (b) of this section.

(d) In an emergency satisfactorily shown by the complainant, and within the time limits herein provided, a complaint may be sent by facsimile, telegram, or electronic mail (when available) to the Department and to the carrier against whose tariff provision the complaint is made. Such complaint shall state the grounds relied upon, and must be confirmed in writing within three (3) business days and filed and served in accordance with this part.

(e) Answers to complaints shall be filed within six (6) working days after the complaint is filed.

§302.507 Computing time for filing complaints.

In computing the time for filing formal complaints pursuant to §302.506, with respect to tariffs that do not contain a posting date, the first day preceding the effective date of the tariff shall be the first day counted, and the last day so counted shall be the last day for filing unless such day is a Saturday, Sunday, or legal holiday for the Department, in which event the period for filing shall be extended to the next successive day that is not a Saturday, Sunday, or holiday. The computation of the time for filing complaints as to tariffs containing a posting date shall be governed by §302.8.

Subpart F—Rules Applicable to Proceedings Concerning Airport Fees

§302.601 Applicability.

(a) This subpart contains the specific rules that apply to a complaint filed by one or more air carriers or foreign air carriers (''carriers''), pursuant to 49 U.S.C. 47129(a), for a determination of the reasonableness of a fee increase or a newly established fee for aeronautical uses that is imposed upon the carrier by the owner or operator of an airport. This subpart also applies to requests by the owner or operator of an airport for such a determination. An airport owner or operator is considered to have imposed a fee on a carrier when it has taken all steps necessary under its procedures to establish the fee, whether or not the fee is being collected or carriers are currently required to pay it.

(b) This subpart does not apply to—

(1) A fee imposed pursuant to a written agreement with a carrier using the facilities of an airport;

(2) A fee imposed pursuant to a financing agreement or covenant entered into prior to August 23, 1994, or

(3) Any other existing fee not in dispute as of August 23, 1994.

(c) Except as modified by this subpart, the provisions of subpart A of this part apply.

§302.602 Complaint by a carrier; request for determination by an airport owner or operator.

(a) Any carrier may file a complaint with the Secretary for a determination as to the reasonableness of any fee imposed on the carrier by the owner or operator of an airport. Any airport

owner or operator may also request such a determination with respect to a fee it has imposed on one or more carriers. The complaint or request for determination shall conform to the requirements of this subpart and §§ 302.3 and 302.4 concerning the form and filing of documents.

(b) If a carrier has previously filed a complaint with respect to the same airport fee or fees, any complaint by another carrier and any airport request for determination shall be filed no later than seven (7) calendar days following the initial complaint. In addition, all complaints or requests for determination must be filed on or before the sixtieth (60th) day after the carrier receives written notice of the imposition of the new fee or the imposition of the increase in the fee.

(c) To ensure an orderly disposition of the matter, all complaints and any request for determination filed with respect to the same airport fee or fees will be considered in a consolidated proceeding, as provided in § 302.606.

§ 302.603 Contents of complaint or request for determination.

(a) The complaint or request for determination shall set forth the entire grounds for requesting a determination of the reasonableness of the airport fee. The complaint or request shall include a copy of the airport owner or operator's written notice to the carrier of the imposition of the fee, a statement of position with a brief, and all supporting testimony and exhibits on which the filing party intends to rely. In lieu of submitting duplicative exhibits or testimony, the filing party may incorporate by reference testimony and exhibits already filed in the same proceeding.

(b) All exhibits and briefs prepared on electronic spreadsheet or word processing programs should be accompanied by standard-format computer diskettes containing those submissions. The disk submission must be in one of the following formats, in the latest two versions, or in such other format as may be specified by notice in the FEDERAL REGISTER: Microsoft Word (or RTF), Word Perfect, Ami Pro, Microsoft Excel, Lotus 123, Quattro Pro, or ASCII tab-delineated files. Parties should submit three copies of each diskette to Department of Transportation Dockets: one copy for the docket, one copy for the Office of Hearings, and one copy for the Office of Aviation Analysis. Filers should ensure that files on the diskettes are unalterably locked.

(c) When a carrier files a complaint, it must also certify:

(1) That it has served on the airport owner or operator and all other carriers serving the airport the complaint, brief, and all supporting testimony and exhibits, and that those parties have received or will receive these documents no later than the date the complaint is filed. Such service shall be by hand, by electronic transmission, or by overnight express delivery. (Unless a carrier has informed the complaining carrier that a different person should be served, service may be made on the person responsible for communicating with the airport on behalf of the carrier about airport fees.);

(2) That the carrier has previously attempted to resolve the dispute directly with the airport owner or operator;

(3) That when there is information on which the carrier intends to rely that is not included with the brief, exhibits, or testimony, the information has been omitted because the airport owner or operator has not made that information available to the carrier. The certification shall specify the date and form of the carrier's request for information from the airport owner or operator; and

(4) That any submission on computer diskette is a true copy of the data file used to prepare the printed versions of the exhibits or briefs.

(d) When an airport owner or operator files a request for determination, it must also certify:

(1) That it has served on all carriers serving the airport the request, brief, and all supporting testimony and exhibits, and that those parties have received or will receive these documents no later than the date the request is filed. Such service shall be in the same manner as provided in § 302.603(c)(1).

(2) That the airport owner or operator has previously attempted to resolve the dispute directly with the carriers; and

(3) That any submission on computer diskette is a true copy of the data file used to prepare the printed versions of the exhibits or briefs.

§ 302.604 Answers to a complaint or request for determination.

(a)(1) When a carrier files a complaint under this subpart, the owner or operator of the airport and any other carrier serving the airport may file an answer to the complaint as provided in paragraphs (b) and (c) of this section.

(2) When the owner or operator of an airport files a request for determination of the reasonableness of a fee it has imposed, any carrier serving the airport may file an answer to the request.

(b) The answer to a complaint or request for determination shall set forth the answering party's entire response. When one or more additional complaints or a request for determination has been filed pursuant to § 302.602(b) with respect to the same airport's fee or fees, the answer shall set forth the answering party's entire response to all complaints and any such request for determination. The answer shall include a statement of position with a brief and any supporting testimony and exhibits on which the answering party intends to rely. In lieu of submitting duplicative exhibits or testimony, the answering party may incorporate by reference testimony and exhibits already filed in the same proceeding.

(c) Answers to a complaint shall be filed no later than fourteen (14) calendar days after the filing date of the first complaint with respect to the fee or fees in dispute at a particular airport. Answers to a request for determination shall be filed no later than fourteen (14) calendar days after the filing date of the request.

(d) All exhibits and briefs prepared on electronic spreadsheet or word processing programs should be accompanied by standard-format computer diskettes containing those submissions as provided in § 302.603(b).

(e) The answering party must also certify that:

(1) it has served the answer, brief, and all supporting testimony and exhibits by hand, by electronic transmission, or by overnight express delivery on the carrier filing the complaint or the airport owner or operator requesting the determination, and that those parties have received or will receive these documents no later than the date the answer is filed; and

(2) that any submission on computer diskette is a true copy of the data file used to prepare the printed versions of the exhibits or briefs.

§ 302.605 Replies.

(a) The carrier submitting a complaint may file a reply to any or all of the answers to the complaint. The airport owner or operator submitting a request for determination may file a reply to any or all of the answers to the request for determination.

(b) The reply shall be limited to new matters raised in the answers. It shall constitute the replying party's entire response to the answers. It shall be in the form of a reply brief and may include supporting testimony and exhibits responsive to new matters raised in the answers. In lieu of submitting duplicative exhibits or testimony, the replying party may incorporate by reference testimony and exhibits already filed in the same proceeding.

(c) The reply shall be filed no later than two (2) calendar days after answers are filed.

(d) All exhibits and briefs prepared on electronic spreadsheet or word processing programs should be accompanied by standard-format computer diskettes containing those submissions as provided in § 302.603(b).

(e) The carrier or airport owner or operator submitting the reply must certify that it has served the reply and all supporting testimony and exhibits on the party or parties submitting the answer to which the reply is directed, and that those parties have received or will receive these documents no later than the date the reply is filed, and that any submission on computer diskette is a true copy of the data file used to prepare the printed versions of the exhibits or briefs.

§ 302.606 Review of complaints or requests for determination.

(a) Within thirty (30) days after a complaint or request for determination is filed under this subpart, the Secretary will determine whether the complaint or request meets the procedural requirements of this subpart and whether a significant dispute exists, and take appropriate action pursuant to paragraph (b), (c), or (d) of this section. When both a complaint and a request for determination have been filed with respect to the same airport fee or fees, the Secretary will issue a determination as to whether the complaint, the request, or both meet the procedural requirements of this subpart and whether a significant dispute exists within thirty (30) days after the complaint is filed.

(b) If the Secretary determines that a significant dispute exists, he or she will issue an instituting order assigning the complaint or request for hearing before an administrative law judge. The instituting order will—

(1) Establish the scope of the issues to be considered and the procedures to be employed;

(2) Indicate the parties to participate in the hearing;

(3) Consolidate into a single proceeding all complaints and any request for determination with respect to the fee or fees in dispute; and

(4) Include any special provisions for exchange or disclosure of information by the parties.

(c) If the Secretary determines that the complaint or request does not meet the procedural requirements of this subpart, the complaint or request for determination will be dismissed without prejudice to filing a new complaint. The order of the Secretary will set forth the terms and conditions under which a revised complaint or request may be filed.

(d) If the Secretary finds that no significant dispute exists—

(1) If the proceeding was instituted by a complaint, the Secretary will issue an order dismissing the complaint, which will contain a concise explanation of the reasons for the determination that the dispute is not significant.

(2) If the proceeding was instituted by a request for determination, the Secretary will either issue a final order as provided in § 302.610 or set forth the schedule for any additional procedures required to complete the proceeding.

§ 302.607 Decision by administrative law judge.

The administrative law judge shall issue a decision recommending a disposition of a complaint or request for determination within sixty (60) days after the date of the instituting order, unless a shorter period is specified by the Secretary.

§ 302.608 Petitions for discretionary review.

(a) Within five (5) calendar days after service of a decision by an administrative law judge, any party may file with the Secretary a petition for discretionary review of the administrative law judge's decision.

(b) Petitions for discretionary review shall comply with § 302.32(a). The petitioner must also certify that it has served the petition by hand, by electronic transmission, or by overnight express delivery on all parties to the proceeding and that those parties have received or will receive the petition no later than the date it is filed.

(c) Any party may file an answer in support of or in opposition to any petition for discretionary review. The answer shall be filed within four (4) calendar days after service of the petition for discretionary review. The answer shall comply with the page limits specified in § 302.32(b).

§ 302.609 Completion of proceedings.

(a) When a complaint or a request for determination with respect to an airport fee or fees has been filed under this subpart and has not been dismissed, the Secretary will issue a determination as to whether the fee is reasonable within 120 days after the complaint or request is filed.

(b) When both a complaint and a request for determination have been filed with respect to the same airport fee or fees and have not been dismissed, the Secretary will issue a determination as to whether the fee is reasonable within 120 days after the complaint is filed.

§ 302.610 Final order.

(a) When a complaint or request for determination stands submitted to the Secretary for final decision on the merits, he or she may dispose of the issues presented by entering an appropriate order, which will include a statement of the reasons for his or her findings and conclusions. Such an order shall be deemed a final order of the Secretary.

(b) The final order of the Secretary shall include, where necessary, directions regarding an appropriate refund or credit of the fee increase or newly established fee which is the subject of the complaint or request for determination.

(c) If the Secretary has not issued a final order within 120 days after the filing of a complaint by an air carrier or foreign air carrier, the decision of the administrative law judge shall be deemed to be the final order of the Secretary.

Subpart G—Rules Applicable to Mail Rate Proceedings and Mail Contracts

§ 302.701 Applicability.

(a) This subpart sets forth the special rules applicable to proceedings for the establishment of mail rates by the Department for foreign air transportation and air transportation between points in Alaska, and certain contractual arrangements between the U.S. Postal Service and certificated air carriers for the carriage of mail in foreign air transportation entered into pursuant to 39 U.S.C. 5402(a), 84 Stat. 772.

(b) Such contracts must be for the transportation of at least 750 pounds of mail per flight, and no more than five (5) percent, based on weight, of the international mail transported under any such contract may consist of letter mail.

FINAL MAIL RATE PROCEEDINGS

§ 302.702 Institution of proceedings.

(a) Proceedings for the determination of rates of compensation for the transportation of mail may be commenced by the filing of a petition by an air carrier whose rate is to be fixed, or the U.S. Postal Service, or upon the issuance of an order by the DOT decisionmaker.

(b) The petition shall set forth the rate or rates sought to be established, a statement that they are believed to be fair and reasonable, the reasons supporting the request for a change in rates, and a detailed economic justification sufficient to establish the reasonableness of the rate or rates proposed.

(c) In any case where an air carrier is operating under a final mail rate uniformly applicable to an entire rate-making unit as established by the DOT decisionmaker, a petition must clearly and unequivocally challenge the rate for such entire rate-making unit and not only a part of such unit.

(d) All petitions, amended petitions, and documents relating thereto shall be served upon the U.S. Postal Service by sending a copy to the Assistant General Counsel, Transportation Division, Washington, DC 20260–1124, by registered or certified mail, postpaid, prior to the filing thereof with the Department. Proof of service on the U.S. Postal Service shall consist of a statement in the document that the person filing it has served a copy as required by this section.

(e) Answers to petitions shall be filed within twenty (20) days after service of the petition.

§ 302.703 Order to show cause or instituting a hearing.

Whether the proceeding is commenced by the filing of a petition or upon the Department's own initiative, the DOT decisionmaker may issue an order directing the respondent to show cause why it should not adopt such findings and conclusions and such final rates as may be specified in the order to show cause, or may issue an order setting the matter for hearing before an administrative law judge.

§ 302.704 Objections and answers to order to show cause.

(a) Where an order to show cause is issued, any person having objections to the rates specified in such order shall file with the DOT decisionmaker an answer within forty-five (45) days after the date of service of such order or

within such other period as the order may specify.

(b) An answer to an order to show cause shall contain specific objections, and shall set forth the findings and conclusions, the rates, and the supporting exhibits that would be substituted for the corresponding items in the findings and conclusions of the show cause order, if such objections were found valid.

(c) An answer filed by a person who is neither a party nor a person ultimately permitted to intervene in an oral evidentiary hearing if such proceeding is established shall be treated as a memorandum filed under § 302.706.

§ 302.705 Further procedures.

(a) If no answer is filed within the designated time, or if a timely filed answer raises no material issue of fact, the DOT decisionmaker may, upon the basis of the record in the proceeding, enter a final order fixing the rate or rates.

(b) If an answer raising a material issue of fact is filed within the time designated in the Department's order, the DOT decisionmaker may then issue an order authorizing additional pleadings and/or establishing further procedural steps, including setting the matter for oral evidentiary hearing before an administrative law judge.

§ 302.706 Hearing.

(a) If a hearing is ordered under § 302.705, the issues at such hearing shall be formulated in accordance with the instituting order, except that at a prehearing conference, the administrative law judge may permit the parties to raise such additional issues as he or she deems necessary to make a full determination of a fair and reasonable rate.

(b)(1) The parties to the proceeding shall be the air carrier or carriers for whom rates are to be fixed, the U.S. Postal Service, the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings and any other person whom the DOT decisionmaker or administrative law judge permits to intervene in accordance with § 302.20.

(2) In addition to participation in hearings in accordance with § 302.19, persons other than parties may, within the time fixed for filing an answer to an order to show cause as provided in § 302.704, submit a memorandum of opposition to, or in support of, the position taken in the petition or order. Such memorandum shall not be received as evidence in the proceeding.

(c) All direct evidence shall be in writing and shall be filed in exhibit form within the times specified by the DOT decisionmaker or by the administrative law judge.

(d) Except as modified by this subpart, the provisions of § 302.17 through § 302.38 of this part shall apply.

PROVISION FOR TEMPORARY RATE

§ 302.707 Procedure for fixing temporary mail rates.

At any time during the pendency of a proceeding for the determination of final mail rates, the DOT decisionmaker, upon his or her own initiative, or on petition by the air carrier whose rates are in issue or by the U.S. Postal Service, may fix temporary rates of compensation for the transportation of mail subject to downward or upward adjustment upon the determination of final mail rates.

INFORMAL MAIL RATE CONFERENCE PROCEDURE

§ 302.708 Invocation of procedure.

(a) Conferences between DOT employees, representatives of air carriers, the U.S. Postal Service and other interested persons may be called by DOT employees for the purpose of considering and clarifying issues and factual material in pending proceedings for the establishment of rates for the transportation of mail.

(b) At the commencement of an informal mail rate conference pursuant to this section, the authorized DOT employees conducting such conference shall issue to each person present at such conference a written statement to the effect that such conference is being conducted pursuant to this section and stating the time of commencement of such conference; and at the termination of such conference the DOT employees conducting such conference shall note in writing on such statement

the time of termination of such conference.

§ 302.709 Scope of conferences.

The mail rate conferences shall be limited to the discussion of, and possible agreement on, particular issues and related factual material in accordance with sound rate-making principles. The duties and powers of DOT employees in rate conferences essentially will not be different, therefore, from the duties and powers they have in the processing of rate cases not involving a rate conference. The employees' function in both instances is to present clearly to the DOT decisionmaker the issues and the related material facts, together with recommendations. The DOT decisionmaker will make an independent determination of the soundness of the employees's analyses and recommendations.

§ 302.710 Participants in conferences.

The persons entitled to be present in mail rate conferences will be the representatives of the carrier whose rates are in issue, the staff of the U.S. Postal Service, and the authorized DOT employees. No other person will attend unless the DOT employees deem his or her presence necessary in the interest of one or more purposes to be accomplished, and in such case his or her participation will be limited to such specific purposes. No person, however, shall have the duty to attend merely by reason of invitation by the authorized DOT employees.

§ 302.711 Conditions upon participation.

(a) *Nondisclosure of information.* As a condition to participation, every participant, during the period of the conference and for ninety (90) days after its termination, or until the Department takes public action with respect to the facts and issues covered in the conference, whichever is earlier:

(1) Shall, except for necessary disclosures in the course of employment in connection with conference business, hold the information obtained in conference in absolute confidence and trust;

(2) Shall not deal, directly or indirectly, for the account of himself or herself, his or her immediate family, members of his or her firm or company, or as a trustee, in securities of the air carrier involved in the rate conference except that under exceptional circumstances special permission may be obtained in advance from the DOT decisionmaker; and

(3) Shall adopt effective controls for the confidential handling of such information and shall instruct personnel under his or her supervision, who by reason of their employment come into possession of information obtained at the conference, that such information is confidential and must not be disclosed to anyone except to the extent absolutely necessary in the course of employment, and must not be misused. (The term ''information'', as used in this section, shall refer only to information obtained at the conference regarding the future course of action or position of the Department or its employees with respect to the facts or issues discussed at the conference.)

(b) *Signed statement required.* Every representative of an air carrier actually present at any conference shall sign a statement that he or she has read this entire instruction and promises to abide by it and advise any other participant to whom he or she discloses any confidential information of the restrictions imposed above. Every representative of the U.S. Postal Service actually present at any conference shall, on his or her own behalf, sign a statement to the same effect.

(c) *Presumption of having conference information.* A director of any air carrier that has had a representative at the conference, who deals either directly or indirectly for himself or herself, his or her immediate family, members of his or her firm or company, or as a trustee, in securities of the air carrier involved in the conference, during the restricted period set forth above, shall be presumed to have come into possession of information obtained at the conference knowing that such information was subject to the restrictions imposed above; but such presumption can be rebutted.

(d) *Compliance report required.* Within ten (10) days after the expiration of the time specified for keeping conference

matters confidential, every participant, as defined in paragraph (e) of this section, shall file a verified compliance report with Department of Transportation Dockets stating that he or she has complied in every respect with the conditions of this section, or if he or she has not so complied, stating in detail in what respects he or she has failed to comply.

(e) *Persons subject to the provisions of this section.* For the purposes of this section, participants shall include:

(1) Any representative of any air carrier and any representative of the U.S. Postal Service actually present at the conference;

(2) The directors and the officers of any air carrier that had a representative at the conference;

(3) The members of any firm of attorneys or consultants that had a representative at the conference; and

(4) The members of the U.S. Postal Service staff who come into possession of information obtained at the conference, knowing that such information is subject to the restrictions imposed in this section.

§ 302.712 Information to be requested from an air carrier.

When an air carrier is requested to submit detailed estimates as to traffic, revenues and expenses by appropriate periods and the investment that will be required to perform the operations for a future period, full and adequate support shall be presented for all estimates, particularly where such estimates deviate materially from the air carrier's experience. With respect to the rate for a past period, essentially the same procedure shall be followed. Other information or data likewise may be requested by the DOT employees. All data submitted by the air carrier shall be certified by a responsible officer.

§ 302.713 DOT analysis of data for submission of answers thereto.

After a careful analysis of these data, the DOT employees will, in most cases, send the air carrier a statement of exceptions showing areas of differences. Where practicable, the air carrier may submit an answer to these exceptions. Conferences will then be scheduled to resolve the issues and facts in accordance with sound ratemaking principles.

§ 302.714 Availability of data to the U.S. Postal Service.

The representatives of the U.S. Postal Service shall have access to all conference data and, insofar as practicable, shall be furnished copies of all pertinent data prepared by the DOT employees and the air carrier, and a reasonable time shall be allowed to review the facts and issues and to make any presentation deemed necessary; *Provided,* That in cases other than those involving an issue as to the service mail rates payable by the U.S. Postal Service pursuant to section 41901 of the Statute, representatives of the U.S. Postal Service shall be furnished with copies of data under this provision only upon their written request.

§ 302.715 Post-conference procedure.

No briefs, argument, or any formal steps will be entertained by the DOT decisionmaker after the rate conferences. The form, content and time of the staff's presentation to the DOT decisionmaker are entirely matters of internal procedure. Any party to the mail rate proceeding may, through an authorized DOT employee, request the opportunity to submit a written or oral statement to the DOT decisionmaker on any unresolved issue. The DOT decisionmaker will grant such requests whenever he or she deems such action desirable in the interest of further clarification and understanding of the issues. The granting of an opportunity for such further presentation shall not, however, impair the rights that any party might otherwise have under the Statute and this part.

§ 302.716 Effect of conference agreements.

No agreements or understandings reached in rate conferences as to facts or issues shall in any respect be binding on the Department or any participant. Any party to mail rate proceedings will have the same rights to file an answer and take other procedural steps as though no rate conference had been held. The fact, however, that a rate conference was held

and certain agreements or understandings may have been reached on certain facts and issues renders it proper to provide that, upon the filing of an answer by any party to the rate proceeding, all issues going to the establishment of a rate shall be open, except insofar as limited in prehearing conference in accordance with § 302.22.

§ 302.717 Waiver of participant conditions.

After the termination of a mail rate conference hereunder, the air carrier whose rates were in issue may petition the DOT decisionmaker for a release from the obligations imposed upon it and all other persons by § 302.711. The DOT decisionmaker will grant such petition only after a detailed and convincing showing is made in the petition and supporting exhibits and documents that there is no reasonable possibility that any of the abuses sought to be prevented will occur or that the Department's processes will in any way be prejudiced. There will be no hearing or oral argument on the petition and the DOT decisionmaker will grant or deny the request without being required to assign reasons therefor.

PROCESSING CONTRACTS FOR THE CARRIAGE OF MAIL IN FOREIGN AIR TRANSPORTATION

§ 302.718 Filing.

Any air carrier that is a party to a contract to which this subpart is applicable shall file three (3) copies of the contract in the Office of Aviation Analysis, X–50, Department of Transportation, Washington, DC 20590, not later than ninety (90) days before the effective date of the contract. A copy of such contract shall be served upon the persons specified in § 302.720 and the certificate of service shall specify the persons upon whom service has been made. One copy of each contract filed shall bear the certification of the secretary or other duly authorized officer of the filing air carrier to the effect that such copy is a true and complete copy of the original written instrument executed by the parties.

§ 302.719 Explanation and data supporting the contract.

Each contract filed pursuant to this subpart shall be accompanied by economic data and such other information in support of the contract upon which the filing air carrier intends that the Department rely, including, in cases where pertinent, estimates of the annual volume of contract mail (weight and ton-miles) under the proposed contract, the nature of such mail (letter mail, parcel post, third class, etc.), together with a statement as to the extent to which this traffic is new or diverted from existing classes of air and surface mail services and the priority assigned to this class of mail.

§ 302.720 Service.

A copy of each contract filed pursuant to § 302.718, and a copy of all material and data filed pursuant to § 302.719, shall be served upon each of the following persons:

(a) Each certificated and commuter (as defined in § 298.2 of this chapter) air carrier, other than the contracting carrier, that is actually providing scheduled mail services between any pair of points between which mail is to be transported pursuant to the contract; and

(b) The Assistant General Counsel, Transportation Division, U.S. Postal Service, Washington, DC 20260–1124.

§ 302.721 Complaints.

Within fifteen (15) days of the filing of a contract, any interested person may file with the Office of Aviation Analysis, X–50, Department of Transportation, Washington, DC 20590, a complaint with respect to the contract setting forth the basis for such complaint and all pertinent information in support of same. A copy of the complaint shall be served upon the air carrier filing the contract and upon each of the persons served with such contract pursuant to § 302.720.

§ 302.722 Answers to complaints.

Answers to the complaint may be filed within ten (10) days of the filing of the complaint, with service being made as provided in § 302.720.

§ 302.723 Further procedures.

(a) In any case where a complaint is filed, the DOT decisionmaker shall issue an order dismissing the complaint, disapproving the contract, or taking such other action as may be appropriate. Any such order shall be issued not later than ten (10) days prior to the effective date of the contract.

(b) In cases where no complaint is filed, the DOT decisionmaker may issue a letter of notification to all persons upon whom the contract was served indicating that the Department does not intend to disapprove the contract.

(c) Unless the DOT decisionmaker disapproves the contract not later than ten (10) days prior to its effective date, the contract automatically becomes effective.

§ 302.724 Petitions for reconsideration.

Except in the case of a Department determination to disapprove a contract, no petitions for reconsideration of any Department determination pursuant to this subpart shall be entertained.

APPENDIX A TO PART 302—INDEX TO RULES OF PRACTICE

Appendix A shows the subjects covered by part 302 and the section numbers used before and after the final rule revising part 302, published in the FEDERAL REGISTER on February 9, 2000 and became effective on March 10, 2000.

Subject	Old rule	New rule
ADMINISTRATIVE LAW JUDGES:		
Actions after hearings	§ 302.27(b)	§ 302.31(a)
Actions during prehearing conference	§ 302.23(a)	§ 302.22(b)
Arguments before	§ 302.25	§ 302.29
Briefs	§ 302.26	§ 302.30
Licensing cases	§ 302.1752	§ 302.215
Certification for decision	§ 302.22(d)	§ 302.31(b)
Definition	§ 302.22(a)	§ 302.2
Delegation of authority	§ 302.27(a)	§ 307.17(a)(3)
Exceptions	§ 302.27(a)	§ 307.17(a)(3)
Interlocutory matters	§ 302.27(a)	§ 307.17(a)(3)
Disqualification	§ 302.22(b)	§ 302.17(b)
Exceptions	§ 302.24(e)	§ 302.24(i)
Licensing cases	§ 302.1754	§ 302.217
Hearings before	§ 302.24	§ 302.23
Initial decision (*see* Initial Decision)		
Powers	§ 302.22(c)	§ 302.17(a)
Prehearing conference report	§ 302.23(b)	§ 302.22(c)
Recommended decision (*see* Recommended Decision)		
Termination of authority	§ 302.22(c)	§ 307.17(a)(4)
ADMISSIONS:		
Enforcement proceeding	§ 302.212	§ 302.412
Limitation on use	§ 302.212	§ 302.412(c)
AIRPORT FEES:		
Administrative law judge decision	§ 302.615	§ 302.607
Complaints by U.S. or foreign air carriers	§ 302.603(a)	§ 302.602(a)
Answers	§ 302.607	§ 302.604
Additional complaints	§ 302.603(b)	§ 302.602(b)
Contents	§ 302.605	§ 302.603
Format of exhibits and briefs	§ 302.605(b)	§ 302.603(b)
Service	§ 302.605(c)(1)	§ 302.603(c)(1)
Replies	§ 302.609	§ 302.605
Consolidation of proceedings	§ 302.603(c)	§ 302.602(c)
Dismissal	§§ 302.611(c), (d)	§§ 302.606(c), (d)
Final order	§ 302.621	§ 302.610
Timing	§ 302.619	§ 302.609
Instituting order	§ 302.611(b)	§ 302.606(b)
Petitions for discretionary review	§ 302.617	§ 302.608
Answers	§ 302.617(c)	§ 302.608(c)
Request for determination by airport owner/operator	§ 302.603(a)	§ 302.602(a)
Answers	§ 302.607	§ 302.604
Contents	§ 302.605	§ 302.603
Format of exhibits and briefs	§ 302.605(b)	§ 302.603(b)
Service	§ 302.605(d)(1)	§ 302.603(d)(1)
Replies	§ 302.609	§ 302.605
Review procedures	§ 302.611	§ 302.606
Significant dispute determination	§ 302.611(b)	§ 302.606(b)
AMENDMENTS OF DOCUMENTS (*see* Documents)		
ANSWERS (*see also* Replies):		

Subject	Old rule	New rule
Airport fees	§ 302.607	§ 302.604
Certificate applications:		
Initial fitness	§ 302.1730(c)	§ 302.204
International route awards		
Conforming applications	§ 302.1720(d)	§ 302.212(d)
Motions to modify scope	§ 302.1720(e)	§ 302.212(d)
New authority	§ 302.1720(d)	§ 302.212(b)
Complaints		
Air mail contracts	§ 302.1506	§ 302.722
Airport fees	§ 302.607	§ 302.604
Enforcement matters	§ 302.204(b)	§ 302.405
Suspension of tariffs	§ 302.505	§ 302.506
Consolidation of proceedings	§ 302.12(c)	§ 302.13(c)
Enforcement proceeding, notice instituting	§ 302.207	§ 302.408
Exemption applications	§ 302.406	§ 302.307
Foreign air carrier permit applications	§ 302.1740(c)	§ 302.204
Generally	§ 302.6	§ 302.6
Mail rate proceedings show cause orders	§ 302.305	§ 302.704
Motions, generally	§ 302.18(c)	§ 302.11(c)
Motions to consolidate	§ 302.12(c)	§ 302.13(c)
Motions to dismiss and for summary judgment	§ 302.212	§ 302.411
Motions for modification/dissolution of enforcement proceedings	§ 302.218	§ 302.419
Petitions for discretionary review	§ 302.28(b)	§ 302.32(b)
Petitions for final mail rates	§ 302.303	§ 302.702(e)
Petitions for intervention	§ 302.15(c)(3)	§ 302.20(c)(3)
Petitions for reconsideration	§ 302.37a	§ 302.14
Requests for determination of airport fees	§ 302.607	§ 302.607
APPEALS:		
Administrative Law Judge's ruling	§ 302.18(f)	§ 302.11(h)
Enforcement complaints	§ 302.206(b)	§ 302.406(c)
APPEARANCES:		
Generally	§ 302.11	§ 302.21
Application for admission to practice unnecessary	§ 302.11(a)	§ 302.21(b)
Copy of transcript	§ 302.11(c)	§ 302.27(b)
Retention of counsel	§ 302.11(b)	§ 302.27(a)
Enforcement proceedings	§ 302.214	§ 302.416
APPLICATIONS:		
Admission to practice unnecessary	§ 302.11(a)	§ 302.21(b)
Suspension from practicing before DOT	§ 302.11(a)	§ 302.21(c)
Amendment	§ 302.5	§ 302.5
Certificates for international route awards	§§ 302.1701–1713, 1720	§§ 302.201–206
Conforming applications	§ 302.1720(c)	§ 302.212(c)
Certificates involving initial fitness	§§ 302.1701–1713, 1730	§§ 302.201–206
Consolidation	§ 302.12	§ 302.13
Exemptions	§§ 302.401–405	§§ 302.302–304
Exemptions, emergency	§§ 302.410(b), (c)	§ 302.311
Foreign Air Carrier Permits	§§ 302.1701–1713, 1740	§§ 302.201–206
Licensing cases	§§ § 302.1701–1790	§ 302.201–206
ARGUMENT:		
Before Administrative Law Judge	§ 302.25	§ 302.29
Oral (*see* Oral Arguments)		
ATTENDANCE FEES AND MILEAGE	§ 302.21	§ 302.27(c)
BRIEFS:		
Accompanying motions or answers	§ 302.18(d)	§ 302.11(d)
Failure to restate objections	§ 302.31(b)	§ 302.35(b)
Filing time	§ 302.31(a)	§ 302.35(a)
Formal specifications	§ 302.31(c)	§ 302.35(c)
Incorporation by reference	§ 302.31(b)	§ 302.35(c)(2)
Licensing cases	§§ 302.1752, 1755	§§ 302.215, 218
To Administrative Law Judge	§ 302.26	§ 302.30
Licensing cases	§ 302.1752	§ 302.215
To DOT decisionmaker	§ 302.31	§ 302.35
Licensing cases	§ 302.1755	§ 302.218
CERTIFICATE CASES FOR U.S. AIR CARRIERS:		
Application:		
Answers to	§§ 302.1720(d) 1730(d)	§ 302.204(a)
Contents of	§ 302.1704	§ 302.202
Incomplete	§ 302.1713	§ 302.209
Replies to answers	.....	§ 302.204(b)

Subject	Old rule	New rule
Service of	§ 302.1705	§ 302.203
Supporting evidence	§ 302.1710	§§ 302.202(a), 205
Verification	§ 302.1707	§ 302.206
Continuing Fitness	§ 302.1730	§ 302.211
Non-hearing procedures	§ 302.1712(a)	§ 302.207
Generally	§§ 302.1701–1790	§§ 302.201–220
Initial Fitness	§ 302.1730	§ 302.211
International Route Awards	§ 302.1720	§ 302.212
Oral evidentiary hearing proceedings	§§ 302.1751–1757	§§ 302.214–220
Petition for	§ 302.1712(b)	§ 302.208
CERTIFICATION:		
Documents	§ 302.4(b)	§ 302.4(b)
Record	§§ 302.22(d), 27, 29	§ 302.31(b)
CHARGES (*see* Rates, Fairs, and Charges; Airport Fees)		
CITATION OF RULES	§ 302.2	§ 302.1(c)
CIVIL PENALTIES	§ 302.206(a)	§§ 302.407(d), (e)
COMPLAINANTS, JOINDER	§ 302.13	§ 302.404(d)
COMPLAINTS:		
Airport fees	§§ 302.603–605	§§ 302.602–603
Contracts for transportation of mail	§§ 302.1505–1507	§ 302.721
Enforcement proceedings	§§ 302.200–204	§§ 302.403–404
Joinder	§ 302.13	§ 302.404(d)
Rates, fares, and charges	§§ 302.501–508	§§ 302.501–507
Suspension of tariffs	§§ 302.505–508	§ 302.506
COMPUTATION OF TIME (*see also* Time)	§ 302.16	§ 302.8
CONSOLIDATION OF PROCEEDINGS	§ 302.12	§ 302.13
Airport fees	§ 302.603(c)	§ 302.602(c)
Answer to motion for	§ 302.12(c)	§ 302.13(c)
Enforcement proceedings	§ 302.210(a)	§ 302.410
Filing time	§ 302.12(b)	§ 302.13(b)
Initiation of	§ 302.12(a)	§ 302.13(a)
CONTINUING FITNESS CERTIFICATE CASES	§ 302.1701–1713	§ 302.212
CONTRACTS (*see* Mail Contracts)		
DECISIONS:		
Final	§ 302.36	§§ 302.38, 220
Initial (*see* Administrative Law Judges)		
Recommended (*see* Administrative Law Judges)		
Tentative	§ 302.29	§ 302.33
Exceptions to	§ 302.30	§ 302.34
DEFINITIONS	NA	§§ 302.2, 402
DELEGATION OF AUTHORITY	§ 302.27	§§ 302.17(a), 18(a)
DEPOSITIONS:		
Application by party for	§ 302.20(b)	§ 302.26(b)
Criteria for order to issue	§ 302.20(a)	§ 302.26(a)
Evidential status	§§ 302.20(h)	§ 302.26(h)
Objections to questions or evidence	§ 302.2(d)	§ 302.26(d)
Specifications	§ 302.20(g)	§ 302.26(g)
Subscription by witness	§ 302.20(e)	§ 302.26(e)
Written interrogatories	§ 302.20(f)	§ 302.26(f)
DISCRETIONARY REVIEW:		
Initial and Recommended decisions	§ 302.28	§ 302.32
Answers in opposition or support	§ 302.28(b)	§ 302.32(b)
Formal requirements	§ 302.28(a)(3)	§§ 302.32(a)(3), (4)
Grounds for	§ 302.28(a)(2)	§ 302.32(a)(2)
Orders declining review	§ 302.28(c)	§ 302.32(c)
Oral arguments	§ 302.28(a)(5)	§ 302.32(a)(5)
Petitions for	§ 302.28(a)(1)	§ 302.32(a)(1)
Review proceedings	§ 302.28(d)	§ 302.32(d)
DISSOLUTION OF ENFORCEMENT ACTION	§ 302.218	§ 302.419
DOCUMENTS:		
Amendments	§ 302.5	§ 302.5
Leave of Department	§ 302.5	§ 302.5(a)
Timing of	§ 302.5	§ 302.5(b)
Answers (*see* Answers)		
Briefs (*see* Briefs)		
Dismissal	§ 302.5	§ 302.3(d)
Electronic filing	NA	§ 302.3(c)
Exhibits	§§ 302.24(g)	§ 302.24(c)
Filing	§ 302.3	§ 302.3
Address	§ 302.3(a)	§ 302.3(a)
Date	§ 302.3(a)	§ 302.3(a)
Improper filing	§ 302.4e	§ 302.3(d)
Formal specifications	§ 302.3(b)	§ 302.3(b)

Subject	Old rule	New rule
General requirements	§ 302.4	§ 302.4
Contents	§ 302.4(a)	§ 302.4(a)(2)
Designation of person to receive service	§ 302.4(c)	§ 302.4(a)
Subscription	§ 302.4(b)	§ 302.4(b)
Memoranda of opposition or support	§ 302.6(c)	§ 302.706(b)(2)
Number of copies	§ 302.3(c)	§ 302.3(c)
Objections to public disclosure	§ 302.39(b)	§ 302.12
Official Notice of facts	§ 302.24(n)	§ 302.24(g)
Partial relevance of	§ 302.24(l)	§ 302.24(e)
Presented at oral argument	§ 302.32(b)	§ 302.36(b)
Receipt after hearing	§ 302.24(k)	§ 302.24(h)
Responsive	§ 302.6	§ 302.6
Retention	§ 302.7	§ 302.3(f)
Service (*see* Service)		
Table of contents/Index	§ 302.3(d)	§ 302.4(a)(3)
Unauthorized	§ 302.4(f)	§ 302.6(c)
DOT DECISIONMAKER:		
Briefs to	§ 302.31	§ 302.35
Licensing cases	§ 302.1755	§ 302.218
Certification of record to	§ 302.22(d)	§ 302.31(b)
Definition	§ 302.22a	§§ 302.2, 18
Final decision	§ 302.36	§ 302.38
Licensing cases	§ 302.1757	§ 302.220
Oral argument	§ 302.32	§ 302.36
Licensing cases	§ 302.1756	§ 302.219
Petitions for reconsideration	§ 302.37	§ 302.14
Review of Administrative Law Judge decision	§ 302.38	§ 302.32
Tentative decision	§ 302.29	§ 302.33
Exceptions	§ 302.30	§ 302.34
ENFORCEMENT PROCEEDINGS:		
Admissions as to facts and documents	§ 302.212	§ 302.412
Complaints:		
Formal	§ 302.201	§ 302.404
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Insufficiency of	§ 302.203	§ 302.404(c)
Consolidation of proceedings	§ 302.210a	§ 302.410
Evidence of previous violations	§ 302.216	§ 302.413
Generally	§§ 302.200–217	§§ 302.401–420
Hearings	§ 302.213	§ 302.415
Modification or dissolution of enforcement action	§ 302.218	§ 302.419
Motions to dismiss	§ 302.212	§ 302.411
Motions for summary judgment	§ 302.212	§ 302.402
Settlement proceedings	§ 302.215	§ 302.417
EVIDENCE:		
Exhibits	§§ 302.24(g), (h)	§§ 302.24(c), (d)
Generally	§ 302.24(c)	§ 302.24(a)
Objections to	§ 302.24(d)	§ 302.24(b)
Offers of proof	§ 302.24(f)	§ 302.24(j)
Official notice of facts in certain documents	§ 302.24(n)	§ 302.24(g)
Partial relevance of	§ 302.24(l)	§ 302.24(e)
Previous violations	§ 302.216	§ 302.413
Records in other proceedings	§ 302.24(j)	§ 302.24(f)
EXAMINERS (*see* Administrative Law Judges)		
EXCEPTIONS:		
Administrative Law Judge's rulings	§ 302.24(e)	§ 302.24(i)
Initial decisions	§ 302.30	§ 302.31(c)
Licensing cases	§ 302.1754	§ 302.217
Recommended decisions	§ 302.30	§ 302.31(c)
Request for oral argument	§ 302.32	§ 302.36
Tentative decisions	§ 302.30	§ 302.34
Waiver	§ 302.33	§ 302.37
EXEMPTION PROCEEDINGS:		
Application:		
Answers to	§ 302.406	§ 302.307
Contents of	§ 302.402	§ 302.303
Filing of	§ 302.401	§ 302.302
Incomplete	§ 302.405	§ 302.306
Posting of	§ 302.404	§ 302.305
Service of	§ 302.403	§ 302.304
Reply to answer	§ 302.407	§ 302.308
Supporting evidence	§ 302.402(c)	§ 302.302(c)
DOT's initiative	§ 302.409	§ 302.310
Emergencies	§ 302.410	§ 302.311
Cabotage	§ 302.402(d)	§ 302.303(d)

Subject	Old rule	New rule
Hearing request	§ 302.408	§ 302.309
EXHIBITS (*see also* Evidence):		
Generally	§ 302.24(g)	§§ 302.24(c), (d)
FARES (*see* Rates, Fares, and Charges)		
FEE (*see* Airport Fees)		
FINAL MAIL RATE PROCEEDINGS (*see* Mail Rate Proceedings)		
FINAL ORDERS (*see* Orders)		
FITNESS CASES (*see* Certificate Cases)		
FOREIGN AIR CARRIER PERMIT CASES:		
Application:		
Answers to	§ 302.1740(c)	§ 302.204(a)
Contents of	§ 302.1704	§ 302.202
Incomplete	§ 302.1713	§ 302.209
Replies to answers		§ 302.204(b)
Service of	§ 302.1705	§ 302.203
Supporting evidence	§ 302.1710	§§ 302.202(a), 205
Verification	§ 302.1707	§ 302.206
Non-hearing procedures	§ 302.1712(a)	§ 302.207
Generally	§§ 302.1701–1713, 1740–1790	§§ 302.201–220
Oral evidentiary hearing proceedings	§ 302.1751–1757	§§ 302.214–220
Petition for	§ 302.1712(b)	§ 302.208
HEARINGS:		
Airport fee dispute proceedings	§ 302.611(b)	§ 302.606(b)
Argument before Administrative Law Judge	§ 302.25	§ 302.29
Change in rates, fares, or charges	§ 302.506	§ 302.706
Consolidated (*see* Consolidation of Proceedings)		
Documents of partial relevance	§ 302.24(i)	§ 302.24(e)
Enforcement proceedings	§ 302.213	§ 302.415
Evidence (*see* Evidence)		
Expedition of	§ 302.14(a)	§ 302.11(e)
Generally	§ 302.24	§ 302.23
Intervention	§ 302.15	§ 302.20
Licensing cases	§ 302.1751	§ 302.214
Notice	§ 302.24(b)	§ 302.23
Offers of proof	§ 302.24(f)	§ 302.24(j)
Official notice of facts in certain documents	§ 302.24(n)	§ 302.24(g)
Participation by non parties	§ 302.14(b)	§ 302.19
Receipt of documents after hearing	§ 302.24(k)	§ 302.24(h)
Records in other proceedings	§ 302.24(j)	§ 302.24(f)
Request for, on application for exemption	§ 302.408	§ 302.309
Shortened procedure	§ 302.35	§ 302.15
Transcripts	§§ 302.24(l), (m)	§ 302.28
INITIAL DECISION:		
Answer in support or opposition	§ 302.28(b)	§ 302.32(b)
Contents	§ 302.27(b)	§ 302.31(c)
Effect of	§ 302.27(c)	§ 302.31(d)
Licensing cases	§ 302.1753	§ 302.216
Exceptions to	§ 302.1754	§ 302.217
Oral arguments	§ 302.28(a)(5)	§ 302.32(a)(5)
Orders declining review	§ 302.28(c)	§ 302.32(c)
Petitions for discretionary review	§ 302.28	§ 302.32
Service	§ 302.27(b)	§ 302.31(c)
Scope	§ 302.27(a)	§ 302.31(a)(1)
INITIAL FITNESS CERTIFICATE CASES (*see* Certificate Cases)		
INSTITUTING ORDERS (*see* Orders)		
INTERROGATORIES (*see* Depositions)		
INTERVENTION:		
Generally	§ 302.15	§ 302.20
JOINDER OF COMPLAINTS OR COMPLAINANTS	§ 302.13	§ 302.404(d)
JOINT PLEADINGS:		
Enforcement cases	§ 302.13	§ 302.404(d)
Licensing cases	§ 302.1708	§ 302.204(c)
LAW JUDGE (*see* Administrative Law Judges)		
LICENSING CASES (*see* Certificate Cases; Foreign Air Carrier Permit Cases		
MAIL CONTRACTS:		
Complaint against contract	§§ 302.1505–1507	§§ 302.721–723
Data supporting contract	§ 302.1503	§ 302.719
Explanation of contract	§ 302.1503	§ 302.719
Filing of contract	§ 302.1502	§ 302.718
Petition for reconsideration	§ 302.1508	§ 302.724
Service of contract	§ 302.1504	§ 302.720
MAIL RATE CONFERENCES:		
Availability of data to Postal Service	§ 302.317	§ 302.714

Subject	Old rule	New rule
Conditions upon participation	§ 302.314	§ 302.711
Compliance report	§ 302.314(d)	§ 302.711(d)
Non-disclosure of information	§ 302.314(a)	§ 302.711(a)
Signed statement required	§ 302.314(b)	§ 302.711(b)
DOT analysis of data for submission of answers	§ 302.316	§ 302.713
Effect of conference agreements	§ 302.319	§ 302.716
Information to be requested from carrier	§ 302.315	§ 302.712
Participants in conferences	§ 302.313	§ 302.710
Post conference procedure	§ 302.318	§ 302.715
Scope of conferences	§ 302.312	§ 302.709
Time of commencing and terminating conference	§ 302.321	§ 302.708(b)
Waiver of participant conditions	§ 302.320	§ 302.717
MAIL RATE PROCEEDINGS:		
Evidence	§ 302.308	§ 302.706(c)
Further procedures	§ 302.306, 307	§ 302.705
Hearing	§ 302.309	§ 302.706
Institution of proceedings	§ 302.302	§ 302.702
Objections and answers to show cause order	§ 302.305	§ 302.704
Order to show cause	§ 302.303	§ 302.703
Parties and persons other than parties	§ 302.301, 302	§ 302.706(b)
MILEAGE FEES	§ 302.21	§ 302.27(c)
MODIFICATION OF ENFORCEMENT ACTION	§ 302.218	§ 302.419
MOTIONS (*see also* Petitions):		
Answers to	§ 302.18(c)	§ 302.11(c)
Appeals from rulings of Administrative Law Judges	§ 302.18(f)	§ 302.11(h)
Briefs	§ 302.18(d)	§ 302.11(d)
Consolidation of proceedings	§ 302.12	§ 302.13
Enforcement cases	§ 302.210a	§ 302.410
Continuances and extension of time	§ 302.17	§ 302.9
Disposition of	§ 302.18(e)	§ 302.11(g)
Effect of pendency	§ 302.18(g)	§ 302.11(f)
Expedition of case	§ 302.14(a)	§ 302.11(e)
For suspension of operating authority pendente lite	§ 302.217	§ 302.418
For modification or dissolution of orders	§ 302.218	§ 302.419
Form and contents	§ 302.18(b)	§ 302.11(b)
Generally	§ 302.18	§ 302.11(a)
Oral arguments	§ 302.18(d)	§ 302.11(d)
Substitution of parties	§ 302.10	§ 302.10(b)
To correct transcripts	§ 302.24(m)	§ 302.28(f)
To dismiss and for summary judgment	§ 302.212	§ 302.411
To dismiss formal complaint	§ 302.204	§ 302.405(c)
To file unauthorized documents	§ 302.4(f)	§ 302.6(c)
To modify scope in Licensing cases	§ 302.1720(c)	§ 302.212(b)
To quash or modify subpoena	§ 302.19(f)	§ 302.25(f)
To whom motions addressed	§ 302.18(a)	§ 302.11(a)
To withhold information from public disclosure	§§ 302.39(b), (e), (f)	§§ 302.12(d), (e)
NON-HEARING PROCEDURES	§ 302.35	§ 302.15
Licensing cases	§ 302.1712(a)	§ 302.207
OBJECTIONS (*see also* Answers):		
To Public Disclosure of Information	§ 302.39	§ 302.12
OFFERS OF PROOF	§ 302.24(f)	§ 302.24(j)
OFFICIAL NOTICE	§ 302.24(n)	§ 302.24(g)
ORAL ARGUMENTS:		
Before DOT decisionmakers	§ 302.32	§ 302.36
Request for leave	§ 302.32(a)	§ 302.36(a)
Rules on documentary evidence	§ 302.32(b)	§ 302.36(b)
Before Administrative Law Judges	§ 302.25	§ 302.29
Discretionary review	§ 302.28(a)(5)	§ 302.32(a)(5)
Licensing cases	§ 302.1756	§ 302.219
Waivers	§ 302.33	§ 302.37
ORAL EVIDENTIARY HEARINGS (*see* Hearings)		
ORDERS:		
Declining review of initial decisions	§ 302.28(c)	§ 302.32(c)
Dismissal:		
Airport fee dispute proceedings	§§ 302.611(c), (d)	§§ 302.606(c), (d)
Enforcement complaints	§ 302.205	§ 302.406
Licensing cases	§ 302.1750(a)(2)	§ 302.210(a)(3)
Establishing further procedures (Licensing cases)	§ 302.1750	§ 302.210
Final	§ 302.36	§ 302.38
Airport fee dispute proceedings	§ 302.621	§ 302.610
Licensing cases	§ 302.1750	§ 302.210
Mail contracts	§ 302.1507(a)	§ 302.723(a)
Mail rate proceedings	§ 302.306	§ 302.705

Subject	Old rule	New rule
Instituting oral evidentiary hearing:		
Airport fee dispute proceedings	§ 302.611(b)	§ 302.606(b)
Licensing cases	§ 302.1750(a)(1)	§ 302.210(a)(4)
Mail rate proceedings	§§ 302.307, 309	§§ 302.703, 705(b)
Instituting investigation of rates, fares, and charges	§ 302.504	§ 302.505
Show cause:		
Licensing cases	§ 302.1730(d)	§ 302.210(a)(1)
Mail rate proceedings	§ 302.304	§ 302.703
PARTIES:		
Appearances of	§ 302.11	§ 302.21(a)
Defined	§ 302.9	§ 302.2, 10(a)
Enforcement proceedings	§ 302.210	§ 302.402
Licensing cases	§ 302.1709	§ 302.210(a)(4)
Mail rate proceedings	§ 302.301	§ 302.706(b)
Participation by Air Carrier Associations	§ 302.10(a)	§ 302.10(c)
Persons other than parties	§ 302.14	§ 302.19
Substitution of	§ 302.10	§ 302.10(b)
PETITIONS:		
Determination of rates, fares, or charges	§ 302.502(a)	§ 302.502–503
Discretionary review (*see* Discretionary Review)		
Filing Time	§ 302.37(a)	§ 302.14(a)
Institution of mail rate proceedings	§ 302.303	§ 302.302
Intervention	§ 302.15(c)	§ 302.20
Orders subject to reconsideration	§ 302.37(a)	§ 302.14(a)
Repetitive	§ 302.37(c)	§ 302.14(c)
Reconsideration	§ 302.37	§ 302.14
Rulemaking	§ 302.38	§ 302.16
PREHEARING CONFERENCE	§ 302.23	§ 302.22
Actions during	§ 302.23(a)	§ 302.22(b)
Enforcement proceeding	§ 302.211	§ 302.414
Purposed § 302.23(a)	§ 302.23(a)	§ 302.22(a)
Report of	§ 302.23(b)	§ 302.22(c)
Scope	§ 302.23(a)	§ 302.22(a)
PROCEEEDINGS:		
Airport fee dispute proceedings	§§ 302.601–621	§§ 302.601–610
Consolidation of (*see* Consolidation)		
Contemporaneous consideration (*see* Consolidation)		
Enforcement	§§ 302.200–217	§ 302.401–420
Exemption	§§ 302.400–410	§ 302.301–311
Licensing cases	§§ 302.1701–1790	§ 302.201–220
Mail rate	§§ 302.300–321	§ 302.701–717
Rates, fares, and charges	§§ 302.500–508	§ 302.501–507
PUBLIC DISCLOSURE OF INFORMATION:		
Documents	§ 302.39(b)	§ 302.12(b)
Generally	§ 302.39(a)	§ 302.12(a)
Objection to by government	§ 302.39(d)	§ 302.12(f)
Oral testimony	§ 302.39(c)	§ 302.12(c)
RATES, FARES, AND CHARGES—PROCEEDINGS (*see also* Mail Rate Proceedings; Airport Fees):		
Institution of	§ 302.501	§ 302.502
Order of investigation	§ 302.504	§ 302.505
Petition	§ 302.501	§ 302.503
Contents	§ 302.502(a)	§ 302.503(a)
Dismissed	§ § 302.503	§ 302.504
Service	§ 302.502(b)	§ 302.503(b)
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PART 303—REVIEW OF AIR CARRIER AGREEMENTS

Subpart A—General Provisions

Sec.

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AUTHORITY: 49 U.S.C. chapters 401, 413, 417.

SOURCE: 50 FR 31142, July 31, 1985, unless otherwise noted.

Subpart A—General Provisions

§ 303.01 Purpose.

These regulations set forth the procedures by which applications may be made to the Department of Transportation under sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions.

[Amdt. 303–2, 54 FR 33499, Aug. 15, 1989]

§ 303.02 Definitions.

(a) The term *Act* refers to the Federal Aviation Act of 1958, as amended. (49 U.S.C. 1301 *et seq.*)

(b) The term *Assistant Secretary* means the Assistant Secretary for Aviation and International Affairs, or as delegated. As provided in 49 CFR 1.43, the Secretary or Deputy Secretary may exercise any authority in lieu of the Assistant Secretary under the provisions of this part.

(c) The term *documents* means (1) all written, recorded, transcribed or graphic matter including letters, telegrams, memoranda, reports, studies, forecasts, lists, directives, tabulations, logs, or minutes and records of meetings, conferences, telephone or other conversations or communications; and (2) all information contained in data processing equipment or materials. The term does not include daily or weekly statistical reports in whose place an annual or monthly summary is submitted.

(d) The term *Documentary Services Division* means the Documentary Services Division of the Office of the Assistant General Counsel for Regulation and Enforcement.

(e) The term *hearing* means either a show cause proceeding as provided in § 303.44 of this part or a full evidentiary hearing as provided in § 303.45 of this part, whichever is determined by the Assistant Secretary to be appropriate.

(f)–(g) [Reserved]

(h) The term *Section 412 transaction* means any contract, agreement or discussion of a cooperative working arrangement within the scope of section 412 of the Act. (49 U.S.C. 1382).

(i) [Reserved]

[50 FR 31142, July 31, 1985, as amended by Amdt. 303–2, 54 FR 33499, Aug. 15, 1989; Amdt. 1–261, 59 FR 10061, Mar. 3, 1994]

§ 303.03 Requirement to file application.

A person who seeks approval of a section 412 transaction must file with the Documentary Services Division an application that conforms to the requirements set forth in §§ 303.04 and 303.05 of this part.

[Amdt. 303–2, 54 FR 33499, Aug. 15, 1989]

§ 303.04 General rules governing application content, procedure and conditions of approval.

(a) Unless specifically exempted by these regulations or by an order of the Assistant Secretary, a person filing an application pursuant to § 303.03 of this part shall prepare and file the application in the manner specified in this section. The application shall also contain the information required by subpart D of this part. An application may be deemed incomplete if it is not in substantial compliance with these requirements.

(b) The parties to the transaction may file either separate applications or one joint application so long as all the information required herein is submitted for each party to the transaction. The Assistant Secretary or Administrative Law Judge, if the matter has been assigned to a judge, upon his

or her initiative or upon application, may order the target company or other persons to submit some or all of the information required by this subpart, or other information under 14 CFR 302.25.

(c) Each page of the application and each document submitted with the application shall be marked with the name, initials, or some other identifying symbol of the applicant. The application shall also indicate the date of preparation and the name and corporate position of the preparer.

(d) Where the required information is in data processing equipment, on microfilm, or is otherwise not eye-readable, the applicant shall provide such information in eye-readable form.

(e) The information provided by the applicant shall be updated in a timely fashion throughout the period of consideration of the application.

(f) If any information or documents required by the applicable subpart are not available, the applicants shall file an affidavit executed by the individual responsible for the search explaining why they cannot be produced.

(g) The Assistant Secretary or the Administrative Law Judge may order any applicant to submit information in addition to that required by the applicable subpart.

(h) An applicant may withhold a document required by this part on the grounds that it is privileged, but each document so withheld shall be identified and the applicant shall supply a brief description of the nature of the document, a written statement indicating the basis of the privilege claimed, and the names of the preparers and recipients of the document. If any interested party contests the assertion of privilege, the document shall be promptly submitted to the Assistant Secretary, or the Administrative Law Judge, if the matter has been assigned to a Judge. Where appropriate, an in camera inspection may be ordered.

(i) The person submitting the application to the Department shall send a complete copy of the application to the Chief, Transportation Section, Antitrust Division of the Department of Justice, at the same time as it is filed with the Documentary Services Division.

(j) The applicant shall, if requested, be responsible for expeditiously providing the application to any interested person, whether or not a party.

(k) Unless otherwise specified in this subpart, all applications shall conform generally to the requirements set forth in 14 CFR part 302, subpart A.

(l) In exceptional circumstances, the Assistant Secretary may waive or alter the procedural requirements of this part to permit a transaction to proceed on an expedited basis.

[50 FR 31142, July 31, 1985, as amended by Amdt. 302–2, 54 FR 33499, Aug. 15, 1989; 65 FR 6456, Feb. 9, 2000]

§ 303.05 Applications requesting antitrust immunity.

(a) Each application must state explicitly whether or not the applicant seeks antitrust immunity under the provisions of section 414 of the Act. If antitrust immunity is requested, the application should specify whether the applicant seeks full immunity or immunity only from the provisions of sections 4, 4a and 4c of the Clayton Act, 15 U.S.C. 15, 15a, 15c. Each application seeking antitrust immunity shall contain a statement explaining why the applicant believes immunity is in the public interest and necessary in order for the transaction to proceed.

(b) [Reserved]

(c) Any material misrepresentation of fact in such an application shall be grounds for rescission *nunc pro tunc* of any antitrust immunity granted as a result of the misrepresentation.

(d) A request for renewal of any immunity granted does not operate under section 558 of Administrative Procedure Act, 5 U.S.C. 558(c), to extend the period of immunity conferred.

[50 FR 31142, July 31, 1985, as amended by Amdt. 303–2, 54 FR 33499, Aug. 15, 1989]

§ 303.06 Review of antitrust immunity.

The Assistant Secretary may initiate a proceeding to review any antitrust immunity previously conferred by the Civil Aeronautics Board or the Department in any section 412 transaction. The Assistant Secretary may terminate or modify such immunity if the Assistant Secretary finds after notice and hearing that the previously conferred immunity is not consistent with

the provisions of section 414. In any proceeding to review such immunity, the proponents of the immunity will have the burden of justifying the continuation of previously conferred immunity under the provisions of section 414.

[Amdt. 303–2, 54 FR 33499, Aug. 15, 1989]

§ 303.07 Transitional rule.

If a section 412 application or a request for antitrust immunity under section 414 is pending on the date this part is amended, such application or request shall be deemed made pursuant to the provisions of this part, as amended.

[Amdt. 303–2, 54 FR 33499, Aug. 15, 1989]

Subpart B [Reserved]

§§ 303.10–303.19 [Reserved]

Subpart C [Reserved]

§§ 303.20–303.24 [Reserved]

Subpart D—Section 412 Applications

§ 303.30 General provisions concerning contents of applications.

A Section 412 application shall contain the following general information:

(a) The name, mailing address and primary line of business of each party to the contract, agreement or request for authority to discuss a possible cooperative working arrangement.

(b) If the contract or agreement for which approval is sought is not evidenced by a resolution of an air carrier association, the application shall contain a copy of the contract or agreement that is certified to be true and complete by each party to the contract of agreement. If the contract or agreement is set forth in an exchange of correspondence, copies of all such correspondence must be submitted and must be certified as true and complete by all parties to the contract or agreement. If the contract or agreement is oral, a memorandum fully describing the agreement must be submitted and must be certified as true and complete by all parties to the contract or agreement. If approval is sought for a request for authority to discuss a possible cooperative working arrangement, the application shall contain a complete description of the possible cooperative working arrangement and all matters to be discussed. The description shall be certified to be true and complete by each party to the proposed discussion.

(c) If the contract, agreement or request for authority to discuss a cooperative working arrangement is evidenced by a resolution or other action of an air carrier association, the application shall contain the resolution or other action and a certification by an authorized employee of the association that the resolution or other action was duly adopted on a certain date. The authorized employee shall also specify in such certification the name of each air carrier that concurred in such resolution or other action and the name of each air carrier member that did not concur. Contracts, agreements and requests for authority to discuss cooperative working arrangements may be filed in this manner only if the Association has complied with 14 CFR part 263.

§ 303.31 Justification for the application.

A section 412 application shall explain the nature and purpose of the contract, agreement or request to discuss a cooperative working arrangement and describe how it changes any price, rule or practice existing under a previously-approved application. The application also, consistent with Department of Transportation and CAB precedent, shall contain factual material, documentation and argument in support of the application. Economic analyses, when required, shall include full explanatory details, including data sources and allocation methods. If the applicants intend to rely on public benefits to justify approval they shall describe these benefits, including foreign policy and comity considerations.

§ 303.32 Service of the application.

(a) Except as provided in paragraph (b) of this section, a section 412 application described in § 303.30(c) of this subpart and any related pleadings shall

be served on any person or organization that has previously advised the air carrier association of its desire for service of such agreements. Each application shall contain the names and addresses of all persons served and a notice that any party in interest may within 21 days of the date of the application file comments with the Assistant Secretary in support or opposition to the application.

(b) Service of IATA Traffic Conference agreements and amendments thereto upon any person or organization that previously has advised IATA of its desire for service of agreements may be accomplished by sending a summary notice specifying the filing date; the IATA memorandum number; the particular Conferences involved; the subject matter (*e.g.* cargo/passenger, tariffs/agency matters/ procedures); the proposed effective date(s); the markets or Conference areas affected; the names of the carriers participating in the agreement; the names of all persons served; and a notice that any party in interest may within 21 days of the date of filing of the application file comments with the Assistant Secretary in support of or opposition to the application. A request for a complete copy of the application can be made under the provisions of §303.04(j).

§303.33 Modifications and cancellations.

This subpart also applies to all modifications or cancellations of contracts or agreements or requests for authority to discuss a possible cooperative working arrangement.

Subpart E—Procedures Upon Application or Review

§303.40 Determination of compliance.

(a) Within 10 days after an application is filed pursuant to §303.03, the Assistant Secretary will determine whether the application complies with the requirements of §§303.04 and 303.05.

(b) If the Assistant Secretary determines that the application is incomplete, he or she may issue a notice dismissing the application without prejudice. If the application is dismissed, and statutory time period for completion of proceedings will not begin to run until a completed application is filed.

§303.41 Notice.

(a) The Documentary Service Division shall compile a weekly list of all applications filed under §§303.04 and 303.05. The list shall include a description of the application, the docket number, date of filing, state that it may be reviewed in the Documentary Services Division, and indicate that interested parties may comment on the application or request a hearing within 21 days of the date of filling or other period as specified. The weekly list will normally be prepared on the following Monday, or as soon as possible, and will be posted on a public bulletin board in the Documentary Services Division. The list also shall be submitted for publication in the FEDERAL REGISTER.

(b) In appropriate case, particularly when an application concerns a matter of broad public significance, the Assistant Secretary may cause a notice of an application and request for public comment to be published separately in the FEDERAL REGISTER.

§303.42 Comments on application.

(a) Unless a different comment period is specified in the weekly list, or in a notice of filing published in the FEDERAL REGISTER, any person may file comments, responses to the application, and/or a request for a hearing within 21 days of the filing of an application.

(b) Comments supporting or opposing an application or proposing conditions and responses thereto shall state with particularity the factual basis on which the person commenting relies, and provide affidavits or other material in support of the factual basis, if appropriate.

(c) Requests for a formal oral evidentiary hearing must set out with specificity the material issues of fact in dispute that cannot be resolved without such a hearing. Vague, unsupported allegations will not suffice.

§303.43 Action following the comment period.

(a) [Reserved]

(b) *Section 412 applications.* After the period for which comments, requests for a hearing or responses to an order to show cause are due concerning a section 412 application, the Assistant Secretary may proceed by order requesting further information or justification or by order of approval or disapproval or, in appropriate cases, may proceed by order to show cause or by order instituting a full evidentiary hearing.

(c) Notice to the public of any full evidentiary hearing or order to show cause concerning an application shall be made by publication in the FEDERAL REGISTER.

[50 FR 31142, July 31, 1985, as amended by Amdt. 303–2, 54 FR 33500, Aug. 15, 1989]

§ 303.44 Show cause proceedings.

If the Assistant Secretary determines that an application, or review of a previously granted application, will be considered in a show cause proceeding, a tentative decision shall be issued inviting interested persons to show cause why the tentative decision should not be made final. Interested persons may respond to the order within the time specified in the order. Replies to such responses shall be permitted within the time specified in the order. Persons wishing to introduce additional facts into the record should incorporate such information in their responses or replies by affidavit. In the case of applications, show cause orders may be issued after the receipt of initial comments on the application.

§ 303.45 Evidentiary hearings.

(a) If the Assistant Secretary determines that an application, or review of a previous granted application, should be the subject of a full evidentiary hearing, he or she shall issue an order so stating. The term ''full evidentiary hearing'' includes any hybrid format set out in the instituting order. This order shall set forth the issues that are to be considered in such hearing.

(b) After the issuance of an order for a full evidentiary hearing, the Chief Administrative Law Judge shall promptly appoint an Administrative Law Judge to conduct such hearing in accordance with section 7 of the Administrative Procedure Act, 5 U.S.C. 556, and the Rules of Practice in part 302 of this chapter.

(c) The applicants and the Assistant General Counsel for Aviation Enforcement and Proceedings shall be parties in any full evidentiary hearing held under these regulations. The Assistant Attorney General, Antitrust, shall be a party upon notice filed with the Administrative Law Judge. Other persons may intervene as parties as provided by § 302.20 of this chapter.

(d) Within the time specified in the order instituting the full evidentiary hearing, the Administrative Law Judge shall recommend to the Assistant Secretary that the application be approved or denied or that the previously granted exemption approval or immunity should be terminated or continued in accordance with the standards of the Act. The recommendation shall be in writing, shall be based solely on the hearing record, and shall include a statement of the Administrative Law Judge's findings and conclusions, and the reasons or basis therefore, or all material issues of fact, law or discretion presented on the record. Copies of the recommendation shall be served on each party.

(e) Within 10 days after the date the Administrative Law Judge serves his or her recommendation, any party may file written exceptions to the recommendation for consideration by the Assistant Secretary. Within 21 days after the service date of the judge's recommendation, any party may file a brief in support of or in opposition to any exceptions. This period may be altered by order of the Assistant Secretary, who may also authorize the filing of reply briefs.

[50 FR 31142, July 31, 1985, as amended at 65 FR 6456, Feb. 9, 2000]

§ 303.46 Decision by the Assistant Secretary.

The Assistant Secretary shall decide, on the basis of the record and in accordance with the procedures prescribed in part 302 of this chapter, whether to grant or deny, in whole or in part, the application. A copy of the Assistant Secretary's final decision shall be served on all parties.

PART 305—RULES OF PRACTICE IN INFORMAL NONPUBLIC INVESTIGATIONS

Sec.
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305.2 Definition.
305.3–305.4 [Reserved]
305.5 Initiation of investigation.
305.6 Appearance of witnesses.
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305.9 Rights of witnesses.
305.10 Nonpublic character of proceedings.
305.11 Procedures after investigation.
305.12 Motions to quash or modify an investigation subpena.

AUTHORITY: 49 U.S.C. chapters 401, 417, 461; 5 U.S.C. 555, 556.

SOURCE: Docket No. 82, 50 FR 2421, Jan. 16, 1985, unless otherwise noted.

§ 305.1 Applicability.

The provisions of this part shall govern informal nonpublic investigations, as distinguished from formal investigations and adjudicatory proceedings, undertaken by the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings with a view to obtaining information from any person. While the Department seeks and encourages voluntary cooperation and believes that it is in the best interest of all parties concerned, it will utilize the procedures provided by this part to compel the disclosure of information by any person where DOT wishes to determine whether such person, or any other person, has been or is violating any provisions of Title IV or sections 101(3), 1002, 1003, or 1108(b) of the Act, or any rule, regulation, order, certificate, permit, or letter or registration issued pursuant thereto by DOT and when the information appears to be relevant to the matter under investigation. This part shall not apply to employees or records of other agencies of the U.S. Government, the District of Columbia, or the several States and their political subdivisions.

§ 305.2 Definition.

For the purpose of, and as used in this part, the term *investigation* means a non-adjudicatory, informal nonpublic investigation for the purpose of determining whether formal enforcement action should be instituted with respect to alleged violations of law.

§§ 305.3–305.4 [Reserved]

§ 305.5 Initiation of investigation.

An investigation may be initiated by order of the Department. Attorneys of the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings shall conduct such investigations pursuant to the provisions of this part and they shall be designated Investigation Attorneys. Investigation Attorneys, administrative law judges and the DOT decisionmaker are hereby authorized to exercise and perform their duties and functions under this part in accordance with the provisions of the Act and the rules and regulations of the Department.

§ 305.6 Appearance of witnesses.

Witnesses may be required to appear before any administrative law judge for the purpose of receiving their testimony or receiving from them documents or other data relating to any subject under investigation. Such testimony shall be mechanically or stenographically recorded, and a transcript thereof shall be made and incorporated in the record of the investigation.

§ 305.7 Issuance of investigation subpenas.

(a) The Deputy General Counsel, the DOT decisionmaker, the chief administrative law judge or the administrative law judge designated to preside at the reception of evidence, may issue a subpena directing the person named therein to appear before a designated administrative law judge at a designated time and place to testify or to produce documentary evidence relating to any matter under investigation, or both. Each such subpena shall briefly advise the person required to testify or submit documentary evidence of the purpose and scope of the investigation, and a copy of the order initiating the investigation shall be attached to the subpena.

(b) Witnesses subpenaed to appear shall be paid the fees and mileage prescribed in §302.7 of the Rules of Practice (14 CFR 302.7). Service of such subpenas shall be made in accordance with

the provisions of §302.27(c) of the Rules of Practice (14 CFR 302.27(c)).

[Docket No. 82, 50 FR 2421, Jan. 16, 1985, as amended at 65 FR 6456, Feb. 9, 2000]

§ 305.8 [Reserved]

§ 305.9 Rights of witnesses.

Any person required to testify or to submit documentary evidence shall be entitled to procure, on payment of lawfully prescribed costs, a copy of any document produced by such person and of his or her own testimony as stenographically reported. Any person compelled to testify or to produce documentary evidence may be accompanied, represented, and advised by counsel.

§ 305.10 Nonpublic character of proceedings.

Investigations shall be attended only by the witnesses and their counsel, the administrative law judge, the Investigation Attorney, other DOT personnel concerned with the conduct of the proceeding and the official stenographer. All orders initiating investigations, motions to quash or modify investigation subpenas, orders disposing of such motions, documents, and transcripts of testimony shall be part of the record in the investigation. Unless DOT determines otherwise, all orders initiating investigations which do not disclose the identity of the particular persons of firms under investigation shall be published in the FEDERAL REGISTER. Except as otherwise required by law, the remainder of the record of such proceedings shall constitute internal DOT documents which shall not be available to the general public. The use of such records in DOT proceedings subject to part 302 of the Rules of Practice shall be governed by §§302.25(g) and 302.12 and by the law of evidence applicable to DOT proceedings.

[Docket No. 82, 50 FR 2421, Jan. 16, 1985, as amended at 65 FR 6456, Feb. 9, 2000]

§ 305.11 Procedures after investigation.

Upon completion of the investigation, where the Deputy General Counsel, determines that no corrective action is warranted, the investigation will be closed, and any documentary evidence obtained in the investigation will be returned to the persons who produced it. Where remedial action is indicated by the investigation, the Deputy General Counsel will proceed pursuant to subpart D of part 302 of the Rules of Practice or will take such other action as may be appropriate.

[Docket No. 82, 50 FR 2421, Jan. 16, 1985, as amended at 65 FR 6456, Feb. 9, 2000]

§ 305.12 Motions to quash or modify an investigation subpena.

Any person upon whom an investigation subpena is served may, within seven (7) days after such service or at any time prior to the return date thereof, whichever is earlier, file a motion to quash or modify such subpena with the administrative law judge who issued such subpena, or in the event the administrative law judge is not available, with the chief administrative law judge for action by himself or herself or by the DOT decisionmaker. Such motions shall be made in writing in conformity with Rules 3 and 4 of the Rules of Practice (part 302 of this subchapter); shall state with particularity the grounds therefor and the relief sought; shall be accompanied by the evidence relied upon and all such factual matter shall be verified in accordance with the provisions of Rule 4(b) of the aforesaid Rules of Practice. Written memoranda or briefs may be filed with the motions, stating the points and authorities relied upon. No oral argument will be heard on such motions unless the chief administrative law judge, the administrative law judge or the DOT decisionmaker directs otherwise. A subpena will be quashed or modified if the evidence whose production is required is not reasonably relevant to the matter under investigation, or the demand made does not describe with sufficient particularity the information sought, or the subpena is unlawful or unduly burdensome. The filing of a motion to quash or modify an investigation subpena shall stay the return date of such subpena until such motion is granted or denied. The DOT decisionmaker may at any time review, upon his or her own initiative, the ruling of an administrative law judge or the chief administrative law

judge denying a motion to quash a subpena. In such cases, the DOT decisionmaker may order that the return date of a subpena which he or she has elected to review be stayed pending DOT action thereon.

[Docket No. 82, 50 FR 2421, Jan. 16, 1985, as amended at 65 FR 6457, Feb. 9, 2000]

PART 313—IMPLEMENTATION OF THE ENERGY POLICY AND CONSERVATION ACT

Sec.
313.1 Purpose, scope, and authority.
313.2 Policy.
313.3 Definitions.
313.4 Major regulatory actions.
313.5 Energy information.
313.6 Energy statements.
313.7 Integration with environmental procedures.

AUTHORITY: 42 U.S.C. 6362(b), 49 U.S.C. Chapter 401.

SOURCE: Docket No. 82, 50 FR 2425, Jan. 16, 1985, unless otherwise noted.

§ 313.1 Purpose, scope, and authority.

(a) Chapter 77 (Energy Conservation) of Title 42 (The Public Health and Welfare), authorizes and directs certain actions to conserve energy supplies through energy conservation programs and where necessary, the regulation of certain energy uses, and to provide for improved energy efficiency of motor vehicles, major appliances, and certain other consumer products. In furtherance of these purposes, 42 U.S.C. 6362 requires several transportation regulatory agencies, including DOT, to submit a number of reports to the Congress with respect to energy conservation and efficiency, and where practicable and consistent with the exercise of DOT's authority under other law, to include in any major regulatory action a statement of its probable impact on energy efficiency and energy conservation. 42 U.S.C. 6362(b) directs DOT to define the term ''major regulatory action'' by rule.

(b) Section 40113 of Subtitle VII of Title 49 of the United States Code (Transportation)(''the Statute''), authorizes DOT to establish such rules, regulations, and procedures as are necessary to the exercise of its functions and are consistent with the purposes of the Statute.

(c) The purpose of these regulations is to establish procedures and guidelines for the implementation of DOT's responsibility under 42 U.S.C. 6362 to include in any major regulatory action taken by DOT a statement of the probable impact on energy efficiency and energy conservation.

(d) These regulations apply to all proceedings before DOT, as provided herein.

[Docket No. 82, 50 FR 2425, Jan. 16, 1985, as amended at 60 FR 43528, 43529, Aug. 22, 1995]

§ 313.2 Policy.

(a) *General.* It is the policy of DOT to view the conservation of energy and the energy efficiency improvement goals of Chapter 77 of Title 42 as part of DOT's overall mandate, to be considered along with the several public interest and public convenience and necessity factors enumerated in section 40101 of the Statute. To the extent practicable and consistent with DOT's authority under the Statute and other law, energy conservation and efficiency are to be weighed in the decisionmaking process just as are DOT's traditional policies and missions.

(b) *Implementation.* Implementation of this policy is through the integration of energy findings and conclusions into decisions, opinions, or orders in proceedings involving a major regulatory action, as defined in this part.

(c) *Proceedings in progress.* The provisions of this part are intended primarily for prospective application. Proceedings in progress on the effective date of this part, in which an application has been docketed but no final decision made public, shall adhere to §313.6(a) of this part, provided that the fair, efficient, and timely administration of DOT's regulatory activities is not compromised thereby. Nothing herein shall imply a requirement for new or additional hearings, a reopening of the record, or any other procedures which would tend to delay a timely decision in proceedings in progress.

(d) *Hearings.* Public hearings will not normally be held for the purpose of implementing 42 U.S.C. 6362, particularly in connection with proposed actions

which do not require notice and hearing as a prerequisite to decision under the Statute. Hearings may be ordered in exceptional circumstances where the proposed action is of great magnitude or widespread public interest and, in addition, presents complex issues peculiarly subject to resolution through evidentiary hearings and the process of cross-examination.

[Docket No. 82, 50 FR 2425, Jan. 16, 1985, as amended at 60 FR 43528, 43529, Aug. 22, 1995]

§313.3 Definitions.

As used in this part:

(a) *Energy efficiency* means the ratio of the useful output of services in air transportation to the energy consumption of such services.

(b) *Energy statement* is a statement of the probable impact of a major regulatory action on energy efficiency and energy conservation, contained in a decision, opinion, order, or rule.

(c) *Major regulatory action* is any decision by the DOT decisionmaker or administrative law judge requiring an energy statement pursuant to §313.4 of this part.

(d) *NEPA* means the National Environmental Policy Act of 1969.

(e) *Statute* means Subtitle VII of Title 49 of the United States Code (Transportation).

[Docket No. 82, 50 FR 2425, Jan. 16, 1985, as amended at 60 FR 43529, Aug. 22, 1995]

§313.4 Major regulatory actions.

(a) Any initial, recommended, tentative or final decision, opinion, order, or final rule is a major regulatory action requiring an energy statement, if it:

(1) May cause a near-term net annual change in aircraft fuel consumption of 10 million (10,000,000) gallons or more, compared to the probable consumption of fuel were the action not to be taken; or

(2) Is specifically so designated by DOT because of its precedential value, substantial controversy with respect to energy conservation and efficiency, or other unusual circumstances.

(b) Notwithstanding paragraph (a)(1) of this section, the following types of actions shall not be deemed as major regulatory actions requiring an energy statement:

(1) Tariff suspension orders under section 41509 of the Statute, emergency exemptions or temporary exemptions not exceeding 24 months under section 40109 of the Statute and other proceedings in which timely action is of the essence;

(2) Orders instituting or declining to institute investigations or rulemaking, setting or declining to set applications for hearing, on reconsideration, or on requests for stay;

(3) Other procedural or interlocutory orders;

(4) Actions taken under delegated authority; and

(5) Issuance of a certificate where no determination of public convenience and necessity is required.

(c) Notwithstanding paragraph (a)(1) of this section, DOT may provide that an energy statement shall not be prepared in a proceeding which may result in a major regulatory action, if it finds that:

(1) The inclusion of an energy statement is not consistent with the exercise of DOT's authority under the Statute or other law;

(2) The inclusion of an energy statement is not practicable because of time constraints, lack of information, or other unusual circumstances; or

(3) The action is taken under laws designed to protect the public health or safety.

[Docket No. 82, 50 FR 2425, Jan. 16, 1985, as amended at 60 FR 43529, Aug. 22, 1995]

§313.5 Energy information.

(a) It shall be the responsibility of applicants and other parties or participants to a proceeding which may involve a major regulatory action to submit sufficient information about the energy consumption and energy efficiency consequences of their proposals or positions in the proceeding to enable the administrative law judge or the DOT decisionmaker, as the case may be, to determine whether the proceeding will in fact involve a major regulatory action for purposes of this part, and if so, to consider the relevant energy factors in the decision and prepare the energy statement.

(b) In proceedings involving evidentiary hearings, the energy information shall be submitted at such hearings pursuant to DOT's usual procedural regulations and practices, under control of the administrative law judge or other hearing officer.

(c) In proceedings not involving evidentiary hearings, the energy information shall be submitted at such time as other materials in justification of an application are submitted. Where an application itself is intended as justification for DOT action, the energy information shall be submitted with the application. In rulemakings not involving hearings, the energy information shall normally be submitted along with comments on the notice of proposed rulemaking, or as directed in any such notice or any advance notice.

§ 313.6 Energy statements.

(a) Each major regulatory action shall include, to the extent practicable, consideration of the probable impact of the action taken or to be taken upon energy efficiency and conservation. The administrative law judge or the DOT decisionmaker, as the case may be, shall normally make findings and conclusions about:

(1) The net change in energy consumption;

(2) The net change in energy efficiency; and

(3) The balance struck between energy factors and other public interest and public convenience and necessity factors in the decision.

(b) Energy findings and conclusions contained in any initial or recommended decision are a part of that decision and thus subject to discretionary review by DOT.

(c) In the case of orders to show cause initiated by DOT, energy findings and conclusions may be omitted if adequate information is not available. In such instances, the energy statement shall be integrated into the final decision.

§ 313.7 Integration with environmental procedures.

(a) In proceedings in which an environmental impact statement or a finding of no significant impact is prepared by a responsible official pursuant to DOT's procedures implementing the National Environmental Policy Act of 1969 (NEPA), the energy information called for by this part may be included in that statement or declaration in order to yield a single, comprehensive document. In such instances, the DOT's NEPA procedures shall govern the submission of the energy information. However, it shall remain the responsibility of the administrative law judge or the DOT decisionmaker, as the case may be, to make the findings and conclusions required by §313.6(a) of this part.

(b) A determination that a major regulatory action within the meaning of 42 U.S.C. 6362 and this part may be involved in a proceeding is independent from any determination that the proceeding is a ''major Federal action significantly affecting the quality of the human environment'' within the meaning of NEPA, and vice versa.

[Docket No. 82, 50 FR 2425, Jan. 16, 1985, as amended at 60 FR 43528, 43529, Aug. 22, 1995]

PART 314—EMPLOYEE PROTECTION PROGRAM

Subpart A—General

Sec.

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314.20 Regular monthly computation.
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AUTHORITY: Secs. 204, 407, Pub. L. 85–726, as amended, 72 Stat. 743, 766, 49 U.S.C. 1324, 1377; sec. 43, Pub. L. 95–504, 92 Stat. 1750 (49 U.S.C. 1552).

SOURCE: Docket No. 82, 50 FR 2426, Jan. 16, 1985, unless otherwise noted.

EDITORIAL NOTE: The reporting requirements contained in part 314 have been approved by the Office of Management and Budget under control number 3024–0053.

Subpart A—General

§ 314.1 Applicability.

Section 43 of the Airline Deregulation Act of 1978, Pub. L. 95–504, establishes an employee protection program. After a determination by DOT that an air carrier has undergone a qualifying dislocation, the Secretary of Labor gives financial assistance to certain employees of the carrier. This part sets out procedures for the Department to determine whether a qualifying dislocation has occurred.

§ 314.2 Definitions.

As used in this part:

Bankruptcy means an adjudication of bankruptcy under Title 11 of the U.S. Code.

Carrier means an air carrier that on October 24, 1978, held a certificate issued under section 401 of the Federal Aviation Act of 1958.

§ 314.3 Conformity with subpart A of part 302.

Except where they are inconsistent with this part, the provisions of subpart A of part 302 of this chapter shall apply to proceedings under this part.

§ 314.4 Information requirements.

The Department may require any carrier to submit any information that it considers necessary to carry out its functions under this part.

§ 314.5 Major contractions.

A major contraction is a reduction by at least 7½ percent of the total number of full-time employees of an air carrier within a 12-month period, and includes an advance determination of major contraction as set forth in § 314.21. The method by which DOT determines whether a carrier has undergone a major contraction is set forth in subpart C.

§ 314.6 Qualifying dislocation.

A qualifying dislocation is a bankruptcy or major contraction of a carrier, the major cause of which is the change in regulatory structure provided by the Airline Deregulation Act of 1978.

Subpart B—Determination of Qualifying Dislocation

§ 314.10 Beginning of proceeding.

A proceeding to determine whether a bankruptcy or major contraction is a qualifying dislocation begins either with an application filed with the Department or an investigation on DOT's own initiative. Proceedings that begin with an application are governed by §§ 314.11 through 314.16. DOT-initiated proceedings are governed by §§ 314.14 through 314.16.

§ 314.11 Applications.

(a) *Who may file.* An application may be filed by an employee who has been deprived of employment or adversely affected with respect to compensation, or by a representative of one or more such employees.

(b) *Title and contents.* Applications shall be titled ''Application for Determination of Qualifying Dislocation,'' and shall contain, with respect to at least one employee:

(1) Name and address of the employee;

(2) Number of years employed by carrier as of October 24, 1978;

(3) Name and address of the applicant, if different from paragraph (b)(1);

(4) Name of carrier-employer;

(5) Position held by employee immediately before being deprived of employment or adversely affected with respect to compensation;

(6) Date on which employee was deprived of employment or adversely affected with respect to compensation; and

(7) An explanation of the applicant's basis for claiming that a qualifying dislocation has occurred, including all supporting evidence available to the applicant.

(c) *Service.* The Department will serve a copy of each application on the affected carrier, the collective bargaining representatives of that carrier's employees, the Secretary of Labor, and any State agencies that are acting as agents of the Secretary of

Labor to administer the Employee Protection Program.

(Approved by the Office of Management and Budget under control number 3024–0053)

§ 314.12 Answers.

Any person may file an answer to an application within 15 days after the application is served.

§ 314.13 Disposition of applications.

(a) After the due date for answers, the Department will dismiss the application or begin an investigation to determine whether a qualifying dislocation has occurred.

(b) The Department will dismiss an application if it does not name an employee who, on October 24, 1978, had been employed by a carrier for at least 4 years.

(c) The Department will dismiss an application if the carrier has neither become bankrupt nor undergone a major contraction.

(d) The Department will dismiss an application even though the carrier has become bankrupt or undergone a major contraction, if it finds that the bankruptcy or major contraction clearly did not have as its major cause the change in regulatory structure provided by the Airline Deregulation Act.

(e) A DOT order dismissing an application will announce the reasons for the dismissal.

§ 314.14 Show-cause order.

When the Department makes a preliminary determination of whether the major cause of the bankruptcy or major contraction was the change in regulatory structure provided by the Airline Deregulation Act of 1978, it will issue an order announcing a tentative decision that a qualifying dislocation has, or has not, occurred. The order will direct all interested persons to show cause why the tentative decision should not be made final, and will allow 30 days for objections to be filed. The Department will publish a summary of the order in the FEDERAL REGISTER and serve a copy of the order on each of the following:

(a) The applicant and the applicant's representative, if any;

(b) The affected carrier;

(c) The collective bargaining representatives of the carrier's employees; and

(d) The Secretary of Labor;

(e) State agencies that are acting as agents of the Secretary of Labor to administer the Employee Protection Program.

§ 314.15 Oral proceedings.

The Department will provide for an oral evidentiary hearing, with notice published in the FEDERAL REGISTER and served on the persons listed in §314.14, if there are material issues of decisional fact that cannot otherwise be adequately resolved. The DOT decisionmaker may in his or her discretion hear oral argument before making a final determination.

§ 314.16 Final determination.

The Department will publish in the FEDERAL REGISTER a summary of an order announcing its final determination and, within 3 business days after the determination, serve a copy of the order on the persons listed in §314.14.

Subpart C—Major Contractions

§ 314.20 Regular monthly computation.

(a) The Department will monitor the number of full-time employees of each carrier, including employees deprived of employment because of a strike, as reported monthly by carriers in accordance with part 241 of this chapter.

(b) The DOT does not require monthly reporting of the number of positions that are vacant as a result of terminations for cause and, except as set forth in paragraph (c)(3) of this section, will not account for those positions in computing major contractions. In the cases set forth in paragraphs (c)(1) and (c)(2) of this section, the DOT presumes that the number of employment positions vacant as a result of terminations for cause is small enough that accounting for them would not change the result.

(c) Each month, with respect to each carrier:

(1) If the carrier's current reported full-time employment level is 92 percent or less of any of the carrier's preceding 12 monthly levels, DOT will find

that the carrier has undergone a major contraction.

(2) If the current reported level is 93 percent or more of each of the carrier's preceding 12 monthly levels, the Department will not find that the carrier has undergone a major contraction.

(3) If neither of the conditions described in paragraphs (c)(1) and (c)(2) of this section is present, the Department will ascertain by special report from the carrier, and add to the reported employment levels, the number of positions that were vacant in each of the relevant months as a result of terminations for cause. If the resulting figure for the current month is 92.5 percent or less of the resulting figure for any of the preceding 12 months, the Department will find that the carrier has undergone a major contraction. Otherwise, the Department will not make such a finding.

§ 314.21 Advance determinations.

(a) If circumstances indicate that a major contraction will occur, the Department may make an advance determination of a major contraction without waiting for the regular monthly computation set forth in §314.20. The Department will consider whether to make an advance determination either on its own initiative or upon receipt of an application from an employee who has been deprived of employment or adversely affected with respect to compensation, or a representative of one or more such employees.

(b) An application under this section shall be titled ''Application for Advance Determination of Major Contraction.'' It shall contain the information set forth in §314.11 (b)(1) through (b)(6) and an explanation of the applicant's basis for claiming that a major contraction will occur, including all supporting evidence available to the applicant. A person may consolidate an application under this section with an application under §314.11 for determination of a qualifying dislocation.

(c) The Department will terminate an advance determination of major contraction whenever it finds that the predicted major contraction has not occurred or will not occur.

§ 314.22 Notice of major contraction.

Upon finding a major contraction under §314.20, or making or terminating an advance determination under §314.21, the Department will publish the finding in the FEDERAL REGISTER and send written notice of it to the persons listed in §314.14.

PART 323—TERMINATIONS, SUSPENSIONS, AND REDUCTIONS OF SERVICE

Sec.

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323.19 Withdrawal notice by exemption carriers in certain limited-entry markets.

AUTHORITY: 49 U.S.C. Chapters 401, 411, 417.

SOURCE: Docket No. 82, 50 FR 2430, Jan. 16, 1985, unless otherwise noted.

§ 323.1 Applicability.

This part applies to certificated air carriers who terminate or suspend service to a point, or in a market, and to all air carriers who terminate, suspend, or reduce service below the level of essential air service under 49 U.S.C. 41731-41742.

[Docket No. 82, 50 FR 2430, Jan. 16, 1985, as amended by Doc. No. OST-96-1269, 61 FR 19165, May 1, 1996]

§ 323.2 Definitions.

As used in this part:

Certificated carrier means a direct air carrier holding authority to provide air transportation granted by the Department of Transportation (''DOT'') or the

former Civil Aeronautics Board (''CAB'') in the form of a certificate of public convenience and necessity under section 41102 of the Title 49 of the United States Code (Transportation) (''the Statute'') or an all-cargo air transportation certificate to perform all-cargo air transportation under section 41103 of the Statute.

Eligible place means a place in the United States that—

(1) Was an eligible point under section 419 of the Federal Aviation Act of 1958 as in effect before October 1, 1988;

(2) Received scheduled air transportation at any time between January 1, 1990, and November 4, 1990; and

(3) Is not listed in Department of Transportation Orders 89–9–37 and 89–12–52 as a place ineligible for compensation under Subchapter II of Chapter 417 of the Statute. (For availability of Department of Transportation Orders, see 49 CFR part 7, subpart E and appendix A.)

Essential air service is that air transportation which the Department has found to be essential under Subchapter II of Chapter 417 of the Statute.

FAA means the Federal Aviation Administration, U.S. Department of Transportation.

FAA-designated hub means any airport serving a small, medium, or large air traffic hub listed in the Department of Transportation publication, *Airport Activity Statistics of Certificated Route Carriers.*

Statute means Subtitle VII of Title 49 of the United States Code (Transportation).

United States includes the several States, the District of Columbia, and the several territories and possessions of the United States. *State* includes any of the individual entities comprising the United States.

[Docket No. 82, 50 FR 2430, Jan. 16, 1985, as amended by Doc. No. OST-96-1269, 61 FR 19165, May 1, 1996]

§ 323.3 Who shall file notices.

(a) *Terminations, suspensions, or reductions by certificated carriers.* The notice described in § 323.4(a) shall be filed by any certificated carrier that intends to:

(1) Terminate or suspend all passenger air transportation that it is providing to any eligible place in the United States when that termination or suspension will leave no certificated carriers serving that place. Service shall be considered to be terminated or suspended whenever it is operated less than 5 days per week, with three or more intermediate stops, or in one direction only between the two places;

(2) Reduce passenger air transportation so that any eligible place receives less than the level of essential air service determined by DOT;

(3) Terminate or suspend all passenger air transportation that it is providing to any eligible place in the United States for which DOT has not issued an essential air service determination under either § 325.5 or § 325.7 of this chapter, when that termination or suspension will leave only one certificated carrier serving that place. Service shall be considered to be terminated or suspended whenever it is operated less than 5 days per week, with three or more intermediate stops, or in one direction only between the two places;

(4) Reduce passenger air transportation to any eligible place in Alaska for which DOT has not determined the level of essential air service so that the service between that place and every other place served by a certificated carrier is either:

(i) Less than two round trip flights per week, or

(ii) Less than the average weekly number of round trip flights actually provided during calendar year 1976, or

(iii) Less than the number of flights specified under an agreement between DOT and the State of Alaska; or

(5) Terminate, suspend, or reduce passenger air transportation at an eligible place for which DOT has issued, or is required to issue, an essential air service determination under section 41731 or section 41733 of the Statute so that the total available seats of all the carriers linking that place to FAA-designated hubs will be reduced by 33 percent or more during a 90-day period. Service to a hub shall be considered to be terminated or suspended whenever it is operated less than 5 days per week, with three or more intermediate stops, or in one direction only between two places.

(b) [Reserved]

(c) *Uncertificated carriers.* The notice described in §323.4(a) shall be filed by any uncertificated carrier that intends to terminate, suspend, or reduce:

(1) Air transportation so that any eligible place receives less than the level of essential air service determined by the DOT;

(2) Passenger air transportation to any eligible place for which DOT has not determined the level of essential air service, other than a place in Alaska, so that there is no FAA-designated hub from which the place receives at least two round trip flights per day, 5 days per week; or

(3) Passenger air transportation to any eligible place in Alaska, for which DOT has not determined the level of essential air service, so that the service between that place and every other place served by a certificated carrier is either:

(i) Less than two round trip flights per week, or

(ii) Less than the average number of weekly round trip flights actually provided during calendar year 1976, or

(iii) Less than the number of flights specified under an agreement between DOT and the State of Alaska.

(d) For the purpose of this section, in ascertaining the level of air transportation being provided to a place or between two places, air transportation that has been the subject of a notice filed under this section shall be considered not in operation for the duration of the notice period.

(e) If a certificated carrier was, before October 24, 1978, granted authority to suspend air transportation, and that authority ends on a stated date, the carrier shall comply with the requirements of this part before continuing the suspension beyond that date.

(f) If a certificated carrier was, before October 24, 1978, granted authority to terminate or suspend air transportation, but has not suspended service, the carrier shall comply with the requirements of this part before terminating or suspending service.

[Docket No. 82, 50 FR 2430, Jan. 16, 1985, as amended by Doc. No. OST-96-1269, 61 FR 19165, 19166, May 1, 1996]

§ 323.4 Contents of notices.

(a) The notice required under §323.3 (a) and (c) shall contain:

(1) Identification of the carrier, including address and telephone number.

(2) Statement whether the carrier is a certificated carrier or an uncertificated carrier.

(3) Names of all other air carriers serving the point at the time of filing.

(4) Description of the service to be terminated, suspended, or reduced, including:

(i) Arrival and departure times at the affected points of the flights to be discontinued,

(ii) Aircraft type used,

(iii) Routes of the flights to be discontinued, and a statement of which routes, if any, will be left without nonstop or single-plane service from a certificated carrier by the intended change, and

(iv) Date of intended termination, suspension, or reduction of service.

(5) A statement whether DOT has determined the level of essential air service for the point, and

(i) If such a determination has been made, a statement whether the intended termination, suspension, or reduction will reduce air transportation to the place below the essential level; or

(ii) If such a determination has not been made, and the place is an eligible place, a statement whether the intended termination, suspension, or reduction reasonably appears to deprive the place of essential air service, and an explanation.

(6) If the place is an eligible place, the calendar date when objections are due under §323.10.

(7) Proof of service upon all persons specified in §323.7(a). The proof of service shall include the names of all carriers served and the names and addresses of all other persons served.

(b) [Reserved]

(c) DOT may require any carrier filing notice to supply additional information.

(Approved by the Office of Management and Budget under control number 3024–0030)

[Docket No. 82, 50 FR 2430, Jan. 16, 1985, as amended by Doc. No. OST-96-1269, 61 FR 19165, 19166, May 1, 1996]

§ 323.5 Time for filing notices.

(a) Except as specified by paragraph (b) of this section, a notice required by § 323.3 shall be filed at least:

(1) 90 days before the intended termination, suspension, or reduction, if it is filed by a certificated carrier or by an uncertificated carrier receiving compensation under 49 U.S.C. 41731-41742 for service to the place;

(2) 30 days before the intended termination, suspension, or reduction, if it is filed by an uncertificated carrier not receiving compensation under section 419 of the Act for service to the place.

(b) The notice required by §323.3(a)(3) shall be filed at least 30 days, and the notice required by § 323.3(a)(1) shall be filed at least 60 days, before the intended termination or suspension.

[Docket No. 82, 50 FR 2430, Jan. 16, 1985, as amended by Doc. No. OST-96-1269, 61 FR 19165, 19166, May 1, 1996]

§ 323.6 General requirements for notices.

(a) Each notice filed under this part shall, unless otherwise specified, conform to the procedural rules of general applicability in subpart A of part 302 of this chapter.

(b) Each notice filed under this part shall be titled to indicate the place(s) involved, and to indicate whether it is a 30-, 60-, or 90-day notice and whether it involves a termination, a suspension, or a reduction of air transportation.

[Docket No. 82, 50 FR 2430, Jan. 16, 1985, as amended by Doc. No. OST-96-1269, 61 FR 19166, May 1, 1996]

§ 323.7 Service of notices.

(a) A copy of each notice required by § 323.3 shall be served upon:

(1) The chief executive of the principal city or other unit of local government at the affected place. The principal city is the one named, or previously named, in the section 41102 certificate by virtue of which the place qualifies as an eligible place. For places in Alaska or Hawaii that are designated as eligible places without having been listed on a section 41102 certificate, the principal city is the most populous municipality at the place.

(2) [Reserved]

(3) The State agency with jurisdiction over transportation by air in the State containing any community required to be served under paragraph (a)(1) of this section. If there is no such State agency, the notice shall be sent to the governor of that State.

(4) The manager of, or other individual with direct supervision over and responsibility for, the airport at any community required to be served under paragraph (a)(1) of this section.

(5) The Postmaster General (marked for the attention of the Assistant General Counsel, Transportation), if the carrier filing the notice is authorized to transport United States mail to or from any community required to be served under paragraph (a)(1) of this section.

(6) Each air carrier providing scheduled service to a non-hub or FAA-designated small hub that is directly affected by the notice.

(7) The DOT Regional Office for the region in which the affected point is located.

(8) Any other person designated by DOT.

(b) [Reserved]

(c) Local communities, State agencies, and airport managers shall be served personally or by registered or certificated mail. All other persons may be served by ordinary mail.

[Docket No. 82, 50 FR 2430, Jan. 16, 1985, as amended by Doc. No. OST-96-1269, 61 FR 19166, May 1, 1996]

§ 323.8 Exemptions.

Carriers are exempted from paragraphs (a)(1), (a)(3), and (a)(5) of § 323.3 to the extent that those provisions require them to file a notice when terminating or suspending the domestic leg of an international flight (fill-up service).

[Doc. No. OST-96-1269, 61 FR 19166, May 1, 1996]

§ 323.9 Objections to notices.

(a) Any person may file an objection requesting DOT to prohibit any termination, suspension, or reduction of air transportation to an eligible place that is the subject of a notice filed under this part.

(b) Objections shall contain:

(1) Identification of the objector, including address and telephone number.

(2) A statement of DOT action requested.

(3) The schedules, routes, carriers, and aircraft types for all air transportation to the affected place other than that proposed to be terminated, suspended, or reduced.

(4) A suggested reasonable level of essential air service to the affected place.

(5) [Reserved]

(6) A justification of the suggested level of essential air service.

(7) Proof of service on the carrier filing the notice objected to, on all airport managers and State and local governments on whom the notice was filed, and any other person designated by DOT. The proof of service shall include the names of all carriers served and the names and addresses of all other persons served.

(c) Objectors are strongly urged to include in their objections facts to support the suggested level of essential air service (e.g., traffic and enplanement data, other market studies, facts descriptive of the place's isolation or dependence on air transportation).

(Approved by the Office of Management and Budget under control number 3024–0030)

[Docket No. 82, 50 FR 2430, Jan. 16, 1985, as amended by Doc. No. OST-96-1269, 61 FR 19165, 19166, May 1, 1996]

§ 323.10 Time for filing objections.

(a) Objections shall be filed not later than:

(1) 12 days from the date of filing of a 30-day notice;

(2) 15 days from the date of filing of a 60-day notice; or

(3) 20 days from the date of filing of a 90-day notice.

(b) The Department may accept late-filed objections, upon motion, for good cause shown.

(c) Whenever a notice has been filed earlier than required under § 323.5, the Department may extend the time for filing an objection to that notice.

§ 323.11 Answers to objections.

(a) Any person may file an answer to an objection filed under this part.

(b) An answer must be filed not later than 7 business days after the filing of the objection to which it responds. Late-filed answers may be allowed, and extensions of filing time granted, by the Department for the same reasons as for objections.

(c) An answer may contain the same type of facts and discussion permitted for objections under this part, and must contain:

(1) Proof of service on the objector, on all persons on whom the objection was required to be served, and on any other person designated by the Department. The proof of service shall include the names and addresses of all persons served.

(2) Identification of the answering party, including address and telephone number.

(Approved by the Office of Management and Budget under control number 3024–0030)

§ 323.12 General requirements for objections and answers.

(a) Each objection and answer filed under this part shall, unless otherwise specified, conform to the procedural rules of general applicability in subpart A of part 302 of this chapter.

(b) Each objection shall be titled ''Objection to Termination, Suspension, or Reduction of Air Service,'' and shall identify the notice to which it responds. Each answer shall be titled ''Answer to Objection to Termination, Suspension, or Reduction of Air Service,'' and shall identify the objection to which it responds.

§ 323.13 DOT actions.

(a) If an objection has been filed under this part, DOT will dispose of the objection by order.

(b) If no objection has been filed within the time allowed by § 323.10(a), DOT may:

(1) By order prohibit a termination, suspension, or reduction that reasonably appears to deprive any eligible place of essential air transportation;

(2) Issue a notice or a final order that it will take no action on a notice filed under § 323.3; or

(3) Take no action.

[Docket No. 82, 50 FR 2430, Jan. 16, 1985, as amended by Doc. No. OST-96-1269, 61 FR 19166, May 1, 1996]

§ 323.14 Temporary suspension authority for involuntary interruption of service.

(a) Any air carrier may temporarily suspend service without filing a notice under § 323.3 for any interruption of service that the carrier cannot reasonably be expected to foresee or control, such as rules, standards, or other action, or inaction, of the Administrator of the Federal Aviation Administration or of a foreign government, emergency measures, strikes, weather conditions, construction work on airports, or disasters. However, the provisions of this paragraph shall apply to interruptions due to airport inadequacies only if the carrier is unable to serve the place through any airport convenient to the place with the type of equipment last regularly used to serve the place.

(b) In the case of an interruption of service caused by a strike, the carrier shall give immediate notice of the interruption to DOT. Suspension authority under this section due to a strike shall expire 90 days after employees return to work.

(c) If service to a place is interrupted for more than 3 consecutive days for reasons beyond the carrier's control other than a strike, the holder shall give notice to DOT within 3 days following the date of first interruption, setting forth the date of first interruption and a full statement of the reasons for the interruption.

(d) The notice required by paragraph (b) or (c) of this section shall be marked for the attention of the Director, Office of Aviation Analysis.

(Approved by the Office of Management and Budget under control number 3024–0030)

[Docket No. 82, 50 FR 2430, Jan. 16, 1985, as amended by Doc. No. OST-96-1269, 61 FR 19166, May 1, 1996]

§ 323.15 Report to be filed after strikes.

(a) Within 15 days following resumption of service after a strike, an air carrier shall file a report with DOT containing a list of all flights that were canceled, the date they were canceled, and the date service was resumed.

(b) The report shall be marked for the attention of the Director, Office of Aviation Analysis.

(Approved by the Office of Management and Budget under control number 3024–0030)

[Docket No. 82, 50 FR 2430, Jan. 16, 1985, as amended by Doc. No. OST-96-1269, 61 FR 19166, May 1, 1996]

§ 323.16 Listings in schedule publications.

Each air carrier filing a notice under § 323.3 (a)(2), (a)(4), (a)(5), or (c) shall continue to list the affected flights in all generally-distributed schedule publications in which the flight was listed before the notice. The listings shall continue until DOT permits the flights to be discontinued. The listings may include a notice stating that the flights are ''to be discontinued as of (date) subject to government approval.''

§ 323.17 Delays in discontinuing service.

If transportation that is the subject of a notice under this part is not discontinued within 90 days of the intended date stated in the notice, a new notice must be filed before the service may be discontinued. However, if DOT requires the carrier to provide service beyond the stated date, the carrier need not file a new notice if it discontinues the service within 90 days after DOT permits it to do so.

§ 323.18 Carriers' obligations when terminating, suspending, or reducing air service.

Any air carrier that terminates, suspends, or reduces air service, whether or not subject to the notice requirements of this part, shall make reasonable efforts to contact all passengers holding reservations on the affected flights to inform them of the flights' cancellation.

§ 323.19 Withdrawal notice by exemption carriers in certain limited-entry markets.

As a condition on the exemption, an air carrier operating under exemption authority in an international market which is the subject of a carrier selection proceeding shall file a notice with the Department at least ninety days

before it terminates service in that market. Once such a notice has been filed, the carrier may not terminate service in that market during the notice period unless the air carrier chosen in the selection proceeding enters the market and the Department grants the operating carrier permission to do so. The Department may allow earlier termination for good cause when in the public interest.

[Doc. No. 43403, 51 FR 43188, Dec. 1, 1986]

PART 325—ESSENTIAL AIR SERVICE PROCEDURES

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AUTHORITY: 49 U.S.C. Chapters 401, 417.

SOURCE: Docket No. 82, 50 FR 2434, Jan. 16, 1985, unless otherwise noted.

§ 325.1 Purpose.

The purpose of this part is to establish procedures to be followed in designating eligible points and in determining essential air transportation levels for eligible points, and in the appeals and periodic reviews of these determinations, under section 419 of the Act.

§ 325.2 Applicability.

This part applies to essential air service determinations for communities designated as eligible under section 419(a) of the Act and to eligible point designations and essential air service determinations for communities that qualify under section 419(b) of the Act. It applies to the gathering of data by the Department, and to the participation of State, local, and other officials and other interested persons in the designation and determination processes.

NOTE: Criteria for designating eligible points under section 419(b) are contained in part 270 of this chapter. Guidelines for deciding essential air service levels are contained in part 398 of this chapter.

§ 325.3 Definitions.

As used in this part, *eligible point* means:

(a) Any point in the United States, the District of Columbia, and the several territories and possessions of the United States to which any direct air carrier was authorized, under a certificate issued by CAB under section 401 of the Act, to provide air service on October 24, 1978, whether or not such service was actually provided;

(b) Any point in the United States and the several territories and possessions of the United States that was deleted from a section 401 certificate between July 1, 1968 and October 24, 1978, inclusive, and that has been designated as an eligible point under the Act; or

(c) Any other point in Alaska or Hawaii that has been designated as an eligible point under the Act.

§ 325.4 State and local participation.

(a) DOT, on a periodic basis, will send a questionnaire to each eligible point that is served by not more than one certificated air carrier, or is designated as an eligible point under section 419(b) of the Act, or for which DOT is reviewing its essential air service needs. The questionnaire will be addressed to:

(1) The chief executive of the principal city, or other unit of local government at the affected point, that is named or has been previously named in a qualifying section 401 certificate. For points in Alaska or Hawaii that are named DOT as eligible points without having been listed on a section 401 certificate, the principal city is the most populous municipality at the point;

(2) The individual or entity with direct supervision over and responsibility for the airport at the eligible point; and

(3) The State agency with jurisdiction over air transportation in the State containing the eligible point. If there is no such State agency, the

questionnaire will be sent to the governor of that State.

(b) Within 60 days after receipt of the questionnaire, five copies of the response shall be filed in the Documentary Services Division, unless the Department specifies another date. If no response is received within the period, essential air service for that eligible point may temporarily be set at the minimum level prescribed in section 419(f) of the Act.

(c) Any other interested person may, during the 60-day response period, submit information relevant to the essential air service level of that eligible point by filing in the Documentary Services Division, five copies of a document titled with the name of the point involved.

(d) As necessary, the DOT may request additional information to supplement the questionnaire.

(Approved by the Office of Management and Budget under control number 3024–0037)

§ 325.5 Determinations and designations.

(a) Not later than October 24, 1979, after reviewing all information submitted, CAB issued determinations of the essential level of air service for eligible points that, on October 24, 1978, were served by not more than one direct air carrier holding a certificate under section 401 of the Act for scheduled service to the point.

(b) DOT will issue a determination of the essential level of air service for a point within 6 months after each of the following events:

(1) A notice is received that service to an eligible point will be reduced to only one carrier that holds a section 401 certificate;

(2) A point is designated as an eligible point under section 419(b) of the Act and either paragraph (c) of this section, paragraph (d) of this section, or § 325.7(e); or

(3) A review was conducted of essential air service of that point under § 325.6.

(c) Not later than January 1, 1982, CAB designated the communities described in § 270.2(a) and (b) as eligible points or as ineligible.

(d) After January 1, 1982, DOT may designate communities in Alaska or Hawaii as eligible points if they apply for such designation.

§ 325.6 Periodic reviews.

(a) The Department will start a periodic review of essential air service within 1 year of the date of the previous determination of essential air service for eligible points receiving subsidized service, within 2 years of the date of the previous determination for eligible points in Alaska, and within 3 years of the date of the previous determination for eligible points without subsidized air service.

(b) The review shall be conducted in accordance with the procedures in §§ 325.4, 325.5 and 325.7.

(c) The Department may review the designation under section 419(b) of a community as an eligible point to determine whether that point continues to meet the criteria in part 270 of this chapter.

§§ 325.7–325.9 [Reserved]

§ 325.10 Modification of the designated level of essential air service.

(a) Any person may file with DOT a petition titled ''Petition for Modification of Essential Air Service Level,'' asking to modify the essential air service level at a point.

(b) The petition shall identify the point affected, and specifically state the reasons why the petitioner believes the designated essential level is inadequate. It should contain any facts and arguments that support its requests, and describe the level of essential air service that should be substituted.

(c) Any person may, within 30 days after the filing of a petition for modification, file an answer to that petition titled ''Answer to Petition for Modification.''

(d) After review, the Department may seek more information and the procedures of §§ 325.5 and 325.7 will be followed.

(Approved by the Office of Management and Budget under control number 3024–0037)

§ 325.11 Form of documents.

All documents filed under this part shall be filed in the Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street,

S.W., Washington, D.C. 20590, and on their front page state:

(a) The title of the document;

(b) The name of the affected community;

(c) The name, address, and telephone number of a person who can be contacted for further information concerning the subject of the document; and

(d) In the case of a responsive document, the docket number of the document to which it responds.

§ 325.12 Service of documents.

Any person, except one filing individually as a consumer, who files a document under this part, including responses to the questionnaire, shall serve that document upon those listed in §325.4(a) of this part and upon the following:

(a) The governor of the State in which the eligible point is located;

(b) Each air carrier providing scheduled service to the affected eligible point;

(c) In the case of a responsive document, the one who filed the document to which it responds; and

(d) The U.S. Postal Service, Assistant General Counsel, Transportation Division, Law Department, Washington, D.C. 20260.

§ 325.13 Environmental evaluations and energy information not required.

Notwithstanding any provision of part 312 or part 313 of this chapter, a person filing a petition or appeal under this part is not required to file an environmental evaluation or energy information with the application.

§ 325.14 Conformity with subpart A of part 302.

Except where they are inconsistent, the provisions of subpart A of part 302 of this chapter shall apply to proceedings under this part.

PART 330—PROCEDURES FOR COMPENSATION OF AIR CARRIERS

Subpart A—General Provisions

Sec.

330.1 What is the purpose of this part?
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3330.41 What funds is the Department setting aside for eligible classes of air carriers?
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APPENDIX A TO PART 330—FORMS FOR ALL CARRIERS
APPENDIX B TO PART 330 [RESERVED]
APPENDIX C TO PART 330—FORMS FOR AIR TAXI OPERATORS

AUTHORITY: Pub. L. 107–42, 115 Stat. 230 (49 U.S.C. 40101 note); sec. 124(d), Pub. L. 107–71, 115 Stat. 631 (49 U.S.C. 40101 note).

SOURCE: Docket No. OST–2001–10885, 67 FR 54066, Aug. 20, 2002, unless otherwise noted.

Subpart A—General Provisions

§ 330.1 What is the purpose of this part?

The purpose of this part is to establish procedures to implement section 101(a)(2) of the Air Transportation

Safety and System Stabilization Act (''the Act''), Public Law 107–42, 115 Stat. 230 (49 U.S.C. 40101 note). This statutory provision is intended to compensate air carriers for direct losses incurred as a result of the Federal ground stop order issued by the Secretary of Transportation, and any subsequent orders, following the terrorist attacks of September 11, 2001, and incremental losses incurred from September 11 through December 31, 2001, as the result of those attacks.

§ 330.3 What do the terms used in this part mean?

The following terms apply to this part:

Air carrier means any U.S. air carrier, as defined in 49 U.S.C. 40102.

Air taxi operator means an air carrier, other than a commuter air carrier, that holds authority issued under 14 CFR part 298 and 14 CFR part 121 or part 135.

Available seat-miles (ASMs) means the aircraft miles flown on each flight stage by an air carrier multiplied by the number of seats available for revenue use on that stage.

Certificated air carrier means an air carrier holding a certificate issued under 49 U.S.C. 41102 or 41103.

Commuter air carrier means an air carrier as defined in 14 CFR 298.2(e) that holds a commuter air carrier authorization issued under 49 U.S.C. 41738.

Incremental loss means a loss incurred by an air carrier in the period of September 11, 2001–December 31, 2001, as a result of the terrorist attacks on the United States of September 11, 2001. It does not include any loss that would have been incurred if the terrorist attacks on the United States of September 11, 2001, had not occurred.

Regional air carrier means an air carrier that operates at least one large aircraft and has annual operating revenues of less than $100 million.

Revenue ton-miles (RTMs) means the aircraft miles flown on each flight stage by the air carrier multiplied by the number of tons of revenue cargo transported on that stage. For purposes of this part, RTMs include only those resulting from all-cargo flights.

§ 330.5 What funds will the Department distribute under this part?

Under this part, the Department will distribute up to the full amount of the compensation it determines is payable to air carriers under section 103(b) of the Act, and up to the full amount of the set-aside provided for in subpart C of this part to air carriers eligible for it. The Department may require additional information to support payments to individual carriers in connection with this final payment.

§ 330.7 [Reserved]

§ 330.9 What are the limits on compensation to air carriers?

(a) You are eligible to receive compensation equaling the lesser of your direct and incremental losses or the amount calculated by the formula set forth in section 103(b)(2) of the Act.

(b) If at any time we determine that a carrier has been compensated in an amount that exceeds the amount to which it is entitled under section 103(b) of the Act or the subpart C set-aside program, the Department will notify the carrier of the basis for the determination, the amount that must be repaid, and the procedures to follow for making a repayment. We will follow collection procedures under the Federal Claims Collection Act of 1966 (31 U.S.C. 3701 et seq,) to the extent required by law, in recovering such overpayments. This process will also apply to collection of overpayments by the Department as a result of an audit by representatives of the Department, including the Office of the Inspector General, or the Comptroller General under section 103 of the Act, which may be the subject of a separate collection action.

§ 330.11 Which carriers are eligible to apply for compensation under this part?

(a) If you are a certificated air carrier, a commuter air carrier, an air taxi, or an indirect air carrier, you are eligible to apply for compensation under Subpart B of this part.

(b) [Reserved]

(c) If you are a foreign air carrier, commercial operator, flying club, fractional owner, general aviation operator, fixed base operator, flight school, or ticket agent, you are not eligible to apply for compensation under this part.

§ 330.13 If an air carrier received compensation under the Act previously, does it have to submit a third-round application?

Yes, if, as an air carrier, you previously received compensation under section 101(a)(2) of the Act, you must, in all cases, submit a complete Form 330 (Final) and other documents required under this part. You must do so even if you are not seeking additional compensation.

§§ 330.15–330.17 [Reserved]

Subpart B—Application Procedures

§ 330.21 [Reserved]

§ 330.23 To what address must air carriers send their applications?

(a) You must submit your application, and all required supporting information, in hard copy (not by fax or electronic means) to the following address:

U.S. Department of Transportation, Aviation Relief Desk (X–50), 400 7th Street, SW., Room 6401, Washington, DC 20590.

(b) If your complete application is not sent to the address in paragraph (a) of this section as required in this section, the Department will not accept it.

§ 330.25 What are the components of an air carrier's application for compensation?

As an air carrier applying for compensation under this part, you must provide to the Department all materials described in §§ 330.27–330.33. The Department will not accept your application if it does not comply fully with the requirements of this subpart.

§ 330.27 What information must certificated and commuter air carriers submit?

(a) You must submit Form 330 (Final), found in Appendix A to this part. Data supplied on Form 330 (Final) in Appendix A to this part must be tied only to the airline portion of their businesses and must exclude non-air transportation related expenses.

(b) [Reserved]

(c) Air carriers that operate both passenger/combination aircraft and all-cargo aircraft and routinely report to the Department ASMs and RTMs separately for both types of flights must submit two versions of Form 330 (Final) in Appendix A to this part to seek compensation on both an ASM and RTM basis. Financial and operational data (both actual and forecasted) must be disaggregated and correlate exclusively to one or the other type of operation.

(d) You must include the following financial information on Form 330 (Final) for the period September 11, 2001 through December 31, 2001:

(1) Your pre-September 11, 2001, profit/loss forecast for the period beginning September 11, 2001, and ending December 31, 2001. This forecast must reflect seasonal reductions in capacity and the cost savings associated with such reductions. Documentation verifying that the pre-September 11, 2001, forecast was, in fact, completed before that date must also be submitted with your application.

(2) Your actual results for that same period reflecting any losses that were a direct result of the terrorist attacks of September 11, 2001. These actual results must incorporate all cost reductions associated with capacity reductions and furloughs you made due to the reduced demand for air service after the September 11th attacks (*e.g.*, employee pay adjustments and furloughs, changes in aircraft fleet in service, schedule and capacity changes, etc.).

(3) The difference between your forecast profits/losses and actual results for that period (*i.e.*, the difference between the figures in paragraphs (d) (1) and (2) of this section).

(4) The actual losses you report must be net losses, before taxes, taking into

account savings from such items as reductions in passenger and cargo handling costs, fuel consumption, landing fees, revenue/traffic-related expenses (*e.g.,* commissions, food and beverage, booking fees, credit card fees), and savings of other costs due to the ground stop and subsequent schedule/capacity/staff reductions (including savings from layoffs of employees, adjusted for severance payments), as well as proceeds from business recovery insurance or other insurance payments. You must not report as losses insurance premium increases that have been or will be compensated by the Government under the Act, or other losses that have been or will be compensated by other subsidies or assistance provided by Federal, state, or local governments.

§ 330.29 What information must air taxi operators submit on Form 330 (Final) and Form 330–C?

As an air taxi operator, you must complete Form 330 (Final) in accordance with the requirements in § 330.27. You must also complete pages 2, 5, and 6 (certifying pages 2 and 5) of Form 330–C as shown in Appendix C to this part. Explanatory notes are included on that Form.

§ 330.31 What data must air carriers submit concerning ASMs or RTMs?

(a) Except as provided in paragraph (d) of this section, if you are applying for compensation as a passenger or combination passenger/cargo carrier, you must have submitted your August 2001 total completed ASM report to the Department for your system-wide air service (e.g., scheduled, non-scheduled, foreign, and domestic).

(b) Except as provided in paragraph (d) of this section, if you are applying for compensation as an all-cargo carrier, you must have submitted your RTM reports to the Department for the second calendar quarter of 2001.

(c) In calculating and submitting ASMs and RTMs under paragraphs (a) and (b) of this section, there are certain things you must not do:

(1) Except at the direction of the Department, or to correct an error that you document to the Department, you must not alter the ASM or RTM reports you earlier submitted to the Department. Your ASMs or RTMs for purposes of this part are as you have reported them to the Department according to existing standards, requirements, and methodologies established by the Office of Airline Information (Bureau of Transportation Statistics).

(2) You must not include ASMs or RTMs resulting from operations by your code-sharing or alliance partners.

(d) If you have not previously reported ASMs or RTMs as provided in paragraphs (a) and (b) of this section for a given operation or operations, you may submit your calculation of ASMs or RTMs to the Department with your application. You must certify the accuracy of this calculation and submit with your application the data and assumptions on which the calculation is based. After reviewing your submission, the Department may modify or reject your calculation.

(1) If you are a direct air carrier that has operated your aircraft for a lessee (i.e., a wet lease, or aircraft, crew, maintenance, and insurance (ACMI) operation), you may submit your calculation of ASMs or RTMs for these flights. Your submission must include the following elements:

(i) Documentation that you otherwise qualify as an air carrier;

(ii) Documentation that you are a wet lessor, and an explanation of why you did not previously report ASMs or RTMs for the operations in question;

(iii) Documentation of the identify of the wet lessees involved in these operations; and

(iv) Accurate and auditable records of ASMs or RTMs actually flown during the relevant time period for these operations.

(2) If you are an indirect air carrier, you may submit your calculation of ASMs or RTMs for flights that direct air carriers have operated for you under contract or other arrangement. Your submission must include the following elements:

(i) Documentation that you otherwise qualify as an air carrier;

(ii) Documentation that you are an indirect air carrier, and an explanation of why you did not previously report ASMs or RTMs for the operations in question;

(iii) Documentation of the identify of the direct air carriers involved in these operations; and

(iv) Accurate and auditable records of ASMs or RTMs actually flown during the relevant time period for these operations.

§ 330.33 Must carriers certify the truth and accuracy of data they submit?

Yes, with respect to all information submitted or retained under §§ 330.27–330.31 and 330.35, your Chief Executive Officer (CEO), Chief Financial Officer (CFO), or Chief Operating Officer (COO) or, if those titles are not used, the equivalent officer, must certify that the submitted information was prepared under his or her supervision and is true and accurate, under penalty of law.

§ 330.35 What records must carriers retain?

As an air carrier that applies for compensation under this part, you must retain records as follows:

(a) You must retain all books, records, and other source and summary documentation supporting your claims for compensation of direct and incremental losses pursuant to Sections 101, 103, and 106 of the Act. This requirement includes, but is not limited to, the following:

(1) You must retain supporting evidence and documentation demonstrating the validity of the data you provide under §§ 330.27–330.31.

(2) You must retain documentation verifying that your pre-September 11, 2001, forecast was the most recent forecast available to that date.

(3) You must also retain documentation outlining the assumptions made for all forecasts and the source of the data and other inputs used in making the forecasts.

(4) You must agree to have your independent public accountant retain all reports, working papers, and supporting documentation pertaining to the agreed-upon procedures engagement conducted by your independent public accountant under the requirements of this part for a period of five years. The accountant must make this information available for audit and examination by representatives of the Department of Transportation (including the Office of the Inspector General), the Comptroller General of the United States, or other Federal agencies.

(b) You must preserve and maintain this documentation in a manner that readily permits its audit and examination by representatives of the Department of Transportation (including the Office of the Inspector General), the Comptroller General of the United States, or other Federal agencies.

(c) You must retain this documentation for five years.

(d) You must make all requested data available within one week from a request by the Department of Transportation (including the Office of the Inspector General), the Comptroller General of the United States, or other Federal agencies.

§ 330.37 Are carriers which participate in this program subject to audit?

(a) All payments you receive from the Department of Transportation under this program are subject to audit. All information you submit with your applications and all records and documentation that you retain are also subject to audit.

(b) Except as provided in paragraph (d) of this section, before you are eligible to receive payment from the final installment of compensation under the Act, there must be an independent public accountant's report based on the performance of procedures agreed upon by the Department of Transportation with respect to the carrier's forecasts and actual results. The independent public accountant's engagement must be performed in accordance with generally accepted professional standards applicable to agreed-upon procedures engagements. You must submit the results of the agreed-upon procedures engagement to the Department with your application for payment of the final installment.

(c) The following are the core requirements for the independent public accountant's review:

(1) Determine that the earnings forecast presented to the Department was inclusive of the entity's full operations

as an air carrier and was the most current forecast prepared prior to September 11, 2001;

(2) Determine that, if forecasts presented to the Department for prior periods had material variances from actual results, the carrier provided explanations to account for such variances;

(3) Determine that the methodology for allocating revenue and expenses to the periods September 1–10 and September 11–30, from the forecasted and actual September results, was in accordance with air carrier records and analyses;

(4) Determine that the actual expenses and revenues presented to the Department are in accordance with the official accounting records of the carrier or the financial statements included in the carrier's Securities and Exchange Commission Form 10–Q (for availability, see 17 CFR 249.0–1(b)), and consistent with Generally Accepted Accounting Principles (GAAP), except to the extent that GAAP would require or allow treatment that would be inconsistent with the Act or this part;

(5) Verify that the carrier provided explanations supporting the allocation methodology used if the forecasted and/or actual results for the September 11—30 period was different from allocating 66.7 percent of the total amounts for September;

(6) Determine that the carrier provided full explanations for all material differences between forecast and actual results for the September 11—30, 2001 period and the October 1—December 31, 2001 period;

(7) Determine that the amounts included in management's explanations for such material differences were in accordance with the carrier's analysis of such fluctuations, and the amounts and explanations were traceable to supporting general ledger accounting records or analyses prepared by the carrier;

(8) Determine that the amounts presented to the Department in Form 330 (Final), pages 2–3, in appendix A to this part that the carrier identified as adjustments to the difference between the pre-September 11 forecast and actual results for the period September 11 through December 31, 2001, were in accordance with the official accounting records of the carrier or the financial statements included in the carrier's Securities and Exchange Commission Form 10–Q, and consistent with GAAP, except to the extent that GAAP would require or allow treatment that would be inconsistent with the Act or this part;

(9) Determine that the insurance recoveries and government payments reported by the air carrier and offsetting income were in accordance with the air carrier's general ledger accounting records;

(10) Determine that the information presented in the air carrier's Supplemental Certification were in accordance with the air carrier's general ledger accounting records;

(11) Include in the auditor's report full documentation for each exception taken by the auditor; and

(12) Identify air carrier reports and records utilized in performing the procedures in paragraphs (c)(1) through (11) of this section.

(d) If you are a carrier that reported fewer than 10 million ASMs for the month of August 2001 or fewer than two million RTMs for the quarter ending June 30, 2001, you are not required to report to the Department on the basis of an agreed-upon procedures engagement by an independent public accountant. Instead, you may report on the basis of simplified procedures approved by the Department.

§ 330.39 What are examples of types of losses that the Department does not allow?

(a)(1) The Department generally does not allow air carriers to include in their calculations aircraft impairment charges, charges or expenses attributable to lease buyouts, or other losses that are not actually and fully realized in the period between September 11, 2001 and December 31, 2001.

(2) The Department will consider requests to accept adjustments for extraordinary or non-recurring expenses or revenues on a case-by-case basis. If, as a carrier, you make such a request, you must demonstrate the following to the satisfaction of the Department:

(i) That the expense or revenue was (or was not, as appropriate) the direct

result of the terrorist attacks of September 11, 2001;

(ii) That the revenue or expense was reported in accordance with Generally Accepted Accounting Principles (GAAP), except to the extent that the GAAP would require or allow treatment that would be inconsistent with the Act or this part;

(iii) That an expense was fully borne within the September 11—December 31, 2001, period and is permanent; and

(iv) That the resulting additional compensation would not be duplicative of other allowances for compensation.

(b) The Department generally does not accept claims by air carriers that cost savings should be excluded from the calculation of incurred losses. Consequently, the Department will generally not allow such claims to be used in a way that has the effect of increasing the compensation for which an air carrier is eligible.

Subpart C—Set-Aside for Certain Carriers

§ 330.41 What funds is the Department setting aside for eligible classes of air carriers?

The Department is setting aside a sum of up to $35 million to compensate eligible classes of air carriers, for which application of a distribution formula containing ASMs as a factor, as set forth in section 103(b)(2) of the Act, would inadequately reflect their share of direct and incremental losses.

§ 330.43 What classes of air carriers are eligible under the set-aside?

There are two classes of eligible air carriers:

(a) You are a Class I air carrier if you are an air taxi, regional, commuter or indirect air carrier and you reported 75,000 or fewer ASMs to the Department for the month of August, 2001.

(b) You are a Class II air carrier if you are an air taxi, regional, commuter or indirect air carrier and you reported between 75,001 and 10 million ASMs to the Department for the month of August 2001.

[Docket No. OST–2001–10885, 67 FR 54066, Aug. 20, 2002, as amended at 68 FR 44458, July 29, 2003]

§ 330.45 What is the basis on which air carriers will be compensated under the set-aside?

(a) Except as provided in paragraph (c) of this section, as an air carrier eligible for compensation through the set-aside, you will be compensated for an amount calculated as provided in paragraph (b) of this section.

(b)(1) As a Class I carrier, your compensation will be calculated using a fixed ASM rate equivalent to the mean losses per ASM for all Class I carriers applying for compensation.

(2) As a Class II carrier, your compensation will be calculated using a graduated ASM rate equivalent to—

(i) The mean loss per ASM for all Class I carriers applying for compensation, for each of the first 75,000 ASMs reported; and

(ii) The mean remaining loss per ASM for all Class II carriers applying for compensation for each ASM in excess of 75,000.

(3) For purposes of this paragraph (b), ASMs are those verified by the Department for August 2001.

(4) Any compensation payments previously made to air carriers eligible for the set-aside will be deducted from the amount calculated as the carrier's total compensation under the set-aside formula.

(c) If you are an air carrier whose compensation is calculated using an ASM rate as provided in paragraph (b) of this section, your compensation will not be less than an amount equivalent to 25 percent of the direct and incremental transportation-related losses you have demonstrated to the satisfaction of the Department were incurred as a direct result of the terrorist attacks of September 11, 2001. Your compensation will not be more than an amount equivalent to the mean percentage of compensation for losses received by passenger and combination air carriers that are not eligible for the set-aside funds, unless you would have been compensated for more than that percentage of losses under the formula set forth in section 103(b)(2) of the Act, in which case you will be compensated under that formula.

[Docket No. OST–2001–10885, 67 FR 54066, Aug. 20, 2002, as amended at 68 FR 44458, July 29, 2003]

APPENDIX A TO PART 330—FORMS FOR ALL CARRIERS

FORM 330 (Final)
Page 1 of 6
(for completion by all carriers)

AIR TRANSPORTATION SAFETY AND SYSTEM STABILIZATION ACT APPLICATION FOR COMPENSATION

NAME, ADDRESS, AND TELEPHONE NUMBER OF AIR CARRIER	
TYPE OF DOT ECONOMIC AUTHORITY HELD	
COMPENSATION AMOUNT RECEIVED TO DATE UNDER SECTION 101(A)(2) OF THE ACT	

Forecasted and Actual Losses for the Period September 11, 2001 to December 31, 2001

	Column A	Column B	Column C
Carrier Financial Data	Pre 9/11/01 Forecast for the Period 9/11/01 thru 12/31/01	Actual Results for the Period 9/11/01 thru 12/31/01	Difference Between the Pre 9/11/01 Forecast & Actual Results for 9/11/01 thru 12/31/01 (A-B)
1. Total Operating Revenue			
2. Total Operating Expenses			
3. Total Operating Income (1-2)			
4. Non-Operating Revenue			
5. Non-Operating Expenses			
6. Income Before Taxes (3 + 4 –5)			

Fuel Price Used in Forecast: Average price per gallon of fuel used in the pre-September 11 forecast for the period from September 11, 2001 through December 31, 2001: _____.

Monthly Profit and Loss Statements: Per section 330.21(h), you must also submit copies of monthly profit and loss statements for the months July 2001 through January 2002, each of which must include the imputed price per gallon average of the fuel used for all aircraft during that month.

FORM 330 (Final)
Page 2 of 6
(for completion by all carriers)

NAME OF AIR CARRIER	

Identification and Explanation of Out-of-Period, Extraordinary or Non-Recurring Revenues and Expenses, and Adjustments to Revenues and Expenses Stemming from Changes Not Directly Related to the Terrorist Events of September 11, 2001

(Note: For definitions and background information in completing this Form, see the sections on "Impairments and Other Extraordinary or Nonrecurring Items" and "Adjustment for Losses Not the Direct Result of the Events of September 11" in the preamble accompanying the original issuance of this form (67 FR 18468; April 16, 2002). See especially the discussion of impairment of assets, lease buyouts, and limitations on treatment of cost reductions below forecast. The three blank lines in each table indicate the format, rather than the expected number of entries.)

In Table 1 below, separately identify and explain any and all out-of-period revenues, extraordinary or non-recurring revenues, and adjustments to actual revenues not directly related to the terrorist events of September 11, 2001 that were **included** in Column B (Boxes B-1 and B-4 on page 1 of this form) but not in Column A, the forecasted revenues. You should use a separate sheet to provide a complete explanation.

Table 1. Adjustments in Included Revenues

Included Revenue Items	Dollar Amount	Explanation (on separate sheet)

In Table 2 below, separately identify and explain any and all out-of-period revenues, extraordinary or non-recurring revenues, and adjustments to actual revenues not directly related to the terrorist events of September 11, 2001 that were **excluded from** Column B (Boxes B-1 and B-4 on page 1 of this form) but not from Column A, the forecasted revenues. You should use a separate sheet if necessary to provide a complete explanation.

Table 2. Adjustments in Excluded Revenues

Excluded Revenue Items	Dollar Amount	Explanation (on separate sheet)

In Table 3 below, separately identify and explain any and all out-of-period expenses, extraordinary or non-recurring expenses, and adjustments to actual expenses not directly related to the terrorist events of September 11, 2001 that were **included** in Column B (Boxes B-2 and B-5 on page 1 of this form) but not in Column A, the forecasted expenses. You should use a separate sheet to provide a complete explanation.

Table 3. Adjustments in Included Expenses

Included Expense Item	Dollar Amount	Explanation (on separate sheet)

In Table 4 below, separately identify and explain any and all out-of-period expenses, extraordinary or non-recurring expenses, and adjustments to actual expenses not directly related to the terrorist events of September 11, 2001 that were **excluded from** Column B (Boxes B-2 and B-5 on page 1 of this form) but not from Column A, the forecasted expenses. You should use a separate sheet to provide a complete explanation.

Table 4. Adjustments in Excluded Expenses

Excluded Expense Item	Dollar Amount	Explanation

FORM 330 (Final)
Page 4 of 6
(to be completed by all-cargo carriers)

NAME OF AIR CARRIER	

ALL-CARGO OPERATIONAL DATA

Cargo Carrier Operating Data	Pre 9-11-01 Forecast for the Period 9-11-01 through 12-31-01	Actual Data for the Period 9-11-01 through 12-31-01	Difference Between the Pre 9-11-01 Forecast and Actual Loss for the Period 9-11-01 thru 12-31-01
Revenue Tons Enplaned			
Revenue Ton Miles (RTMs)			
Available Ton Miles (ATMs)			
Load Factor (%)			
Departures Performed			
Cargo Revenue Yield per RTM			

FORM 330 (Final)
Page 5 of 6
(to be completed by passenger and combination carriers)

NAME OF AIR CARRIER	

PASSENGER AND COMBINATION CARRIER OPERATIONAL DATA

Passenger Carrier Operating Data	Pre 9-11-01 Forecast for the Period 9-11-01 thru 12-31-01	Actual Data for the Period 9-11-01 thru 12-31-01	Difference Between the Pre 9-11-01 Forecast and Actual Loss for the Period 9-11-01 thru 12-31-01
Revenue Passengers Carried			
Revenue Passenger Miles (RPMs)			
Available Seat Miles (ASMs)			
Load Factor (%)			
Breakeven Load Factor (%)			
Average Length of Passenger Haul			
Departures Performed			
Average Passenger Fare ($)			
Passenger Revenue Yield per RPM (cents)			
Operating Revenue per ASM (cents)			
Operating Expense per ASM (cents)			

FORM 330 (Final)
Page 6 of 6

NAME, ADDRESS AND TELEPHONE NUMBER OF AIR CARRIER	

Compensation payments will be made via Electronic Funds Transfer. The Department of Transportation can process this type of payment only if air carrier applicants submit the following banking information with their request:

Air Carrier Bank Routing Number	_ _ _ _ _ _ _ _ _ (9 positions)
Air Carrier Bank Account Number	
Name on Account	
Type of Account (*e.g.*, checking, savings)	
Taxpayer ID Number	

I CERTIFY THAT THE INFORMATION ON FORM 330 (FINAL) AND THE MONTHLY PROFIT AND LOSS STATEMENTS SUBMITED AS PART OF THE APPLICATION ARE TRUE AND ACCURATE UNDER PENALTY OF LAW. FALSIFICATION OF A CLAIM FOR COMPENSATION/PAYMENTS UNDER PUB. L. 107-42 MAY RESULT IN CRIMINAL PROSECUTION RESULTING IN FINE AND/OR IMPRISONMENT.

_____ _____
CERTIFYING OFFICER DATE
(CEO, CFO or COO)

Print Name_____ Telephone Number _____

Title: _____

APPENDIX B TO PART 330 [RESERVED]

APPENDIX C TO PART 330—FORMS FOR AIR TAXI OPERATORS

FORM 330-C
Page 1 of 7

AIR TRANSPORTATION SAFETY AND SYSTEM STABILIZATION ACT APPLICATION FOR COMPENSATION FOR AIR TAXI OPERATORS

NAME, ADDRESS AND TELEPHONE NUMBER OF AIR TAXI OPERATOR	
DATE OF MOST RECENT PART 298 REGISTRATION OR AMENDMENT	
FAA PART 135 OR 121 CERTIFICATE NUMBER	

PART 1: FORECASTED & ACTUAL LOSSES FOR THE PERIOD SEPTEMBER 11, 2001 TO SEPTEMBER 30, 2001 (in whole dollars)

Air Taxi Financial Data	Contracted/Planned Operations for the Period 9-11-01 through 9-30-01	Actual Results for the Period 9-11-01 through 9-30-01	Difference Between the Pre 09-11-01 Forecast and Actual Results for 9-11-01 through 9-30-01
Total Operating Revenue			
Total Operating Expenses			
Total Operating Income			
Non-Operating Income			
Non-Operating Expenses			
Income Before Taxes			

The operations for hire for which losses are claimed in this chart must have been cancelled entirely, resulting in a complete loss of revenue for those operations. Revenue for these operations must not have been re-captured through subsequent re-accommodation of the same trips. Such non-recovered losses in revenues had associated countervailing reductions in operating expenses that have also been incorporated in the data and calculations in this chart.

FORM 330-C
Page 2 of 7

NAME OF AIR CARRIER	

**PART 2: REPORT OF OPERATING STATISTICS FOR AIR TRANSPORTATION FOR HIRE*
(in whole numbers)**

FOR AIRCRAFT USED IN PASSENGER, PASSENGER/CARGO & OTHER TRANSPORT SERVICES FOR THE MONTH OF AUGUST 2001

Aircraft Type	Number of Type in Use for Transport Services**	Number of Seats Available per Aircraft for Use by Paid Passengers	Revenue Aircraft Miles Flown in Transport Services	Available Seat Miles in Transport Services	Revenue Airborne Hours in Transport Services	Revenue Aircraft Departures in Transport Services
1)						
2)						
3)						
4)						
5)						
6)						

FOR AIRCRAFT USED ONLY FOR ALL-CARGO OPERATIONS* FOR THE QUARTER ENDED JUNE 30, 2001**

Aircraft Type	Number of Type in Use for Transport Services**	Available Payload Capacity (in pounds)	Revenue Aircraft Miles Flown in Transport Services	Cargo Revenue Ton Miles in Transport Services (if known)	Revenue Airborne Hours in Transport Services	Revenue Aircraft Departures in Transport Services
1)						
2)						
3)						
4)						
5)						
6)						

* Air transportation for hire includes only commercial services operated under Part 121 or Part 135 operating certificates. Other services operated under Part 91, as well as dry leases and flights operated for the purpose of flight instructions, maintenance testing and aircraft positioning are excluded.
** This number should be the same number as listed on the operator's current Part 298 registration and current FAA-issued operations specifications.
*** For all-cargo operations, please note aircraft that are operated under contract for another express or all-cargo carrier and identify those carriers and provide details on a separate, attached sheet.

NOTE: If the operator records and reports aircraft miles, the operator should compute and enter available seat miles by multiplying the number of seats times the aircraft miles. If the operator does not report aircraft miles, DOT will compute the available seat miles. If the operator records and reports cargo RTMs, the operator should enter the amounts directly on the form. If not, DOT will estimate the RTMs based on the other data submitted. All carriers, however, must report airborne hours and departures.

FORM 330-C
Page 3 of 7

NAME OF AIR CARRIER	

PART 3: ESTIMATE OF LOSS FOR THE PERIOD
OCTOBER 1, 2001 TO DECEMBER 31, 2001
(in whole dollars)

Air Taxi Financial Data	Pre 09-11-01 Forecast* for the Period 10-01-01 through 12-31-01	Current Forecast for the Period 10-01-01 through 12-31-01	Difference Between the Pre 09-11-01 Forecast and the Current Forecast for the period 10-01-01 through 12-31-01
Total Operating Revenue			
Total Operating Expenses			
Total Operating Income			
Non-Operating Income			
Non-Operating Expenses			
Income Before Taxes			

* For those air taxi operators that do not typically prepare forecasts, use contracted/scheduled services that were scheduled before September 11, 2001 and can be documented.

FORM 330-C
Page 4 of 7

NAME OF AIR CARRIER	

PART 4: OPERATIONAL DATA
(in whole numbers or dollars)

Air Taxi Operational Data		Pre 9-11-01 Forecast for the Period 10-01-01 through 12-31-01	Current Forecast for the Period 10-01-01 through 12-31-01	Difference Between the Pre 9-11-01 Forecast and the Forecast for 10-01-01 through 12-31-01
Total operating revenues				
Total operating expenses				
Total operations for hire (departures)				
Total available seat miles **OR**				
Total revenue ton miles				
Total aircraft in fleet:				
(Show aircraft types in the next column)	1)			
	2)			
	3)			
	4)			
	5)			
	6)			
Seats available per aircraft:				
(Show aircraft types in the next column)	1)			
	2)			
	3)			
	4)			
	5)			
	6)			
Total aircraft miles flown:				
(Show aircraft types in the next column)	1)			
	2)			
	3)			
	4)			
	5)			
	6)			
Total airborne hours:				
(Show aircraft types in the next column)	1)			
	2)			
	3)			
	4)			
	5)			
	6)			
Available payload capacity (in lbs.) (all-cargo operations only):				
(Show aircraft types in the next column)	1)			
	2)			
	3)			
	4)			
	5)			
	6)			

FORM 330-C
Page 5 of 7

NAME OF AIR CARRIER	

PART 5: HISTORICAL OPERATIONAL DATA
(in whole numbers or dollars)

Air Taxi Operational Data		Month of Sept 2000	Month of Oct 2000	Month of Nov 2000	Month of Dec 2000		Month of July 2001	Month of Aug 2001
Total operating revenues								
Total operating expenses								
Total operations for hire (departures)								
Total available seat miles **OR**								
Total revenue ton miles								
Total aircraft in fleet:								
(Show aircraft types in the next column)	1)							
	2)							
	3)							
	4)							
	5)							
	6)							
Seats available per aircraft:								
(Show aircraft types in the next column)	1)							
	2)							
	3)							
	4)							
	5)							
	6)							
Total aircraft miles flown:								
(Show aircraft types in the next column)	1)							
	2)							
	3)							
	4)							
	5)							
	6)							
Total airborne hours:								
(Show aircraft types in the next column)	1)							
	2)							
	3)							
	4)							
	5)							
	6)							
Available payload capacity (in lbs.) (all-cargo operations only):								
(Show aircraft types in the next column)	1)							
	2)							
	3)							
	4)							
	5)							
	6)							

NAME OF AIR CARRIER	

Part 6: ACCOUNT INFORMATION AND CERTIFICATION

Compensation payments will be made via Electronic Funds Transfer. The Department of Transportation can process this type of payment only if air carrier applicants submit the following banking information with their requests:

Air Carrier Bank Routing Number	_ _ _ _ _ _ _ _ _ (9 positions)
Air Carrier Bank Account Number	
Name on Account	
Type of Account (*e.g.*, checking, savings)	
Taxpayer ID Number	

I CERTIFY THAT THE INFORMATION CONTAINED IN PARTS 1 THROUGH 5 OF THIS FORM (FORM 330-C) IS TRUE AND ACCURATE UNDER PENALTY OF LAW. FALSIFICATION OF A CLAIM FOR COMPENSATION/PAYMENTS UNDER PUB. L. 107-42 MAY RESULT IN CRIMINAL PROSECUTION RESULTING IN FINE AND/OR IMPRISONMENT (18 U.S.C. 1001).

Certifying Officer (signature) **Date**

Print Name and Title (CEO, CFO or COO) **Telephone Number**

FORM 330-C
Page 7 of 7

EXPLANATORY NOTES:

1. In order to avoid the possibility of misinterpretation, we are requiring that numbers or notations (for example, "N/A") be entered into all data blocks on all forms even if those numbers are zero. We also note that all amounts are to be reported in whole numbers.

2. The required forecasted amounts should be based on a forecasting and/or budgeting approach or similar accounting system if the air carrier routinely uses that method. For those carriers whose accounting systems or methodologies rely more on actual or short run projections, we ask that they make a "good faith" effort to categorize their revenues and expenses according to the required forms. In this regard, the following may provide additional assistance.

3. As general guidance, we include the following information that has been adapted from 14 CFR Part 298 (Section 298.62) or 14 CFR Part 241. Air transportation for hire includes only commercial services operated under Part 121 or Part 135 operating certificates. Other services operated under Part 91, as well as dry leases and flights operated for the purpose of flight instructions, maintenance testing and aircraft positioning are excluded.

4. Total operating revenues generally include gross revenues accruing from services ordinarily associated with air transportation. It is meant to include revenue derived from scheduled service, on demand and nonscheduled service operations.

5. In general, total operating expenses include expenses of the type usually and ordinarily incurred in the performance of air transportation. It includes expenses incurred: directly in the in-flight operation of aircraft; in the holding of aircraft and aircraft personnel in readiness for assignment to an in-flight status; on the ground, in controlling and protecting the in-flight movement of aircraft; landing and handling aircraft on the ground; selling transportation, servicing and handling passenger and cargo traffic; promoting the development of traffic; and administering operations generally. It shall also include expenses which are specifically identifiable with the repair and upkeep of property and equipment used in the performance of air transportation and all depreciation and amortization expenses applicable to property and equipment used in providing air transportation services.

6. Non-operating income includes such items as interest income and other similar investments. It may also include capital gains (for example, aircraft sales). Non-operating expenses include interest expense and other expenses attributable to financing or other activities that are extraneous to and not an integral part of air transportation or its incidental services. It may also include capital losses (for example, aircraft sales).

7. We note that claims for compensation cannot be based solely on lost revenues, that is, the total revenue that an air taxi operator expected to receive from flights that would have been flown but were cancelled due to the DOT-mandated flight stoppage. While these amounts would provide information on the changes in total operating revenues, it is important to recognize that changes in total operating expenses must also be considered in calculating operating income and net income which is ultimately used to determine compensation. Also, for those carriers with less sophisticated accounting systems, the calculation of forecasted total operating expenses might be based on an analysis of fixed costs (those that stay the same regardless of the number of flights or changes in passenger and cargo traffic) and variable costs (those that change in proportion to the level of operations and traffic volume).

8. All carriers should be able to provide actual financial results for the period of September 11 to September 30, 2001, as required. We will not accept incomplete forms or reports that are submitted in lieu of the required forms and we will not accept the submission of invoices, flight logs, sales records, calendar notations of events or other similar documents in lieu of the required forms. However, supporting documentation must be retained for audit purposes.

SUBCHAPTER C [RESERVED]

SUBCHAPTER D—SPECIAL REGULATIONS

PART 372—OVERSEAS MILITARY PERSONNEL CHARTERS

Subpart A—General Provisions

Sec.
372.1 Applicability.
372.2 Definitions.
372.3 Waiver.
372.4 Enforcement.
372.5 Suspension of revocation of authority.

Subpart B—Exemption

372.10 Exemption.

Subpart C—Conditions and Limitations

372.20 Requirement of operating authorization.
372.21 Solicitation.
372.22 Discrimination.
372.23 Methods of competition.
372.24 Surety bond, depository agreement, escrow agreement.
372.25 Tariffs to be filed for charter trips.
372.26 [Reserved]
372.27 Name of operator.
372.28 Record retention.

Subpart D—Operating Authorization

372.30 Application.
372.31 Issuance.
372.32 Effective period.
372.33 Nontransferability.

APPENDIX A TO PART 372—OVERSEAS MILITARY PERSONNEL CHARTER OPERATOR'S SURETY BOND UNDER PART 372 OF THE SPECIAL REGULATIONS OF THE DEPARTMENT OF TRANSPORTATION (14 CFR PART 372)

AUTHORITY: 49 U.S.C. Chapters 401, 411, 413, 417.

SOURCE: SPR–54, 37 FR 11163, June 3, 1972, unless otherwise noted.

Subpart A—General Provisions

§ 372.1 Applicability.

This part establishes the terms and conditions governing the furnishing of overseas military personnel charters in air transportation by direct air carriers or foreign air carriers and by overseas military charter operators. This part also relieves charter operators from the provisions of section 41102 of Title 49 of the United States Code (''the Statute''), for the purpose of enabling them to provide overseas military personnel charters utilizing aircraft chartered from such direct air carriers or foreign air carriers. Nothing contained in this part shall be construed as repealing or amending any provisions of any of the Department's regulations, unless the context so requires.

[SPR–60, 37 FR 19122, Sept. 19, 1972, as amended at 60 FR 43529, Aug. 22, 1995]

§ 372.2 Definitions.

As used in this part, unless the context otherwise requires:

Charter means overseas military personnel charter.

Charter operator means overseas military personnel charter operator.

Charter participant means a member of the overseas military personnel charter group.

Charter price means the total amount of money paid by the charter participant to the charter operator for air transportation.

Immediate family means only the following persons: the spouse, children, parents, parents of the spouse, children of the parents, and children of the parents of the spouse of (1) military personnel on active duty with the United States Armed Forces (including Coast Guard) stationed outside the contiguous states of the United States and the District of Columbia, and (2) civilian employees of the Department of Defense who are citizens of the United States and are stationed in a foreign country, or in a U.S. territory or possession, where U.S. military personnel are stationed.

Overseas military personnel charter means a charter, either one-way or round-trip, limited to military personnel on active duty with the U.S. Armed Forces (including the Coast Guard), stationed outside the 48 contiguous States of the United States and the District of Columbia, and/or civilian employees of the Department of Defense who are citizens of the United States and are stationed in a foreign

country, or in a U.S. territory or possession, where such U.S. military personnel are stationed, and/or the immediate families of the foregoing persons, where the following conditions are met: (a) All military personnel and civilian employees of the Department of Defense participating in the charter are on official furlough, leave, pass, or other authorized absence from duty, and (b) the transportation is between a place in the 48 contiguous States of the United States or the District of Columbia and a place in Alaska, Hawaii, or a territory or possession of the United States, or a foreign country in which military personnel of the United States are stationed: *Provided, however,* That nothing contained herein shall preclude an overseas military personnel charter operator from utilizing any unused space on an aircraft chartered by it pursuant to this part for the transportation, on a free or reduced-rate basis, of such charter operator's employees, directors, and officers, and the parents and immediate families of such persons, subject to the provisions of part 223 of this chapter.

Overseas military personnel charter operator means any citizen of the United States, as defined in section 40102(a)(15) of the Statute authorized hereunder to engage in the formation of overseas military personnel charter groups and who complies with the provisions of this part.

Person means any individual, firm, association, partnership, or corporation.

Statute when used in this chapter means Subtitle VII of Title 49 of the United States Code (Transportation).

[SPR–54, 37 FR 11163, June 3, 1972, as amended by SPR–69, 38 FR 14164, May 30, 1973; SPR–109, 41 FR 35158, Aug. 20, 1976; 60 FR 43529, Aug. 22, 1995]

§ 372.3 Waiver.

A waiver of any of the provisions of this regulation may be granted by the Department upon its own initiative, or upon the submission by a charter operator of a written request therefor: *Provided,* That such a waiver is in the public interest and it appears to the Department that special or unusual circumstances warrant a departure from the provisions set forth herein.

§ 372.4 Enforcement.

In case of any violation of the provisions of the Statute, or this part, or any other rule, regulation, or order issued under the Statute, the violator may be subject to a proceeding pursuant to section 46101 of the Statute before the Department, or sections 46106 through 46108 of the Statute before a U.S. district court, as the case may be, to compel compliance therewith, to civil penalties pursuant to the provisions of section 46301 of the Statute, or in the case of willful violation, to criminal penalties pursuant to the provisions of section 46316 of the Statute; or other lawful sanctions.

[SPR–54, 37 FR 11163, June 3, 1972, as amended at 60 FR 43529, Aug. 22, 1995]

§ 372.5 Suspension or revocation of authority.

The Department reserves the power to suspend the authority of any charter operator, without hearing, if it finds that such action is necessary in order to protect the rights of the traveling public, or to revoke such authority for cause.

Subpart B—Exemption

§ 372.10 Exemption.

Charter operators are hereby relieved from the provisions of section 41102 of the Statute only if and so long as they comply with the provisions of this part and the conditions imposed herein, and to the extent necessary to permit them to organize and arrange overseas military personnel charters.

[SPR–176, 46 FR 43960, Sept. 2, 1981, as amended at 60 FR 43529, Aug. 22, 1995]

Subpart C—Conditions and Limitations

§ 372.20 Requirement of operating authorization.

No person shall engage in air transportation as an overseas military personnel charter operator by organizing, providing, selling, or offering to sell, soliciting, or advertising an overseas military personnel charter or charters unless there is in force an operating authorization issued pursuant to

§ 372.31 authorizing such person to engage in such transportation.

[Docket No. 47939, 57 FR 40105, Sept. 2, 1992]

§ 372.21 Solicitation.

Solicitation of charter participants through advertising by charter operators shall be restricted to the following:

(a) Radio and television stations operated by the U.S. Armed Forces;

(b) Newspapers, periodicals, or other printed media disseminated and distributed primarily among military personnel or civilian employees of the Department of Defense: *Provided, however,* That any printed advertisement of a charter operator shall include a statement explaining that eligibility for participation in such charters is limited to military servicemen who are stationed outside of the 48 contiguous States and the District of Columbia, and/or U.S. citizen civilian DOD employees who are stationed in a foreign country, or a U.S. territory or possession, where U.S. military personnel are stationed, and their respective immediate families.

§ 372.22 Discrimination.

No charter operator shall make, give, or cause any undue or unreasonable preference or advantage to any particular person, port, locality, or description of traffic in air transportation in any respect whatsoever or subject any particular person, port, locality, or description of traffic in air transportation to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

§ 372.23 Methods of competition.

No charter operator shall engage in unfair or deceptive practices or unfair methods of competition in air transportation or the sale thereof.

§ 372.24 Surety bond, depository agreement, escrow agreement.

(a) Before selling or offering to sell, soliciting or advertising any charter flight, a charter operator shall comply with one of the three following requirements:

(1) The charter operator shall furnish a surety bond in an amount not less than the maximum fare held out for charter flights proposed to be operated during each calendar month multiplied by 90 percent of the number of available seats on such flights: *Provided, however,* That the liability of the surety to any charter participant shall not exceed the charter operator's applicable tariff fare. Such bond shall be filed with the Department not less than 45 days prior to the commencement of the calendar month covered by the bond together with a list of flights proposed to be operated during the month showing charter price, departure dates, equipment to be used for each flight and the seating capacity: *Provided, however,* That the amount of the bond shall be increased if additional charter flights are proposed or may be reduced if proposed charter flights are canceled, in which event a substitute bond and amended list of proposed flights shall be filed with the Department within 10 days of the date that the charter operator adds flights or cancels flights previously proposed, but in no event later than 2 days prior to the operation of any such additional charter flights; or

(2) The charter operator shall:

(i) Furnish and file with the Department a surety bond in the amount of $100,000 for the protection of the charter participants: *Provided, however,* That the liability of the surety to any charter participant shall not exceed the charter operator's applicable tariff fare; and

(ii) Enter into an agreement with a bank, the terms of which shall include the following:

(*a*) Each participant shall pay for his deposit and subsequent payments comprising the charter participant's tariff fare only by check or money order payable to such bank which shall maintain a separate accounting for each flight: *Provided, however,* That if the participant makes a cash deposit, the charter operator who receives such cash deposit shall forthwith remit to the designated bank a check for the full amount of the deposit;

(*b*) The bank shall not pay the air carrier or foreign air carrier the charter price for the transportation earlier

than 60 days (including day of departure) prior to the scheduled day of departure of the originating or returning flight, upon certification of the departure date and price by the charter operator;

(*c*) The bank shall reimburse the charter operator for refunds made by the latter to the participants upon written notification from the charter operator;

(*d*) If the charter operator notifies the bank that a flight has been canceled, the bank shall make the applicable refunds directly to the participants;

(*e*) Except as provided in paragraph (a)(2)(ii)(*c*) of this section, the bank shall not pay any funds from the account to the charter operator prior to 2 banking days after completion of each flight when the balance in the account shall be paid to the charter operator upon certification of the completion date by the charter operator and direct air carrier;

(*f*) Notwithstanding any provisions above, the amount of total cash deposits required to be maintained in the depository account of the bank may be reduced by one or both of the following: The amount of surety bond in the form prescribed herein in excess of the minimum bond required by paragraph (a)(2)(i) of this section; an escrow with the designated bank of Federal, State, or municipal bonds or other securities, consisting of certificates of deposit issued by banks having a stated policy of redeeming such certificates before maturity at the request of the holder (subject only to such interest penalties or other conditions as may be required by law), or negotiable securities which are publicly traded on a securities exchange, all such securities to be made payable to the escrow account: *Provided,* That such other securities shall be substituted in an amount no greater than 80 percent of the total market value of the escrow account at the time of such substitution: *And provided, further,* That should the market value of such other securities subsequently decrease, from time to time, then additional cash or securities qualified for investment hereunder shall promptly be added to the escrow account, in an amount equal to the amount of such decreased value; or

(3) The charter operator shall:

(i) Furnish and file with the Department a surety bond in the amount of $100,000 for the protection of the charter participants: *Provided, however,* That the liability of the surety to any charter participant shall not exceed the charter operator's applicable tariff fare; and

(ii) Enter into an agreement with a bank, the terms of which shall include the following:

(*a*) Whenever the gross amount of customers' deposits exceeds 25 percent of the charter operator's net worth, as computed under generally accepted accounting principles, the charter operator shall, on or before the 30th day of the succeeding month, place in escrow or in trust with the bank cash in an amount at least equal to the amount by which such deposits exceed 25 percent of its net worth: *Provided,* That negotiable securities may be substituted for cash, but the market value thereof shall at all times be not less than the amount of cash for which they are substituted;

(*b*) The escrow agreement or the trust agreement between the bank and the operator shall not be effective until approved by the Department. Claims against the escrow or trust may be made only with respect to the nonperformance of air transportation.

(b) As used in this section, the term *bank* means a bank insured by the Federal Deposit Insurance Corporation.

(c) Any bond furnished under this section shall insure the financial responsibility of the charter operator and the supplying of the air transportation in accordance with the contract between the charter operator and the charter participants, and shall be in the form set forth as appendix A to this part. Such bond shall be issued by a bonding or surety company (1) whose surety bonds are accepted by the Interstate Commerce Commission under 49 CFR 1084.6; or (2) which is listed in Best's Insurance Reports (fire and casualty) with a general policyholders' rating of ''A'' or better. The bonding or surety company shall be one legally authorized to issue bonds of that type in the State in which the charter originates or in which the charter operator is incorporated. For purposes of this

section, the term ''State'' includes any territory or possession of the United States, or the District of Columbia. The bond shall be specifically identified by the issuing surety with a company bond numbering system so that the Department may identify the bond with the specific charter or charters to which it relates: *Provided, however,* That these data may be set forth in an addendum attached to the bond which addendum must be signed by the charter operator and the surety company. It shall be effective on or before the date the operating authorization becomes effective. If the bond does not comply with the requirements of this section, or for any reason fails to provide satisfactory or adequate protection for the public, the Department will notify the direct air carrier and the charter operator, by registered or certified mail, stating the deficiencies of the bond. Unless such deficiencies are corrected within the time set forth in such notification, the subject charters shall in no event be operated.

(d) Any bond furnished under this section shall provide that unless the charter participant files a claim with the charter operator, or, if he is unavailable, with the surety, within sixty (60) days after termination of the charter, the surety shall be released from all liability under the bond to such charter participant. The contract between the charter operator and the charter participants shall contain notice of this provision.

(Secs. 101(3), 204(a), 401, and 402 of the Federal Aviation Act of 1958, as amended, 72 Stat. 737, 743, 754, and 757, as amended, 49 U.S.C. 1301, 1324, 1371 and 1372)

[SPR–54, 37 FR 11163, June 3, 1972, as amended by SPR–60, 37 FR 19122, Sept. 19, 1972; SPR–63, 37 FR 22849, Oct. 26, 1972; SPR–95, 40 FR 52355, Nov. 10, 1975; Docket No. 47939, 57 FR 40105, Sept. 2, 1992]

§ 372.25 Tariffs to be filed for charter trips.

Effective October 1, 1972, a charter operator shall not operate or sell or offer to sell, solicit or advertise, any charter trips unless such operator shall have on file with the Department a currently effective tariff showing all rates, fares, and charges for such charter trips and showing the rules, regulations, practices, and services in connection with such transportation.

§ 372.26 [Reserved]

§ 372.27 Name of operator.

It shall be an express condition upon the exercise of the exemption herein granted and the operating authorizations issued hereunder, that the charter operator concerned, in holding out to the public and performing air transportation services, shall do so only in a name the use of which is authorized under the provisions of part 215 of this chapter.

§ 372.28 Record retention.[1]

(a) Every charter operator conducting a charter pursuant to this part shall retain for 2 years after completion of the charter or series of charters true copies of the following documents at its principal or general office in the United States:

(1) All documents which evidence or reflect deposits made by, and refunds made to, each charter participant;

(2) All statements, invoices, bills, and receipts from suppliers or furnishers of goods and services in connection with the charter or series of charters.

(b) Every charter operator shall make the documents listed in this section available upon request by an authorized representative of the Department and shall permit such representative to make such notes and copies thereof as he deems appropriate.

[SPR–54, 37 FR 11163, June 3, 1972, as amended by Docket No. 47939, 57 FR 40105, Sept. 2, 1992]

[1] Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device, a material fact, or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing of document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than 5 years, or both. Title 18, U.S.C. sec. 1001.

Subpart D—Operating Authorization

§ 372.30 Application.

(a) *Application.* Any person desiring to operate as an overseas military personnel charter operator may apply to the Department for an appropriate operating authorization. Contact the Office of Aviation Analysis, Special Authorities Division, for filing instructions. The application shall be certified by a responsible official of such person and shall contain the following information:

(1) Date;

(2) Name of applicant, trade names, and name in which authorization is to be issued;

(3) Address of principal office and mailing address;

(4) Form of organization (i.e., corporation, partnership, etc.), State under whose laws company is authorized to operate and date company was formed;

(5) A list containing the names of each officer, director, partner, owner, or member of applicant, and holder of more than 5 percent of outstanding stock if a corporation, or owner of more than a 5-percent interest if other than a corporation; an indication as to whether or not 75 percent or more of the voting interest is owned or controlled by citizens of the United States or one of its possessions; if more than 5 percent of applicant's stock is held by a corporation, an indication must be made as to whether or not 75 percent or more of the voting interest in such corporation is owned or controlled by citizens of the United States or one of its possessions;

(6) A description of current business activities and of former business experience in, or related to, the transportation field;

(7) Description of operating authority granted applicant by agencies of the U.S. Government (such as customs broker, surface or air freight forwarder, motor carrier, ocean freight forwarder, etc.), and, if applicable, reasons for revocation or other termination;

(8) List of names of the officers, owners, etc., of applicants who have at any time applied for any type of authority or registration from the Civil Aeronautics Board or the Department of Transportation and, if applicable, reasons for revocation or other termination;

(9) List of officers, owners, etc., of applicant who have at any time been employed by or associated with any air carrier authorized to operate by the Civil Aeronautics Board or the Department of Transportation indicating dates of employment and capacity in which employed;

(10) Any additional information in support of application;

(11) Balance sheet as of a date not more than 3 months prior to application and profit and loss statement for the full year ending as of date of balance sheet;

(12) Brief account of any arrangement by which applicant will have available financial sources and facilities of other companies or individuals;

(13) The charter operator's surety bond and, where applicable, a copy of the depository, escrow or trust agreement with a bank as provided in § 372.24.[2]

(b) *Additional information.* The applicant shall also submit such other additional information pertinent to its proposed activities as may be requested by the Department with respect to any individual application.

[SPR–54, 37 FR 11163, June 3, 1972, as amended by Docket No. 47939, 57 FR 40105, Sept. 2, 1992; 60 FR 43529, Aug. 22, 1995]

§ 372.31 Issuance.

(a) If, after the filing of an application for an operating authorization, it appears that the applicant is capable of performing the air transportation authorized by this part as an overseas military personnel charter operator and of conforming to the provisions of the Act and all rules and requirements thereunder, and that the conduct of such operations by the applicant will not be inconsistent with the public interest, the applicant will be notified by letter. Such notification will advise

[2] The surety bond and, where applicable, a copy of the depository escrow, or trust agreement with the bank should not be filed with the Department until the applicant is notified by the Department to do so.

the applicant that, upon the filing of a valid tariff pursuant to §372.25, an operating authorization will be issued to the applicant.

(b) If, after the filing of an application for an operating authorization, it appears that the applicant has not made a due showing of capability or that the conduct of operations by the applicant might otherwise be inconsistent with the public interest, the Department shall by letter notify the applicant of its findings to that effect. The Department may dismiss any such application unless within 30 days of the date of the mailing of such letter, the applicant has in writing requested reconsideration and submitted such additional information as it believes will make the necessary showing, or requested that the application be assigned for hearing, in which case the applicant shall outline the evidence to be presented at such hearing and shall show the need for hearing in order properly to present its case.

(c) In the event that reconsideration or hearing is requested, the Department may, without notice or hearing, enter an order of approval or of disapproval in accordance without notice or hearing, enter an order of approval or of disapproval in accordance with its determination of the public interest upon the showing made, or on its own initiative may assign the application for hearing.

§372.32 Effective period.

Each operating authorization shall be effective upon the date specified therein, and shall continue in effect, unless sooner suspended or revoked, during such period as the authority provided by this part shall remain in effect, or if issued for a limited period of time, shall continue in effect until the expiration thereof unless sooner suspended or revoked.

§372.33 Nontransferability.

(a) An operating authorization shall be nontransferable and shall be effective only with respect to the person named therein or his successor by operation of law, subject to the provisions of this section. The following persons may temporarily continue operations under an operating authorization issued in the name of another person, for a maximum period of 6 months from the effective date of succession, by giving written notice of such succession to the Department within 60 days after the succession:

(1) Administrators or executors of deceased persons;

(2) Guardians of incapacitated persons;

(3) Surviving partner or partners collectively of dissolved partnerships; and

(4) Trustees, receivers, conservators, assignees, or other such persons who are authorized by law to collect and preserve the property of financially disabled persons.

(b) All operations by successors, as above authorized, shall be performed in the name or names of the prior holder of the operating authorization and the name of the successor, whose capacity shall also be designated. Any successor desiring to continue operations after the expiration of the 6-month period above authorized must file an application for a new operating authorization within 120 days after such succession. If a timely application is filed, such successor may continue operations until final disposition of the application by the Department.

APPENDIX A TO PART 372—OVERSEAS MILITARY PERSONNEL CHARTER OPERATOR'S SURETY BOND UNDER PART 372 OF THE SPECIAL REGULATIONS OF THE DEPARTMENT OF TRANSPORTATION (14 CFR PART 372)

Know all men by these presents, that we _____ (name of charter operator) of _____ (address) as Principal hereinafter called ''Principal''), and _____ (name of surety) a corporation created and existing under the laws of the State of _____ (State) as Surety (hereinafter called ''Surety'') are held and firmly bound unto the United States of America in the sum of _____ (see §372.24(a), 14 CFR Part 372) for which payment, well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors, and assigns, jointly and severally firmly by these presents.

Whereas Principal is an overseas military personnel charter operator pursuant to the provisions of Part 372 of the Department's

Special Regulations and other rules and regulations of the Department relating to security for the protection of charter participants, and has elected to file with the Department of Transportation such a bond as will insure financial responsibility with respect to all monies received from charter participants for services in connection with overseas military personnel charters to be operated subject to Part 372 of the Department's Special Regulations in accordance with contracts, agreements, or arrangements therefor, and

Whereas this bond is written to assure compliance by Principal as an authorized charter operator with Part 372 of the Department's Special Regulations, and other rules and regulations of the Department relating to security for the protection of charter participants, and shall inure to the benefit of any and all charter participants to whom Principal may be held legally liable for any damages herein described.

Now, therefore, the condition of this obligation is such that if Principal shall pay or cause to be paid to charter participants any sum or sums for which Principal may be held legally liable by reason of Principal's failure faithfully to perform, fulfill and carry out all contracts, agreements, and arrangements made by Principal while this bond is in effect with respect to the receipt of moneys from charter participants, and proper disbursement thereof pursuant to and in accordance with the provisions of Part 372 of the Department's Special Regulations, then this obligation shall be void, otherwise to remain in full force and effect.

The liability of Surety with respect to any charter participant shall not exceed the charter price paid by or on behalf of such participant.

The liability of Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penalty (face amount) of the bond, but in no event shall Surety's obligation hereunder exceed the amount of said penalty.

Surety agrees to furnish written notice to the Office of Aviation Analysis, Department of Transportation, forthwith of all suits or claims made and judgments rendered, and payments made by Surety under this bond.

This bond shall cover the following Charters:[1]

Surety company's bond No. _____

Date of flight departure _____

Place of flight departure _____

This bond is effective on the _____ day of _____, 199__, 12:01 a.m., standard time at the address of Principal as stated herein and as hereinafter provided. Principal or Surety may at any time terminate this bond by written notice to: Special Authorities Division (X–57), Office of Aviation Analysis, U.S. Department of Transportation, Washington, DC 20590, such termination to become effective thirty (30) days after the actual receipt of said notice by the Department. Surety shall not be liable hereunder for the payment of any damages hereinbefore described which arise as a result of any contracts, agreements, undertakings, or arrangements for the supplying of transportation and other services made by Principal after the termination of this bond as herein provided, but such termination shall not affect the liability of the bond hereunder for the payment of any damages arising as a result of contracts, agreements, or arrangements for the supplying of transportation and other services made by Principal prior to the date that such termination becomes effective. Liability of Surety under this bond shall in all events be limited only to a charter participant or charter participants who shall within sixty (60) days after the termination of the particular charter described herein give written notice of claim to the charter operator or, if it is unavailable, to Surety, and all liability on this bond shall automatically terminate sixty (60) days after the termination date of each particular charter covered by this bond except for claims made in the time provided herein.

In witness whereof, the said Principal and Surety have executed this instrument on the _____ day of _____, 199__.

PRINCIPAL

Name _____

By: Signature and title _____

Witness _____

SURETY

Name _____

By: Signature and title _____

Witness _____

Only corporations may qualify to act as surety and they must meet the requirements set forth in §372.24(c) of Part 372.

[Docket No. 47939, 57 FR 40105, Sept. 2, 1992, as amended at 60 FR 43529, Aug. 22, 1995]

[1] These data may be supplied in an addendum attached to the bond; however, all pages are to bear the Surety's seal.

PART 374—IMPLEMENTATION OF THE CONSUMER CREDIT PROTECTION ACT WITH RESPECT TO AIR CARRIERS AND FOREIGN AIR CARRIERS

Sec.

374.1 Purpose.
374.2 Applicability.

374.3 Compliance with the Consumer Credit Protection Act and regulations.
374.4 Enforcement procedure.

AUTHORITY: 15 U.S.C. 1601–1693r; 49 U.S.C. Subtitle VII; and 12 CFR parts 202 and 226.

SOURCE: SPR–175, 46 FR 43960, Sept. 2, 1981, unless otherwise noted.

§ 374.1 Purpose.

The purpose of this part is to state the Department of Transportation's responsibility to enforce air carrier and foreign air carrier compliance with Subchapters I, III, IV, V and VI of the Consumer Credit Protection Act and Regulations B and Z of the Board of Governors of the Federal Reserve System.

[62 FR 25841, May 12, 1997]

§ 374.2 Applicability.

This part is applicable to all air carriers and foreign air carriers engaging in consumer credit transactions.

§ 374.3 Compliance with the Consumer Credit Protection Act and regulations.

(a) Each air carrier and foreign air carrier shall comply with the requirements of the Consumer Credit Protection Act, 15 U.S.C. 1601–1693r. Any violation of the following requirements of that Act will be a violation of 49 U.S.C. Subtitle VII, enforceable by the Department of Transportation:

(1) The Truth in Lending Act, as supplemented by the Fair Credit Billing Act, 15 U.S.C. 1601–1667, requiring disclosure of credit terms to the consumer and prohibiting inaccurate or unfair credit billing and credit card practices.

(2) The Fair Credit Reporting Act, 15 U.S.C. 1681–1681 setting forth requirements to be met by consumer credit reporting agencies and persons who use consumer credit reports.

(b) Each air carrier and foreign air carrier shall comply with the requirements of Regulation B, 12 CFR part 202, and Regulation Z, 12 CFR part 226, of the Board of Governors of the Federal Reserve Board. Any violation of the requirements of those regulations will be a violation of 49 U.S.C. Subtitle VII, enforceable by the Department of Transportation.

[62 FR 25841, May 12, 1997]

§ 374.4 Enforcement procedure.

The statutes and regulations referred to in § 374.3 may be enforced by an enforcement procedure as set forth in part 302 of this chapter or by the assessment of civil penalties under 49 U.S.C. 46301.

[62 FR 25842, May 12, 1997]

PART 374a—EXTENSION OF CREDIT BY AIRLINES TO FEDERAL POLITICAL CANDIDATES

Sec.
374a.1 Purpose.
374a.2 Applicability.
374a.3 Definitions.
374a.4 Conditions governing extension of unsecured credit.
374a.5 Exemption authority.
374a.6 Reporting requirements.
374a.7 Record retention requirements.
374a.8 Prospective application of part.

AUTHORITY: 49 U.S.C. chapters 401, 411, 415, 417.

SOURCE: SPR–53, 37 FR 9388, May 10, 1972, unless otherwise noted.

§ 374a.1 Purpose.

Section 401 of the Federal Election Campaign Act of 1971 (Pub. L. 92–225, 86 Stat. 19, 2 U.S.C. 451, enacted February 7, 1972, and hereafter referred to as the ''Election Campaign Act'') directs the Civil Aeronautics Board to promulgate, within 90 days after enactment, regulations with respect to the extension of unsecured credit by any person regulated by the Board to any candidate for Federal office, or to any person on behalf of such a candidate, for goods furnished or services rendered in connection with the campaign of such candidate for nomination for election, or election, to such office. The purpose of this part is to issue rules pursuant to said section 401 of the Election Campaign Act in accordance with the Civil Aeronautics Board's responsibility thereunder.

§ 374a.2 Applicability.

This regulation shall be applicable to all air carriers as defined herein.

§ 374a.3 Definitions.

Adequate security means (a) a bond, issued by a surety meeting the standards prescribed for sureties in part 380 of this chapter, in an amount not less than one hundred and fifty percent (150%) of the credit limit established by the air carrier for the candidate, or the person acting on behalf of the candidate, as the case may be, by the terms of which bond the surety undertakes to pay to the air carrier any and all amounts (not exceeding the face amount of the bond) for which the assured candidate or the assured person acting on behalf of a candidate, as the case may be, is or may become legally liable to the air carrier for transportation, as defined in this part; or (b) collateral with a market value equal to one hundred and fifty percent (150%) of the established credit limit for such account, which collateral must be deposited in escrow and must consist of Federal, State, or municipal bonds or other negotiable securities which are publicly traded on a securities exchange.

Air carrier means any air carrier holding a certificate of public convenience and necessity issued under section 401 of the Federal Aviation Act of 1958, as amended.

Candidate means an individual who seeks nomination for election, or election, to Federal office, whether or not such individual is elected. For purposes of this part, an individual shall be deemed to seek nomination for election, or election, if he has (a) taken the action necessary under the law of a State to qualify himself for nomination for election, or election, to Federal office; or (b) received contributions or made expenditures, or given his consent for any other person to receive contributions or make expenditures, with a view to bringing about his nomination for election, or election, to such office.

Election shall have reference to (a) a general, special, primary, or runoff election; (b) a convention or caucus of a political party held to nominate a candidate; (c) a primary election held for the selection of delegates to a national nominating convention of a political party; or (d) a primary election held for the expression of a preference for the nomination of persons for election to Federal office.

Established credit limit means the dollar limit of credit established by the carrier extending credit.

Federal office means the office of President or Vice President of the United States, or of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress of the United States.

Person acting on behalf of a candidate means (a) a political committee acting on behalf of, or a person employed by such candidate or by such political committee to act on behalf of, such candidate in connection with such candidate's campaign for nomination for election, or election, to Federal office; (b) a person acting under a contract with, or as an agent of, such candidate or political committee to engage in activities in connection with such candidate's campaign for nomination for election, or election, to Federal office; or (c) a person for whom such candidate or political committee pays, directly or indirectly, for services purchased by such person. The term includes persons acting on behalf of more than one candidate.

Payment in advance means payment by cash, check, money order, or by credit card (if the issuer of such card is not an air carrier or a subsidiary, parent, or affiliate thereof) prior to performance of such transportation by an air carrier.

Political committee means any committee, association, corporation, or organization which accepts contributions, or makes expenditures, for the purpose of supporting a candidate or candidates for nomination for election, or election, to Federal office.

Transportation means (a) the carriage of persons or property (including services connected therewith) for compensation or hire to or from any place in the United States, or (b) the lease or rental of aircraft, with or without crew.

[SPR–53, 37 FR 9388, May 10, 1972, as amended by SPR–173, 45 FR 80099, Dec. 3, 1980]

§ 374a.4 Conditions governing extension of unsecured credit.

(a) Unless adequate security is posted, or full payment in advance is made,

no air carrier shall provide transportation to any person it knows, or has reasons to know, is a candidate or a person acting on behalf of such candidate, in connection with the campaign of such candidate, except in accordance with, and subject to, the following conditions:

(1) At least once a month the air carrier shall submit to each such candidate or person a statement covering all unsecured credit extended to such candidate or person, as the case may be (whether in connection with the campaign of such candidate or otherwise.)

(2) Such statements shall be mailed no later than the second business day following the last day of the billing period, covered by the statement.

(3) The amount of indebtedness shown on each such statement shall be payable in full no later than 25 days after the last day of the billing period, after which time the indebtedness shall be overdue.

(4)(i) Unsecured credit shall not be extended by an air carrier to a candidate, or to any person acting on his behalf in connection with the campaign of such candidate, so long as any overdue indebtedness of such candidate to such air carrier shall remain unpaid, in whole or in part, or so long as such air carrier shall know that any overdue indebtedness of such candidate to any other air carrier remains unpaid, in whole or in part.

(ii) Unsecured credit shall not be extended by an air carrier to a person acting on behalf of a candidate, for transportation in connection with the campaign of such candidate, so long as any overdue indebtedness of such person to such carrier shall remain unpaid, in whole or in part, or so long as such air carrier shall know that any overdue indebtedness of such person to any other air carrier remains unpaid, in whole or in part.

(5)(i) With respect to transportation in connection with the campaign of any candidate to be performed after June 1, 1972, unsecured credit shall not be extended by an air carrier to any person acting on behalf of such candidate unless the carrier is authorized in writing by such candidate to extend such credit. The foregoing sentence shall not be construed as requiring the candidate to assume liability to the carrier for credit so extended.

(ii) Within 7 days after indebtedness becomes overdue for any unsecured credit extended by an air carrier to a person acting on behalf of a candidate in accordance with paragraph (a)(5)(i) of this section, the carrier shall notify the candidate in writing of the amount of the overdue indebtedness, and, unless paid in full within 25 days after the date of such notice, the overdue indebtedness shall be deemed to be the overdue indebtedness of the candidate, for the purposes of paragraph (b)(4)(i) of this section.

(b) It shall be presumed that a candidate or person acting on behalf of a candidate intends to use transportation in connection with the campaign of such candidate for nomination for election, or election, to Federal office.

(Secs. 204, 407 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 766; 49 U.S.C. 1324, 1377. Sec. 401 of the Federal Election Campaign Act of 1971, 86 Stat. 19, 2 U.S.C. 451)

[SPR–53, 37 FR 9388, May 10, 1972, as amended by SPR–169, 45 FR 25796, Apr. 16, 1980; SPR–172, 45 FR 53454, Aug. 12, 1980]

§ 374a.5 Exemption authority.

Air carriers are exempt from the following provisions of Title IV of the Federal Aviation Act of 1958, as amended: (a) Section 403, (b) section 404(b), and any and all other provisions of Title IV of the Federal Aviation Act of 1958, as amended, to the extent necessary to enable air carriers to comply with the provisions of this part.

§ 374a.6 Reporting requirements.

(a) Air carriers shall make monthly reports to the Bureau of Transportation Statistics with respect to the credit for transportation furnished to candidates, or persons acting on behalf of candidates, during the period from 6 months before nomination, if any, or from 6 months before election, until the date of election. After that 6-month period, air carriers shall file such a report with the Bureau of Transportation Statistics not later than the 20th day following the end of the calendar month in which the election or nomination takes place, and thereafter

when any change occurs in that report, until a negative report is filed showing that no debt for such extension of credit is owed to the carrier.

(b)(1) A separate report shall be filed for each candidate with an aggregate indebtedness balance of over $5,000 on the last day of the month to which the report pertains. The report shall cover all debts incurred by the candidate, whether or not incurred in connection with his campaign, and all debts incurred by persons acting on his behalf in connection with such campaign. The indebtedness accounts reported shall be those which the air carrier knows, or has reason to know, have been incurred by or on behalf of a candidate; and it shall be presumed that the transportation for which the indebtedness has been incurred is intended to be used in connection with the campaign of such candidate for nomination for election, or election, to Federal office.

(2) The reports required by this paragraph (b) shall be filed with the Office of Airline Information not later than the 20th day following the end of the calendar month to which the report pertains. They shall include the following data: (i) Name of account; (ii) the credit limit established for such account; (iii) the balance, if any, of the amount payable for transportation not paid for in advance; (iv) any unpaid balance of the charges for such transportation as of the last day of the month covered by the report, and the length of time that such balance has remained unpaid; and (v) a description of the type and value of any bond, collateral, or other security securing such unpaid balance.

(3) The report required by this paragraph (b) shall be in the form attached hereto as Appendix A.[1]

(c) A separate report shall be filed for each person acting on behalf of any candidate, if the aggregate indebtedness balance of such person to the reporting air carrier (including all debts incurred by such person, whether or not incurred in connection with the campaign of a candidate, as defined in this part) is over $5,000 on the last day of the month to which the report pertains. The report shall be filed with the Office of Airline Information not later than the 20th day following the end of the calendar month to which the report pertains and shall include (1) the credit limitation established for such person; (2) the balance, if any, of the amount payable for transportation not paid for in advance; (3) any unpaid balance of the charges for such transportation as of the last day of the month covered by the report, and the length of time that such balance has remained unpaid; and (4) a description of the type and value of any bond, collateral, or other security securing such unpaid balance.

[SPR–53, 37 FR 9388, May 10, 1972, as amended by SPR–190, 47 FR 32414, July 27, 1982; 60 FR 66726, Dec. 26, 1995]

§ 374a.7 Record retention requirements.

(a) Every air carrier subject to the part shall retain for 2 years after a Federal election true copies of the following documents at its principal or general office in the United States:

(1) All documents which evidence or reflect the furnishing of transportation to a candidate for political office or a person acting on his behalf;

(2) All statements, invoices, bills, and receipts with respect to the furnishing of such transportation referred to in paragraph (a)(1) of this section.

(b) Every air carrier shall make the documents listed in this section available in the United States upon request by an authorized representative of the DOT and shall permit such representative to make such notes and copies thereof as he deems appropriate.

[SPR–53, 37 FR 9388, May 10, 1972, as amended at 60 FR 66726, Dec. 26, 1995]

§ 374a.8 Prospective application of part.

The provisions of this part shall apply only to the extension of credit by an air carrier to a candidate, or to a person acting on his behalf, which is made subsequent to the effective date of this part, and shall not be applicable to debts incurred prior to such date but which are unpaid as of the effective date of this part. The provisions of this part will be applicable, however, to all credit transactions which occur subsequent to the effective date of the part even though the credit account in

[1] Filed as part of the original document.

which the transaction takes place was opened prior to the effective date of the part.

PART 375—NAVIGATION OF FOREIGN CIVIL AIRCRAFT WITHIN THE UNITED STATES

Subpart A—General

Sec.
375.1 Definitions.
375.2 Applicability.
375.3 [Reserved]

Subpart B—Authorization

375.10 Certain foreign civil aircraft registered in ICAO member states.
375.11 Other foreign civil aircraft.

Subpart C—Rules Generally Applicable

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APPENDIX A TO PART 375—FORM 4509

AUTHORITY: 49 U.S.C. 1324, 1372, 1502, 1508.

SOURCE: OST Docket No. 42547, 51 FR 7254, Mar. 3, 1986, unless otherwise noted.

Subpart A—General

§ 375.1 Definitions.

As used in this part:

Act means the Federal Aviation Act of 1958, as amended;

Air transportation means the carriage by aircraft of persons or property as a common carrier for compensation or hire or the carriage of mail by aircraft in interstate, overseas, or foreign commerce (see section 101 (10) and (23) of the Federal Aviation Act, 49 U.S.C. 1301);

Category shall indicate a classification of aircraft such as airplane, helicopter, glider, etc.;

Commercial air operations shall mean operations by foreign civil aircraft engaged in flights for the purpose of crop dusting, pest control, pipeline patrol, mapping, surveying, banner towing, skywriting, or similar agricultural and industrial operations performed in the United States, and any operations for remuneration or hire to, from or within the United States including air carriage involving the discharging or taking on of passengers or cargo at one or more points in the United States, including carriage of cargo for the operator's own account if the cargo is to be resold or otherwise used in the furtherance of a business other than the business of providing carriage by aircraft, but excluding operations pursuant to foreign air carrier permits issued under section 402 of the Act, exemptions, and all other operations in air transportation.

Exemption means an exemption granted, under section 416(b) of the Act, authorizing air transportation by a foreign air carrier;

Foreign air carrier permit means a permit authorizing foreign air transportation by a foreign air carrier pursuant to section 402 of the Act;

Foreign aircraft permit means a permit authorizing navigation of foreign civil aircraft in the United States pursuant to section 1108(b) of the Act and this part;

Foreign civil aircraft means (a) an aircraft of foreign registry that is not part of the armed forces of a foreign nation, or (b) a U.S.-registered aircraft owned, controlled or operated by persons who are not citizens or permanent residents of the United States;

Stop for non-traffic purposes means a landing for any purpose other than taking on or discharging passengers, cargo or mail, and does not include landings for embarking or disembarking stopover passengers or transshipped cargo or mail, or for other than strictly operational purposes.

Type means all aircraft of the same basic design including all modifications thereto except those modifications that result in a change in handling or flight characteristics.

§ 375.2 Applicability.

The provisions of this part regulate the admission to, and navigation in, the United States of foreign civil aircraft other than aircraft operated under authority contained in a foreign air carrier permit or exemption. This part also contains provisions that specify the extent to which certain classes of flight operations by foreign civil aircraft may be conducted, and the terms and conditions applicable to such operations. Nothing in this part shall authorize any foreign civil aircraft to engage in air transportation nor be deemed to provide for such authorization by the Department.

§ 375.3 [Reserved]

Subpart B—Authorization

§ 375.10 Certain foreign civil aircraft registered in ICAO member states.

Subject to the observance of the applicable rules, conditions, and limitations set forth in this part:

(a) Foreign civil aircraft manufactured in a State that at the time of manufacture was a member of the International Civil Aviation Organization (ICAO), and registered in a State that at the time of flight is a member of ICAO, may be navigated in the United States;

(b) Foreign civil aircraft manufactured in a State that at the time of manufacture was not a member of ICAO, and registered in a State that at the time of flight is a member of ICAO, may be navigated in the United States,

(1) If the State of registry has notified ICAO that the requirements under which it issues or renders valid certificates of airworthiness are equal to or above the minimum standards established pursuant to the Chicago Convention, or

(2) If such notification has not been made to ICAO at the time of flight, there is on file with the Department a statement by the State of registry that, with regard to aircraft of the type that is proposed to be operated hereunder, the requirements under which certificates of airworthiness are issued or rendered valid are equal to or above the minimum standards established pursuant to the Chicago Convention.

§ 375.11 Other foreign civil aircraft.

A foreign civil aircraft other than those referred to in §375.10 may be navigated in the United States only when (a) the operation is authorized by the Department under the provisions of this part, and (b) the aircraft complies with any applicable airworthiness standards of the Federal Aviation Administration for its operation.

Subpart C—Rules Generally Applicable

§ 375.19 Nature of privilege conferred.

The provisions of this part, and of any permit issued hereunder, together with section 1108(b) of the Act, are designed, among other purposes, to carry out the international undertakings of the United States in the Chicago Convention, in particular Article 5. That article gives foreign aircraft the privilege of ''taking on or discharging passengers, cargo or mail'' subject to the

right of the State where such embarkation or discharge takes place to impose such regulations, conditions or limitations as it may consider desirable. The U.S. Congress by the 1953 amendment to section 6 of the Air Commerce Act of 1926, now designated as section 1108(b) of the Act, authorizes the Department to permit such operations only where conditions of reciprocity and the interest of the public in the United States are met. Thus, the operator of any foreign registered aircraft is not entitled as a matter of right to the issuance, renewal or freedom from modification or change in a permit issuable pursuant to this authority. Accordingly, any authority conferred by this part may be withheld, revoked, amended, modified, restricted, suspended, withdrawn, or canceled by the Department in the interest of the public of the United States, without notice or hearing.

§ 375.20 Airworthiness and registration certificates.

Foreign civil aircraft shall carry currently effective certificates of registration and airworthiness issued or rendered valid by the country of registry and shall display the nationality and registration markings of that country. However, a foreign civil aircraft may carry, in lieu of such certificate of airworthiness, an effective special flight authorization issued by the Federal Aviation Administration for the operations being performed.

§ 375.21 Airmen.

Members of the flight crew of a foreign civil aircraft shall have in their personal possession valid airman certificates or licenses authorizing them to perform their assigned functions in the aircraft and for the operation involved issued or rendered valid by the country of registry of the aircraft or by the United States. No such flight crew members shall perform any flight duty within the United States that they are not currently authorized to perform in the country issuing or validating the certificate.

§ 375.22 Flight operations.

Flights of foreign civil aircraft in the United States shall be conducted in accordance with the currently applicable rules of the Federal Aviation Administration.

§ 375.23 Maximum allowable weights.

Foreign civil aircraft that are permitted to navigate in the United States on the basis of foreign airworthiness certificates must conform to the limitations on maximum certificated weights prescribed or authorized for the particular variation of the aircraft type, and for the particular category of use, by the country of manufacture of the aircraft type involved.

§ 375.24 Entry and clearance.

All U.S. entry and clearance requirements for aircraft, passengers, crews, baggage and cargo shall be followed.

§ 375.25 Unauthorized operations.

No foreign civil aircraft shall be navigated in the United States unless authorized by this part. Commercial air operations (other than those authorized by § 375.36) shall not be undertaken without a permit issued by the Department.

§ 375.26 Waiver of sovereign immunity.

Owners and operators of aircraft operated under this part that are engaged in proprietary of commercial activities waive any defense of sovereign immunity from suit in any action or proceeding instituted against any of them in any court or other tribunal in the United States for any claim relating to that operation.

Subpart D—Authorized Operations

§ 375.30 Operations other than commercial air operations.

Foreign civil aircraft that are not engaged in commercial air operations into, out of, or within the United States may be operated in the United States and may carry non-revenue traffic to, from or between points in the United States.

§ 375.31 Demonstration flights of foreign aircraft.

Flights of foreign civil aircraft within the United States may be made for the purpose of demonstration of the

aircraft or any component thereof (including demonstrations at airshows), provided no persons, cargo or mail are carried for remuneration or hire.

§ 375.32 Flights incidental to agricultural and industrial operations outside the United States.

Foreign civil aircraft that are engaged in agricultural or industrial operations to be performed wholly outside the United States may be navigated into, out of, and within the United States in connection with those operations provided that the aircraft is not at the time engaged in the carriage of passengers, cargo, or mail for remuneration or hire.

§ 375.33 Transit flights, irregular operations.

Foreign civil aircraft carrying passengers, property or mail for remuneration or hire, but not engaged in scheduled international air services, are authorized to navigate nonstop across the territory of the United States and to make stops for non-traffic purposes. The navigation of foreign civil aircraft in the United States is not authorized under this section when the elapsed time between landing and takeoff at a stop in the United States exceeds 24 hours and passengers are permitted to leave the airport or when passengers, property or mail are transferred to another aircraft. Flights involving stops under such circumstances may, however, be performed in the case of emergency relating to the safey of the aircraft, passengers, cargo or crew.

§ 375.34 Indoctrination training.

Foreign civil aircraft may be operated in the United States for the purpose of giving indoctrination training in the operation of the aircraft concerned to a buyer or a buyer's employees or designees. This section does not, however, authorize foreign civil aircraft to be used within the United States for the purpose of flight instruction for remuneration or hire.

§ 375.35 Free transportation.

(a) Foreign civil aircraft may be navigated in the United States by a foreign air carrier for the transportation of persons and property specified in paragraph (b) of this section over the following non-traffic segments provided such transportation is not for compensation or hire:

(1) Between two or more points in the United States;

(2) Between a point in the United States named in the carrier's section 402 permit or exemption, and a point outside the United States not so named, when authorized in accordance with the provisions of part 216 of this chapter to carry blind sector traffic to or from such unnamed foreign point; and

(3) Between a point in the United States and a point outside thereof when the carrier lands at the United States point for non-traffic purposes in exercise of the privilege granted under the International Air Services Transit Agreement.

(b) Free transportation may be provided under this section for the following categories of persons and property:

(1) Directors, officers and employees, and their parents and immediate families, of the foreign air carrier operating the aircraft;

(2) Directors, officers and employees, and their parents and immediate families, of an air carrier or another foreign air carrier traveling pursuant to a pass interchange arrangement;

(3) Travel agents being transported for the purpose of familiarizing themselves with the carrier's services, if the agents are under no obligation to sell the transporting carrier's services;

(4) Witnesses and attorneys attending any legal investigation in which any such foreign air carrier is involved;

(5) Persons injured in aircraft accidents and physicians and nurses attending such persons;

(6) Any persons or property with the object of providing relief in cases of general epidemic, natural disaster or other catastrophe;

(7) Any person who has the duty of guarding foreign government officials travelling on official business; and

(8) Guests of a foreign air carrier (including members of the press) on delivery flights of newly-acquired or newly-renovated aircraft.

(c) A charge reasonably related to the value of meals and beverages furnished enroute shall not be deemed to constitute compensation or hire for purposes of this section.

§ 375.36 Lease of foreign civil aircraft without crew.

Foreign civil aircraft that are leased without crew to an air carrier or citizen or permanent resident of the United States, and used by the lessee in otherwise authorized air transportation or commercial air operations, may be operated into, out of, and within the United States in accordance with any applicable regulations prescribed by the Federal Aviation Administration.

Subpart E—Operations Requiring Specific Preflight Authorization of Filing

§ 375.40 Permits for commercial air operations.

(a) *Permit required.* Except for aircraft being operated under a foreign air carrier permit, an exemption, or as otherwise provided in Subpart D or H of this part, foreign civil aircraft may engage in commercial air operations only if there is carried on board the aircraft a permit issued by the Department in accordance with this subpart authorizing the operations involved.

(b) Aircraft are not authorized to engage in air transportation under this section. Where an operation involves the carriage of persons, property or mail for compensation or hire, the Department will determine whether particular flights for which a permit is sought will be in common carriage, and therefore in air transportation, based on all the facts and circumstances surrounding the applicant's entire operations. The burden rests upon the applicant in each instance to demonstrate by an appropriate factual showing that the contemplated operation will not constitute common carriage from, to or within the United States. In general, an applicant that holds itself out to the public, or to a particular class or segment, as willing to furnish transportation for hire is a common carrier.

§ 375.41 Agricultural and industrial operations within the United States.

Foreign civil aircraft shall not be used for such commercial air operations as crop dusting, pest control, pipeline patrol, mapping, surveying, banner towing, skywriting or similar agricultural or industrial operations within the United States, including its territorial waters and overlying airspace, unless a permit has been issued by the Department and the operation is conducted in accordance with all applicable State and local laws and regulations as well as the applicable provisions of this part.

§ 375.42 Transport operations—occasional planeload charters.

Occasional planeload charters may be authorized where, because of their limited nature and extent, special equipment or facilities utilized, or other circumstances pertaining to them, it appears that they are not within the scope of the applicant's normal holding out of transportation services to the general public. Such charters are normally limited to those in which the entire capacity of the aircraft is engaged by a single charterer, and since they are occasional in nature, should not exceed for any one applicant more than six flights during a calendar year. This part does not authorize operations that involve solicitation of the general public such as is usually involved in the transportation of individually-ticketed passengers or individually-waybilled cargo, or in which the charterer is a travel agent, a charter operator, a broker, an air freight forwarder or any other organization that holds itself out to the general public to provide transportation services. Carriage of cargo for the operator's own account is governed by the provisions of this section if the cargo is to be resold or otherwise used in the furtherance of a business other than the business of providing carriage by aircraft.

§ 375.43 Application for foreign aircraft permit.

(a) Applications for foreign aircraft permits shall be submitted on OST Form 4509, (Appendix A), in duplicate,

addressed to the Chief, Discrete Operations Branch, Licensing Division, P–45, Office of Aviation Operations. Upon a showing of good cause, applications may be made by telegram or by telephone.

(b) Applications shall contain a proper identification (including citizenship) of the applicant (the operator of the aircraft concerned) and of the owner thereof (if different from the applicant), a description of the aircraft by make, model, and registration marks; and a full description of the operations for which authority is desired, indicating type and dates of operations and number of flights, and routing. In the case of cargo flights, the names of all contractors, agents, if any, and the beneficial owner of the cargo, and a description of the cargo and of the proposed operations shall be provided. In the case of passenger flights, a full identification and description of the group chartering the aircraft, and identification of the travel agent, if any, shall be provided. Applications shall also contain a statement as to whether the applicant's homeland allows operators of U.S.-registered aircraft to conduct similar operations.

(c) Applications shall be filed at least 15 days in advance of the proposed commencement date of the operations. The Department may direct the applicant to serve copies of its application on additional persons. Late applications may be considered by the Department upon a showing of good cause.

(d)(1) Any party in interest may file a memorandum supporting or opposing an application. Two copies of each memorandum shall be filed within 7 business days after the application is filed but no later than the proposed commencement date of the operations. Memoranda will be considered to the extent practicable; the Department may act on an application without waiting for supporting or opposing memoranda to be filed.

(2) Each memorandum shall set forth the reasons why the applications should be granted or denied, accompanied by whatever data, including affidavits, the Department is asked to consider.

(3) A copy of each memorandum shall be served on the applicant.

(e)(1) Unless otherwise ordered by the Department, each application and memorandum filed in response shall be available for public inspection at the Licensing Division of the Office of Aviation Operations immediately upon filing. Notice of the filing of all applications shall be published in the Department's Weekly List of Applications Filed.

(2) Any person objecting to public disclosure of any information in an application or memorandum must state the grounds for the objection in writing. If the Department finds that disclosure of all or part of the information should be withheld under applicable provisions of law, and the public interest does not require disclosure, it will order that the injurious information be withheld.

(Approved by the Office of Management and Budget under control number 2106–0002)

§ 375.44 Issuance of permit.

(a) The Department will issue a foreign aircraft permit if it finds that the proposed operations meet the requirements of this part and are in the public interest. Foreign aircraft permits may be conditioned or limited by the Department. Permits must be carried aboard the applicant's aircraft during flight over U.S. territory, and are not transferable.

(b) In determining whether to grant a particular application, the Department will consider, among other factors, the extent to which the country of the applicant's nationality deals with U.S. civil aircraft operators on the basis of substantial reciprocity, and whether the operation is otherwise in the public interest.

§ 375.45 Records and reports of occasional planeload charters.

(a) *Cargo documents.* The holder of a permit for cargo operations shall issue a manifest or shipping document to its shipper with respect to each shipment.

(b) [Reserved]

(c) *Contents of documents for passenger flights.* The holder of a permit for passenger charters originating or terminating in the United States shall require each charterer to file with it

prior to flight a list of names and addresses of all passengers to be transported on each flight.

(d) *Reports of unused authority.* All foreign operators of occasional planeload charters for which authority is granted must notify the Department, in writing, not later than 15 days after the expiration of their permits, or their failure to use this authority. The unused authority shall otherwise be deemed to have been exercised.

Subpart F—Transit Flights

§ 375.50 Transit flights; scheduled international air service operations.

(a) *Requirement of notice.* Scheduled international air services proposed to be operated pursuant to the International Air Services Transit Agreement in transit across the United States may not be undertaken by foreign civil aircraft unless the operator of such aircraft, and (if other than the operator) the carrier offering such service to the public, has, not less than 30 days prior to the date of commencement of such service, filed a Notice of Proposed Transit Flights Pursuant to the International Air Services Transit Agreement in accordance with the provisions of paragraphs (b) and (c) of this section.

(b) *Filing of the notice.* An original and two copies of the Notice shall be filed with the Chief, Discrete Operations Branch, Licensing Division, P–45, Office of Aviation Operations. Copies of the Notice shall be served upon the Department of State and the Administrator of the Federal Aviation Administration. The filing date shall be the date of actual receipt by the Department.

(c) *Content of notice.* A ''Notice of Proposed Transit Flights Pursuant to the International Air Services Transit Agreement'' shall be clearly labeled as such, and as a minimum shall set forth, with whatever detail may be necessary, the following information:

(1) The name, country or organization, and citizenship of the operator, and, if other than the operator, of the carrier offering the services to the public. If any interest (direct or indirect) in the operator or offeror of services is held by nationals of a country other than the country of organization or citizenship, the nature and extent of such interest must be fully disclosed. If any officer or director of the operator or carrier offering the services is a national of a country other than the country of organization or citizenship, the position of duties of such officer or director, and the officer and director's relevant position in relation to other officers and directors must similarly be fully disclosed. If the information required in this subsection has been previously supplied to the Department, the applicant may incorporate it by reference.

(2) The State of registration of the aircraft proposed to be operated.

(3) A full description of the proposed operations including the type of operations (passenger, property, mail, or combination), date of commencement, duration and frequency of flights, and routing (including each terminal and intermediate point to be served).

(4) A statement as to whether or not any advertisement or publication of the proposed operations has been made in the United States. If there has been any advertisement or publication of the operations in the United States, copies of all such advertisements or publications shall be included.

(5) Any change with respect to these matters (minor changes in schedules or routing excepted) shall also be filed with the Department.

(d) *Authorized operations.* If the operator and the carrier offering services to the public (if different from the operator) have filed a ''Notice of Proposed Transit Flights Pursuant to the International Air Services Transit Agreement,'' at least 30 days before the date of commencement of the proposed operations in accordance with paragraphs (a), (b), and (c) of this section, the described operations may be commenced and performed without further authorization from the Department, unless and until the Department issues an order notifying the operator and/or the carrier offering the services to the public that, considering the matters submitted in the Notice, the Department is of the view that a question may exist as to whether:

(1) The proposed services are authorized pursuant to the terms of the International Air Services Transit Agreement;

(2) Substantial ownership and effective control are vested in nationals of a State party to the International Air Services Transit Agreement;

(3) The proposed operations will be in compliance with the laws of the United States, the Department's rules, or the provisions of this section; or

(4) The operator or its government have performed their obligations under the International Air Services Transit Agreement.

(e) *Prohibited operations.* If the Department issues an order of notification as described in paragraph (d) of this section, neither the operator, nor the carrier offering the services to the public, shall commence the proposed operations, or, except as may be otherwise specified in the order, operate any flights subsequent to receipt of the order, unless and until the Department issues a foreign aircraft permit pursuant to the provisions of section 1108(b) of the Act and this part specifically authorizing such operations.

(f) *Foreign aircraft permit—application and procedures.* If the Department issues an Order of Notification as described in paragraph (d) of this section, the carrier's Notice of Proposed Transit Flights Pursuant to the International Air Services Transit Agreement shall be treated as an application for the required foreign aircraft permit, and further procedures on such application shall be as directed by the Department.

(g) *Short notice filing.* Nothing in this section shall be construed as precluding the filing of an application for a foreign aircraft permit to perform transit operations pursuant to the International Air Services Transit Agreement less than 30 days in advance of the proposed operation. No such flights shall be operated, however, unless or until a specific foreign aircraft permit has been issued by the Department.

(h) *Nature of privilege conferred.* Air transportation is not authorized under this section, and the burden rests upon each operator and carrier to show that the proposed operations will not constitute air transportation within the meaning of the Federal Aviation Act. In addition, each operator and carrier has the burden of demonstrating that the proposed operations are authorized by the International Air Services Transit Agreement, and that the appropriate authorization should not be withheld pursuant to section 5 of Article I thereof. Stopovers for the convenience or pleasure of the passengers are not authorized under this section and stops other than for strictly operational reasons shall not be made. The consolidation on the same aircraft of an operation under this section with a service authorized under section 402 or 416(b) of the Act is not authorized by this section. Any authorization or permit granted under this section is nontransferable, and may be withheld, revoked, suspended, withdrawn, or cancelled by the Department, without notice or hearing, if required by the public interest. Operators of aircraft registered in countries not parties to the International Air Services Transit Agreement shall make special application to the Department under § 375.70.

Subpart G—Penalties

§ 375.60 Penalties.

The operation of a foreign aircraft within the United States or over adjacent territorial waters in violation of the provisions of this part constitutes a violation of the Federal Aviation Act and of this chapter, and may, in addition, constitute a violation of the rules of the Federal Aviation Administration. Such operation makes the person or persons responsible for the violation or violations subject to a civil penalty as provided in section 901 of the Act, and to the alteration, amendment, modification, suspension or revocation of any permit issued under this part and of any U.S. certificate involved as provided in section 609 of the Act. Engaging in air transportation as defined in the Act by a foreign aircraft without a foreign air carrier permit issued pursuant to section 402 of the Act or an exemption, or in violation of the terms of such authority constitutes not only a violation of this part but of title IV of

the Act as well, which entails a criminal penalty as set forth in section 902 of the Act.

Subpart H—Special Authorization

§ 375.70 Special authorization.

Any person desiring to navigate a foreign civil aircraft within the United States other than as specifically provided in this part may petition the Department for a special authorization to conduct the particular flight or series of flights. Such authorization may be issued only if the Department finds that the proposed operation is fully consistent with the applicable law, that the applicant's homeland grants a similar privilege with respect to operators of U.S.-registered aircraft, and that the proposed operation is in the interest of the public of the United States.

APPENDIX A TO PART 375—FORM 4509

Approved by OMB
No. 2106-0002
Expires 11/30/87

U.S. Department of Transportation

APPLICATION FOR FOREIGN AIRCRAFT PERMIT OR SPECIAL AUTHORIZATION UNDER PART 375

(See Instructions On Reverse Side)

TO: Department of Transportation
Licensing Division, P-45
Office of Aviation Operations
Washington, D.C. 20590

DO NOT WRITE—FOR OFFICIAL USE ONLY

Disposition of Applications:

☐ Approved

☐ Approved, subject to condition(s) on reverse.

☐ Disapproved/Dismissed for reason(s) cited on reverse.

Under assigned authority _____

Effective from _____ to _____.

Director, Office of Aviation Operations

1. Name and address of applicant: (operator)

Nationality:

Operations pursuant to this authorization shall conform to Part 375 of the Department's Regulations and Part 91 of the Federal Aviation Regulations. THIS PERMIT MUST BE CARRIED ABOARD AIRCRAFT DURING FLIGHT OVER UNITED STATES TERRITORY.

2. Send authorization to:
a. Name and address:

b. Telephone:

3. Aircraft make, model, and registration or identification marks:

4. Country in which aircraft is registered:

5. Name and address of registered owner of aircraft:

6. Name and address of contractor/charterer:

7. Dates of flights:

8. Planned routing of flights (indicate non-traffic stops by asterisks):

9. Description of operations (see instructions) (Check one):
Passenger ☐ Cargo ☐ Agricultural or Industrial operation ☐

10. Does the nation which is the domicile of the applicant grant to United States carriers a privilege similar to that requested herein?_____; if so, has the fact of such reciprocity been established with the Department?_____. If the fact has not been established with the Department, provide documentation to establish such reciprocity.

OST Form 4509 (Rev. 2/20/86)

11. If application is being filed late, state reasons for lateness:
12. Other information requested by the Department:
CERTIFICATION I hereby certify that the flights for which authority is sought herein conform to the requirements of the applicable regulations and orders of the Department of Transportation. (Date) (Signature and title of authorized officer)

INSTRUCTIONS

1. Prepare an original and one copy of this application according to Section 375.43 of the Department's Regulations. If extra space is required to complete an item, continue on a separate sheet of paper.
2. Under Item 9:
   (a) For passenger flights, provide full identification or description of group contracting for charter, and name and address of travel agent, if any.
   (b) For cargo flights, provide the names of all contractors, description of cargo, beneficial owner of cargo, and provide a full description of the proposed operation including nature of any service to be performed by any exporter, importer, or transportation agent.
   (c) For agricultural or industrial operations, describe area involved and purpose of operations.
3. Send the application to: Department of Transportation, Licensing Division, P-45, Office of Aviation Operations, Washington, D.C. 20590.
4. See Part 91 of Federal Aviation Regulations and 375 of the Department's Regulations (14 CFR 91 and 14 CFR 375) for a full statement of the rules respecting navigation of foreign civil aircraft within the United States.

DO NOT WRITE—FOR OFFICIAL USE ONLY
Exercise of the authorization is subject to the following condition(s): OR Application is disapproved/dismissed for the following reason(s):

PART 377—CONTINUANCE OF EXPIRED AUTHORIZATIONS BY OPERATION OF LAW PENDING FINAL DETERMINATION OF APPLICATIONS FOR RENEWAL THEREOF

Subpart A—General Provisions

Sec.
377.1 Definitions.
377.2 Applicability of part.
377.3 Authorizations not covered by 5 U.S.C. 558(c).
377.4 Certain authorizations with alternative termination dates.
377.5 Procedure to obtain Board interpretation.

Subpart B—Renewal Applications and Procedure Thereon

377.10 Requirements for, and effect of, renewal applications.
377.11 Processing of defective renewal applications.

AUTHORITY: 49 U.S.C. Chapters 401, 461; 5 U.S.C. 558, 559.

Subpart A—General Provisions

§ 377.1 Definitions.

As used in this part:

Authorization means any agency certificate, approval, statutory exemption or other form of permission granted pursuant to sections 101(3), 401, 402, 408, 409, 412 and 416 of the Federal Aviation Act of 1958, as amended. Where any operating authorization creates more than one separate route, each of these shall be deemed a separate authorization for the purposes of this part.

Renewal application means any application filed in conformity with the requirements of this part which requests either a renewal or a new license and is intended to invoke the provisions of the last sentence of 5 U.S.C. 558(c).

Route means an authorization which permits an air carrier to render unlimited regularly scheduled service between a specifically designated pair of terminal points and intermediate points, if any.

[SPR–84, 40 FR 24998, June 12, 1975, as amended by SPR–184, 47 FR 7212, Feb. 18, 1982]

§ 377.2 Applicability of part.

(a) This part implements the last sentence of 5 U.S.C. 558(c) with regard to temporary authorizations granted by the Board.

NOTE: The last sentence of 5 U.S.C. 558(c) provides: ''When the licensee has made timely and sufficient application for a renewal or a new license in accordance with agency rules, a license with reference to an activity of a continuing nature does not expire until the application has been finally determined by the agency.''

(b) Nothing in this part prevents the Board from terminating at any time, in accordance with law, any authorization or any extension of an authorization.

(c) Nothing in this part constitutes a determination that any given authorization is a ''license with reference to an activity of a continuing nature'' within the meaning of 5 U.S.C. 558(c).

[SPR–184, 47 FR 7212, Feb. 18, 1982]

§ 377.3 Authorizations not covered by 5 U.S.C. 558(c).

The Board hereby determines that the following authorizations are not licenses ''with reference to an activity of a continuing nature'' within the meaning of 5 U.S.C. 558(c):

(a) Authorizations granted for a specified period of 180 days or less; and

(b) Authorizations, other than those granted under section 401 of the Act, that by their terms are subject to termination at an uncertain date upon the happening of an event, including fulfillment of a condition subsequent or occurrence of a contingency.

[SPR–184, 47 FR 7212, Feb. 18, 1982]

§ 377.4 Certain authorizations with alternative termination dates.

Unless granted under section 401 of the Act, an authorization that by its terms is subject to termination alternatively, either at an uncertain date upon the happening of an event or upon the arrival of a specified date:

(a) Will not be considered a ''license with reference to an activity of a continuing nature'' within the meaning of 5 U.S.C. 558(c), if the event occurs before the specified date; and

(b) Ordinarily (subject to Board interpretation under §377.5) will be considered such a license, if the event does not occur before the specified date and

that date is more than 180 days after the effective date of the authorization.

[SPR–184, 47 FR 7212, Feb. 18, 1982]

§ 377.5 Procedure to obtain Board interpretation.

(a) The Board will determine upon written request by the holder of a temporary authorization or by any competitively affected air carrier or foreign air carrier, or upon its own initiative, whether the temporary authorization is a ''license with reference to an activity of a continuing nature'' within the meaning of 5 U.S.C. 558(c).

(b) A written request for such a Board determination shall be filed at least 60 days before the deadline set forth in § 377.10 for a timely renewal application.

(c) The filing of such a written request shall not affect the timeliness requirements for renewal applications that are set forth in § 377.10 or any other applicable Board rule or order.

[SPR–184, 47 FR 7212, Feb. 18, 1982]

Subpart B—Renewal Applications and Procedure Thereon

§ 377.10 Requirements for, and effect of, renewal applications.

(a) *Identification of authorization covered by renewal application.* Each renewal application shall identify the authorization or authorizations to which it is intended to relate. The application shall indicate the applicant's intention to rely upon 5 U.S.C. 558(c) as implemented by this part. In case of applications for renewal of an authorization for route service, the renewal application shall specifically identify the separate routes which the applicant proposes to continue serving pursuant to the expiring authorization, pending final determination of the renewal application.

(b) *Contents of renewal application.* The application must contain all the information required by law and the Board's regulations, and meet the requirements thereof as to form. The new authorization sought need not be of the same duration as the expiring authorization. If the application relates to renewal of route authority, it must contain, as a minimum, a request for renewed authority to render route service between the terminals named in each separate route for which renewal is requested.

(c) *Timeliness.* The application must be filed and served in compliance with applicable law and the Board's regulations at least 60 days before the expiration date of the outstanding temporary authorization, except that:

(1) For certificates issued under section 401 of the Act with a specified expiration date, the deadline is 180 days before the expiration date;

(2) For certificates issued under section 401 of the Act that terminate by their terms upon the happening of an event that could not be foreseen, the deadline is 30 days after the time that the carrier has notice that the event will occur or has occurred;

(3) For foreign air carrier permits issued under section 402 of the Act and exemptions issued under section 416 to non-U.S. citizens, the deadline is the expiration date itself;

(4) For renewal by substantially equivalent certificate authority of fixed term route authorizations granted by exemption and for interim extension of the exemption, pursuant to § 399.18 of this chapter, the deadline is 90 days before the expiration date; and

(5) Nothing in this part supersedes a requirement for earlier filing contained in any law, Board rule or order, or temporary authorization.

(d) *Effect.* In the case of authorizations which constitute licenses with reference to activities of a continuing nature within the meaning of 5 U.S.C. 558(c), the filing of an application complying in all respects with the requirements of paragraphs (a) through (c) of this section shall extend the authorization to which it relates as then outstanding in its entirety, together with all applicable terms, conditions and limitations, until the application has been finally determined by the Board. In the case of routes granted under section 401 of the Act, the duty to render adequate service continues to attach to every point as provided in the expired authorization which is extended pursuant to this provision. The date of final determination of the application shall be the date when the final order determining the application takes effect, or

when the applicable period for filing of petitions for rehearing, reargument or reconsideration expires, or when a timely filed petition therefor is denied, whichever occurs latest.

[SPR–84, 40 FR 24998, June 12, 1975, as amended by SPR–184, 47 FR 7212, Feb. 18, 1982; 65 FR 6457, Feb. 9, 2000]

§ 377.11 Processing of defective renewal applications.

When the Board determines that a renewal application does not comply with the requirements of this part, or that it does not relate to a license with reference to an activity of a continuing nature, it will so notify the applicant. The applicant may amend his application to cure the deficiency as a matter of right at any time prior to the date when the application was due pursuant to § 377.10(c).

[SPR–84, 40 FR 24998, June 12, 1975]

PART 380—PUBLIC CHARTERS

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APPENDIX A TO PART 380—PUBLIC CHARTER OPERATOR'S SURETY BOND UNDER PART 380 OF THE SPECIAL REGULATIONS OF THE DEPARTMENT OF TRANSPORTATION (14 CFR PART 380)
APPENDIX B TO PART 380—PUBLIC CHARTER SURETY TRUST AGREEMENT

AUTHORITY: 49 U.S.C. 40101, 40102, 40109, 40113, 41101, 41103, 41301, 41504, 41702, 41708, 41712, 46101.

SOURCE: Docket No. OST–97–2356, 63 FR 28241, May 22, 1998, unless otherwise noted.

Subpart A—General Provisions

§ 380.1 Applicability.

This part applies to Public Charter air transportation of passengers in interstate or foreign air transportation, whether furnished by direct air carriers or Public Charter operators. This part also relieves such charter operators from various provisions of subtitle VII of Title 49 of the United States Code (statute), formerly Title IV of the Federal Aviation Act of 1958,

as amended, for the purpose of enabling them to provide Public Charters utilizing aircraft chartered from such direct air carriers. It also declines jurisdiction over foreign Public Charter operators operating foreign-originating Public Charters.

§ 380.2 Definitions.

For the purposes of this part:

Certificated air carrier means a U.S. direct air carrier holding a certificate issued under the statute.

Charter flight means a flight operated under the terms of a charter contract between a direct air carrier and its customer. It does not include scheduled air transportation, scheduled foreign air transportation, or nonscheduled cargo air transportation, sold on an individually ticketed or individually waybilled basis.

Direct air carrier means a certificated or foreign air carrier, or an air taxi operator or commuter air carrier registered under part 298 of this chapter, or a Canadian charter air taxi operator registered under part 294 of this chapter, that directly engages in the operation of aircraft under a certificate, permit or exemption issued by the Department.

Educational institution means a school that is operated as such on a year-round basis and is empowered to grant academic degrees or secondary school diplomas by any government in the United States or by a foreign government.

Foreign air carrier means a direct air carrier that holds a foreign air carrier permit issued under the statute or an exemption issued under the statute authorizing direct foreign air transportation.

Foreign Public Charter opertor means an indirect air carrier which is not a citizen of the United States as defined in the statute, that is authorized to engage in the formation of groups for transportation on Public Charters in accordance with this part.

Indirect air carrier means any person who undertakes to engage indirectly in air transportation operations and who uses for such transportation the services of a direct air carrier.

Public Charter means a one-way or round-trip charter flight to be performed by one or more direct air carriers that is arranged and sponsored by a charter operator.

Public Charter operator means a U.S. or foreign Public Charter operator.

Security agreement means:

(1) A surety bond issued by a company—

(i) That is listed in the Best's Insurance Reports (Fire and Casualty) with a general policyholders' rating of ''A'' or better, or

(ii) That is listed in the U.S. Department of Treasury's notice listing companies holding Certificates of Authority as acceptable sureties on Federal bonds and as acceptable reinsuring companies, published in the FEDERAL REGISTER in the first week in July; or

(2) A Surety trust agreement or a letter-of-credit, issued by a Federal Deposit Insurance Corporation-insured financial institution, which provides substantially equivalent protection.

Statute means Subtitle VII of Title 49 of the United States Code (Transportation).

Sub-operator means a Public Charter operator that has contracted for its charter seats from a Public Charter operator that has contracted from one or more direct air carriers. A sub-operator is itself an indirect air carrier, not an agent of the Public Charter operator from which it has obtained its seat.

U.S. Public Charter operator means an indirect air carrier that is a citizen of the United States as defined in 49 U.S.C. 40102(a) and that is authorized to engage in the formation of groups for transportation on Public Charters in accordance with this part.

§ 380.3 General provisions.

(a) Public Charters may be operated on a one-way or round-trip basis, with no minimum group or contract size. Public Charters may be sold on an air-only basis, or with mandatory or optional land arrangements.

(b) A U.S. Public Charter operator operating a Public Charter which originates in a foreign country shall not be subject to the requirements of §§ 380.25, 380.28, 380.30 and 380.35.

(c) The Department declines to exercise jurisdiction over a foreign Public Charter operator which operates a Public Charter originating in a foreign

country, but reserves the right to exercise its jurisdiction over any foreign Public Charter operator at any time its finds that such action is in the public interest.

(d)(1) An educational institution operating a Public Charter need not comply with the financial security requirements of § 380.34 if each student participant in the charter is enrolled in a formal academic course of study outside the United States, sponsored by or in conjunction with that institution, that is of at least four weeks' duration.

(2) The spouse, children, and parents of a student participant may accompany the participant on a charter operated under this section.

(e) The Department, upon application or on its own initiative, may waive any of the provision of this part if it finds such action to be in the public interest.

§ 380.4 Enforcement.

In the case of any violation of the provision of the Statute or of this part, or any other rule, regulations, or order issued under the Statute, the violator may be subject to a proceeding pursuant to the Statute before the Department or a U.S district court, as the case may be, to compel compliance therewith; to civil penalties pursuant to the provisions of the Statute, or to criminal penalties pursuant to the provisions of the Statute, or other lawful sanctions.

Subpart B—Conditions and Limitations

§ 380.10 Public Charter requirements.

Public Charters under this part shall meet the following requirements:

(a)–(b) [Reserved]

(c) If the charter is on a round-trip basis, the departing flight and returning need not be performed by the same direct air carrier.

(d) The air transportation portion of the charter must be performed by direct air carriers that hold authority under Chapter 411 and 413 of the Statute, or are operating under 14 CFR part 298, except that only U.S. citizen direct air carriers may provide air transportation for operations in interstate air transportation.

§ 380.11 Payment to direct air carrier(s).

Except for air taxi operators and commuter air carriers (which are governed by 14 CFR 298.38) and Canadian charter air taxi operators (which are governed by 14 CFR 294.32), the direct air carrier(s) shall be paid in full for the cost of the charter transportation (for both legs, if a round-trip charter) prior to the scheduled date of flight departure, as provided for in the basic charter regulations applicable to the direct air carrier(s) under part 212 of this chapter.

§ 380.12 Cancellation by charter operator and notice to participants.

(a) The charter operator may not cancel a charter for any reason (including insufficient participation), except for circumstances that make it physically impossible to perform the charter trip, less than 10 days before the scheduled date of departure of the outbound trip.

(b) If the charter operator cancels 10 or more days before the scheduled date of departure, the operator must so notify each participant in writing within 7 days after the cancellation but in any event not less than 10 days before the scheduled departure date of the outbound trip. If a charter is canceled less than 10 days before scheduled departure (i.e., for circumstances that make it physically impossible to perform the charter trip), the operator must get the message to each participant as soon as possible.

§ 380.13 Prohibition on sale of round trips with open returns.

The charter operator shall not accept any participant's payment for return transportation unless the participant has specified a particular return flight.

§ 380.14 Unused space.

Noting contained in this part shall preclude a charter operator from utilizing any unused space on an aircraft by it for a Public Charter for the transportation, on a free or reduced basis, of such charter operator's employees, directors, and officers, and parents and immediate families of such persons.

§ 380.15 Substitution for charter participants.

Subsititues may be arranged for charter participants at any time preceding departure. Participants who provide the charter operator or its sales agent with a substitute participant, or who are substituted for by a participant found by the operator, shall receive a refund of all moneys paid to the operator, except that the operator may reserve the right to retain an administrative fee not to exceed $25 for effecting the substitution.

§ 380.17 Charters conducted by educational institutions.

(a) This section shall apply only to charters conducted by educational institutions for charter groups comprised of bona fide participants in a formal academic course of study abroad which is of at least 4 weeks duration. The charter group may also include a student participant's immediate family (spouse, children, and parents). Except as modified in this section, all terms and conditions of this part applicable to the operation of Public Charters shall apply to charters conducted by educational institutions.

(b) An educational institution conducting such a charter shall submit to the Office of Aviation Analysis, Special Authorities Division, a statement, signed by its president, certifying that it meets the definition of ''educational institution'' set forth in § 380.2.

(c) An educational institution conducting such a charter need not comply with the requirements of §§ 380.25, 380.28, 380.34, and 380.35.

Subpart C—Requirements Applicable to Charter Operators

§ 380.20 Relief from the Statute.

(a) To the extent necessary to permit them to organize and arrange public charters, charter operators and foreign charter operators are hereby relieved from the following provisions of Subtitle VII of Title 49 of the U.S. Code, only if and so long as they comply with the provisions and the conditions imposed by this part:

(1) Chapter 411.

(2) Chapter 413.

(3) Chapter 415.

(4) Chapter 419.

(5) If foreign charter operators receive interstate air transportation rights, any other provision of the statute that would otherwise prohibit them from organizing and arranging Public Charters in interstate air transportation.

(b) A charter operator who is a citizen of the United States shall not be subject to the following requirements with respect to Public Charters that originate in a foreign country: §§ 380.25, 380.28, and 380.30 through 380.35.

§§ 380.21–380.23 [Reserved]

§ 380.24 Suspension of exemption authority.

The Department reserves the power to deny the exemption authority of any charter operator, without hearing, if it finds that such action is necessary in the public interest or is otherwise necessary in order to protect the rights of the traveling public.

§ 380.25 Prospectus filing and related requirements.

A charter operator may organize and operate a Public Charter only in accordance with this part, and subject to the following conditions:

(a) No charter operator shall operate, sell, receive money from any prospective participant for, or offer to sell or otherwise advertise a charter or series of charters until the Office of Aviation Analysis, Special Authorities Division, has accepted a Public Charter prospectus as described in § 380.28.

(b) If within 10 days after the filing the Department notifies the charter operator that it has rejected the prospectus for noncompliance with this part, the prohibitions set forth in paragraph (a) of this section shall continue until the Department advises that it has accepted the prospectus.

(c) The following amendments to a filed prospectus may be made:

(1) The addition or cancellation of any flight;

(2) A change in any flight, date, origin city or destination city; and

(3) A change in or addition of any direct air carrier, securer, or depository bank.

(d) The charter operator shall amend the prospectus to reflect any change described in paragraph (c) of this section. The amendment shall be filed in the manner and form used for the original prospectus. It shall become effective upon filing unless the operator is otherwise notified.

(e) The charter operator shall notify the depository bank (if any) and the securer of any change described in paragraph (c) of this section not later than when filing a prospectus amendment to reflect the change. If the securer is unable to adjust the security agreement as required by the change, the Office of Aviation Analysis, Special Authorities Division shall be advised of this fact within 2 business days.

(Approved by the Office of Management and Budget under Control Number 2106–0005)

§ 380.26 Discrimination.

No charter operator shall make, give, or cause any undue or unreasonable preference or advantage to any particular person, port, locality, or description of traffic in air transportation in any respect whatsoever, or subject any particular person, port, locality, or description of traffic in air transportation to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

§ 380.27 Methods of competition.

No charter operator shall engage in unfair or deceptive practices or unfair methods of competition in air transportation or the sale thereof.

§ 380.28 Charter prospectus.

(a) The charter prospectus shall include an original and two copies of the following:

(1) From the charter operator and the direct air carrier:

(i) The proposed flight schedule, listing the origin and destination cities, dates, type of aircraft, number of seats, and charter price for each flight;

(ii) The tour itinerary (if any) including hotels (name and length of stay at each), and other ground accommodations and services; and

(iii) A statement that they have entered into a charter contract that covers the proposed flight schedule, that the contract complies with all applicable Department regulations, and that a copy of the schedule has been sent to the depository bank (if any) and the operator's securer. The schedule shall be identified with a number assigned by the charter operator that does not duplicate any schedule numbers assigned by the operator to other proposed flight schedules. The proposed flight schedule, tour itinerary (if any), and statement shall be filed on OST Form 4532.

(2)(i) From the charter operator and the securer, a statement:

(A) That they have entered into a security agreement covering the proposed flight schedule that complies with § 380.34, including the amount of the coverage, the number assigned to it by the securer, and the amount of any outstanding claims against it, and

(B) That the securer has received a copy of the proposed flight schedule. The statement shall identify the proposed flight schedule by the schedule number assigned by the charter operator in accordance with paragraph (a) of this section. If there are any outstanding claims against the agreement, the charter operator and securer shall also state that they have executed a rider or amendment increasing the coverage by the amount of the claims, or that the securer will separately pay any claims for which it may be liable without impairing the agreement or reducing the amount of its coverage.

(ii) These statements shall be filed an OST Form 4533.

(3) If a depository agreement is used, a statement from the charter operator, the direct air carrier, and the depository bank:

(i) That they have entered into a depository agreement covering the proposed flight schedule that complies with § 380.34, and

(ii) That the bank has received a copy of the proposed flight schedule by the schedule number assigned by the charter operator in accordance with paragraph (a)(1) of this section. This statement shall be filed on OST Form 4534.

(b) Each of the statements described in paragraph (a) of this section shall also include the names and addresses of

the parties to it, and the originals shall be signed by those parties.

(c) The prospectus may cover a series of charters performed by one charter operator if the departure of the last charter is not more than one year after the departure of the first.

(d) If the prospectus covers a series of charters and the air transportation will be performed by more than one direct air carrier, the prospectus shall include separate statements in accordance with paragraphs (a)(1) and (a)(3) of this section to cover the flights that will be performed by each direct carrier.

(Approved by the Office of Management and Budget under Control Number 2106–0005)

§ 380.29 Charter contract.

The charter contract between the charter operator or foreign charter operator and the direct air carrier shall evidence a binding commitment on the part of the carrier to furnish the air transportation required for the trip or trips covered by the contract.

§ 380.30 Solicitation materials.

(a) All solicitation materials for a Public Charter shall include the name of the charter operator and the name of the direct air carrier.

(b) Any solicitation material that states a price per passenger shall also include one of the following:

(1) A statement referring to the operator-participant contract for further information about conditions applicable to the charter; or

(2) The full text of the operator-participant contract.

(c) Except as set forth in § 380.33a for operator's option plan contracts, if the charter prospectus names alternative dates or cities, any solicitation material that states a price per passenger shall also state that the actual dates or cities have not yet been selected, if that is the case.

(d) Any solicitation material that names a hotel but does not name every hotel named in the operator-participant contract shall also state that substitutions may be made.

(e) In any solicitation material from a direct air carrier, indirect air carrier, or an agent of either, for a charter, charter tour (*i.e.,* a combination of air transportation and ground accommodations), or a charter tour component (*e.g.,* a hotel stay), any price stated for such charter, tour, or component shall be the entire price to be paid by the participants to the air carrier, or agent, for such charter, tour, or component.

§ 380.31 General requirements for operator-participant contracts.

(a) Except for telephone sales for which payment is made by credit card as described in paragraph (b) of this section, the charter operator shall not accept payment from or on behalf of a prospective participant unless the participant has agreed to the conditions of the charter by signing an operator-participant contract as described in § 380.32. If a member of a group that will travel together pays for the group, that member may sign the contract on behalf of the group.

(b) For telephone sales only, the charter operator may accept payment by credit card without the participant having first signed an operator-participant contract provided that the charter operator first advises the customer:

(1) That he or she has the right to receive the operator-participant contract before making a booking;

(2) That the operator-participant contract will be mailed to the participant within 24 hours of accepting payment by credit card; and

(3) That the operator-participant contract must be signed, and the signed portion returned to the operator, before travel.

(4) A full refund must be made of any amounts charged to a credit card for any participant who cancels before the operator-participant contract is signed.

(c) The contract form may include a space that participants may check to authorize the charter operator to retain their money while attempting to make other arrangements for them if there is no space available on the flight or on specific alternative flights they have requested.

(d) If there is no space available on the flight or specific alternative flights requested by the participant the operator shall return all the participant's money within 7 days after receiving it unless the participant, in accordance

with paragraph (c) of this section, has authorized the operator to retain the payments while the operator attempts to make other arrangements for the participant. If the operator retains the payments while attempting to make other arrangements for the participant, it shall notify the participant of the fact within 7 days after receiving the payments, but in no event later than the departure. For the purpose of the time periods in this paragraph, receipt of money by a travel agent on behalf of a charter operator will not be considered as receipt by the operator.

(e) Except as set forth in §380.33a for operator's option plan contracts, the operator-participant contract shall not specify alternative dates for the outbound or return flights, or alternative origin or destination cities for any flight leg.

(f) The contract form shall be printed in 7-point or larger type. The statements required by paragraph (a), (f), (h), (l), (r), (s), and (x) of §380.32 shall be printed so as to contrast with the rest of the contract by the use of boldfaced type, capital letters, or a type size that is at least 50 percent larger than that used for the rest of the contract.

(g) The contract form shall include a space that participants may check to indicate that they wish to be furnished details of trip cancellation, health, and accident insurance.

(h) The contract form shall be designed so as to enable participants to retain a copy of the general terms and conditions after signing it. The specific information supplied by participants (such as choices of dates, cities, or other options) need not be retainable.

§380.32 Specific requirements for operator-participant contracts.

Contracts between charter operators and charter participants shall state:

(a) The name and complete mailing address of the charter operator;

(b) The name of the direct air carrier, the dollar amounts of that carrier's liability limitations for participant's baggage, the type and capacity of the aircraft to be used for the flight, and the conditions governing aircraft-equipment substitutions;

(c) The dates of the outbound and return flights;

(d) The origin and destination cities of each flight leg;

(e) The amount and schedule of payments;

(f) If a depository agreement as provided in §380.34(b) is used: That all checks, money orders, and credit card drafts must be made payable to the escrow account at the depository bank (identifying bank)[1] or, when the charter is sold to the participant by a retail travel agent, checks and money orders may be made payable to the agent, who must in turn make his check payable to the escrow account at the depository bank;

(g) The tour itinerary, if any, including the name and location of the hotels, length of stay at each, and other ground accommodations and services that are part of the tour;

(h) That the charter operator may not cancel the charter less than 10 days before the scheduled departure date, except for circumstances that make it physically impossible to perform the charter tip;

(i) That if a charter is canceled 10 or more days before the scheduled departure date, the operator will notify the participant in writing within 7 days after the cancellation, but in any event at least 10 days before the scheduled departure;

(j) That is a charter is canceled less than 10 days before departure (*i.e.*, for circumstances that make it physically impossible to perform the charter trip), the operator will get the message to the participant as soon as possible;

(k) That if the charter is canceled, a refund will be made to the participant within 14 days after the cancellation;

(l) The right to refunds if the participant changes plans is limited;

[1] If the credit card merchant account is separate from the depository account, it must be used solely as a conduit, i.e., all credit card payments toward Public Charter trips must be immediately remitted to the depository account in full, without holdback, or retention of any portion of the participant's payment. If the depository bank is not the credit card merchant bank, the Department must be satisfied that there are adequate procedural safeguards for the protection of participants' payments.

(m) The right to refunds if the participant changes plans, including

(1) The right to a full refund, for sales made by credit card, until an operator-participant contract is signed; and

(2) That any participant who wishes to cancel will receive a full refund (less any applicable administrative fee, not to exceed $25) upon providing a substitute participant to the charter operator or its sales agent, or upon being substituted for by a participant found by the charter operator;

(n) The procedure for obtaining the refunds described in paragraph (m) of this section, including that they will be made within 14 days after the cancellation or substitution;

(o) The meaning of ''major change'', as set forth in § 380.33(a);

(p) That if the charter operator knows of a major change 10 or more days before scheduled departure, the operator will notify the participant of the change within 7 days after first knowing of it, but in any event at least 10 days before scheduled departure;

(q) That is the operator first knows of a major change less than 10 days before scheduled departure, the operator will get the message to the participant as soon as possible;

(r) That within 7 days after receiving a pre-departure notification of a major change but in no event later than departure, the participant may cancel, and that a full refund will be made to the participant within 14 days after canceling;

(s) That upon a post-departure notification of a major change, the participant may reject the substituted hotel or the changed date, origin, or destination of a flight leg and be sent, within 14 days after the return date named in the contract, a refund of the portion of his payment allocable to the hotel accommodations or air transportation not provided;

(t) That the participants rights and remedies set forth in the contract, including the procedures for major changes, shall be in addition to any other rights or remedies available under applicable law, although the operator may condition a refund on the participant's waiver of additional remedies;

(u) That trip cancellation, health, and accident insurance is available and that the operator will furnish details of the insurance to participants who check the space provided for this purpose on the contract form;

(v) The name and address of the surety company or bank issuing the security agreement; and that unless the charter participant files a claim with the charter operator or, if he is unavailable, with the securer, within 60 days after termination of the charter, the securer shall be released from all liability under the security agreement to that participant. Termination means the date of arrival (or in the case of a canceled charter, the intended date or arrival) of the return flight. If there is no return flight in a participant's itinerary, termination means the date or intended date of departure of the last flight in the participant's itinerary;

(w) For international flights only: That additional restrictions may be imposed on the flight by the foreign government involved, and that if landing rights are denied by a foreign government the flight will be canceled with a full refund to the participant. This statement need not be included in the contract if—

(1) The prospectus includes a certification by the charter operator and the direct air carrier that landing rights have been obtained from all the foreign governments involved, and

(2) All the foreign governments involved have adopted country-of-origin rules for charterworthiness;

(x) That the charter operator is the principal and is responsible to the participants for all services and accommodations offered in connection with the charter. However, the contract may expressly provide that the charter operator, unless negligent, is not responsible for personal injury or property damage caused by any direct air carrier, hotel or other supplier of services in connection with the charter.

§ 380.33 Major changes in itinerary or price; refunds.

(a) For the purposes of this section, ''major change'' means any of the following:

(1) A change in the departure or return date shown in the operator-participant contract, (or, if the contract states alternative dates, the date designated to the participant by the charter operator in accordance with §380.33a(b)), unless the change results from a flight delay. In any event, however, a date change that the operator knows of more than 2 days before the scheduled flight date, and any delay of more than 48 hours, will be considered a major change.

(2) A change in the origin or destination city shown in the operator-participant contract for any flight leg (or, if the contract states alternative cities, the city designated to the participant by the operator in accordance with §380.33a(b)), unless the change affects only the order in which cities named in a tour package are visited.

(3) A substitution of any hotel that is not named in the operator-participant contract; and

(4) A price increase to the participant that occurs 10 or more days before departure and results in an aggregate price increase of more than 10 percent.

(b) The charter operator shall not increase the price to any participant less than 10 days before departure.

(c) The charter operator shall notify all participants of major changes, as required by the operator-participant contracts. This notification shall include the participants' rights to refunds required to be described in the operator-participant contract. The operator shall, if applicable, also notify the participants that the acceptance of a refund constitutes a waiver of their legal rights.

(d) Except as otherwise specified, notifications and refunds required by this part are considered made at the time they are mailed or sent by an equivalent method.

(e) The charter operator shall make all refunds required to be described in the operator-participant contract within the time limits set forth in paragraphs (k), (n), (r), and (s) of §380.32, as applicable.

§380.33a Operator's option plan.

(a) For the purposes of this part, an operator's option plan contract that states alternative dates for the outbound or return flights, or alternative origin or destination cities for any flight leg.

(b) Operator's option plan contracts shall state, in addition to the information required by §380.32, that the selection of the actual dates or cities, as applicable, is at the charter operator's option and will not entitle the participant to a refund, and that the operator will notify the participant of the actual dates or cities at least 10 days before the earliest of any alternative dates for the outbound flight.

(c) Contract forms for all operator's option plan contracts shall be labeled ''OPERATOR'S OPTION PLAN'' in bold-faced capital letters at least ¼ inch high. The statement required by paragraph (b) of this section and the statement of alternative dates (§380.32(c)) or alternative cities (§380.32(d)), as applicable, shall be printed so as to contrast with the rest of the contract, as set forth in §380.31(f).

(d) Any solicitation material that states a price per passenger for an operator's option plan contract shall clearly and conspicuously—

(1) Identify that price as being for the operator's option plan,

(2) Name all the possible dates or cities, as applicable, and

(3) State that the selection of the actual dates or cities is at the charter operator's option.

(e) Charter operators and their agents shall not misrepresent to prospective participants, orally, in solicitation materials, or otherwise, the probability that any particular city or date will be selected from among the alternatives named in an operator's option plan contract.

(f) The charter operator shall notify all participants with operator's option plan contracts of the actual dates or cities, as applicable, as required by contracts.

§380.34 Security and depository agreements.

(a) Except as provided in paragraph (b) of this section, the charter operator or foreign charter operator shall furnish a security agreement in an amount for not less than the charter price for the air transportation, if only

air transportation is involved, or, if the charter involves land accommodations in addition to air transportation, a security agreement in one of the following amounts dependent upon the length of the charter or series of charters:

(1) For a charter or series of charters of 14 days or less, security in an amount of not less than the charter price for the air transportation to be furnished in connection with such charter or series of charters;

(2) For a charter or series of charters of more than 14 days but less than 28 days security in an amount of not less than twice the charter price; and

(3) For a charter or series of charters of 28 days or more, security in an amount of not less than three times the charter price: Provided, however, That the liability of the securer to any charter participant shall not exceed amounts paid by that participant to the charter operator with respect to the charter.

(b) The direct air carrier and the charter operator or foreign charter operator may elect, in lieu of furnishing a security agreement as provided under paragraph (a) of this section, to comply with the requirements of paragraphs (b)(1) and (b)(2) of this section, as follows:

(1) The charter operator shall furnish a security agreement in an amount of at least $10,000 times the number of flights, except that the amount need not be more than $200,000. The liability of the securer to any charter participant shall not exceed the amount paid by the participant to the charter operator for that charter.

(2) The direct air carrier and charter operator or foreign charter operator shall enter into an agreement with a designated bank, the terms of which shall provide that all payments by charter participants paid to charter operators or foreign charter operators and their retail travel agents shall be deposited with and maintained by the bank subject to the following conditions:

(i) On sales made to charter participants by charter operators or foreign charter operators the participant shall pay by check, money order, or credit card draft payable to the bank;[2] on sales made to charter participants by retail travel agents, the retail travel agent may deduct his commission and remit the balance to the designated bank by check, money order, or electronic transfer: Provided, That the travel agent agrees in writing with the charter operator or foreign charter operator that if the charter is canceled the travel agent shall remit to the bank the full amount of the commission previously deducted or received within 10 days after receipt of notification of cancellation of the charter; except for the credit card company's usual commission (not to exceed 3 percent), the charter operator shall not permit any portion of a charter participant's payments by credit cared to be ''held back'' by the credit card merchant bank;[3]

(ii) The bank shall pay the direct air carrier the charter price for the transportation not earlier than 60 days (including day of departure) prior to the scheduled day of departure of the originating or returning flight, upon certification of the departure date by the air carrier: Provided, That, in the case of a round trip charter contract to be performed by one carrier, the total round trip charter price shall be paid to the carrier not earlier than 60 days prior to the scheduled day of departure of the originating flight;

(iii) The bank shall reimburse the charter operator or foreign charter operator for refunds made by the latter to the charter participant upon written notification from the charter operator or foreign charter operator;

(iv) If the charter operator, foreign charter operator or the direct air carrier notifies the bank that a charter has been canceled, the bank shall make applicable refunds directly to the charter participants;

(v) After the charter price has been paid in full to the direct air carrier, the bank shall pay funds from the account

[2] See also n.1, *supra.*

[3] ''Holdback'' is an amount in excess of usual commissions that a credit card merchant bank sometimes retains to cover potential charge-backs or other charges.

directly to the hotels, sightseeing enterprises, or other persons or companies furnishing ground accommodations and services, if any, in connection with the charter or series of charters upon presentation to the bank of vendors' bills and upon certification by the charter operator or foreign charter operator of the amounts payable for such ground accommodations and services and the person or companies to whom payment is to be made: Provided, however, That the total amounts paid by the bank pursuant to paragraphs (b)(2) (ii) and (v) of this section shall not exceed either the total cost of the air transportation, or 80 percent of the total deposits received by the bank less any refunds made to charter participants pursuant to paragraphs (b)(2) (ii) and (iv) of this section, whichever is greater;

(vi) As used in this section, the term ''bank'' means a bank insured by the Federal Deposit Insurance Corporation;

(vii) The bank shall maintain a separate accounting for each charter group;

(viii) Notwithstanding any other provisions of this section, the amount of total cash deposits required to be maintained in the depository account of the bank may be reduced by one or both of the following: The amount of the security agreement in the form prescribed in this section in excess of the minimum coverage required by paragraph (b)(1) of this section; an escrow with the designated bank of Federal, State, or municipal bonds or other securities, consisting of certificates of deposit issued by banks having a stated policy of redeeming such certificates before maturity at the request of the holder (subject only to such interest penalties or other conditions as may be required by law), or negotiable securities which are publicly traded on a securities exchange, all such securities to be made payable to the escrow account: Provided, That such other securities shall be substituted in an amount no greater than 80 percent of the total market value of the escrow account at the time of such substitution: And provided, further, That should the market value of such other securities subsequently decrease, from time to time, then additional cash or securities qualified for investment hereunder shall promptly be added to the escrow account, in an amount equal to the amount of such decreased value; and

(ix) Except as provided in paragraph (b)(2)(i), (iii), (iv), (v), and (viii) of this section, the bank shall not pay out any funds from the account prior to 2 banking days after completion of each charter, when the balance in the account shall be paid the charter operator or foreign charter operator, upon certification of the completion date by the direct air carrier: Provided, however, That if the Charter involves air transportation only and the bank has paid the direct air carrier(s) the charter price for the originating flight, and the returning flight if any, and has paid all refunds due to participants, as provided in paragraph (b)(2)(ii) and (iii), respectively, of this section, then the bank may pay the balance in the account to the charter operator upon certification by the direct air carrier performing the originating flight that such flight has in fact departed.

(c)(1) The security agreement required under paragraphs (a) and (b) of this section shall insure the financial responsibility of the charter operator or foreign charter operator and the supplying of the transportation and all other accommodations, services, and facilities in accordance with the contract between the charter operator or foreign charter operator and the charter participants.

(2) The security agreement may be either:

(i) A surety bond in the form set forth as appendix A to this part;

(ii) A surety trust agreement in the form set forth as appendix B to this part; or

(iii) An arrangement with a bank (for instance, a standby letter of credit) that provides protection of charter participants' funds equivalent to or greater than that provided by the Bond in appendix A. An arrangement that furnishes a lesser degree of protection than would be provided under the bond shall be invalid to that extent, and instead the bank, the charter operator or foreign charter operator, and the charter participants shall have the same rights and liabilities as provided under a bond in the form of appendix A. If the

arrangement does not give as much protection as a bond against the risk of the charter operator's bankruptcy, the bank shall be liable in the event of bankruptcy to the same extent as if it had entered into a bond.

(3) Any agreement under paragraph (c)(2)(iii) of this section shall include a statement that, in the event that the other provisions of the agreement do not provide protection to charter participants comparable to that provided under a bond in the form of appendix A, the bank shall assume, for the benefit of the charter participants, all the liabilities it would have if it entered into the bond.

(4) The security agreement shall be effective on or before the date the charter prospectus is filed with the Department.

(5) The security agreement shall be specifically identified by the issuing securer with a numbering system so that the Department can identify the security agreement with the specific charter or charters to which it relates. These data may be set forth in an addendum attached to the security agreement, which addendum must be signed by the charter operator or foreign charter operator and the securer.

(6) When security is provided by a surety bond, such bond shall be issued by a bonding or surety company that is listed in Best's Insurance Reports (Fire and Casualty) with a general policyholders' rating of ''A'' or better. The bonding or surety company shall be one legally authorized to issue bonds of that type in the State in which the charter originates. For purposes of this section the term ''State'' includes any territory or possession of the United States, or the District of Columbia.

(7) When security is provided by a security agreement other than a bond, the agreement shall be issued by a national bank complying with the provisions of 12 CFR 7.7010(a), or by a State bank complying with applicable State laws that give authority to issue such agreements, and all such banks must be insured by the Federal Deposit Insurance Corporation.

(d) The security agreement required by this section shall provide that unless the charter participant files a claim with the charter operator or foreign charter operator, or, if it is unavailable, with the securer, within 60 days after termination of the charter, the securer shall be released from all liability under the security agreement to such charter participant. Terminations means the date of arrival (or in the case of a canceled charter, the intended date of arrival) of the return flight. If there is no return flight in a participant's itinerary, termination means the date or intended date of departure of the last flight in the participant's itinerary.

§ 380.34a Substitution of direct air carrier's security or depository agreement.

(a) A direct air carrier may substitute its own security agreement and/or depository arrangements, as specified in this section, for those required of the charter operator under § 380.34, but only for charter trips in which all the air transportation is provided by one direct air carrier. Charter operators are relieved from § 380.34 to the extent that the direct carrier substitutes its own arrangements.

(b) The direct air carrier may substitute its security agreement for all of the arrangements required of the charter operator under § 380.34 (a) or (b). Alternatively, it may substitute its depository agreement for the depository agreement required of the charter operator under § 380.34(b)(2). If the direct carrier substitutes its depository agreement, it may also obtain and substitute a security agreement for the one otherwise required of the charter operator under § 380.34(b)(1). If the direct carrier substitutes its depository agreement only, the charter operator must supply the security agreement required under § 380.34(b)(1).

(c) If the direct carrier substitutes a security agreement for all the charter operator's requirements under § 380.34, the charter operator shall include in the charter prospectus, in place of the information in § 380.28(a)(2) regarding the charter operator's security agreement:

(1) A statement by the direct air carrier on OST Form 4535 that it will take responsibility for all charter participant payments (including those for ground accommodations and services)

and for the fulfillment of all the charter operator's contractual and regulatory obligations to the charter participants.

(2) A statement from the direct air carrier and its securer (under §212.12 of this chapter), OST Form 4533, that they have entered into a security agreement assuring the direct air carrier's responsibilities to charter participants under this section in an unlimited amount (except that the liability of the securer with respect to any charter participant may be limited to the charter price paid by or on behalf of such participant), and that the securer has received a copy of the proposed flight schedule identified by the schedule number assigned by the charter operator under this part.

(d) A substitute depository agreement under this section shall be signed by the direct air carrier, the charter operator, and the depository bank, and shall provide, in addition to existing requirements under §212.8 of this chapter, that:

(1) Payments by or on behalf of charter participants shall be allocated to the flight accounts matching the participant's itinerary in the following way: Each account shall have allocated to it the charter cost of the participant's air transportation on that flight. The portion of each payment not intended for air transportation services shall be allocated to the account for the return flight in the participant's itinerary. If there is only one flight in the itinerary, the entire payment shall be allocated to that account.

(2) The bank shall pay funds from a flight account directly to the hotels, sightseeing enterprises, or other persons or companies furnishing ground accommodations and services, if any, in connection with the charter flight, upon presentation to the bank of vendor's bills and upon certification by the person who contracted for the ground accommodations or services of the amounts payable and the persons or companies to whom payment is to be made, except that no disbursement shall be made that would reduce the balance in the account below the charter cost of the flight.

(3) On sales made to participants by a person other than a retail travel agent, the participant shall pay by check, money order, or credit card draft payable to the bank. On sales made to participants by a retail travel agent, payments shall be made in the same manner unless the agent deducts its commission and remits the balance to the bank by check, money order, or electronic transfer. The agent may deduct its commission only if it agrees in writing with its principal (the charter operator or direct air carrier, as applicable) that, if the charter is canceled, the agent shall remit to the bank the full amount of the commission previously deducted or received within 10 days after receipt of notification of the cancellation. The depository bank shall pay refunds directly to participants according to the terms of the operator-participant contract and the terms of this part.

(e) If the direct carrier substitutes a security agreement in addition to substituting a depository agreement, the charter prospectus information must include all the information required by paragraphs (c) and (d) of this section, except for the amount of the security agreement. That agreement shall be in an amount of at least $10,000 times the number of flights, except that the amount need not be more than $200,000.

(f) A copy of the depository agreement under paragraph (d) of this section shall be filed with the Department, and it shall not be effective until approved by the Department.

(g) A copy of the security agreement under paragraph (c) or paragraph (e) of this section shall be filed with the Department. It shall insure the financial responsibility of the direct air carrier for supplying the transportation and all other accommodations, services, and facilities in accordance with the contracts between the charter operator and the charter participants. Such security agreement shall meet all the other requirements of §380.34 (c) and (d).

§380.35 Disbursements from depository account.

No charter operator or direct air carrier shall cause its agents or the depository bank to make disbursements or

payments from deposits except in accordance with the provisions of this part.

§ 380.36 Record retention.

Every charter operator conducting a charter pursuant to this part shall comply with the applicable record-retention provisions of part 249 of this chapter.

Subpart D—Requirements Applicable to Direct Air Carriers

§ 380.40 Charter not to be performed unless in compliance with this part 380.

(a) For all Public Charters other than foreign-originating charters organized by foreign charter operators: A direct air carrier shall not perform air transportation in connection with such a charter unless it has made a reasonable effort to verify that all provisions of this part have been complied with and that the charter operator's authority under this part has not been suspended by the Department.

(b) For foreign-originating Public Charters organized by foreign charter operators: A direct air carrier shall not perform air transportation in connection with such a charter unless—

(1) The charter is conducted in accordance with subpart B of this part and

(2) The charter operator conforms to all requirements of this part that are applicable to charter operators within the Department's jurisdiction, other than §§ 380.25, 380.28, 380.30 through 380.36, and 380.50.

§§ 380.41–380.42 [Reserved]

§ 380.43 Cancellations by direct air carriers.

The direct air carrier shall not cancel any charter under this part less than 10 days before the scheduled departure date, except for circumstances that make it physically impossible to perform the charter trip.

§ 380.45 Suspension of exemption authority.

The Department reserves the power to suspend the exemption authority of any air carrier, without hearing, if it finds that such action is necessary in order to protect the rights of the traveling public.

§ 380.46 Charter trip reporting.

The direct air carrier shall promptly notify the Office of Aviation Analysis, Special Authorities Division, regarding any charters covered by a prospectus filed under § 380.28 that are later canceled.

Subpart E—Registration of Foreign Charter Operators

§ 380.60 Purpose.

This subpart establishes registration procedures for foreign charter operators intending to engage in the formation of groups for transportation on Public Charters that originate in the United States.

§ 380.61 Operation by foreign charter operators.

(a) Each foreign charter operator shall be registered under this subpart and file a prospectus under § 380.25 before organizing groups for transportation on Public Charters that originate in the United States.

(b) Each foreign charter registered under this subpart shall comply with the other provisions of this part directed to charter operators.

§ 380.62 Registration applications.

(a) To be registered under this subpart, a foreign charter operator shall file two copies of an application for registration with the Office of Aviation Analysis, Special Authorities Division. The Department will list the names and nationalities of all persons applying for registration in its Weekly Summary of Filings.

(b) The application shall be made on OST Form 4530, which can be obtained from the Office of Aviation Analysis, Special Authorities Division.

(c) The applicant shall clearly indicate in its application for registration whether it requests authority to engage in foreign and/or interstate air transportation.

§ 380.63 Objections to registration applications.

Any person objecting to the registration application of a foreign charter operator or to a proposed change in the name or ownership of that operator shall file an objection with the Office of Aviation Analysis, Special Authorities Division, within 28 days after the Department receives the properly completed registration application.

§ 380.64 Department action on a registration application.

(a) After a registration is received, one of the following actions will be taken.

(1) The application will be approved by the stamping of the effective date of registration on OST Form 4530 and returning the duplicate copy of the form to the operator;

(2) Additional information will be requested for the applicant;

(3) The applicant will be notified that its application will require further analysis or procedures, or is being referred to the Department for formal action;

(4)The registration application will be rejected if it does not comply with the filing requirements of this subpart;

(5) The application will be approved subject to such terms, conditions, or limitations as may be required by the public interest; or

(6) The registration application will be rejected for reasons relating to the failure of effective reciprocity or if the Department finds that it would be in the public interest to do so.

(b) One of the actions described in paragraph (a) of this section will normally be taken within 60 days after the registration application is received. The Department will also consider requests for faster action that include a full explanation of the need for expedited action.

§ 380.65 Notification of change of operations or ownership.

(a) Not later than 30 days before any change in its name or address or before a temporary or permanent cessation of operations, each foreign charter operator registered under this subpart shall notify the Office of Aviation Analysis, Special Authorities Division, of the change by resubmitting OST Form 4530.

(b) A foreign charter operator registered under this subpart shall apply for an amendment to that registration not later than 30 days after either of the following events:

(1) A person listed on its existing registration as owning or holding beneficial interest in at least 10 percent of the operator or of the operator's stock reduces its holding to below 10 percent;

(2) A person not listed on the existing registration as owning or holding beneficial interest in at least 10 percent of the operator or of the operator's stock becomes an owner or holder of 10 percent or more of the company or of its stock.

(c) An application for an amendment shall be made by resubmitting OST Form 4530. The existing registration shall remain valid pending Department action on the amendment.

§ 380.66 Cancellation or conditioning of the registration.

The registration of a foreign charter operator may be canceled or subjected to additional terms, conditions, or limitations if any of the following occur:

(a) The operator files a written notice with the Department that it is discontinuing its charter operations;

(b) A substantial ownership interest is acquired by persons who are not citizens of the same country as the registrant; or

(c) The Department finds, after notice and an opportunity for responses, that it is in the public interest to do so. In making this finding, the Department will consider whether effective reciprocity exists between the United States and the government of the foreign charter operator.

§ 380.67 Waiver of sovereign immunity.

By accepting an approved registration form under this subpart, an operator waives any right it may have to assert any defense of sovereign immunity from suit in any proceeding against it, in any court or other tribunal of the United States, that is based upon a claim arising out of operations by the operator under this part.

APPENDIX A TO PART 380—PUBLIC CHARTER OPERATOR'S SURETY BOND UNDER PART 380 OF THE SPECIAL REGULATIONS OF THE DEPARTMENT OF TRANSPORTATION (14 CFR PART 380)

Know all men by these presents, that we _____ (name of charter operator) of _____, (city) _____ (state or country) as Principal (hereinafter called Principal), and_____ (name of surety) a corporation created and existing under the laws of the State of _____((State) as Surety (hereinafter called Surety) are held and firmly bound unto the United States of America in the sum of $ _____ (see §380.34(f) of Part 380) for which payment, well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Whereas Principal intends to become a Public Charter operator pursuant to the provisions of part 380 of the Department's Special Regulations and other rules and regulations of the Department relating to insurance or other security for the protection of charter participants, and has elected to file with the Department of Transportation such a bond as will insure financial responsibility with respect to all moneys received from charter participants for services in connection with a Public Charter to be operated subject to Part 380 of the Department's Special Regulations in accordance with contracts, agreements, or arrangements therefor, and

Whereas this bond is written to assure compliance by Principal as an authorized charter operator with Part 380 of the Department's Special Regulations, and other rules and regulations of the Department relating to insurance and other security for the protection of charter participants, and shall inure to the benefit of any and all charter participants to whom Principal may be held legally liable for any damages herein described.

Now, therefor, the condition of this obligation is such that if Principal shall pay or cause to be paid to charter participants any sum or sums for which Principal may be held legally liable by reason of Principal's failure faithfully to perform, fulfill and carry out all contracts, agreements, and arrangements made by Principal while this bond is in effect with respect to the receipt of moneys from charter participants, and proper disbursement thereof pursuant to and in accordance with the provisions of Part 380 of the Department's Special Regulations, then this obligation shall be void, otherwise to remain in full force and effect.

The liability of Surety with respect to any charter participant shall not exceed the charter price paid by or on behalf of such participant.

The liability of Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penalty of the bond, but in no event shall Surety's obligation hereunder exceed the amount of said penalty.

Surety agrees to furnish written notice to the Office of Aviation Analysis, Department of Transportation, forthwith of all suits or claims filed and judgments rendered, and payments made by Surety under this bond.

The bond shall cover the following charters:[1]

Surety company's bond No. _____

Date of flight departure _____

Place of flight departure _____

This bond is effective on the _____ day of _____, 12:01 a.m., standard time at the address of Principal as stated herein and as hereinafter provided. Principal or Surety may at any time terminate this bond by written notice to: ''Special Authorities Division (P–57), Office of Aviation Analysis, U.S. Department of Transportation, Washington, DC 20590,'' such termination to become effective thirty (30) days after the actual receipt of said notice by the Department. Surety shall not be liable hereunder for the payment of any damages hereinbefore described which arise as a result of any contracts, agreements, undertakings, or arrangements for the supplying of transportation and other services made by Principal after the termination of this bond as herein provided, but such termination shall not affect the liability of the bond hereunder for the payment of any damages arising as a result of contracts, agreements, or arrangements for the supplying of transportation and other services made by Principal prior to the date that such termination becomes effective. Liability of Surety under this bond shall in all events be limited only to a charter participant or charter participants who shall within sixty (60) days after the termination of the particular charter described herein give written notice of claim to the charter operator or, if it is unavailable, to Surety, and all liability on this bond shall automatically terminate sixty (60) days after the termination date of each particular charter covered by this bond except for claims made in the time provided herein.

In witness whereof, the said Principal and Surety have executed this instrument on the _____ day of _____, _____.

[1] These data may be supplied in addendum attached to the bond.

Principal

Name _____

By: Signature and title

Surety

Name _____

By: Signature and title _____

Only corporations may qualify to act as surety and they must meet the requirements set forth in §380.34(c)(6) of Part 380.

APPENDIX B TO PART 380—PUBLIC CHARTER SURETY TRUST AGREEMENT

This Trust Agreement is entered into between _____ (charter operator) incorporated under the law of _____ with the principal place of business being _____ (hereinafter referred to as the Operator), and _____ (Bank) with its principal place of business being _____ (hereinafter referred to as the ''Trustee''), for the purpose of creating a trust to become effective as of the _____ day of _____, _____, which trust shall continue until terminated as hereinafter provided.

The Operator intends to become a Public Charter operator pursuant to the provisions of Part 380 of the Department's Special Regulations and other rules and regulations of the Department relating to insurance or other security for the protection of charter participants, and has elected to file with the Department of Transportation such a Surety Trust Agreements as will insure financial responsibility with respect to all moneys received from charter participants for services in connection with a Public Charter to be operated subject to Part 380 of the Department's Special Regulations in accordance with contracts, agreements, or arrangements therefor.

This Surety Trust Agreement is written to assure compliance by the Operator with the provisions of Part 380 of the Department's Special Regulations and other rules and regulations of the Department relating to insurance or other security for the protection of charter participants.

It shall inure to the benefit of any and all charter participants to whom the Operator may be held legally liable for any of the damages herein described.

It is mutually agreed by and between the operator and Trustee that the Trustee shall manage the corpus of the trust and carry out the purposes of the trust as hereinafter set forth during the term of the trust for the benefit of charter participants (who are hereinafter referred to as ''Beneficiaries.'')

Beneficiaries of the trust created by this Agreement shall be limited to those charter participants who meet the following requirements:

1. Those for whom Operator or Operator's agent has received payment toward participation in one or more charters operated by or proposed to be operated by Operator.

2. Who have legal claim or claims for money damages against the Operator by reason of the Operators' failure faithfully to perform, fulfill, and carry out all contracts, agreements, and arrangements made by the Operator while this trust is in respect to the receipt of moneys and proper disbursement thereof pursuant to Part 380 of the Department's Special Regulations; and

3. Who have given notice of such claim or claims in accordance with this Trust Agreement, but who have not been paid by the Operator.

The Operator shall convey to the Trustee legal title to the trust corpus, which has a value of $_____ by the time of the execution of this Agreement.

Trustee shall assume the responsibilities of the Trustee over the said trust corpus and shall distribute from the trust corpus to any and all Beneficiaries to whom the Operator, in its capacity as a Public Charter operator, may be held legally liable by reason of the Operator's failure faithfully to perform, fulfill, and carry out all contracts, agreements, and arrangements made by the Operator, while this trust is in effect with respect to the receipt of moneys and proper disbursement thereof pursuant to Part 380 of the Department's Special Regulations in connection with said charters, such damages as will discharge such liability while this trust is in effect; Provided, however, That the liability of the trust to any Beneficiary shall not exceed the charter price (as defined in Part 380 of the Department's Special Regulations) paid by or on behalf on any such Beneficiary; Provided, further, That there shall be on obligation of the trust to any Beneficiary if the Operator shall pay or cause to be paid to any Beneficiary any sum or sums for which the Operator may be held legally liable by reasons of its failure faithfully to perform, fulfill, and carry out all contracts, agreements, and arrangements made by the Operator in its capacity as charter operator while this trust is in effect with respect to the receipt of moneys and proper disbursement thereof pursuant to Part 380 of the Department's Special Regulations; And provided still further, That the liability of the trust as administered by the Trustee shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments, shall amount in the aggregate to $_____. Notwithstanding anything herein to the contrary, in no event shall the obligation of the trust or the Trustee hereunder exceed the aggregate amount of $_____.

The Trustee agrees to furnish written notice to the Office of Aviation Analysis, Department of Transportation, forthwith of all

suits of claims filed and judgments rendered (of which it has knowledge), and of payments made by the Trustee under the terms of this trust.

The Trust shall not be liable hereunder for the payment of any damages hereinbefore described which arise as a result of any contracts, agreements, undertakings, or arrangements for the supplying of transportation and other services made by the Operator after the termination of this trust as herein provided, but such termination shall not affect the liability of the trust hereunder for the payment of any damages arising as a result of contracts, agreements, or arrangements for the supplying of transportation and other services made by the Operator prior to the date that such termination becomes effective.

Liability of the trust shall in all events be limited only to a Beneficiary or Beneficiaries who shall within sixty days after the termination of the particular charter give written notice of claim to the Operator or, if it is unavailable, to the Trustee, and all liability of the trust with respect to participants in a charter shall automatically terminate sixty days after the termination date of each particular charter covered by this trust except for claims filed in the time provided herein. Sixty-one days after the completion of the last charter covered by this Trust Agreement, the trust shall automatically terminate except for claims of any Beneficiary or Beneficiaries previously made in accordance with this Agreement still pending on and after said sixty-first day. To the extent of such claims, the trust shall continue until those claims are discharged, dismissed, dropped, or otherwise terminated; the remainder of the trust corpus shall be conveyed forthwith to the Operator. After all remaining claims which are covered by this Trust Agreement pending on and after the said sixty-first day have been discharged, dismissed, dropped, or otherwise terminated, the Trustee shall convey forthwith the remainder of the trust corpus, if any, to the Operator.

Either the Operator or Trustee may at any time terminate this trust by written notice to: ''Special Authorities Division (P–57), Office of Aviation Analysis, U.S. Department of Transportation, Washington, DC 20590,'' such termination to become effective thirty days after the actual receipt of said notice by the Department.

In the event of any controversy or claim arising hereunder, the Trustee shall not be required to determine same or take any other action with respect thereto, but may await the settlement of such controversy or claim by final appropriate legal proceedings, and in such event shall not be liable for interest or damages of any kind.

Any Successor to the Trustee by merger, consolidation, or otherwise, shall succeed to this trusteeship and shall have the powers and obligations set forth in this Agreement.

The trust created under this Agreement shall be operated and administered under the laws of the State of _____.

IN WITNESS WHEREOF, the Operator and Trustee have executed this instrument on the _____ day of _____, _____.

Trustee

Name _____
By: Signature and title

Charter Operator

Name _____
By: Signature and title

PART 381—SPECIAL EVENT TOURS

Sec.
381.1 Purpose.
381.3 Applicability.
381.5 Definition.
381.7 Advertising.
381.9 Sales.
381.11 Refunds.
381.13 Price increases.

AUTHORITY: 49 U.S.C. 40113(a) and 41712.

SOURCE: Docket No. 49385, 59 FR 61514, Nov. 30, 1994, unless otherwise noted.

§ 381.1 Purpose.

The purpose of this part is ensure that air travelers who have purchased tours to special events will receive the promised admission to the event. This part expands the ''Super Bowl rule'' to other events.

§ 381.3 Applicability.

This part applies to Special Event Tours that are in interstate air transportation, or in foreign air transportation originating at a point in the United States. This part applies to U.S. and foreign operators of Special Event Tours, whether they be air carriers or ticket agents. This part applies to scheduled, charter, and other air transportation.

§ 381.5 Definition.

Special Event Tour means a tour that is organized for the purpose of attending a sporting, social, religious, educational, cultural, political or other event of a special nature and limited duration, which exists for reasons apart from the tour itself, and which is represented by the operator of the tour

as including admission to that event. Examples of such events include, but are not limited to, college and professional sporting events, the Olympics, concerts, the Passion Play in Oberammergau, etc.

§ 381.7 Advertising.

No operator of a Special Event Tour or agent of such an operator shall conduct, or cause or allow to be conducted, any advertising, solicitation or other promotion for a Special Event Tour unless:

(a) The operator is in physical possession of enough tickets for admission to the event to provide such tickets for a substantial number of seats on the tour; or

(b) The operator has entered into a written contract with an organization that is the distributor of such tickets or an organization that receives such tickets directly from the distributor (e.g., a bowl committee; football conference, league or team; concert promoter or arena; etc.), the terms of which provide for that organization to furnish the operator enough admission tickets to provide such tickets for a substantial number of seats on the tour; or

(c) The operator has entered into a written contract with another person or organization that has a written contract or series of written contracts with the distributor of such tickets or with an organization that receives such tickets directly from the distributor, the terms of which provide for that organization (the organization with which the operator has contracted) to furnish the operator enough admission tickets to provide such tickets for a substantial number of seats on the tour.

§ 381.9 Sales.

(a) Except as provided in paragraph (b) of this section:

(1) No operator of a Special Event Tour shall accept money for a seat on a Special Event Tour, or authorize an agent to accept such money, unless the operator has physical possession of, or written contracts (in the manner described in § 381.7) for, a ticket for admission to the event for that individual. To the extent that the operator receives an unsolicited booking for which the operator does not have physical possession of or written contracts for a ticket for admission to the event, any payment accompanying that booking must be returned within 3 business days.

(2) Upon acceptance of the money for a sale, the operator must reserve one event ticket for that individual. An operator may not sell more seats on the tour than it has event tickets in hand or under contract. (An operator need not continue to reserve an event ticket for an individual who withdraws from the tour by providing notice to the operator or by being notified by the operator that the individual's participation has been canceled due to failure to remit a required installment payment.)

(b) An operator of a Special Event Tour may accept a booking and payment from an individual for whom the operator does not have an event ticket in hand or under contract if that individual agrees in writing that he or she understands that no event ticket has been reserved for him or her. This agreement shall specify whether the person has agreed to participate in the tour without an event ticket and/or the operator has agreed to attempt to acquire an event ticket for this person. If the two parties agree that the operator will attempt to acquire an event ticket, the agreement shall specify any penalties that will apply if the individual later cancels because an event ticket did not become available. If the operator notifies this person that an event ticket has become available, that person shall enjoy all the other protections of this part from that time.

§ 381.11 Refunds.

If promised admission to the primary event for which a Special Event Tour was organized is not furnished by the tour operator, at the tour price agreed to before departure (including any increases that the participant has accepted pursuant to § 381.13(a)), the operator must provide each tour participant affected in this way a refund of the total tour price. This refund is to be provided within 14 calendar days after the scheduled return date of the tour.

§ 381.13 Price increases.

(a) Should the tour operator increase a participant's tour price by more than 10 percent (aggregate of all increases to that participant), that participant shall have the option of canceling his or her participation in the tour and receiving a full refund within 14 days after the cancellation.

(b) The tour operator shall not increase the tour price to any participant less than ten days before departure.

PART 382—NONDISCRIMINATION ON THE BASIS OF DISABILITY IN AIR TRAVEL

Subpart A—General Provisions

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APPENDIX A TO PART 382—DISABILITY COMPLAINT REPORTING FORM

AUTHORITY: 49 U.S.C. 41702, 47105, and 41712.

SOURCE: 55 FR 8046, Mar. 6, 1990, unless otherwise noted:

EDITORIAL NOTE: Nomenclature changes to part 382 appear at 61 FR 56422, Nov. 1, 1996, and 66 FR 22115, May 3, 2001.

Subpart A—General Provisions

§ 382.1 Purpose.

The purpose of this part is to implement the Air Carrier Access Act of 1986 (49 U.S.C. 1374(c)), which provides that no air carrier may discriminate against any otherwise qualified individual with a disability, by reason of such disability, in the provision of air transportation.

§ 382.3 Applicability.

(a) Except as provided in this section, this part applies to all air carriers providing air transportation.

(b) Sections 382.21–382.63 do not apply to indirect air carriers.

(c) Except for § 382.70, this part does not apply to foreign air carriers or to airport facilities outside the United States, its territories, possessions, and commonwealths.

(d) Nothing in this part shall authorize or require a carrier to fail to comply with any applicable FAA safety regulation.

(e) The compliance date for the following provisions of this part is June 4, 1990:

§ 382.7 (b)
§ 382.21(c)
§ 382.31(e)
§ 382.33(f)
§ 382.35 (d), (e)
§ 382.37 (b), (c)
§ 382.39 (a) (second sentence of introductory language); (a)(1) and (a)(2), with respect to acquisition of equipment; (a)(3); (b)(3); (b)(4)
§ 382.41 (d), (e)(2), (f)
§ 382.45 (a), (c)
§ 382.47(a)
§ 382.49 (b), (c)
§ 382.65 (a), (b)(2).

(f) The compliance date for the following provisions of this part is August 5, 1990:

§ 382.9
§ 382.23(e)
§ 382.33(d)
§ 382.51
§ 382.53(c).

(g) The compliance date for the following provisions for this part is October 5, 1990:

§ 382.35 (b)(2), (b)(3)
§ 382.41(g), with respect to the acceptance and stowage of batteries requiring hazardous materials packaging, for carriers which, as of March 6, 1990, had a policy of carrying no hazardous materials.

[55 FR 8046, Mar.6, 1990, as amended at 55 FR 12341, Apr. 3, 1990; 55 FR 23544, June 11, 1990; 68 FR 40494, July 8, 2003]

§ 382.5 Definitions.

As used in this part—

Air Carrier or *carrier* means any citizen of the United States who undertakes, whether directly or indirectly or by a lease or any other arrangement, to engage in air transportation.

Air carrier airport means a public, commercial service airport which emplanes annually 2,500 or more passengers and receives scheduled air service.

Air transportation means interstate, overseas, or foreign air transportation, or the transportation of mail by aircraft, as defined in the Federal Aviation Act.

Department or *DOT* means the United States Department of Transportation.

FAA means the Federal Aviation Administration, an operating administration of the Department.

Facility means all or any portion of aircraft, buildings, structures, equipment, roads, walks, parking lots, and any other real or personal property, normally used by passengers or prospective passengers visiting or using the airport, to the extent the carrier exercises control over the selection, design, construction, or alteration of the property.

Individual with a disability means any individual who has a physical or mental impairment that, on a permanent or temporary basis, substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(a) *Physical or mental impairment* means:

(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory including speech organs, cardio-vascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine; or

(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

The term *physical or mental impairment* includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments; cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction, and alcoholism.

(b) *Major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(c) *Has a record of such impairment* means has a history of, or has been classified, or misclassified, as having a mental or physical impairment that substantially limits one or more major life activities.

(d) *Is regarded as having an impairment* means:

(1) Has a physical or mental impairment that does not substantially limit major life activities but that is treated by an air carrier as constituting such a limitation;

(2) Has a physical or mental impairment that substantially limits a major life activity only as a result of the attitudes of others toward such an impairment; or

(3) Has none of the impairments set forth in this definition but is treated by an air carrier as having such an impairment.

Indirect air carrier means a person not directly involved in the operation of an aircraft who sells air transportation services to the general public other than as an authorized agent of an air carrier.

Qualified individual with a disability means a individual with a disability who—

(a) With respect to accompanying or meeting a traveler, use of ground transportation, using terminal facilities, or obtaining information about schedules, fares or policies, takes those actions necessary to avail himself or herself of facilities or services offered by an air carrier to the general public, with reasonable accommodations, as needed, provided by the carrier;

(b) With respect to obtaining a ticket for air transportation on an air carrier, offers, or makes a good faith attempt to offer, to purchase or otherwise validly to obtain such a ticket;

(c) With respect to obtaining air transportation, or other services or accommodations required by this part:

(1) Purchases or possesses a valid ticket for air transportation on an air carrier and presents himself or herself at the airport for the purpose of traveling on the flight for which the ticket has been purchased or obtained; and

(2) Meets reasonable, nondiscriminatory contract of carriage requirements applicable to all passengers;

Schedule air service means any flight scheduled in the current edition of the *Official Airline Guide*, the carrier's published schedule, or the computer reservation system used by the carrier.

§ 382.7 General prohibition of discrimination.

(a) A carrier shall not, directly or through contractual, licensing, or other arrangements:

(1) Discriminate against any otherwise qualified individual with a disability, by reason of such disability, in the provision of air transportation;

(2) Require an individual with a disability to accept special services (including, but not limited to, preboarding) not requested by the passenger;

(3) Exclude a qualified individual with a disability from or deny the person the benefit of any air transportation or related services that are available to other persons, even if there are separate or different services available for individuals with a disability except when specifically permitted by another section of this part; or,

(4) Take any action adverse to an individual because of the individual's assertion, on his or her own behalf or through or behalf of others, of rights protected by this part or the Air Carrier Access Act.

(b) If an indirect air carrier provides facilities or services for passengers that are covered for other carriers by sections §§ 382.21–382.55, the indirect air carrier shall do so in a manner consistent with those sections.

(c) Carriers shall, in addition to meeting the other requirements of this part, modify policies, practices, and facilities as needed to ensure nondiscrimination, consistent with the standards of section 504 of the Rehabilitation Act, as amended. Carriers are not required to make modifications that would constitute an undue burden or would fundamentally alter their program.

[55 FR 8046, Mar. 6, 1990, as amended by Doc. No. OST–96–1880, 63 FR 10535, Mar. 4, 1998; 65 FR 352, Jan. 5, 2000]

§ 382.9 Assurances from contractors.

Carriers' contracts with contractors who provide services to passengers, including carriers' agreements of appointment with travel agents (excluding travel agents who are not U.S. citizens who provide services to air carriers outside the United States, its territories and commonwealths), shall include a clause assuring:

(a) Nondiscrimination on the basis of disability, consistent with this part, by such contractors in activities performed on behalf of the carriers; and

(b) That contractor employers will comply with directives issued by carrier complaints resolution officials (CROs) under § 382.67.

§§ 382.11–382.19 [Reserved]

Subpart B—Requirements Concerning Facilities

§ 382.21 Aircraft accessibility.

(a) The following requirements apply to new aircraft operated under 14 CFR part 121 and ordered by the carrier after the effective date of this part or delivered to the carrier more than two

years after the effective date of this part:

(1)(i) Aircraft with 30 or more passenger seats on which passenger aisle seats have armrests shall have movable aisle armrests on at least one-half of passenger aisle seats.

(ii) Such armrests are not required to be provided on aisle seats on which a movable armrest is not feasible or aisle seats which a passenger with a mobility impairment is precluded from using by an FAA safety rule.

(iii) For aircraft equipped with movable aisle armrests as required by this paragraph, carriers shall configure cabins, or establish administrative systems, to ensure that an individuals with mobility impairments or other individuals with a disability can readily obtain seating in rows with movable aisle armrests.

(2) Aircraft with 100 or more passenger seats shall have a priority space in the cabin designated for stowage of at least one folding wheelchair;

(3) Aircraft with more than one aisle in which lavatories are provided shall include at least one accessible lavatory. This lavatory shall permit a qualified individual with a disability to enter, maneuver within as necessary to use all lavatory facilities, and leave, by means of the aircraft's on-board wheelchair. The accessible lavatory shall afford privacy to persons using the on-board wheelchair equivalent to that afforded ambulatory users. The lavatory shall provide door locks, accessible call buttons, grab bars, faucets and other controls, and dispensers usable by qualified individuals with a disability, including wheelchair users and persons with manual impairments;

(4)(i) Aircraft with more than 60 passenger seats having an accessible lavatory, whether or not required to have such a lavatory by paragraph (a)(3) of this section, shall be equipped with an operable on-board wheelchair for the use of passengers.

(ii) The carrier shall ensure that an operable on-board wheelchair is provided for a flight using an aircraft with more than 60 passenger seats on the request (with advance notice as provided in §382.33(b)(8)) of a qualified individual with a disability who represents to the carrier that he or she is able to use an inaccessible lavatory but is unable to reach the lavatory from a seat without the use of an on-board wheelchair.

(iii) On-board wheelchairs shall include footrests, armrests which are movable or removable, adequate occupant restraint systems, a backrest height that permits assistance to passengers in transferring, structurally sound handles for maneuvering the occupied chair, and wheel locks or another adequate means to prevent chair movement during transfer or turbulence. The chair shall be designed to be compatible with the maneuvering space, aisle width, and seat height of the aircraft on which it is to be used, and to be easily pushed, pulled, and turned in the cabin environment by carrier personnel.

(b)(1) Except as provided in paragraph (b)(2) of this section, aircraft in service on the effective date of this part shall not be required to be retrofitted for the sole purpose of enhancing accessibility.

(2) Each carrier, within two years of the effective date of this part, shall comply with the provisions of paragraph (a)(4) of this section with respect to all aircraft with more than 60 passenger seats operated under 14 CFR part 121.

(c) Whenever an aircraft operated under 14 CFR part 121 which does not have the accessibility features set forth in paragraph (a) of this section undergoes replacement of cabin interior elements or lavatories, or the replacement of existing seats with newly manufactured seats, the carrier shall meet the requirements of paragraph (a) of this section with respect to the affected feature(s) of the aircraft.

(d) Aircraft operated under 14 CFR part 121 with fewer than 30 passenger seats (with respect to the requirements of paragraph (a)(1) of this section), fewer than 100 passenger seats (with respect to the requirements of paragraph (a)(2) of this section) or 60 or fewer passenger seats (with respect to the requirements of paragraph (a)(4) of this section), and aircraft operated under 14 CFR part 135, shall comply with the requirements of this section to the extent not inconsistent with structural, weight and balance, operational and interior configuration limitations.

(e) Any replacement or refurbishing of the aircraft cabin shall not reduce existing accessibility to a level below that specified in this part.

(f) Carriers shall maintain aircraft accessibility features in proper working order.

§ 382.23 Airport facilities.

(a) This section applies to all terminal facilities and services owned, leased, or operated on any basis by an air carrier at a commercial service airport, including parking and ground transportation facilities.

(b) Air carriers shall ensure that the terminal facilities and services subject to this section shall be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Air carriers shall be deemed to comply with this Air Carrier Access Act obligation if they meet requirements applying to places of public accommodation under Department of Justice (DOJ) regulations implementing Title III of the Americans with Disabilities Act (ADA).

(c) The carrier shall ensure that there is an accessible path between the gate and the area from which aircraft are boarded.

(d) Systems of inter-terminal transportation, including, but not limited to, shuttle vehicles and people movers, shall comply with applicable requirements of the Department of Transportation's ADA rule.

(e) The Americans with Disabilities Act Accessibility Guidelines (ADAAGs), including section 10.4 concerning airport facilities, shall be the standard for accessibility under this section.

(f) Contracts or leases between carriers and airport operators concerning the use of airport facilities shall set forth the respective responsibilities of the parties for the provision of accessible facilities and services to individuals with disabilities as required by this part for carriers and applicable section 504 and ADA rules of the Department of Transportation and Department of Justice for airport operators.

[Amdt. 6, 61 FR 56422, Nov. 1, 1996]

§§ 382.25–382.29 [Reserved]

Subpart C—Requirements for Services

§ 382.31 Refusal of transportation.

(a) Unless specifically permitted by a provision of this part, a carrier shall not refuse to provide transportation to a qualified individual with a disability on the basis of his or her disability.

(b) A carrier shall not refuse to provide transportation to a qualified individual with a disability solely because the person's disability results in appearance or involuntary behavior that may offend, annoy, or inconvenience crewmembers or other passengers.

(c) A carrier shall not refuse to provide transportation to qualified individuals with a disability by limiting the number of such persons who are permitted to travel on a given flight.

(d) Carrier personnel, as authorized by 49 U.S.C. 1511, 14 CFR 91.8, or 14 CFR 121.533, may refuse to provide transportation to any passenger on the basis of safety, and may refuse to provide transportation to any passenger whose carriage would violate the Federal Aviation Regulations. In exercising this authority, carrier personnel shall not discriminate against any qualified individual with a disability on the basis of disability and their actions shall not be inconsistent with the provisions of this part. In the event that such action is inconsistent with the provisions of this part, the carrier shall be subject to remedies provided under § 382.65.

(e) When a carrier refuses to provide transportation to any person on a basis relating to the individual's disability, the carrier shall specify in writing to the person the basis for the refusal, including, where applicable, the reasonable and specific basis for the carrier's opinion that transporting the person would or might be inimical to the safety of the flight. This written explanation shall be provided within 10 calendar days of the refusal of transportation.

§ 382.33 Advance notice requirements.

(a) Except as provided in paragraph (b) of this section, a carrier shall not require a qualified individual with a

disability to provide advance notice of his or her intention to travel or of his or her disability as a condition of receiving transportation or of receiving services or accommodations required by this part.

(b) A carrier may require up to 48 hours advance notice and one-hour advance check-in concerning a qualified individual with a disability who wishes to receive any of the following services, types of equipment, or accommodations:

(1) Medical oxygen for use on board the aircraft, if this service is available on the flight;

(2) Carriage of an incubator, if this service is available on the flight;

(3) Hook-up for a respirator to the aircraft electrical power supply, if this service is available on the flight;

(4) Accommodation for a passenger who must travel in a stretcher, if this service is available on the flight;

(5) Transportation for an electric wheelchair on a flight scheduled to be made with an aircraft with fewer than 60 seats;

(6) Provision by the carrier of hazardous materials packaging for a battery for a wheelchair or other assistive device;

(7) Accommodation for a group of ten or more qualified individuals with a disability, who make reservations and travel as a group; and

(8) Provision of an on-board wheelchair on an aircraft that does not have an accessible lavatory.

(c) If a passenger does not meet advance notice or check-in requirements established by a carrier consistent with this section, the carrier shall nonetheless provide the service, equipment, or accommodation if it can do so by making a reasonable effort, without delaying the flight.

(d) Carriers' reservation and other administrative systems shall ensure that when advance notice is provided by qualified individuals with a disability as provided by this section, the notice is recorded and properly transmitted to operating employees responsible for providing the accommodation concerning which notice was provided.

(e) If the qualified individual with a disability provides the notice required by the carrier for a service under paragraph (b) of this section, the carrier shall ensure that the requested service is provided.

(f) If a qualified individual with a disability provides advance notice to a carrier, and the individual is forced to change to the flight of a different carrier because of the cancellation of the original flight or the substitution of inaccessible equipment, the first carrier shall, to the maximum extent feasible, provide assistance to the second carrier in providing the accommodation requested by the individual from the first carrier.

§ 382.35 Attendants.

(a) Except as provided in this section, a carrier shall not require that a qualified individual with a disability travel with an attendant as a condition of being provided air transportation. A concern on the part of carrier personnel that a individual with a disability may need to use inaccessible lavatory facilities or may otherwise need extensive special assistance for personal needs which carrier personnel are not obligated to provide is not a basis on which the carrier may require an attendant.

(b) A carrier may require that a qualified individual with a disability meeting any of the following criteria travel with an attendant as a condition of being provided air transportation, if the carrier determines that an attendant is essential for safety:

(1) A person traveling in a stretcher or incubator. The attendant for such a person must be capable of attending to the passenger's in-flight medical needs;

(2) A person who, because of a mental disability, is unable to comprehend or respond appropriately to safety instructions from carrier personnel, including the safety briefing required by 14 CFR 121.571(a)(3) and (a)(4) or 14 CFR 135.117(b);

(3) A person with a mobility impairment so severe that the person is unable to assist in his or her own evacuation of the aircraft;

(4) A person who has both severe hearing and severe vision impairments, if the person cannot establish some means of communication with carrier personnel, adequate to permit transmission of the safety briefing required

by 14 CFR 121.571(a)(3) and (a)(4) or 14 CFR 135.117(b).

(c) If the carrier determines that a person meeting the criteria of paragraph (b)(2), (b)(3) or (b)(4) of this section must travel with an attendant, contrary to the individual's self-assessment that he or she is capable of traveling independently, the carrier shall not charge for the transportation of the attendant.

(d) If, because there is not a seat available on a flight for an attendant whom the carrier has determined to be necessary, an individual with a disability with a confirmed reservation is unable to travel on the flight, the individual with a disability shall be eligible for denied boarding compensation under 14 CFR part 250.

(e) For purposes of determining whether a seat is available for an attendant, the attendant shall be deemed to have checked in at the same time as the individual with a disability.

§ 382.37 Seat assignments.

(a) Carriers shall not exclude any qualified individual with a disability from any seat in an exit row or other location or require that a qualified individual with a disability sit in any particular seat, on the basis of disability, except in order to comply with the requirements of an FAA safety regulation or as provided in this section.

(b) If a person's disability results in involuntary active behavior that would result in the person properly being refused transportation under § 382.31, and the safety problem could be mitigated to a degree that would permit the person to be transported consistent with safety if the person is seated in a particular location, the carrier shall offer the person that particular seat location as an alternative to being refused transportation.

(c) If a service animal cannot be accommodated at the seat location of the qualified individual with a disability whom the animal is accompanying (see § 382.55(a)(2)), the carrier shall offer the passenger the opportunity to move with the animal to a seat location, if present on the aircraft, where the animal can be accommodated, as an alternative to requiring that the animal travel with checked baggage.

§ 382.38 Seating accommodations.

(a) On request of an individual who self-identifies to a carrier as having a disability specified in this paragraph, the carrier shall provide the following seating accommodations, subject to the provisions of this section:

(1) For a passenger who uses an aisle chair to access the aircraft and who cannot readily transfer over a fixed aisle armrest, the carrier shall provide a seat in a row with a movable aisle armrest.

(2) The carrier shall provide a seat next to a passenger traveling with a disability for a person assisting the individual in the following circumstances:

(i) When an individual with a disability is traveling with a personal care attendant who will be performing a function for the individual during the flight that airline personnel are not required to perform (e.g., assistance with eating);

(ii) When an individual with a vision impairment is traveling with a reader/assistant who will be performing functions for the individual during the flight; or

(iii) When an individual with a hearing impairment is traveling with an interpreter who will be performing functions for the individual during the flight.

(3) For an individual traveling with a service animal, the carrier shall provide, as the individual requests, either a bulkhead seat or a seat other than a bulkhead seat.

(4) For a person with a fused or immobilized leg, the carrier shall provide a bulkhead seat or other seat that provides greater legroom than other seats, on the side of an aisle that better accommodates the individual's disability.

(b) A carrier that provides advance seat assignments shall comply with the requirements of paragraph (a) of this section by any of the following methods:

(1) The carrier may ''block'' an adequate number of the seats used to provide the seating accommodations required by this section.

(i) The carrier shall not assign these seats to passengers not needing seating accommodations provided under this

paragraph until 24 hours before the scheduled departure of the flight.

(ii) At any time up until 24 hours before the scheduled departure of the flight, the carrier shall assign a seat meeting the requirements of this section to an individual who requests it.

(iii) If an individual with a disability does not make a request at least 24 hours before the scheduled departure of the flight, the carrier shall meet the individual's request to the extent practicable, but is not required to reassign a seat assigned to another passenger in order to do so.

(2) The carrier may designate an adequate number of the seats used to provide seating accommodations required by this section as ''priority seats'' for individuals with disabilities.

(i) The carrier shall provide notice that all passengers assigned these seats (other than passengers with disabilities listed in paragraph (a) of this section) are subject to being reassigned to another seat if necessary to provide a seating accommodation required by this section. The carrier may provide this notice through its computer reservation system, verbal information provided by reservation personnel, ticket notices, gate announcements, counter signs, seat cards or notices, frequent-flier literature, or other appropriate means.

(ii) The carrier shall assign a seat meeting the requirements of this section to an individual who requests the accommodation and checks in at least one hour before the scheduled departure of the flight. If all designated priority seats that would accommodate the individual have been assigned to other passengers, the carrier shall reassign the seats of the other passengers as needed to provide the requested accommodation.

(iii) If the individual with a disability does not check in at least an hour before the scheduled departure of the flight, the carrier shall meet the individual's request to the extent practicable, but is not required to reassign a seat assigned to another passenger in order to do so.

(c) On request of an individual who self-identifies to a carrier as having a disability other than one in the four categories listed in paragraph (a) of this section and as needing a seat assignment accommodation in order to readily access and use the carrier's air transportation services, a carrier that assigns seats in advance shall provide such an accommodation, as described in this paragraph.

(1) A carrier that complies with paragraph (a) this section through the ''seat-blocking'' mechanism of paragraph (b)(1) of this section shall implement the requirements of this paragraph as follows:

(i) When the passenger with a disability not described in paragraph (a) of this section makes a reservation more than 24 hours before the scheduled departure time of the flight, the carrier is not required to offer the passenger one of the seats blocked for the use of passengers with disabilities listed under paragraph (a) of this section.

(ii) However, the carrier shall assign to the passenger any seat, not already assigned to another passenger, that accommodates the passenger's needs, even if that seat is not available for assignment to the general passenger population at the time of the request.

(2) A carrier that complies with this section through the ''designated priority seats'' mechanism of paragraph (b)(2) of this section shall implement the requirements of this paragraph as follows:

(i) When a passenger with a disability not described in paragraph (a) of this section makes a reservation, the carrier shall assign to the passenger any seat, not already assigned to another passenger, that accommodates the passenger's needs, even if that seat is not available for assignment to the general passenger population at the time of the request.

(ii) If such a passenger is assigned to a designated priority seat, he or she is subject to being reassigned to another seat as provided in paragraph (b)(2) of this section.

(d) A carrier that does not provide advance seat assignments shall provide seating accommodations for persons described in paragraphs (a) and (c) of this section by allowing them to board the aircraft before other passengers, including other ''pre-boarded'' passengers, so that the individuals needing seating accommodations can select

seats that best meet their needs if they have taken advantage of the opportunity to pre-board.

(e) A carrier may comply with the requirements of this section through an alternative method not specified in paragraphs (b) through (d) of this section. A carrier wishing to do so shall obtain the written concurrence of the Department of Transportation (Office of the Secretary) before implementing the alternative method.

(f) The carrier shall assign a seat providing an accommodation requested by an individual with a disability, as specified in this section, even if the seat is not otherwise available for assignment to the general passenger population at the time of the individual's request.

(g) If the carrier has already provided a seat to an individual with a disability to furnish an accommodation required by paragraph (a) or (c) of this section, the carrier shall not reassign that individual to another seat in response to a subsequent request from another individual with a disability, without the first individual's consent.

(h) In no case shall any individual be denied transportation on a flight in order to provide accommodations required by this section.

(i) Carriers are not required to furnish more than one seat per ticket or to provide a seat in a class of service other than the one the passenger has purchased.

(j) In responding to requests from individuals for accommodations required by this section, carriers shall comply with FAA safety rules, including those pertaining to exit seating (see 14 CFR 121.585 and 135.129).

(k) Carriers are required to comply with this section beginning September 30, 1998.

[Doc. No. OST–96–1880, 63 FR 10535, Mar. 4, 1998; 63 FR 11954, Mar. 11, 1998]

§ 382.39 Provision of services and equipment.

Carriers shall ensure that qualified individuals with a disability are provided the following services and equipment:

(a) Carriers shall provide assistance requested by or on behalf of qualified individuals with a disability, or offered by air carrier personnel and accepted by qualified individuals with a disability, in enplaning and deplaning. The delivering carrier shall be responsible for assistance in making flight connections and transportation between gates.

(1) This assistance shall include, as needed, the services personnel and the use of ground wheelchairs, boarding wheelchairs, on-board wheelchairs where provided in accordance with this part, and ramps or mechanical lifts.

(2) Boarding shall be by level-entry loading bridges or accessible passenger lounges, where these means are available. Where these means are unavailable, assistance in boarding aircraft with 30 or fewer passenger seats shall be provided as set forth in § 382.40, and assistance in boarding aircraft with 31 or more seats shall be provided as set forth in § 382.40a. In no case shall carrier personnel hand-carry a passenger in order to provide boarding or deplaning assistance (i.e., directly pick up the passenger's body in the arms of one or more carrier personnel to effect a change of level that the passenger needs to enter or leave the aircraft). Hand-carrying of passengers is permitted only for emergency evacuations.

(3) Carriers shall not leave an individual with a disability unattended in a ground wheelchair, boarding wheelchair, or other device, in which the passenger is not independently mobile, for more than 30 minutes.

(b) Carriers shall provide services within the aircraft cabin as requested by or on behalf of individuals with a disability, or when offered by air carrier personnel and accepted by individuals with a disability as follows:

(1) Assistance in moving to and from seats, as part of the enplaning and deplaning processes;

(2) Assistance in preparation for eating, such as opening packages and identifying food;

(3) If there is an on-board wheelchair on the aircraft, assistance with the use of the on-board wheelchair to enable the person to move to and from a lavatory;

(4) Assistance to a semiambulatory person in moving to and from the lavatory, not involving lifting or carrying the person; or

(5) Assistance in loading and retrieving carry-on items, including mobility aids and other assistive devices stowed on board in accordance with § 382.41.

(c) Carriers are not required to provide extensive special assistance to qualified individuals with a disability. For purposes of this section, extensive special assistance includes the following activities:

(1) Assistance in actual eating;

(2) Assistance within the restroom or assistance at the passenger's seat with elimination functions;

(3) Provision of medical services.

[55 FR 8046, Mar. 6, 1990, as amended by Amdt. 6, 61 FR 56422, 56423, Nov. 1, 1996; 62 FR 17, Jan. 2, 1997; 66 FR 22115, May 3, 2001]

§ 382.40 Boarding assistance for small aircraft.

(a) Paragraphs (b) and (c) of this section apply to air carriers conducting passenger operations with aircraft having 19–30 seat capacity at airports with 10,000 or more annual enplanements.

(b) Carriers shall, in cooperation with the airports they serve, provide boarding assistance to individuals with disabilities using mechanical lifts, ramps, or other suitable devices that do not require employees to lift or carry passengers up stairs.

(c)(1) Each carrier shall negotiate in good faith with the airport operator at each airport concerning the acquisition and use of boarding assistance devices. The carrier(s) and the airport operator shall, by no later than September 2, 1997, sign a written agreement allocating responsibility for meeting the boarding assistance requirements of this section between or among the parties. The agreement shall be made available, on request, to representatives of the Department of Transportation.

(2) The agreement shall provide that all actions necessary to ensure accessible boarding for passengers with disabilities are completed as soon as practicable, but no later than December 2, 1998 at large and medium commercial service hub airports (those with 1,200,000 or more annual enplanements); December 2, 1999 for small commercial service hub airports (those with between 250,000 and 1,199,999 annual enplanements); or December 4, 2000 for non-hub commercial service primary airports (those with between 10,000 and 249,999 annual enplanements) . All air carriers and airport operators involved are jointly responsible for the timely and complete implementation of the agreement.

(3) Under the agreement, carriers may require that passengers wishing to receive boarding assistance requiring the use of a lift for a flight using a 19–30 seat aircraft check in for the flight one hour before the scheduled departure time for the flight. If the passenger checks in after this time, the carrier shall nonetheless provide the boarding assistance by lift if it can do so by making a reasonable effort, without delaying the flight.

(4) Boarding assistance under the agreement is not required in the following situations:

(i) Access to aircraft with a capacity of fewer than 19 or more than 30 seats;

(ii) Access to float planes;

(iii) Access to the following 19-seat capacity aircraft models: the Fairchild Metro, the Jetstream 31, and the Beech 1900 (C and D models);

(iv) Access to any other 19-seat aircraft model determined by the Department of Transportation to be unsuitable for boarding assistance by lift on the basis of a significant risk of serious damage to the aircraft or the presence of internal barriers that preclude passengers who use a boarding or aisle chair to reach a non-exit row seat.

(5) When boarding assistance is not required to be provided under paragraph (c)(4) of this section, or cannot be provided as required by paragraphs (b) and (c) of this section for reasons beyond the control of the parties to the agreement (e.g., because of mechanical problems with a lift), boarding assistance shall be provided by any available means to which the passenger consents, except hand-carrying as defined in § 382.39(a)(2) of this part.

(6) The agreement shall ensure that all lifts and other accessibility equipment are maintained in proper working condition.

(d)(1) The training of carrier personnel required by § 382.61 shall include, for those personnel involved in providing boarding assistance, training to proficiency in the use of the boarding

assistance equipment used by the carrier and appropriate boarding assistance procedures that safeguard the safety and dignity of passengers.

(2) Carriers who do not operate aircraft with more than a 19-seat capacity shall ensure that those personnel involved in providing boarding assistance are trained to proficiency in the use of the boarding assistance equipment used by the carrier and appropriate boarding assistance procedures that safeguard the safety and dignity of passengers.

[Amdt. 6, 61 FR 56423, Nov. 1, 1996]

§ 382.40a Boarding assistance for large aircraft.

(a) Paragraphs (b) and (c) of this section apply to air carriers conducting passenger operations with aircraft having a seating capacity of 31 or more passengers at airports with 10,000 or more annual enplanements, in any situation where passengers are not boarded by level-entry loading bridges or accessible passenger lounges.

(b) Carriers shall, in cooperation with the airports they serve, provide boarding assistance to individuals with disabilities using mechanical lifts, ramps, or other suitable devices that do not require employees to lift or carry passengers up stairs.

(c)(1) Each carrier that does not provide passenger boarding by level-entry loading bridges or accessible passenger lounges shall negotiate in good faith with the airport operator at each airport concerning the acquisition and use of boarding assistance devices. The carrier(s) and the airport operator shall, by no later than March 4, 2002, sign a written agreement allocating responsibility for meeting the boarding assistance requirements of this section between or among the parties. The agreement shall be made available, on request, to representatives of the Department of Transportation.

(2) The agreement shall provide that all actions necessary to ensure accessible boarding for passengers with disabilities are completed as soon as practicable, but no later than December 4, 2002. All air carriers and airport operators involved are jointly responsible for the timely and complete implementation of the agreement.

(3) Under the agreement, carriers may require that passengers wishing to receive boarding assistance requiring the use of a lift for a flight check in for the flight one hour before the scheduled departure time for the flight. If the passenger checks in after this time, the carrier shall nonetheless provide the boarding assistance by lift if it can do so by making a reasonable effort, without delaying the flight.

(4) Level-entry boarding assistance under the agreement is not required with respect to float planes or with respect to any widebody aircraft determined by the Department of Transportation to be unsuitable for boarding assistance by lift, ramp, or other device on the basis that no existing boarding assistance device on the market will accommodate the aircraft without a significant risk of serious damage to the aircraft or injury to passengers or employees.

(5) When level-entry boarding assistance is not required to be provided under paragraph (c)(4) of this section, or cannot be provided as required by paragraphs (b) and (c) of this section (e.g., because of mechanical problems with a lift), boarding assistance shall be provided by any available means to which the passenger consents, except hand-carrying as defined in § 382.39 (a)(2).

(6) The agreement shall ensure that all lifts and other accessibility equipment are maintained in proper working condition.

(d) The training of carrier personnel required by § 382.61 shall include, for those personnel involved in providing boarding assistance, training to proficiency in the use of the boarding assistance equipment used by the carrier and appropriate boarding assistance procedures that safeguard the safety and dignity of passengers.

[Doc. No. 1999–6159, 66 FR 22115, May 3, 2001]

§ 382.41 Stowage of personal equipment.

(a) All stowage of qualified individuals with a disability's wheelchairs and other equipment covered by this part in aircraft cabins shall be in accordance with 14 CFR 121.589 and 14 CFR 121.285(c) or 14 CFR 135.87, as applicable.

(b) Carriers shall permit qualified individuals with a disability using personal ventilators/respirators to bring their equipment, including non-spillable batteries that meet the requirements of 49 CFR 173.159(d) and any applicable FAA safety regulations, on board the aircraft and use it.

(c) Carriers shall permit qualified individuals with a disability to stow canes and other assistive devices on board the aircraft in close proximity to their seats, consistent with the requirements of FAA safety regulations for carry-on items.

(d) Carriers shall not, in implementing their carry-on baggage policies, count toward a limit on carry-on items any assistive device brought into the cabin by a qualified individual with a disability.

(e) Carriers shall provide for on-board stowage of passengers' wheelchairs (including collapsible or break-down battery-powered wheelchairs, subject to the provisions of paragraph (g)(5) of this section) as carry-on baggage as follows:

(1) Carriers shall permit the stowage of wheelchairs or components of wheelchairs in overhead compartments and under seats, consistent with the requirements of FAA safety regulations for carry-on items.

(2) In an aircraft in which a closet or other approved stowage area is provided in the cabin for passengers' carry-on items, of a size that will accommodate a folding, collapsible, or break-down wheelchair, the carrier shall designate priority stowage space, as described below, for at least one folding, collapsible, or break-down wheelchair in that area. A individual with a disability who takes advantage of a carrier offer of the opportunity to pre-board the aircraft may stow his or her wheelchair in this area, with priority over the carry-on items brought onto the aircraft by other passengers enplaning at the same airport. A individual with a disability who does not take advantage of a carrier offer of the opportunity to preboard may use the area to stow his or her wheelchair on a first-come, first-served basis along with all other passengers seeking to stow carry-on items in the area.

(3) If an approved stowage area in the cabin is not available for a folding, collapsible, or break-down wheelchair, the wheelchair shall be stowed in the cargo compartment.

(f) When a folding, collapsible, or break-down wheelchair cannot be stowed in the passenger cabin as carry-on baggage, carriers shall provide for the checking and timely return of passengers' wheelchairs and other assistive devices as close as possible to the door of the aircraft, so that passengers may use their own equipment to the extent possible, except where this practice would be inconsistent with DOT regulations governing the transportation of hazardous materials.

(1) At the request of the passenger, the carrier may return wheelchairs or other assistive devices to the passenger at the baggage claim area instead of at the door of the aircraft.

(2) In order to achieve the timely return of wheelchairs, passengers' wheelchairs and other assistive devices shall be among the first items retrieved from the baggage compartment.

(3) Wheelchairs and other assistive devices shall be stowed in the baggage compartment with priority over other cargo and baggage. Where this priority results in passengers' baggage being unable to be carried on the flight, the carrier shall make its best efforts to ensure that the other baggage reaches the passengers' destination within four hours of the scheduled arrival time of the flight.

(g) Whenever baggage compartment size and aircraft airworthiness considerations do not prohibit doing so, carriers shall accept a passenger's battery-powered wheelchair, including the battery, as checked baggage, consistent with the requirements of 49 CFR 175.10(a)(19) and (20) and the provisions of paragraph (f) of this section.

(1) Carriers may require that qualified individuals with a disability wishing to have battery-powered wheelchairs transported on a flight (including in the cabin) check in one hour before the scheduled departure time of the flight. If such an individual checks in after this time, the carrier shall nonetheless carry the wheelchair if it can do so by making a reasonable effort, without delaying the flight.

(2) If the battery on the individual's wheelchair has been labeled by the manufacturer as non-spillable as provided in 49 CFR 173.159(d)(2), or if a battery-powered wheelchair with a spillable battery is loaded, stored, secured and unloaded in an upright position, the carrier shall not require the battery to be removed and separately packaged. Notwithstanding this requirement, carriers may remove and package separately any battery that appears to be damaged or leaking.

(3) When it is necessary to detach the battery from the wheelchair, carriers shall, upon request, provide packaging for the battery meeting the requirements of 49 CFR 175.10(a)(19) and (20) and package the battery. Carriers may refuse to use packaging materials or devices other than those they normally use for this purpose.

(4) Carriers shall not drain batteries.

(5) At the request of a passenger, a carrier shall stow a folding, breakdown or collapsible battery-powered wheelchair in the passenger cabin stowage area as provided in paragraph (e) of this section. If the wheelchair can be stowed in the cabin without removing the battery, the carrier shall not remove the battery. If the wheelchair cannot be stowed in the cabin without removing the battery, the carrier shall remove the battery and stow it in the baggage compartment as provided in paragraph (g)(3) of this section. In this case, the carrier shall permit the wheelchair, with battery removed, to be stowed in the cabin.

(h) Individuals with disabilities shall be permitted to provide written directions concerning the disassembly and reassembly of their wheelchairs.

[55 FR 8046, Mar. 6, 1990, as amended by Doc. No. OST –96–1880, 63 FR 10536, Mar. 4, 1998]

§ 382.43 Treatment of mobility aids and assistive devices.

(a) When wheelchairs or other assistive devices are disassembled by the carrier for stowage, the carrier shall reassemble them and ensure their prompt return to the individual with a disability. Wheelchairs and other assistive devices shall be returned to the passenger in the condition received by the carrier.

(b) With respect to domestic transportation, the baggage liability limits of 14 CFR part 254 do not apply to liability for loss, damage, or delay concerning wheelchairs or other assistive devices. The criterion for calculating the compensation for a lost, damaged, or destroyed wheelchair or other assistive device shall be the original purchase price of the device.

(c) Carriers shall not require qualified individuals with a disability to sign waivers of liability for damage to or loss of wheelchairs or other assistive devices.

[55 FR 8046, Mar. 6, 1990, as amended at 55 FR 12342, Apr. 3, 1990; 64 FR 41783, Aug. 2, 1999]

§ 382.45 Passenger information.

(a) A carrier shall make available, on request, the following information concerning facilities and services related to the provision of air transportation to qualified individuals with a disability. This information shall pertain to the type of aircraft and, where feasible, the specific aircraft scheduled for a specific flight:

(1) The location of seats, if any, with movable armrests and any seats which the carrier, consistent with this part, does not make available to qualified individuals with a disability;

(2) Any limitations on the ability of the aircraft to accommodate qualified individuals with disabilities, including limitations on the availability of boarding assistance to the aircraft, with respect to the departure and destination points and any intermediate stops. The carrier shall provide this information to any passenger who states that he or she uses a wheelchair for boarding, even if the passenger does not explicitly request the information.

(3) Any limitations on the availability of storage facilities, in the cabin or in the cargo bay, for mobility aids or other equipment commonly used by individuals with a disability;

(4) Whether the aircraft has an accessible lavatory.

(b) The following provisions govern the provision of individual safety briefings to qualified individuals with a disability:

(1) Individual safety briefings shall be conducted for any passenger where

required by 14 CFR 121.571 (a)(3) and (a)(4) or 14 CFR 135.117(b);

(2) Carrier personnel may offer an individual briefing to any other passenger;

(3) Individual safety briefings for qualified individuals with a disability shall be conducted as inconspicuously and discreetly as possible;

(4) Carrier personnel shall not require any qualified individual with a disability to demonstrate that he or she has listened to, read, or understood the information presented, except to the extent that carrier personnel impose such a requirement on all passengers with respect to the general safety briefing, and shall not take any action adverse to a qualified individual with a disability on the basis that the person has not ''accepted'' the briefing.

(c) Each carrier shall ensure that qualified individuals with a disability, including those with vision or hearing impairments, have timely access to information the carrier provides to other passengers in the terminal or on the aircraft (to the extent that it does not interfere with crewmembers' safety duties as set forth in FAA regulations) including, but not limited to, information concerning ticketing, flight delays, schedule changes, connections, flight check-in, gate assignments, and the checking and claiming of luggage; *Provided,* That persons who are unable to obtain such information from the audio or visual systems used by carriers in airports or on aircraft shall request the information from carrier personnel. Carriers shall also provide information on aircraft changes that will affect the travel of individuals with a disability.

(d) Carriers shall have, at each airport they use, a copy of this part and shall make it available for review by individuals with a disability on request.

[55 FR 8046, Mar. 6, 1990, as amended by Amdt. 6, 61 FR 56423, Nov. 1, 1996]

§ 382.47 Accommodations for persons with hearing impairments.

(a) Each carrier providing scheduled air service, or charter service under section 401 of the Federal Aviation Act, and which makes available telephone reservation and information service available to the public shall make available a telecommunications device for the deaf (TDD) service to enable persons with hearing impairments to make reservations and obtain information. The TDD service shall be available during the same hours as the telephone service for the general public and the response time for answering calls shall be equivalent. Users of the TDD service shall not be subject to charges for a call that exceed those applicable to other users of the telephone information and reservation service.

(b) In aircraft in which safety briefings are presented to passengers on video screens, the carrier shall ensure that the video presentation is accessible to persons with hearing impairments.

(1) Except as provided in paragraph (b)(2) of this section, the carrier shall implement this requirement by using open captioning or an inset for a sign language interpreter as part of the video presentation.

(2) A carrier may use an equivalent non-video alternative to this requirement only if neither open captioning nor a sign language interpreter inset could be placed in the video presentation without so interfering with it as to render it ineffective or would be large enough to be readable.

(3) Carriers shall implement the requirements of this section by substituting captioned video materials for uncaptioned video materials as the uncaptioned materials are replaced in the normal course of the carrier's operations.

§ 382.49 Security screening of passengers.

(a) Qualified individuals with a disability shall undergo security screening in the same manner, and be subject to the same security requirements, as other passengers. Possession by a qualified individual with a disability of an aid used for independent travel shall not subject the person or the aid to special screening procedures if the person using the aid clears the security system without activating it. *Provided,* That this paragraph shall not prohibit security personnel from examining a mobility aid or assistive device which,

in their judgment, may conceal a weapon or other prohibited item. Security searches of qualified individuals with a disability whose aids activate the security system shall be conducted in the same manner as for other passengers. Private security screenings shall not be required for qualified individuals with a disability to a greater extent, or for any different reason, than for other passengers.

(b) Except as provided in paragraph (c) of this section, if a qualified individual with a disability requests a private screening in a timely manner, the carrier shall provide it in time for the passenger to enplane.

(c) If a carrier employs technology that can conduct an appropriate screening of an individual with a disability without necessitating a physical search of the person, the carrier is not required to provide a private screening.

§ 382.51 Communicable diseases.

(a) Except as provided in paragraph (b) of this section, a carrier shall not take any of the following actions, with respect to a person who is otherwise a qualified individual with a disability, on the basis that the individual has a communicable disease or infection:

(1) Refuse to provide transportation to the person;

(2) Require the person to provide a medical certificate; or

(3) Impose on the person any condition, restriction, or requirement not imposed on other passengers.

(b)(1) The carrier may take the actions listed in paragraph (a) of this section with respect to an individual who has a communicable disease or infection only if the individual's condition poses a direct threat to the health or safety of others.

(2) For purposes of this section, a direct threat means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services.

(3) In determining whether an individual poses a direct threat to the health or safety of others, a carrier must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: the nature, duration, and severity of the risk; that the potential harm to the health and safety of others will actually occur; and whether reasonable modifications of policies, practices, or procedures will mitigate the risk.

(4) In taking actions authorized under this paragraph, carriers shall select the alternative, consistent with the safety and health of other persons, that is least restrictive from the point of view of the passenger with the communicable disease. For example, the carrier shall not refuse to provide transportation to an individual if provision of a medical certificate or reasonable modifications to practices, policies, or procedures will mitigate the risk of communication of the disease to others to an extent that would permit the individual to travel.

(5) If an action authorized under this paragraph results in the postponement of a passenger's travel, the carrier shall permit the passenger to travel at a later time (up to 90 days from the date of the postponed travel) at the fare that would have applied to the passenger's originally scheduled trip without penalty or, at the passenger's discretion, provide a refund for any unused flights, including return flights.

(6) Upon the passenger's request, the carrier shall provide to the passenger a written explanation of any action taken under this paragraph within 10 days of the request.

(c) If a qualified individual with a disability with a communicable disease or infection of the kind described in paragraph (b) of this section presents a medical certificate to the carrier, as provided in § 382.53(c)(2), the carrier shall provide transportation to the individual, unless it is not feasible for the carrier to implement the conditions set forth in the medical certificate as necessary to prevent the transmission of the disease or infection to other persons in the normal course of a flight.

[55 FR 8046, Mar. 6, 1990, as amended by Amdt. 6, 61 FR 56423, Nov. 1, 1996]

§ 382.53 Medical certificates.

(a) Except as provided in this section, a carrier shall not require a person who is otherwise a qualified individual with a disability to have a medical certificate as a condition for being provided transportation.

(b)(1) A carrier may require a medical certificate for a qualified individual with a disability—

(i) Who is traveling in a stretcher or incubator;

(ii) Who needs medical oxygen during a flight, as provided in 14 CFR 121.574; or

(iii) Whose medical condition is such that there is reasonable doubt that the individual can complete the flight safely, without requiring extraordinary medical assistance during the flight.

(2) For purposes of this paragraph, a medical certificate is a written statement from the passenger's physician saying that the passenger is capable of completing a flight safely, without requiring extraordinary medical assistance during the flight.

(c)(1) If a qualified individual with a disability has a communicable disease or infection of the kind described in § 382.51(b), a carrier may require a medical certificate.

(2) For purposes of this paragraph, a medical certificate is a written statement from the passenger's physician saying that the disease or infection would not, under the present conditions in the particular passenger's case, be communicable to other persons during the normal course of a flight. The medical certificate shall state any conditions or precautions that would have to be observed to prevent the transmission of the disease or infection to other persons in the normal course of a flight. It shall be dated within ten days of the date of the flight for which it is presented.

§ 382.55 Miscellaneous provisions.

(a) Carriers shall permit dogs and other service animals used by individuals with a disability to accompany the persons on a flight.

(1) Carriers shall accept as evidence that an animal is a service animal identification cards, other written documentation, presence of harnesses or markings on harnesses, tags, or the credible verbal assurances of the qualified individual with a disability using the animal.

(2) Carriers shall permit a service animal to accompany a qualified individual with a disability in any seat in which the person sits, unless the animal obstructs an aisle or other area that must remain unobstructed in order to facilitate an emergency evacuation.

(3) In the event that special information concerning the transportation of animals outside the continental United States is either required to be or is provided by the carrier, the information shall be provided to all passengers traveling with animals outside the continental United States with the carrier, including those traveling with service animals.

(b) Carriers shall not require qualified individuals with a disability to sit on blankets.

(c) Carriers shall not restrict the movements of individuals with a disability in terminals or require them to remain in a holding area or other location in order to be provided transportation, to receive assistance, or for other purposes, or otherwise mandate separate treatment for individuals with a disability, except as permitted or required in this part.

§ 382.57 Charges for accommodations prohibited.

Carriers shall not impose charges for providing facilities, equipment, or services that are required by this part to be provided to qualified individuals with a disability.

§ 382.59 [Reserved]

Subpart D—Administrative Provisions

§ 382.61 Training.

(a) Each carrier which operates aircraft with more than 19 passenger seats shall provide training, meeting the requirements of this paragraph, for all its personnel who deal with the traveling public, as appropriate to the duties of each employee.

(1) The carrier shall ensure training to proficiency concerning:

(i) The requirements of this part and other DOT or FAA regulations affecting the provision of air travel to individuals with a disability; and

(ii) The carrier's procedures, consistent with this part, concerning the provision of air travel to individuals with a disability, including the proper and safe operation of any equipment used to accommodate individuals with a disability.

(2) The carrier shall also train such employees with respect to awareness and appropriate responses to individuals with a disability, including persons with physical, sensory, mental, and emotional disabilities, including how to distinguish among the differing abilities of individuals with a disability.

(3) The carrier shall consult with organizations representing persons with disabilities in developing its training program and the policies and procedures concerning which carrier personnel are trained.

(4) The carrier shall ensure that personnel required to receive training shall complete the training by the following times:

(i) For crewmembers subject to training required under 14 CFR part 121 or 135, who are employed on the date the carrier's program is established under § 382.63, as part of their next scheduled recurrent training;

(ii) For other personnel employed on the date the carrier's program is established under § 382.63, within 180 days of that date;

(iii) For crewmembers subject to training requirements under 14 CFR part 121 or 135 whose employment in any given position commences after the date the carrier's program is established under § 382.63, before they assume their duties; and

(iv) For other personnel whose employment in any given position commences after the date the carrier's program is established under § 382.63, within 60 days of the date on which they assume their duties.

(5) Each carrier shall ensure that all personnel required to receive training receive refresher training on the matters covered by this section, as appropriate to the duties of each employee, as needed to maintain proficiency.

(6) Each carrier shall provide, or require its contractors to provide, training to the contractors' employees concerning travel by individuals with a disability. This training is required only for those contractor employees who deal directly with the traveling public at airports, and it shall be tailored to the employees' functions. Training for contractor employees shall meet the requirements of paragraphs (a)(1) through (a)(5) of this section.

(7) Current employees of each carrier designated as complaints resolution officials, for purposes of § 382.65 of this part, shall receive training concerning the requirements of this part and the duties of a complaints resolution official within 60 days of the effective date of this part. Employees subsequently designated as complaints resolution officers shall receive this training before assuming their duties under § 382.65. All employees performing the complaints resolution official function shall receive annual refresher training concerning their duties and the provisions of this regulation.

(b) Each carrier operating only aircraft with 19 or fewer passenger seats shall provide training for flight crewmembers and appropriate personnel to ensure that they are familiar with the matters listed in paragraphs (a)(1) and (a)(2) of this section and comply with the requirements of this part.

§ 382.63 Carrier programs.

(a)(1) Each carrier that operates aircraft with more than 19 passenger seats shall establish and implement, within 180 days of the effective date of this part, a written program for carrying out the requirements of this part.

(2) Carriers are not excused from compliance with the provisions of this part during the 180 days before carrier programs are required to be established.

(b) The program shall include the following elements:

(1) The carrier's schedule for training its personnel in compliance with § 382.61;

(2) The carrier's policies and procedures for accommodating individuals with a disability consistent with the requirements of this part.

(c)(1) Major and National carriers (as defined in the DOT publication *Air Carrier Traffic Statistics*), and every U.S. carrier that shares the designator code of a Major or National carrier (as described in 14 CFR 399.88), shall submit their program to the Department for review within 180 days of the effective date of this part.

(2) The Department shall review each carrier's program, which the carrier shall implement without further DOT action at the time it is submitted to the Department.

(3) If the Department determines that any portion of a carrier's plan must be amended, or provisions added or deleted, in order for the carrier to comply with this part, DOT will direct the carrier to make appropriate changes. The carrier shall incorporate these changes into its program and implement them.

(d) Other carriers shall maintain their programs on file, and shall make them available for review by the Department on the Department's request. If, upon such review, the Department determines that any portion of a carrier's plan must be amended, or provisions added or deleted, in order for the carrier to comply with this part, DOT will direct the carrier to make appropriate changes. The carrier shall incorporate these changes into its program and implement them.

§ 382.65 Compliance procedures.

(a) Each carrier providing scheduled service shall establish and implement a complaint resolution mechanism, including designating one or more complaints resolution official(s) (CRO) to be available at each airport which the carrier serves.

(1) The carrier shall make a CRO available to any person who complains of alleged violations of this part during all times the carrier is operating at the airport.

(2) The carrier may make the CRO available via telephone, at no cost to the passenger, if the CRO is not present in person at the airport at the time of the complaint. If a telephone link to the CRO is used, TDD service shall be available so that persons with hearing impairments may readily communicate with the CRO.

(3) Each CRO shall be thoroughly familiar with the requirements of this part and the carrier's procedures with respect to individuals with a disability.

(4) Each CRO shall have the authority to make dispositive resolution of complaints on behalf of the carrier.

(5) When a complaint is made to a CRO, the CRO shall promptly take dispositive action as follows:

(i) If the complaint is made to a CRO before the action or proposed action of carrier personnel has resulted in a violation of a provision of this part, the CRO shall take or direct other carrier personnel to take action, as necessary, to ensure compliance with this part. *Provided,* That the CRO is not required to be given authority to countermand a decision of the pilot-in-command of an aircraft based on safety.

(ii) If an alleged violation of a provision of this part has already occurred, and the CRO agrees that a violation has occurred, the CRO shall provide to the complainant a written statement setting forth a summary of the facts and what steps, if any, the carrier proposes to take in response to the violation.

(iii) If the CRO determines that the carrier's action does not violate a provision of this part, the CRO shall provide to the complainant a written statement including a summary of the facts and the reasons, under this part, for the determination.

(iv) The statements required to be provided in paragraph (a)(5) of this section shall inform the complainant of his or her right to pursue DOT enforcement action under this section. This statement shall be provided in person to the complainant at the airport if possible; otherwise, it shall be forwarded to the complainant within 10 calendar days of the complaint.

(b) Each carrier shall establish a procedure for resolving written complaints alleging violation of the provisions of this part.

(1) A carrier is not required to respond to a complaint postmarked more than 45 days after the date of the alleged violation.

(2) A written complaint shall state whether the complainant has contacted a CRO in the matter, the name of the CRO and the date of the contact, if

available, and include any written response received from the CRO.

(3) The carrier shall make a dispositive written response to a written complaint alleging a violation of a provision of this part within 30 days of its receipt.

(i) If the carrier agrees that a violation has occurred, the carrier shall provide to the complainant a written statement setting forth a summary of the facts and what steps, if any, the carrier proposes to take in response to the violation.

(ii) If the carrier denies that a violation has occurred, the response shall include a summary of the facts and the carrier's reasons, under this part, for the determination.

(iii) The statements required to be provided in paragraph (b)(3) of this section shall inform the complainant of his or her right to pursue DOT enforcement action under this section.

(c) Any person believing that a carrier has violated any provision of this part may contact the following office for assistance: Department of Transportation, Office of Consumer Affairs, 400 7th Street, SW., Washington, DC 20590, (202) 366–2220.

(d) Any person believing that a carrier has violated any provision of this part may file a formal complaint under the applicable procedures of 14 CFR part 302.

§ 382.70 Disability-related complaints received by carriers.

(a) For the purposes of this section, a disability-related complaint means a specific written expression of dissatisfaction received from, or submitted on behalf, of an individual with a disability concerning a difficulty associated with the person's disability, which the person experienced when using or attempting to use an air carrier's or foreign air carrier's services.

(b) This section applies to certificated U.S. carriers and foreign air carriers operating to, from, and in the United States, conducting passenger operations with at least one aircraft having a designed seating capacity of more than 60 passengers. Foreign air carriers are covered by this section only with respect to disability-related complaints associated with any flight segment originating or terminating in the United States.

(c) Carriers shall categorize disability-related complaints that they receive according to the type of disability and nature of complaint. Data concerning a passenger's disability must be recorded separately in the following areas: vision impaired, hearing impaired, vision and hearing impaired, mentally impaired, communicable disease, allergies (*e.g.*, food allergies, chemical sensitivity), paraplegic, quadriplegic, other wheelchair, oxygen, stretcher, other assistive device (cane, respirator, etc.), and other disability. Data concerning the alleged discrimination or service problem related to the disability must be separately recorded in the following areas: refusal to board, refusal to board without an attendant, security issues concerning disability, aircraft not accessible, airport not accessible, advance notice dispute, seating accommodation, failure to provide adequate or timely assistance, damage to assistive device, storage and delay of assistive device, service animal problem, unsatisfactory information, and other.

(d) Carriers shall submit an annual report summarizing the disability-related complaints that they received during the prior calendar year using the form specified in Appendix A to this Part. The first report shall cover complaints received during calendar year 2004 and shall be submitted to the Department of Transportation by January 25, 2005. Carriers shall submit all subsequent reports on the last Monday in January of that year for the prior calendar year. All submissions must be made through the World Wide Web except for situations where the carrier can demonstrate that it would suffer undue hardship if it were not permitted to submit the data via paper copies, disks, or email, and DOT has approved an exception. All fields in the form must be completed; carriers are to enter ''0'' where there were no complaints in a given category. Each annual report must contain the following certification signed by an authorized representative of the carrier: ''I, the undersigned, do certify that this report has been prepared under my direction in accordance with the regulations in

14 CFR Part 382. I affirm that, to the best of my knowledge and belief, this is a true, correct, and complete report.'' Electronic signatures will be accepted.

(e) Carriers shall retain correspondence and record of action taken on all disability-related complaints for three years after receipt of the complaint or creation of the record of action taken. Carriers must make these records available to Department of Transportation officials at their request.

(f)(1) In a code-share situation, each carrier shall comply with paragraphs (c) through (e) of this section for—

(i) Disability-related complaints it receives from or on behalf of passengers with respect to difficulties encountered in connection with service it provides;

(ii) Disability-related complaints it receives from or on behalf of passengers when it is unable to reach agreement with its code-share partner as to whether the complaint involves service it provides or service its code-share partner provides; and

(iii) Disability-related complaints forwarded by another carrier or governmental agency with respect to difficulties encountered in connection with service it provides.

(2) Each carrier shall also forward to its code-share partner disability-related complaints the carrier receives from or on behalf of passengers with respect to difficulties encountered in connection with service provided by its code-sharing partner.

(g) Each carrier, except for carriers in code-share situations, shall comply with paragraphs (c) through (e) of this section for disability-related complaints it receives from or on behalf of passengers as well as disability-related complaints forwarded by another carrier or governmental agency with respect to difficulties encountered in connection with service it provides.

(h) Carriers that do not submit their data via the Web shall use the disability-related complaint data form specified in appendix A to this part when filing their annual report summarizing the disability-related complaints they received. The report shall be mailed, by the dates specified in paragraph (d) of this section, to the following address: U.S. Department of Transportation, Aviation Consumer Protection Division, 400 7th Street, SW., Room 4107, C–75, Washington, DC 20590.

[68 FR 40494, July 8, 2003]

APPENDIX A TO PART 382—DISABILITY COMPLAINT REPORTING FORM

Appendix A – Disability Complaint Reporting Form

Name of Carrier: _____ Submission Date: _____

Contact Person: Period of Data Collection: _____

Name: _____

Telephone # (include country code if outside the U.S.): _____

Email address: _____

Mailing address: _____

Total number of complaints (i.e., incidents): _____

REPORT OF DISABILITY-RELATED COMPLAINT DATA

	Vision Impaired	Hearing Impaired	Vision & Hearing Impaired	Paraplegic	Quadriplegic	Other wheelchair	Oxygen	Stretcher	Other Disability	Other Assistive Device	Mentally Impaired	Communicable Disease	Allergies
Refusal To Board Passenger													
Refusal to Board w/o Attendant													
Security Issues Regarding Disability													
Aircraft Not Accessible													
Airport Not Accessible													
Advance Notice Dispute													

	Seating Accommodation						
	Failure to Provide Assistance						
	Damage to Assistive Device						
	Storage and Delay of Assistive Device						
	Service Animal Problem						
	Unsatisfactory Info						
	Other						

Certification Statement: I, the undersigned, do certify that this report has been prepared under my direction in accordance with the regulations in 14 CFR Part 382. I affirm that, to the best of my knowledge and belief, this is a true, correct, and complete report

Signature: _____

[68 FR 40495, July 8, 2003]

PART 383—CIVIL PENALTIES

Sec.
383.1 Basis and purpose.

383.2 Amount of penalty.

AUTHORITY: Sec. 503, Pub. L. 108–176, 117 Stat. 2490.

SOURCE: 69 FR 41423, July 9, 2004, unless otherwise noted.

§ 383.1 Basis and purpose.

(a) Basis. This part implements the civil penalty provisions of Vision 100—Century of Aviation Reauthorization Act (Pub. L. 108–176; 117 Stat. 2490, December 12, 2003, section 503) (Vision 100). Because this statute revises or reaffirms all civil penalty provisions under 49 U.S.C. 46301, no further adjustments to account for inflation are required under the terms of Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, 104 Stat. 890) and the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, section 31001). The latter requires that federal agencies adjust civil penalties at least every four years to reflect any inflation which may have occurred.

(b) Purpose. This part incorporates the civil penalty liability amounts prescribed in 49 U.S.C. 46301(a), as modified by Vision 100.

§ 383.2 Amount of penalty.

Civil penalties payable to the U.S. Government for violations of Title 49, Chapters 401 through 421, pursuant to 49 U.S.C. 46301(a) as revised by Vision 100, are as follows:

(a) A general civil penalty of not more than $25,000 (or $1,100 for individuals or small businesses) applies to violations of statutory provisions and rules or orders issued under those provisions, other than those listed in paragraph (b) of this section, (see 49 U.S.C. 46301(a)(1));

(b) With respect to small businesses and individuals, notwithstanding the general $1,100 civil penalty, the following civil penalty limits apply:

(1) A maximum civil penalty of $10,000 applies for violations of most provisions of Chapter 401, including the anti-discrimination provisions of sections 40127 (general provision), and 41705 (discrimination against the disabled) and rules and orders issued thereunder (see 49 U.S.C. 46301 (a)(5)(A));

(2) A maximum civil penalty of $5,000 applies for violations of section 41719 and rules and orders issued thereunder (see 49 U.S.C. 46301 (a)(5)(C)); and

(3) A maximum civil penalty of $2,500 applies for violations of section 41712 or consumer protection rules or orders (see 49 U.S.C. 46301 (a)(5)(D)).

SUBCHAPTER E—ORGANIZATION

PART 385—STAFF ASSIGNMENTS AND REVIEW OF ACTION UNDER ASSIGNMENTS

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AUTHORITY: 49 U.S.C. Subtitle I, Chapters 401, 411, 413, 415, 417.

SOURCE: Docket No. T–1, 49 FR 50985, Dec. 31, 1984, unless otherwise noted.

Subpart A—General Provisions

§ 385.1 Definitions.

Department means Department of Transportation.

Petition for review means a petition asking the appropriate Reviewing Official to exercise his or her discretionary right of review of staff action.

Precedent means applicable judicial decisions and decisions by the Department, or by the Board where consistent with Department policy.

Reviewing Official means the Assistant Secretary for Aviation and International Affairs, the General Counsel, or the Director of the Bureau of Transportation Statistics, as appropriate to the subject matter under review, but not with regard to Deputy General Counsel and Administrative Law Judge decisions made under this part.

Staff action means the exercise of a function under Subparts I, II and IV of Subtitle VII of Title 49 of the United States Code (Transportation) by a staff member pursuant to assignment under this part.

Staff members means officers and employees of the Department who are assigned authority under this part.

Statute means Subtitle VII of Title 49 of the United States Code (Transportation).

[Docket No. T–1, 49 FR 50985, Dec. 31, 1984, as amended by Amdt. 1–261, 59 FR 10061, Mar. 3, 1994; 60 FR 66726, Dec. 26, 1995; Doc. No. OST-96-1268, 61 FR 19167, May 1, 1996]

§ 385.2 Applicability.

This part describes the organization of the Department insofar as, pursuant to authority conferred on it by section 40113 of the Statute, the Department has adopted rules herein or elsewhere which make continuing assignments of authority with respect to any of its functions of making orders or other determinations, many of which are not required to be made on an evidentiary record upon notice and hearing or which are not the subject of contest, and Department personnel have been assigned to perform such functions.

Delegations by the Secretary of Transportation to Secretarial Officers and the Director, Bureau of Transportation Statistics (BTS) of functions under Subparts I, II, and IV of the Statute appear in 49 CFR part 1. This part also sets forth the procedures governing discretionary review by the appropriate Reviewing Official of action taken under such assignments. Nothing in this part shall be construed as precluding the Department from issuing, by appropriate order, temporary delegations of authority with respect to any functions described in this part or with respect to any other functions which can be lawfully delegated.

[Docket No. T–1, 49 FR 50985, Dec. 31, 1984, as amended at 60 FR 66726, Dec. 26, 1995; Doc. No. OST-96-1268, 61 FR 19167, May 1, 1996]

§ 385.3 Scope of staff action.

Applications for relief which, pursuant to this part, may be granted by staff members under assigned authority, and proceedings on such requests shall be governed by applicable rules in the same manner as if no assignment had been made (see § 385.5). In such proceedings, each staff member may determine any procedural matters which may arise, including, inter alia, service of documents on additional persons; filing of otherwise unauthorized documents; waivers of procedural requirements; requests for hearing; requests for additional information; dismissal of applications upon the applicant's request, moot applications, or incomplete or otherwise defective applications; and extensions of time. Such determinations, except those which would terminate the matter, shall be subject to review only in connection with review of the staff member's decision on the merits. The dismissal of incomplete or otherwise defective applications under authority set forth in this part shall be without prejudice except where under otherwise applicable law the time for making application has run out or where the defect is not corrected within a reasonable time fixed by the staff member. Under the authority assigned to the staff as set forth in this part to approve, disapprove, grant, or deny, relief may be granted or denied in part and grants may be made subject to lawful and reasonable conditions. Moreover, where applicable, the authority to grant relief also includes authority to renew or extend an existing authorization.

[Doc. T–1, 49 FR 50985, Dec. 31, 1984; Amdt. 1, 50 FR 7170, Feb. 21, 1985]

§ 385.4 Form of staff action.

Unless otherwise specified, staff action shall be by order or informal writing (letters, telegrams, decision marked on copy of application form, etc.). Such orders or informal writings shall contain a recital that action is taken pursuant to authority assigned herein, shall, in cases where there are ''parties or interveners,'' or where there may be an adverse effect upon a person with a substantial interest, contain a brief reference to the right of aggrieved parties to petition the Reviewing Official for review pursuant to applicable procedural rules, including a statement of the time within which petitions must be filed (§ 385.51); shall state whether the filing of a petition shall preclude the action from becoming effective; and shall be in the name of the person exercising the assigned function. They shall contain all findings, determinations and conclusions which would be required or appropriate if they were issued by the Secretary. Upon request, the appropriate Department Official shall attest as Departmental action orders or informal writings issued pursuant to this part which have become the action of the Department (§ 385.52).

[Doc. T–1, 49 FR 50985, Dec. 31, 1984; Amdt. 1, 50 FR 7170, Feb. 21, 1985]

§ 385.5 Procedures prescribed in other regulations.

Procedures set forth in this part do not supersede procedures applicable to matters on which decision has been assigned unless otherwise specifically provided herein: *Provided, however,* That any provisions in other regulations which provide for reconsideration of nonhearing determinations are not applicable to decisions made under authority assigned herein or to decisions made upon review thereof by the Reviewing Official.

§ 385.6 Referral to the Reviewing Official.

When the staff member finds that the public interest so requires, or that, with respect to other than matters requiring immediate action as hereafter specified, there will be insufficient time for discretionary review of his or her decision upon petition, the staff member shall, in lieu of exercising the authority, submit the matter to the Reviewing Official for decision. In any case in which the staff member finds that immediate action is required with respect to any matter assigned herein, the disposition of which is governed by prior precedent and policy, the staff member may take appropriate action and specify that the filing of a petition for review shall not preclude such action from becoming effective.

§ 385.7 Exercise of authority by superiors.

Any assignment of authority to a staff member other than the Chief Administrative Law Judge, the Administrative Law Judge, and the Deputy General Counsel, shall also be deemed to be made, severally, to each such staff member's respective superiors. In accordance with the Department's principle of management responsibility, the superior may choose to exercise the assigned power personally. Moreover, the Secretary may at any time exercise any authority assigned herein.

§ 385.8 Exercise of authority in "acting" capacity.

Unless the assignment provides otherwise, staff members serving in an ''acting'' capacity may exercise the authority assigned to the staff members for whom they are acting.

Subpart B—Assignment of Functions to Staff Members

§ 385.10 Authority of Chief Administrative Law Judge, Office of Hearings.

The Chief Administrative Law Judge has authority to:

(a) Consolidate, upon recommendation of the Director, Office of International Aviation (or such staff member of the Office of International Aviation as he or she may designate), into one proceeding cases involving the investigation of a tariff or of complaints concerned with related tariffs.

(b) With respect to matters to be decided after notice and hearing:

(1) Dismiss applications or complaints (except those falling under subpart D of part 302 of this chapter (Procedural Regulations)) when such dismissal is requested or consented to by the applicant or complainant, or where such party has failed to prosecute such application or complaint;

(2) Dismiss proceedings upon his or her finding that the proceeding has become moot or that no further basis for continuation exists; and

(3) Dismiss an application subject to dismissal as stale under part 302 of this chapter.

[49 FR 50985, Dec. 31, 1984, as amended at 55 FR 20448, May 17, 1990; 65 FR 6457, Feb. 9, 2000]

§ 385.11 Authority of the Administrative Law Judges, Office of Hearings.

The Administrative Law Judges, Office of Hearings, have authority to take the following actions in matters to which they are respectively assigned:

(a) Grant or deny intervention in formal proceedings.

(b) With respect to matters to be decided after notice and hearing, dismiss applications or complaints (except those falling under subpart D of part 302 of this chapter (Procedural Regulations)) when such dismissal is requested or consented to by the applicant or complainant, or where such party has failed to prosecute such application or complaint.

(c) Grant requests for consolidation of applications for route authority within the scope of the proceeding before him or her, and deny requests for consolidation of applications for route authority not within the scope of the proceeding.

(d) Approve or disapprove proposed settlements of enforcement proceedings submitted under § 302.215 of this chapter.

[Docket No. T–1, 49 FR 50985, Dec. 31, 1984, as amended at 65 FR 6457, Feb. 9, 2000]

§ 385.12 Authority of the Director, Office of Aviation Analysis.

The Director, Office of Aviation Analysis, has authority:

(a) With respect to applications filed under section 41102 to engage in interstate or foreign scheduled or charter air transportation, section 41103 to engage in all-cargo air transportation, or section 41738 to engage in certain commuter air transportation:

(1) To issue an order stating the Department's intention to process the application through show-cause procedures or other expedited procedures, where that course of action is clear under current policy and precedent.

(2) To issue an order to show cause proposing to grant such application in those cases where no objections to the application have been filed, and where the Department has already found the applicant to be fit, willing and able to provide service of the same basic scope and character.

(3) To issue an order, subject to any Presidential review required under section 41307 of the Statute, making final an order to show cause issued under paragraph (a)(2) of this section, where no objections to the order to show cause have been filed.

(4) To issue an order dismissing an application:

(i) When dismissal is requested or consented to by the applicant;

(ii) For lack of prosecution; or

(iii) When the application has become moot.

(5) To review Air Carrier Certificates and Operations Specifications issued by the Federal Aviation Administration to carriers that have been granted certificate or commuter air carrier authority, and information concerning those carriers' fitness to operate under that authority that emerged following the issuance of orders establishing their fitness, and—

(i) To amend orders issuing the certificate or commuter air carrier authority to advance the effective dates of the authority if the review is satisfactory;

(ii) To stay the effectiveness of such orders for up to 30 days if the review is unsatisfactory;

(iii) To lift the stay of effectiveness imposed under paragraph (a)(5)(ii) of this section when the unsatisfactory conditions that required issuance of the stay have been resolved; or

(iv) To issue notices announcing the effective date of the certificate or commuter air carrier authority.

(b) To approve or deny applications of air carriers:

(1) For exemptions from section 41102 or 41103 of the Statute, and from orders issued thereunder, and from applicable regulations under this chapter where the course of action is clear under current policy or precedent.

(2) For waivers of the Department's filing fee requirements under part 389 of this chapter, in accordance with current policy or precedent.

(3) For relief under section 40109 of the Statute to hold out, arrange, and coordinate the operation of air ambulance flights as indirect air carriers in accordance with established precedent.

(c) To waive the deadlines in § 377.10(c) of this chapter for filing applications for the renewal of temporary authorizations when, in the Director's judgment, the public interest would be served. The provisions of § 377.10(d) of this chapter shall apply in the same manner as to a timely filed application.

(d) With respect to air carrier names:

(1) To register names and trade names of certificated and commuter air carriers pursuant to part 215 of this chapter.

(2) To reissue certificates issued under sections 41102 or 41103 of the Statute when revisions thereof are necessitated by a change in the name of a carrier, provided that no issue of substance concerning the operating authority of the carrier is involved.

(e) To approve, deny, or cancel registrations filed with the Department by air taxi operators and commuter air carriers pursuant to part 298 of this chapter.

(f) With respect to Canadian charter air taxi operations:

(1) To approve applications for registration, or require that a registrant submit additional information, or reject an application for registration for failure to comply with part 294 of this chapter.

(2) To cancel, revoke, or suspend the registration of any Canadian charter

air taxi operator using small aircraft registered under part 294 of this chapter that:

(i) Filed with the Department a written notice that it is discontinuing operations;

(ii) No longer is designated by its home government to operate the services contemplated by its registration;

(iii) Holds a foreign air carrier permit under section 41302 to operate large aircraft charters between the United States and Canada;

(iv) Fails to keep its filed certificate of insurance current;

(v) No longer is substantially owned or effectively controlled by persons who are:

(A) Citizens of Canada;

(B) The Government of Canada; or

(C) A combination of both; or

(vi) No longer holds current effective Operations Specifications issued by the FAA.

(3) To grant or deny requests for a waiver of part 294 of this chapter, where grant or denial of the request is in accordance with current policy or precedent.

(g) To approve certificates of insurance filed with the Department on behalf of U.S. and foreign air carriers in accordance with the provisions of part 205 of this chapter.

(h) With respect to foreign air freight forwarders:

(1) To approve applications for registration, or require that a registrant submit additional information, or reject an application for registration for failure to comply with part 297 of this chapter.

(2) To cancel the registration of any foreign air freight forwarder or foreign cooperative shippers association that files a written notice with the Department indicating the discontinuance of common carrier activities.

(3) To exempt the registrant from the requirement contained in § 297.20 of this chapter that substantial ownership and effective control reside in citizens of the country that the applicant claims as its country of citizenship, where the course of action is clear under current precedent or policies.

(i) With respect to charter operations:

(1) To grant or deny requests for waiver of parts 207, 208, 212, 372, and 380 of this chapter, where grant or denial of the request is in accordance with established precedent.

(2) To approve or disapprove direct air carrier escrow agreements filed pursuant to parts 207, 208, and 212 of this chapter.

(3) To reject or accept Public Charter prospectuses filed under part 380 of this chapter.

(4) With respect to the procedures for the registration of foreign charter operators under subpart F of part 380 of this chapter:

(i) To approve applications for registration, or require that a registrant submit additional information, or reject an application for registration for failure to comply with part 380 of this chapter.

(ii) To notify the applicant that its application will require further analysis or procedures, or is being referred to the Assistant Secretary for Aviation and International Affairs for formal action.

(iii) To cancel the registration of a foreign charter operator if it files a written notice with the Department that it is discontinuing its charter operations.

(iv) To waive provisions of subpart F of part 380 of this chapter.

(j) With respect to mail rates:

(1) To issue show-cause orders proposing to make modifications of a technical nature in the mail rate formula applicable to temporary or final service mail rate orders.

(2) To issue final orders establishing temporary and final service mail rates:

(i) In those cases where no objection has been filed following release of the show-cause order, and where the rates established are the same as those proposed in the show-cause order; and

(ii) In those cases where it is necessary to make modifications of a technical nature in the rates proposed in the show-cause order.

(3) To issue final orders amending mail rate orders of air carriers to reflect changes in the names of the carriers subject to the orders.

(4) To issue a letter, in the case of air mail contracts filed with the Department under part 302 of this chapter

against which no complaints have been filed, stating that the contract will not be disapproved by the Department and may become effective immediately.

(k) With respect to essential air service proceedings:

(1) To establish procedural dates.

(2) To issue orders setting interim rates of compensation for carriers required to provide essential air service.

(3) To issue orders approving a carrier's alternate service pattern if:

(i) The resulting level of service at the eligible place would be equal to or greater than the level of service earlier determined to be essential for that place;

(ii) The community concerned does not object to the carrier's implementation of the alternate service pattern; and

(iii) The carrier is not receiving a subsidy for the service or implementation of the alternate service pattern would not increase the carrier's subsidy.

(4) To issue orders adjusting the operational and/or financial unit rates of the payout formula for a carrier receiving subsidy under section 41732 of the Statute where the adjustment will not increase the total amount of compensation that the carrier will receive.

(5) To renew, up to five times in succession, an order under section 41734 of the Statute to an air carrier to continue providing essential air service while the Department attempts to find a replacement carrier.

(6) To request service and subsidy proposals from carriers interested in providing essential air service to an eligible place that is not receiving essential air service and for which no appeal of its essential air service determination is pending.

(7) To request service and subsidy proposals from carriers interested in providing essential air service when no proposals were filed in response to a previous request for proposals.

(8) To issue final orders establishing interim or final subsidy rates under section 41732 or final adjustments of compensation for continued service under section 41732 in those cases where no objection has been filed to a show-cause order, and where the rates established are the same as or less than those proposed in the approved show-cause order.

(9) With respect to provisions for terminations, suspensions, or reductions of service under part 323 of this chapter:

(i) To require any person who files a notice, objection, or answer to supply additional information.

(ii) To require service of a notice, objection, or answer upon any person.

(iii) To accept late-filed objections or answers, upon motion, for good cause shown.

(iv) To extend the time for filing objections for answers, when the initial notice has been filed earlier than required under § 323.5.

[Doc. No. OST-96-1268, 61 FR 19167, May 1, 1996]

§ 385.13 Authority of the Director, Office of International Aviation.

The Director, Office of International Aviation, has authority to:

(a) Approve or deny applications for exemptions, where the course of action is clear under current policy or precedent:

(1) For air carriers, from chapter 411 of the Statute and from certificates and orders issued under that chapter;

(2) For foreign air carriers, from section 41301 and from permits and related orders issued under chapter 413;

(3) For air carriers and foreign air carriers, from chapter 415 and from orders issued and tariffs filed under that chapter; and

(4) From orders and applicable regulations under this chapter.

(b) With respect to applications for certificates of public convenience and necessity under section 41102 and foreign air carrier permits under section 41302:

(1) Issue an order to show cause proposing to grant such application in those cases where no objections to the application have been filed, and the applicant has already been found fit, willing, and able by the Department to provide service of the same basic scope and character;

(2) Issue an order stating the Department's intention to process the application through show-cause procedures;

(3) Issue an order, subject to Presidential review under section 41307, to

make final an order to show cause issued under the circumstances of paragraph (b)(1) of this section, where no objections to the show-cause order have been filed; and

(4) Reissue certificates of public convenience and necessity and foreign air carrier permits when revisions are necessitated by a change in the name of the carrier or of points specified, provided that no issue of substance concerning the operating authority of a carrier is involved.

(c) With respect to an application under section 41102 for a certificate to engage in foreign scheduled air transportation, issue an order instituting an investigation of the applicant's fitness and other issues related to the application, where no person has already filed an objection to the application and the investigation will be conducted by oral hearing procedures.

(d) Issue an order to show cause why a foreign air carrier permit should not be revoked under section 41304 when:

(1) The government of the permit holder's home country represents that it does not object to revocation of the permit; and

(2) The permit holder—

(i) Has ceased operations; or

(ii) No longer holds valid authority from its own government to operate the services in its permit.

(e) Approve or disapprove requests by foreign air carriers for authorizations provided for, or waivers of restrictions contained, in any agreement or in any permit or order of the Department, when no person disclosing a substantial interest objects or where the course of action is clear under current policy or precedent.

(f) Waive the deadlines in §377.10(c) of this chapter for filing applications for renewal of unexpired temporary authorizations when, in the Director's judgment, the public interest would be served. The provisions of §377.10(d) of this chapter shall apply in the same manner as to a timely filed application.

(g) Extend the time allowed for action on a complaint of unfair or discriminatory practices, filed under section 41310, for an additional period or periods of 30 days each, not to exceed the 180th day after filing unless that deadline has been waived by the complainant.

(h) Grant or deny applications for statements of authorization under parts 207, 208, and 212 of this chapter, and requests for waivers of the requirements of parts 207, 208, and 212 of this chapter, where grant or denial of the request is in accordance with current policy or precedent.

(i) Approve or disapprove charter trips by foreign air carriers, and those by air carriers that are predominantly in foreign air transportation, when prior authorization is required by:

(1) Any provision of this chapter; or

(2) An order of the Department.

(j) Approve or disapprove requests by foreign air carriers for waivers of the 30-day advance filing requirement for proposed schedules whose filing the Department has ordered under part 213 of this chapter.

(k) Approve, when no person disclosing a substantial interest objects, or disapprove requests by foreign air carriers for special authorizations provided for in part 216 of this chapter.

(l) With respect to applications for statements of authorization to conduct intermodal cargo services under part 222 of this chapter:

(1) Approve applications under part 222 of this chapter where no person with a substantial interest raises objections citing specific facts of nonreciprocity or of restraints on competition by U.S. air carriers;

(2) Reject applications under part 222 of this chapter where there is no agreement by the United States permitting the proposed services; or

(3) Require that an applicant under part 222 of this chapter submit additional information.

(m) Approve or disapprove issuance of foreign aircraft permits provided for in part 375, subparts E and H, of this chapter.

(n) Grant or deny applications of foreign air carriers for renewal of emergency exemptions granted under 49 U.S.C. 40109(g).

(o) Grant or deny applications by air carriers and foreign air carriers under part 389 of this chapter for waivers of the Department's filing fee requirements, in accordance with current policy or precedent.

(p) Determine matters in proceedings under section 40109 and chapters 411, 413 and 415, that have not been set for oral evidentiary hearing, in addition to those authorized under § 385.3, such matters to include, *inter alia,* filing times, service of documents, submissions of additional information, filing of otherwise unauthorized documents, access to information for which confidential treatment has been requested, rejection of incomplete or otherwise defective applications, and solicitation of applications for authority.

(q) Approve or disapprove applications under part 223 of this chapter for permission to furnish free or reduced-rate foreign air transportation.

(r) With respect to International Air Transport Association (IATA) agreements filed with the Department pursuant to sections 41309 and 41308 of the Statute, or pursuant to Civil Aeronautics Board Order E–9305 of June 15, 1955:

(1) Issue orders approving or disapproving IATA agreements relating to fare and rate matters under section 41309, and granting or denying antitrust immunity under section 41308, where the course of action is clear under current policy and precedent.

(2) Issue orders describing filed agreements, establishing procedural dates for submission of justification, comments and replies, which support or oppose agreements, and prescribing the particular types of data to be included in such submission.

(s) Reject any tariff, supplement, or revised page that is filed by any U.S. air carrier or foreign air carrier, and that is subject to rejection because it is not consistent with chapter 415 of the Statute or with part 221 or 222 of this chapter. Where a tariff, supplement or loose-leaf page is filed on more than 60 days' notice and is not rejected within the first 30 days (including the filing date), it shall not be rejected after such 30-day period under this authority unless the issuing carrier is given an opportunity to remove the cause for rejection by the effective date, by special tariff permission if necessary, and fails to take such corrective action.

(t) Approve or disapprove any application for special tariff permission under part 221, subpart P, of this chapter to make tariff changes upon less than statutory notice.

(u) Approve or disapprove applications for waiver of part 221 of this chapter.

(v) Institute an investigation of, or institute an investigation and suspend the effectiveness of, a tariff or change in a tariff which:

(1) Is substantially similar to a prior tariff under investigation or suspension; and

(2) Is filed by or on behalf of one or more of the parties to the prior tariff; and

(3) Is filed within 90 days after the expiration, modification, or cancellation of the prior tariff, or within 90 days after the effective date of an order requiring its cancellation or modification.

(w) In instances when an investigation of a tariff is pending, or the tariff is under suspension, or when a complaint requesting investigation or suspension of a tariff has been filed:

(1) Permit cancellation of the tariff; or

(2) If the grounds for the investigation or complaint have been removed through cancellation, expiration or modification of the tariff, either dismiss the investigation or complaint, or terminate the suspension.

(x) Extend the period of suspension of a tariff when the proceedings concerning the lawfulness of such tariff cannot be concluded before the expiration of the existing suspension period, provided that the aggregate of such extensions may not be for a longer period than permitted under section 41509.

(y) Cancel the suspension of and/or dismiss an investigation of a tariff relating to service predominantly in foreign air transportation where the course of action is clear under current policy and precedent.

[Doc. No. OST-96-1268, 61 FR 19169, May 1, 1996]

§ 385.14 Authority of the General Counsel.

(a) The General Counsel has authority to:

(1) Issue proposed or final regulations for the purpose of making editorial

changes or corrections in the Department's rules and regulations to carry out Titles IV and X of the Act, with the concurrence of the staff offices primarily responsible for the parts or sections involved: *Provided,* That any final regulation so issued shall have an effective date not less than 20 days after its date of publication in the FEDERAL REGISTER, and shall include a brief reference to the review procedures established in subpart C of this part.

(2) Where a petition for review is duly filed, reverse any rulemaking action taken by him or her pursuant to paragraph (a) of this section by withdrawing a proposed or final regulation issued thereunder, in which case the petition for review will not be submitted to the Reviewing Official involved. (Such a withdrawal is not subject to the review procedures of subpart C of this part.)

(3) Issue, upon request therefor, interpretations of facts bearing upon disqualifications of former members and employees, and Department employees under § 300.13 or § 300.14 of this chapter (Procedural Regulations).

(4) Issue orders deferring action until after oral argument on motions submitted by parties subsequent to the issuance of an Administrative Law Judge's initial or recommended decision.

(5) Reissue existing regulations for the purpose of incorporating prior amendments adopted by the Department.

(b) To the extent that a hearing case is involved, the authority assigned to the General Counsel in paragraph (a) of this section shall not be reassigned to the Deputy General Counsel or exercised by the Deputy General Counsel in the capacity of Acting General Counsel.

[Doc. T–1, 49 FR 50985, Dec. 31, 1984; Amdt. 1, 50 FR 7170, Feb. 21, 1985. Redesignated by Doc. No. OST-96-1268, 61 FR 19170, May 1, 1996]

§ 385.15 Authority of the Deputy General Counsel.

The Deputy General Counsel has authority to:

(a) Compromise any civil penalties being imposed in enforcement cases.

(b) Issue orders initiating and terminating informal nonpublic investigations under part 305 of this chapter (Procedural Regulations).

(c) Issue orders requiring air carriers to prepare and submit within a specified reasonable period, special reports, copies of agreements, records, accounts, papers, documents, and specific answers to questions upon which information is deemed necessary. Special reports shall be under oath whenever the Deputy General Counsel so requires.

(d) Institute and prosecute in the proper court, as agent of the Department, all necessary proceedings for the enforcement of the provisions of the act or any rule, regulation, requirement, or order thereunder, or any term, condition, or limitation of any certificate or permit, and for the punishment of all violations thereof. Any action taken by the Deputy General Counsel, pursuant to the authority of this section shall not be subject to the review procedures of this part.

(e) Make findings regarding the reasonable necessity for the application of the Department's authority to obtain access to lands, buildings and equipment, and to inspect, examine and make notes and copies of accounts, records, memorandums, documents, papers and correspondence of persons having control over, or affiliated with, any person subject to regulation under Titles IV or X of the Act, through issuance of an appropriate order, letter or other transmittal.

(f) Issue orders denying or granting conditional or complete confidential treatment of information supplied by any person to the Office of Aviation Enforcement and Proceedings. Confidential treatment may only be granted upon a finding that, if the information were in the Department's possession and a Freedom of Information Act (FOIA) request were made for the information:

(1) At the time of the confidentiality request, the FOIA request would be denied on the basis of one or more of the FOIA exemptions; and

(2) At any later time, the FOIA request would also be denied, absent a material change in circumstances (which may include a demonstration

that the asserted exemption does not apply).

[Docket No. T–1, 49 FR 50985, Dec. 31, 1984. Redesignated by Doc. No. OST-96-1268, 61 FR 19170, May 1, 1996]

§ 385.16 Heads of Offices and Assistant General Counsels.

The heads of Offices and Assistant General Counsels have the authority to:

(a) Grant requests for permission to withdraw petitions, applications, motions, complaints, or other pleadings or documents which the respective Office has responsibility for processing where such authority has not otherwise been assigned in this regulation.

(b) Grant extensions of time for filing of documents or reports which are required to be filed by regulation or Department order and which reports or documents the respective Office has the responsibility for processing.

(c) Grant waivers of the environmental procedures set by Department order in any proceeding or portion of a proceeding dealing with environmental matters.

(d) Establish procedures on a case-by-case basis for environmental proceedings to ensure compliance with applicable law.

[Docket No. T–1, 49 FR 50985, Dec. 31, 1984. Redesignated by Doc. No. OST-96-1268, 61 FR 19170, May 1, 1996]

§ 385.17 Authority of the Assistant General Counsel for Regulation and Enforcement.

The Assistant General Counsel for Regulation and Enforcement has authority to:

(a) Call public meetings in pending rulemaking proceedings,

(b) Issue a notice suspending the effective dates of final regulations issued by the General Counsel pending Departmental determination of review proceedings instituted thereon, whether by petition or upon order of the Department. (Such a notice is not subject to the review procedures of subpart C of this part.), and

(c) Approve or disapprove, for good cause shown, requests to extend the time for filing comments on all proposed or final new or amended regulations, and requests to extend comment periods following the issuance of final rules.

[Docket No. T–1, 49 FR 50985, Dec. 31, 1984. Redesignated by Doc. No. OST-96-1268, 61 FR 19170, May 1, 1996]

§ 385.18 Authority of the Chief, Coordination Section, Documentary Services Division.

The Chief, Coordination Section, Documentary Services Division, has the authority to coordinate and perform all administrative functions of the Department provided for in sections 2, 3 and 5 of Executive Order 12597 issued May 13, 1987, except that this delegation shall not include the exercise of the authority delegated by the President to the Secretary by sections 2 and 5 of that Order to determine not to disapprove orders of the Department in certain cases.

[Amdt. 385–3, 52 FR 18905, May 20, 1987. Redesignated by Doc. No. OST-96-1268, 61 FR 19170, May 1, 1996]

§ 385.19 Authority of the Director, Office of Aviation Information, Bureau of Transportation Statistics.

The Director, Office of Aviation Information, Bureau of Transportation Statistics (BTS) has authority to:

(a) Conduct all rulemaking proceedings concerning accounting, reporting, and record retention requirements for carrying out Subparts I, II, and IV of the Statute, except the issuance of final rules and the disposition of petitions for reconsideration.

(b) Interpret the accounting, reporting, and record retention requirements used to carry out Subparts I, II, and IV of the Statute.

(c) Waive any of the accounting, reporting, and record retention requirements upon a showing of the existence of such facts, circumstances or other grounds, and subject to such limitations or conditions as may be prescribed for waivers in the applicable regulations, unless such authority is otherwise specifically assigned.

(d) Dismiss petitions for Department or BTS action with respect to accounting, reporting, and record retention matters when such dismissal is requested or consented to by the petitioner.

(e) Require special reports, documentation, or modifications to reports required by this chapter from any air carrier upon a determination that such reports or documentation or modifications are necessary to meet temporary information needs, assist in an evaluation of continued financial fitness, or comply with special information requests by Congress, Department officials, or another agency or component of the Federal Government.

(f) Grant or deny requests by air carriers for extension of filing dates for reports required by subchapters A and D of this chapter.

(g) Grant or deny requests by air carriers for substitution of their own forms, adaptation of Department forms, or use of ADP media to meet special needs where Department approval of such forms or ADP media is required by subchapter A of this chapter.

(h) Determine the data necessary to complete the International Civil Aviation Organization reports required by U.S. Treaty; as provided in Order 81–3–120, establish any necessary supplemental reporting requirements; and dispose of petitions for extensions of filing dates or waivers with respect to the data required for such reports.

(i) Grant or deny motions filed under §302.12 of this chapter requesting confidential treatment of aviation economic information or reports filed with BTS and place the decision in the motion's docket, which decision will be subject to review through a petition for reconsideration filed within ten days of issuance, to be acted upon by the Director, BTS.

(j) Grant or deny requests filed under §241.22 of this chapter for confidential treatment of preliminary year-end financial reports.

(k) Grant or deny requests filed under §248.5 of this chapter for confidential treatment of individual air carrier special reports.

(l) Grant or deny requests for use of domestic and international service segment and market data in accordance with the limitations on the availability of these data contained in §241.19–6 of this chapter and Order 81–12–9.

(m) Grant or deny requests for use of international Origin and Destination Survey statistics in accordance with the limitations on the availability of these data contained in §241.19–7 of this chapter.

(n) Grant or deny requests for individual air carrier fuel data in accordance with the limitations on the availability of these data contained in paragraph (k) of the reporting instructions for Schedule P–12(a), which are contained in §241.24 of this chapter.

(o) Grant or deny requests for individual air carrier financial data in accordance with the limitation on the availability of these data contained in paragraph (d) of the reporting instructions for Schedule F–1, which are contained in §298.62 of this chapter.

(p) Grant or deny requests for individual air carrier financial data as reported on Schedule P–1(a) in accordance with §241.22(b)(3) of this chapter.

[53 FR 51751, Dec. 23, 1988, as amended at 60 FR 66726, 66727, Dec. 26, 1995. Redesignated and amended by Doc. No. OST-96-1268, 61 FR 19170, May 1, 1996; 65 FR 6457, Feb. 9, 2000]

§385.20 Authority of the Inspector General.

The Inspector General has authority to:

(a) Require special reports, including documentation, from any air carrier regarding audits and other examinations of carrier facilities, operations, and accounting and statistical records.

(b)(1) For accounting purpose, make findings regarding the reasonable necessity for the application of the Department authority to obtain access to lands, buildings, and equipment, and to inspect, examine, and make notes and copies of accounts, records, documents, papers, and correspondence of persons having control over, or affiliated with, any person subject to regulation used to carry out titles IV and X of the Act through issuance of an appropriate order, letter, or other transmittal;

(2) Authorize one or more auditors or special agents to conduct audits, inspections, and examinations and to make notes and copies in accordance with such findings.

(c) Release to the carrier that is the subject of a financial audit the audit report and other information developed during the audit.

(d) Require submission by carriers of special statements necessary to an explanation of any carrier accounting practice.

[Docket No. T–1, 49 FR 50985, Dec. 31, 1984. Redesignated by Doc. No. OST-96-1268, 61 FR 19170, May 1, 1996]

§ 385.21 Authority of the Chief, Accounting Division, Office of Budget and Policy, Federal Transit Administration.

The Chief, Accounting Division, Office of Budget and Policy, Federal Transit Administration, has authority to:

(a) Approve and order the payment of refunds of filing fees paid under § 389.27(b) of this chapter when such refunds have been authorized by either the Director, Office of Aviation Analysis, or the Director, Office of International Aviation.

(b) Pay from appropriated funds all properly documented claims consistent with Treasury, OMB, GAO, and DOT policies.

(c) Make minor or routine adjustments to payments based on audit reports prepared by the Inspector General, and through routine internal examinations of claims and vouchers.

(d) Design air carrier subsidy claim forms for small community service under 49 U.S.C. 41737.

[Doc. T–1, 49 FR 50985, Dec. 31, 1984; Amdt. 1, 50 FR 7170, Feb. 21, 1985. Redesignated and amended by Doc. No. OST-96-1268, 61 FR 19170, May 1, 1996]

Subpart C—Procedure on Review of Staff Action

§ 385.30 Persons who may petition for review.

Petitions for review may be filed by the applicant; by persons who have availed themselves of the opportunity, if any, to participate in the matter at the staff action level; and by persons who have not had opportunity to so participate or show good and sufficient cause for not having participated: *Provided,* That such persons, other than the applicant, disclose a substantial interest which would be adversely affected by the respective staff action.

[Docket No. T–1, 49 FR 50985, Dec. 31, 1984. Redesignated by Doc. No. OST-96-1268, 61 FR 19171, May 1, 1996]

§ 385.31 Petitions for review.

(a) *Time for filing.* Petitions for review shall be filed and served within seven (7) days after the date of the staff action to which they relate, but a different period may be fixed in such staff action consistent with effective preservation of the right to petition for discretionary review and the exigencies of the situation.

(b) *Contents.* Petitions for review shall demonstrate that (1) a finding of material fact is clearly erroneous; (2) a legal conclusion is contrary to law, Department rules, or precedent; (3) a substantial and important question of policy is involved; (4) a prejudicial procedural error has occurred; or (5) the staff action is substantially deficient on its face. The petition shall briefly and specifically state the alleged grounds for review and the relief sought. If persons who participated at the staff action level set forth any new facts, arguments, or other new matter, an explanation must be furnished as to why said matter was not previously adduced at the staff action level. In the absence of a valid explanation, the Department may disregard such new matter.

(c) *Form and filing.* Petitions shall comply with the form and filing requirements of §§ 302.3 and 302.4 of this chapter. (Rules of practice in Economic Proceedings). Petitions shall not exceed 10 pages in length. A greater length, however, may be specified in the staff action taken. The petitions shall be accompanied by proof of required service. However, persons who seek review of a civil penalty proposed by the Assistant General Counsel for Aviation Enforcement and Proceedings pursuant to § 385.15(a) may submit their request therefor by letter to the Department with a copy to the Assistant General Counsel for Aviation Enforcement and Proceedings and need not comply with the above form and filing requirements.

(d) *Service.* A petition filed by a person other than the applicant shall be

served on the applicant. Petitions shall also be served on any persons who have served documents on the petitioner at the staff action level; and on such other persons as may be directed by the Department or the staff member who took the action to be reviewed.

(e) *Answers.* The applicant and such other persons as disclose a substantial interest which would be adversely affected by the relief sought in the petition may, within seven (7) days after filing the petition, file an answer thereto. A different period for the filing of answers may be fixed in the staff action. Such answers shall comply with the form and filing requirements applicable to petitions and shall be served on the applicant and any other person who has theretofore served a document in the matter on such respondent.

[Docket No. T–1, 49 FR 50985, Dec. 31, 1984. Redesignated and amended by Doc. No. OST-96-1268, 61 FR 19171, May 1, 1996; 65 FR 6457, Feb. 9, 2000]

§ 385.32 Effective date of staff action.

Unless, within the time provided by or pursuant to this regulation, a petition for review is filed or the Department gives notice that it will review on its own motion, staff action shall, without further proceedings, be effective and become the action of the Department upon the expiration of such period. A timely petition for review filed in accordance with the provisions of this section, or notice given by the Department of review on its own motion, shall stay the staff action pending disposition by the Department, unless the Department determines otherwise or unless the staff action provides otherwise in accordance with subpart A of this part. However, in cases where the Department's regulations provide that permissions or approvals are granted, or that other legal effects result, within a stated period from the filing with the Department of a prescribed document, unless the Department gives notice to the contrary or takes other action within said period, such notice given or action taken by a staff member under delegated authority shall toll the running of such period. A timely petition for review of staff action which is not stayed by its filing which is received after or not acted upon before the effective date of the action shall be entertained and disposed of on its merits as a petition for reconsideration.

[Docket No. T–1, 49 FR 50985, Dec. 31, 1984. Redesignated by Doc. No. OST-96-1268, 61 FR 19171, May 1, 1996]

§ 385.33 Review by the staff.

Where a petition for review is duly filed, the staff member may, upon consideration of all documents properly filed, reverse his or her decision. Except in the case of Administrative Law Judges, action taken by a staff member other than an office head or Assistant General Counsel may be reversed by the respective office head or Assistant General Counsel who is in the supervisory chain of command with respect to the staff member who took the initial action. If the initial action is reversed, the petition for review will not be submitted to the Reviewing Official. Staff action reversing the initial action shall be subject to petition for Department review as any other staff action.

[Docket No. T–1, 49 FR 50985, Dec. 31, 1984. Redesignated by Doc. No. OST-96-1268, 61 FR 19171, May 1, 1996]

§ 385.34 Decision by the Reviewing Official.

(a) *Decline of right to review*. If the Reviewing Official declines the right to exercise discretionary review, the staff action stayed by the petition for review shall become effective on the second business day following the date of service of the order, unless the order provides otherwise.

(b) *Exercise of right to review*. The Reviewing Official will exercise his or her discretionary right of review either upon petition or on his or her own motion. The Reviewing official may by order provide for interlocutory relief pending his or her decision on the merits and may limit the issues on review. The Reviewing Official may affirm, modify or set aside the staff action, may order the matter remanded, or may order further submittals or other proceedings before making a decison on the merits. In case the Reviewing Official affirms the staff action, staff action stayed by the petition for review shall become effective on the second

business day following the date of service of the Reviewing Official's order, unless the order provides otherwise. Decisions by the Reviewing Official under this part are final and are not subject to petitions for reconsideration.

[Doc. T–1, 49 FR 50985, Dec. 31, 1984; Amdt. 1, 50 FR 7170, Feb. 21, 1985. Redesignated by Doc. No. OST-96-1268, 61 FR 19171, May 1, 1996]

PART 389—FEES AND CHARGES FOR SPECIAL SERVICES

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AUTHORITY: Sec. 204, 1002, Pub. L. 85–726, as amended, 72 Stat. 743, 797; 49 U.S.C. 1324, 1502. Act of August 31, 1951, ch. 376, 65 Stat. 268; 31 U.S.C. 483a.

SOURCE: OR–27, 33 FR 70, Jan. 4, 1968, unless otherwise noted.

Subpart A—General Provisions

§ 389.1 Policy and scope.

Pursuant to the provisions of Title V of the Independent Offices Appropriation Act of 1952 (5 U.S.C. 140) as implemented by Bureau of Budget Circular A–25, dated September 23, 1959, the Board sets forth in this regulation the special services made available by the Board and prescribes the fees to be paid for these and various other services.

Subpart B—Fees for Special Services

§ 389.10 Applicability of subpart.

This subpart describes certain special services made available by the Board and prescribes the fees and charges for these services.

§ 389.11 Services available.

Upon request and payment of fees as provided in subsequent sections, there are available, with respect to documents subject to inspection, services as follows:

(a) Locating and copying records and documents.

(b) Certification of copies of documents under seal of the Board.

(c) Subscriptions to publications of the Board.

(d) Transcripts of hearings.

[OR–27, 33 FR 70, Jan. 4, 1968, as amended by OR–94, 40 FR 7242, Feb. 19, 1975]

§ 389.12 Payment of fees and charges.

The fees charged for special services may be paid by check, draft, or postal money order, payable to the Civil Aeronautics Board, except for charges for reporting services which are performed under competitive bid contracts with non-Government firms. Fees for reporting are payable to the firms providing the services.

§ 389.13 Fees for services.

Except for photocopy work, the basic fees set forth below provide for documents to be mailed with ordinary first class postage prepaid. If copy is to be transmitted by registered, certified, air, or special delivery mail, postal fees therefor will be added to the basic fee. Also, if special handling or packaging is required, costs therefor will be added to the basic fee. For photocopy work, postage will be in addition to the fee for copying.

§ 389.14 Locating and copying records and documents.

Public records and documents on file with the Civil Aeronautics Board will

be located and copied upon request and payment of fees as set forth below:

(a) There shall be no charge in connection with searches for records or documents under this chapter.

(b) Photocopies of records or documents shall be made using the Board's facilities or by contractors.

(1) The fee for photocopying will be 15 cents per page.

(2) The fee for copying by contractors will be that established in the contracts with the Board and will be billed directly by those contractors.

(c) Copies of board data on magnetic tapes, or extractions of data from Board data tapes, will be made by the National Archives and Records Service (NARS) of the General Services Administration or by computer service bureaus.

(1) The Director, Bureau of Accounts and Statistics, furnishes many public records and documents contained on magnetic tape to NARS. Initial requests for data should be made directly to the Machine Readable Archives Division, National Archives and Records Services, General Services Administration, Washington, D.C. 20408, with the applicant directly reimbursing NARS for its copying or data extraction charges. When NARS does not have the requested data, the Director, Bureau of Accounts and Statistics, upon written request, will furnish the tapes for a reasonable length of time to a computer service bureau chosen by the applicant subject to the Director's approval. The computer service bureau shall assume the liability for the cost of replacing any tape that may be damaged or destroyed by it.

(2) The fee for data copying by NARS will be determined by NARS.

(3) The fee for data copying by a computer service bureau shall be established by agreement between the requesting party and the computer service bureau.

(d) Where the Board's fee for service requested will exceed $100, the service will not be performed until payment has been received. In such cases, the requester will be notified promptly of the amount of the fee, and the requested service will be performed as expeditiously as practicable following receipt of payment.

(e) Applications for waivers or modifications of any fees required to be paid to the Board under this section may be filed in accordance with the following:

(1) Each applicant shall set forth briefly and succinctly the relief that it seeks and the reasons why such relief should be granted. Waivers or modifications of stated fees shall be granted only where it is demonstrated that such action is in the public interest because furnishing of the information requested can be considered as primarily benefiting the general public.

(2) Applications requesting waivers or modifications of fees under this section shall be addressed to the Managing Director, who has been delegated authority by the Board to decide such applications in § 385.12 of this chapter, and shall accompany the request for service under this section.

(3) The Managing Director shall either rule on the application or, at his discretion, pass the matter on to the Board for its determination. In acting upon such applications the Managing Director and the Board, where applicable, shall be guided by the procedures and requirements of § 310.9(d) of this chapter.

(4) A decision by either the Managing Director or the Board pursuant to paragraph (d)(3) of this section is final and will not be subject to petitions for reconsideration.

[OR–94, 40 FR 7242, Feb. 19, 1975, as amended by OR–131, 43 FR 38574, Aug. 29, 1978]

§ 389.15 Certification of copies of documents.

The Secretary of the Board will provide, on request, certifications or validation (with the Civil Aeronautics Board seal) of documents filed with or issued by the Board. Copies of tariffs filed with the Board will be certified only when such copies have been made under the Board's supervision upon request of the applicant. Charges for this service are as follows:

(a) Certification of the Secretary, $2. This fee includes clerical services involved in checking the authenticity of records to be certified. If copying of the documents to be certified is required, the copying charges provided for in § 389.14 will be in addition to the charges specified in this section.

(b) [Reserved]

[OR–27, 33 FR 70, Jan. 4, 1968, as amended by OR–35, 34 FR 5598, Mar. 25, 1969]

§ 389.16 Board publications.

(a) *Charges for publications.* Charges have been established by the Superintendent of Documents for subscriptions to certain Board publications. A list of these publications together with information on how they can be ordered is contained in the ''List of Publications'', which is available on request from the Board's Publications Services Division, B–22, Washington, D.C., 20428.

(b) *Free services.* No charge will be made by the Board for notices, decisions, orders, etc., required by law to be served on a party to any proceeding or matter before the Board. No charge will be made for single copies of Board publications individually requested in person or by mail, except where a charge is specifically fixed for a publication at the time of its issuance.

(c) *Reciprocal services.* Arrangements may be made with the Board's Bureau of International Aviation for furnishing publications to a foreign country or to an international organization on a reciprocal basis.

[OR–178, 46 FR 8445, Jan. 27, 1981]

§ 389.17 Transcripts of proceedings.

Transcripts of testimony and oral argument are furnished to the Board by a non-Government contractor for any proceeding in which the presiding officer has determined that such transcript should be made, and copies thereof may be purchased directly from the reporting firm, at prices and upon other terms and conditions specified in the contract made between the Board and the reporting firm, and currently in effect, pursuant to section 11 of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App. I). Any person may obtain from the Director, Office of Facilities and Operations, the name and address of the reporting firm with which the Board currently has such contract, as well as the contract prices then in effect for the various types of transcript and copying services covered by such contract.

[OR–84, 39 FR 22417, June 24, 1974]

Subpart C—Filing and Processing License Fees

§ 389.20 Applicability of subpart.

(a) This subpart applies to the filing of certain documents and records of the Department by non-government parties, and prescribes fees for their processing.

(b) For the purpose of this subpart, record means those electronic tariff records submitted to the Department under subpart W of 14 CFR part 221, and contains that set of information which describes one (1) tariff fare, or that set of information which describes one (1) related element associated with such tariff fare.

[Amdt. 389–37, 54 FR 2099, Jan. 19, 1989]

§ 389.21 Payment of fees.

(a) Any document or record for which a filing fee is requried by § 389.25 shall be accompanied by either (1) a check, draft, or postal money order, payable to the Civil Aeronautics Board, in the amount prescribed herein, or (2) a request for waiver or modification of the filing fee.

(b) [Reserved]

(c) Where a document seeks authority or relief in the alternative and therefore would otherwise be subject to more than one filing fee, only the highest fee shall be required.

(d) Where a document relating to a single transaction or matter seeks multiple authorities or relief and therefore would otherwise be subject to more than one filing fee, only the highest fee shall be required. Where a document relating to more than one transaction or matter seeks multiple authorities or relief, the requried filing fee shall be determiend by combining the highest fees for each transaction or matter. For purposes of this paragraph, a specific number of charters or inclusive tours described in one application will be regarded as a single transaction or matter.

(e) No fee shall be returned after the document has been filed with the

Board, except as provided in §§ 389.23 and 389.27.

[OR–27, 33 FR 70, Jan. 4, 1968, as amended by OR–27A, 33 FR 3633, Mar. 1, 1968; OR–50, 35 FR 15986, Oct. 10, 1970; 48 FR 642, Jan. 6, 1983; Amdt. 389–37, 54 FR 2099, Jan. 19, 1989]

§ 389.22 Failure to make proper payment.

(a)(1) Except as provided in § 389.23, documents (except tariff publications) which are not accompanied by filing fees shall be returned to the filing party, and such documents shall not be considered as filed by the Board.

(2) Except as provided in § 389.23, records which are not accompanied by the appropriate filing fees shall be retained and considered filed with the Department. The Department will notify the filer concerning the nonpayment or underpayment of the filing fees, and will also notify the filer that the records will not be processed until the fees are paid.

(b) The filing fee tendered by a filing party shall be accepted by the Board office to whom payment is made, subject to post audit by the Chief of the Board's Finance Division and notification to the filing party within 30 days of any additional amount due. Not more than 5 days after receipt of the notification, the determination of the Chief, Finance Division, may be appealed to the Managing Director of the Board, who has been delegated authority by the Board to decide such appeals in § 385.12 of this chapter. The filing party may submit to the Board a petition for review of the Managing Director's decision pursuant to § 385.50 of this chapter, and proceedings thereon will be governed by part 385, subpart C, of this chapter.

(c) The amount found due by the Chief, Finance Division, shall be paid within 10 days of notification except that (1) if that decision is appealed to the Managing Director, the amount due shall be paid within 10 days after the Managing Director notifies the filing party that he has affirmed or modified the decision of the Chief, Finance Division; and (2) if the decision of the Managing Director is appealed to the Board, the amount due shall be paid within 10 days after the Board notifies the filing party that it has affirmed or modified the staff decision. If the amount due is not paid, the document (except a tariff publication) shall be returned to the filing party along with the fee tendered, and such document shall be deemed to have been dismissed or withdrawn.

[OR–27, 33 FR 70, Jan. 4, 1968, as amended by OR–96, 40 FR 20613, May 12, 1975; Amdt. 389–37, 54 FR 2099, Jan. 19, 1989]

§ 389.23 Application for waiver or modification of fees.

(a) Applications may be filed asking for waiver or modification of any fee paid under this subpart. Each applicant shall set forth the reasons why a waiver or modification should be granted, and by what legal authority.

(b) Applications asking for a waiver or modification of fees shall be sent to the Managing Director of the Board, and shall accompany the document filed. Applicants may appeal the decision of the Managing Director to the Board under § 385.50 of this chapter. When no petition for review is filed with the Board, or when the Board reviews the Managing Director's decision, if the amount found due is not paid within 10 days after receipt of notification of the final determination, the document shall be returned to the filing party.

(Approved by the Office of Management and Budget under control number 3024–0071)

[48 FR 642, Jan. 6, 1983, as amended by OR–215, 49 FR 6884, Feb. 24, 1984]

§ 389.24 Foreign air carriers.

A foreign air carrier, or such carriers, if from the same country, acting jointly, may apply for a waiver of the requirements of this part based on reciprocity for U.S. air carriers contained in the requirement of their home governments, or as provided in a treaty or agreement with the United States. To apply for a waiver under this section, foreign air carriers shall send waiver requests to the Director, Bureau of International Aviation. The request should include applicable official government rules, decisions, statements of policy, or comparable evidence concerning filing fees for U.S. air carriers, or for all carriers serving that country. Once a waiver has been granted for a

specific country, no further waiver applications need be filed for that country.

(Approved by the Office of Management and Budget under control number 3024–0071)

[OR–209, 48 FR 10628, Mar. 14, 1983, as amended by OR–215, 49 FR 6884, Feb. 24, 1984]

§ 389.25 Schedule of processing fees.

(a) *Document-filing fees.*

Code	Document	
	Interstate and Overseas Air Transportation	
	Certificate of Public Convenience and Necessity:	
	Application under sec. 401:	
1	Charter	850
2	Scheduled Service	850
3	Dormant Authority	290
4	All-Cargo under sec. 418	670
5	Transfer	290
6	Air Taxi Registration	8
7	Scheduled Passenger Commuter Registration	670
8	Change of Name (registration of trade name or reissuance of certificate)	56
9	Exemption Request (General):	
10	Section 403	53
11	Section 401 (domestic)	280
12	Section 419	120
13	Service Mail Rate Petition	420
	FOREIGN AIR TRANSPORTATION (U.S. AND AIR CARRIERS)	
	Certificate of Public Convenience and Necessity (sec. 401):	
14	Scheduled Service	900
15	Amendment to application	425
16	Charter Service	600
17	Amendment to application	200
18	Transfer	255
19	Change of Name (registration of trade name or reissuance of certificate)	56
	Foreign Air Carrier Permit (sec. 402):	
20	Initial	760
21	Amendment/Renewal of permit	475
22	Amendment to application for a permit	215
	Exemption:	
23	Section 403	53
	Section 401/402:	
24	10 or fewer flights	77
25	More than 10 flights	360
26	Filed less than 10 days before effective date requested	[1] 17
27	Other (U.S. and foreign air carriers)	360
28	Emergency cabotage (sec. 416(b)(7))	360
29	Relief for U.S. (sec. 101) and foreign (sec. 416) indirect air carriers	370
	Undocketed Items:	
30	Canadian Charter Air Taxi Registration	30
31	Foreign Freight Forwarder Registration	11
32	Foreign Tour Operator Registration	10
33	Foreign Aircraft Permit (part 375)	25
34	Special Authorization (part 375)	12
35	Charter Statement of Authorization	8
36	Intermodal Statement of Authorization	10
37	Special Authority (part 216)	37
38	Items 33–37 if filed less than time required before effective date	[1] 11
39	IATA resolutions	61
	OTHER (U.S. AND FOREIGN AIR CARRIERS)	
	Charters:	
40	Public Charter Prospectus	39
41	OMPC Operation Authorization	665
42	Waiver of Charter Regulations	39
	Tariffs:	
43	Pages	2
44	Special Tariff Permission	12
45	Waiver of Tariff Regulations	12
46	Approval of Interlocking Relationships	415
47	Merger or Acquisition of Control	1080
47a	Exemption request	371
	Agreements filed under section 412:	
48	Prior Approval (docketed)	1080
49	Routine (nondocketed)	64
50	Application for free and reduced-rate transportation	16

[1] Additional.

(b) *Electronic Tariff Filing Fees.* The filing fee for one (1) or more transactions proposed in any existing record, or for any new or canceled records, shall be 5 cents per record; *Provided:* That no fee shall be assessed for those records submitted to the Department pursuant to §221.500(b)(1) of this subpart.

[48 FR 643, Jan. 6, 1983, as amended by OR–206, 48 FR 1941, Jan. 17, 1983; OR–210, 48 FR 15615, Apr. 12, 1983; 53 FR 17924, May 19, 1988; Amdt. 389–37, 54 FR 2099, Jan. 19, 1989]

§ 389.26 Special rules for tariff page filings.

(a) *Tariffs issued by carriers.* The filing fee for tariff pages filed by U.S. air carriers will be charged even if the tariff includes matters involving participating foreign air carriers. It will also be charged if the tariff is issued by a foreign air carrier and includes matters involving participating U.S. air carriers, unless the foreign air carrier has obtained a waiver under §389.24. The fee will not be charged for a blank looseleaf page unless it cancels matter in the preceding issue of the page.

(b) *Tariffs issued by publishing agents.* (1) If the tariff is issued for one or more air carriers exclusively, the fee will be charged for each page.

(2) If the tariff is issued for one or more air carriers and one or more foreign air carriers, the fee will be charged for each page, except for those pages that the issuing agent states contain only:

(i) Matters pertaining exclusively to foreign air carriers that have been granted a waiver, or

(ii) Changes in matters pertaining to foreign air carriers that have been granted a waiver and that are included

on the same page with other matters that are reissued without change.

(3) The fee will not be charged for a blank looseleaf page unless it cancels matters in the preceding page.

(4) No fee will be charged when two pages are published back-to-back, one page is not subject to the fee under paragraph (b)(2), and the page on the reverse is issued without substantive change.

(5) The fee will be charged for two looseleaf pages containing a correction number check sheet unless all other pages of the tariff are exempt from the fee.

[48 FR 643, Jan. 6, 1983]

§ 389.27 Refund of fee.

(a) Any fee charged under this part may be refunded in full or in part upon request if the document for which it is charged is withdrawn before final action is taken. Such requests shall be filed in accordance with § 389.23.

(b) Any person may file an application for refund of a fee paid since April 28, 1977, on the grounds that such fee exceeded the Board's cost in providing the service. The application shall be filed with the Board's Comptroller and shall contain: the amount paid, the date paid, and the category of service.

(Approved by the Office of Management and Budget under control number 3024–0071)

[48 FR 643, Jan. 6, 1983, as amended by OR–215, 49 FR 6884, Feb. 24, 1984; 49 FR 32564, Aug. 15, 1984]

SUBCHAPTER F—POLICY STATEMENTS

PART 398—GUIDELINES FOR INDIVIDUAL DETERMINATIONS OF BASIC ESSENTIAL AIR SERVICE

Sec.

398.1 Purpose.
398.2 Number and designation of hubs.
398.3 Specific airports.
398.4 Equipment.
398.5 Frequency of flights.
398.6 Seat guarantees.
398.7 Timing of flights.
398.8 Number of intermediate stops.
398.9 Load factor standards.
398.10 Overflights.
398.11 Funding reductions.

AUTHORITY: 49 U.S.C. Chapters 401, 417; Airport and Airway Safety and Capacity Expansion Act of 1987 (Pub. L. 100–223, Dec. 30, 1987).

SOURCE: Docket No. OST–95–397, 60 FR 43529, Aug. 22, 1995, unless otherwise noted.

§ 398.1 Purpose.

The purpose of this part is to establish general guidelines for the determination of basic essential air service for each eligible place under 49 U.S.C. 41731 and 41732. Procedures for the determination of the essential air service level for a place are contained in part 325 of this chapter.

§ 398.2 Number and designation of hubs.

(a) *What is a hub?* The Department considers hubs as belonging to any one of three classifications:

(1) A *large* hub is a place accounting for at least 1.00 percent of the total enplanements in the United States;

(2) A *medium* hub is a place accounting for at least 0.25 percent but less than 1.00 percent of the total enplanements in the United States; and

(3) A *small* hub is a place accounting for at least 0.05 percent but less than 0.25 percent of the total enplanements in the United States.

(b) *How many hubs?* (1) As a general matter, the Department will require service to one large or medium hub.

(2) In Alaska or when the nearest large or medium hub is more than 400 miles from the eligible place, the Department may instead require service to a small hub or nonhub.

(3) In some cases, the Department may require service to two hubs, of which at least one will be a large or medium hub. The Department will require service to two hubs if an eligible place has close commercial, geographic, and political ties to both hubs and if there is sufficient traffic from the eligible place to support two round trips a day to both hubs. If traffic is not sufficient, the Department may require one round trip a day to both hubs if the community requests such service.

(4) In no event will essential air service consist of service to more than two hubs.

(c) *Which hub?* (1) In designating hubs, the Department will weigh all of the following factors:

(i) The extent to which candidate hubs provide access to the national air transportation system;

(ii) The commercial, geographic, and political ties of candidate hubs to the eligible place;

(iii) The traffic levels to candidate hubs, as shown by traffic studies and origin and designation data;

(iv) The distance of candidate hubs from the eligible place; and

(v) The size of candidate hubs. Large size will be a positive factor, but principally as substantiating the access and community-ties factors.

(2) For Alaska, rather than requiring service to a hub, the Department may instead require that service from an eligible place be provided to a nearby focal point for traffic which, in turn, has service to a hub.

§ 398.3 Specific airports.

(a) At an eligible place, essential air service may be specified as service to a particular airport. In the case of hyphenated places, essential air service will be specified as service to more than one airport only if clearly necessary and if the multi-airport service is economically feasible and justified on the basis of traffic levels at those airports.

(b) At a hub, essential air service is not usually specified as service to a particular airport.

§ 398.4 Equipment.

(a) Except in Alaska, service will be provided by aircraft offering at least 15 passenger seats, unless:

(1) Average daily enplanements at the place did not exceed 11 passengers for any fiscal year from 1976 through 1986;

(2) The requirement would necessitate the payment of compensation in a fiscal year for service at the place when compensation would otherwise not be necessary; or

(3) The affected community agrees in writing to the use of smaller aircraft to provide service at the place.

(b) The aircraft must have at least two engines and use two pilots, unless scheduled air transportation has not been provided to the place in aircraft with at least two engines and using two pilots for at least 60 consecutive operating days at any time since October 31, 1978.

(c) The aircraft must be pressurized when the service regularly involves flights above 8,000 feet in altitude.

(d) All aircraft must meet the applicable safety standards of the Federal Aviation Administration.

(e) The aircraft must be conveniently accessible to passengers by stairs rather than over the wing.

§ 398.5 Frequency of flights.

(a) Except in Alaska, at least two round trips each weekday and two round trips each weekend.

(b) In Alaska, a level of service at least equal to that provided in 1976, or two round trips each week, whichever is greater, except that the Department and the appropriate State authority of Alaska may agree to a different level of service after consulting with the affected community.

(c) An essential air service level may be set at more than that stated in paragraphs (a) and (b) of this section if:

(1) Historical traffic data and studies of traffic-generating potential for the place indicate that more frequent service is needed to accommodate passengers and accompanying baggage with the aircraft used at that place;

(2) More flights are needed because the capacity available to the eligible place is being shared with traffic destined for an intermediate stop or for a place beyond the eligible place;

(3) More flights are needed to accommodate passengers because smaller aircraft are being used at the place;

(4) More flights are needed in order to ensure adequate connecting opportunities as provided for by § 398.7; or

(5) For Alaska, the appropriate state agency agrees that more frequent service is needed to accommodate cargo traffic with the aircraft used at the eligible place.

(d) For eligible places where traffic levels vary substantially with the season, a two-tier level of essential air service may be established with required flight frequencies changing accordingly.

§ 398.6 Seat guarantees.

(a) The number of seats guaranteed at the eligible place will be sufficient to accommodate the estimated passenger traffic at an average load factor of 60 percent, except that an average load factor of 50 percent will be used when service is provided with aircraft having fewer than 15 passenger seats.

(b) Only under unusual circumstances will an eligible place's essential air service level be set at a number of flights that will accommodate more than 40 passengers a day in each direction (a total of 80 inbound and outbound passengers). Generally, 40 passengers can be accommodated by guaranteeing 67 seats a day in each direction (a total of 134 inbound and outbound seats).

(c) The Department may guarantee an eligible place more than 67 seats a day if:

(1) The number of stops between or beyond the eligible place and the hub results in available aircraft capacity being shared with passengers at those other places;

(2) The distance between the eligible place and the designated hub requires the use of large aircraft;

(3) The eligible place has suffered an abrupt and significant reduction in its service that warrants a temporary increase in the maximum guaranteed capacity; or

(4) Other unusual circumstances warrant guaranteeing the eligible place more than 67 seats a day.

§ 398.7 Timing of flights.

To qualify as essential air service, flights must depart at reasonable times, considering the needs of passengers with connecting flights at the hub. It is the policy of the Department to consider the reasonableness of the time in view of the purpose for which the local passengers are traveling. If travel is primarily to connect with other flights at the hub, local flight times should be designed to link with those flights. If travel is primarily local (*i.e.*, to and from the hub), there should be at least one morning flight in each direction and one late-afternoon or evening flight in each direction.

§ 398.8 Number of intermediate stops.

(a) Except in Alaska, no more than one intermediate stop is permitted in providing essential air service between the eligible place and its hub, unless otherwise agreed to with the community. In cases where an eligible place receives service to two hubs, however, more than one intermediate stop is permitted between that place and its secondary hub.

(b) In Alaska, more than one intermediate stop is permitted if required by low traffic levels at the eligible place or by the long distance between the eligible place and its hub.

(c) The Department may specify nonstop service when necessary to make the service viable.

(d) Where an eligible place normally is an intermediate stop that shares available capacity with another place, it is the policy of the Department either to require additional capacity (more flights or larger aircraft) between the eligible place and its hub or to specify some turnaround operations on that route segment.

§ 398.9 Load factor standards.

The load factor standards used in this part may be raised for individual eligible places under either of the following circumstances:

(a) The place is served by the carrier as part of a linear route; or

(b) It would be in the interest of the community, the carrier, or the general public to raise the load factor standard for that place.

§ 398.10 Overflights.

The Department considers it a violation of 49 U.S.C. 41732 and the air service guarantees provided under this part for an air carrier providing essential air service to an eligible place to overfly that place, except under one or more of the following circumstances:

(a) The carrier is not compensated for serving that place and another carrier is providing by its flights the service required by the Department's essential air service determination for that place;

(b) Circumstances beyond the carrier's control prevent it from landing at the eligible place;

(c) The flight involved is not in a market where the Department has determined air service to be essential; or

(d) The eligible place is a place in Alaska for which the Department's essential air service determination permits the overflight.

§ 398.11 Funding reductions.

(a) If, in any fiscal year, appropriations for payments to air carriers remain at or below the amounts estimated as necessary to maintain subsidy-supported essential air service at the places receiving such service, and Congress provides no statutory direction to the contrary, appropriations shall not be available for essential air service to otherwise eligible places within the 48 contiguous States and Puerto Rico that have a rate of subsidy per passenger in excess of $200.00, or are located:

(1) Less than 70 highway miles from the nearest large or medium hub airport;

(2) Less than 55 miles from the nearest small hub airport; or

(3) Less than 45 highway miles from the nearest nonhub airport that has enplaned, on certificated or commuter carriers, 100 or more passengers per day in the most recent year for which the Department has obtained complete data.

(b) The rate of subsidy per passenger shall be calculated by dividing the annual subsidy in effect as of July 1 of the prior fiscal year by the total origin-and-destination traffic during the most recent year for which the Department has obtained complete data.

PART 399—STATEMENTS OF GENERAL POLICY

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AUTHORITY: 49 U.S.C. 40101 *et seq.*

SOURCE: PS–21, 29 FR 1446, Jan. 29, 1964, unless otherwise noted.

Subpart A—Applicability and Effects of Policy Statements

§ 399.1 Applicability.

All statements of general policy adopted by the Board for the guidance of the public will be published in this part, except as provided in § 399.2.

§ 399.2 Exclusions.

The following types of policies are generally not included in this part:

(a) Policies relating solely to the internal management of the Board;

(b) Policies requiring secrecy in the public interest or in the interest of national defense;

(c) Policies that are repetitive of section 102 of the Act;

(d) Policies that are fully expressed in a procedural or substantive rule of the Board, or in any opinion, decision, order, certificate, permit, exemption, or waiver of the Board;

(e) Expressions of encouragement or admonition to industry to follow a certain course of action;

(f) Positions on legislative items and on other matters that are outside the scope of the Board's current statutory powers and duties.

[PS–21, 29 FR 1446, Jan. 29, 1964, as amended by PS–63, 40 FR 6643, Feb. 13, 1975]

§ 399.3 Statements in other Board documents.

No statement contained in any Board opinion, decision, order, certificate, permit, exemption, or waiver shall be considered a statement of policy within the meaning of this part, even though such statements may constitute a precedent in future cases or declare future policy to be followed in like cases. Similarly, a denial by the Board or relief sought, or statements of the Board's reasons for failure to issue a rule upon which rulemaking proceedings have been commenced shall not be considered statements of policy, except to the extent that it is specifically stated that such denial or failure is based upon a policy thereafter to be followed.

§ 399.4 Nature and effect of policy statements.

Policy statements published in this part will be observed by the Board until rescinded, but any policy may be amended from time to time as experience or changing conditions may require. Changes in policy may be made with or without advance notice to the public and will become effective upon publication in the FEDERAL REGISTER unless otherwise provided. If it appears to the Board, in its consideration of any matter before it, that the application of a policy published in this part would run counter to an express provision of law or policy enunciated by Congress in the Act, the published policy shall not be applicable to such matter.

§ 399.5 Arrangement of policy statements.

The statements of general policy relating to the various duties and functions of the Board are grouped according to subject matter in the following subparts; the titles of the subparts indicate the general subject matter included therein.

Subpart B—Policies Relating to Operating Authority

§§ 399.10–399.11 [Reserved]

§ 399.12 Negotiation by air carriers for landing rights in foreign countries.

(a) It is the policy of the Board (jointly with the Department of State) that, as a general rule, landing rights abroad for United States flag air carriers will be acquired through negotiation by the U.S. Government with foreign governments rather than by direct negotiation between an air carrier and a foreign government.

(b) It is corollary to the foregoing policy that no United States air carrier may avail itself of representations by one foreign government to further its interest with another foreign government, especially with respect to landing rights, except insofar as such representations have been specifically authorized by the U.S. Government.

§§ 399.13–399.17 [Reserved]

§ 399.18 Maximum duration of fixed-term route authorization granted by exemption; renewal of such authority.

It is the policy of the Board to limit the duration of exemptions which authorize fixed-term route service to a maximum period of two years, and to entertain requests for renewal of such authority only when incorporated in a duly filed application for substantially equivalent certificate authority under section 401 of the Act. (See § 377.10(c) of this chapter (Special Regulations).)

[PS–21, 29 FR 1446, Jan. 29, 1964, as amended at 65 FR 6457, Feb. 9, 2000]

§ 399.19 [Reserved]

§ 399.21 Charter exemptions (except military).

In deciding applications for exemptions from section 41102 of Title 49 of the United States Code by air carriers seeking to perform charter service in air transportation, we will give primary weight to the chartering public's own assessment of the air carrier services that best meet its transportation needs. Therefore, we will not, as a general rule, consider as relevant to our decision on such applications, objections based upon (1) offers by the objectors to perform the charter service, and/or (2) estimates of revenue or traffic diversion, unless in the latter case the objectors demonstrate that the diversion resulting from grant of the exemption would threaten their ability to fulfill their certificate obligations.

[PS–78, 43 FR 31886, July 24, 1978, as amended at 60 FR 43531, Aug. 22, 1995]

Subpart C—Policies Relating to Rates and Tariffs

§ 399.30 Definitions.

As used in this subpart:

DPFI formula fare means the trunk coach formula fare on July 1, 1977, as established by the Board in Phase 9 of the Domestic Passenger Fares Investigation (Docket 21866–9).

SIFL means the standard industry fare level, as set forth in § 399.31.

[PS–92, 45 FR 24118, Apr. 9, 1980]

§ 399.31 Standard industry fare level.

(a) *Generally.* Except as set forth in paragraph (d) of this section, the standard industry fare level (''SIFL'') for coach/standard service in a market is equal to the predominant fare in effect in that market on July 1, 1977, as adjusted by the Board for cost increases.

(b) *Predominant fare.* For each market, the predominant fare in effect on July 1, 1977, is presumed to be as set forth below. The presumption may be rebutted, however, by showing that more passengers used a higher fare.

(1) For U.S. Mainland-Puerto Rico/Virgin Islands markets where the Board has specified day-of-week fare differentials: the peak-season midweek fare appearing in tariffs in effect on July 1, 1977.

(2) For U.S. Mainland-Puerto Rico/Virgin Islands markets where the Board has specified only seasonal fare differentials: the off-peak-season fare appearing in tariffs in effect on July 1, 1977.

(3) For U.S. Mainland-Hawaii markets: the peak-season second class fare appearing in tariffs in effect on July 1, 1977.

(4) For all other interstate and overseas markets: the lowest unrestricted fare in effect on July 1, 1977.

(c) *Adjustments for cost increases.* The Board adjusts the SIFL at least once every 6 months by the percentage change, since the previous adjustment, in the actual operating cost per available seat-mile for interstate and overseas transportation combined. The method of adjustment is illustrated in the example set out at the end of this subpart.

(d) *Intrastate markets in California, Florida, and Texas.* For each of these markets, the SIFL is equal to the level that it would be if the market were an interstate one whose predominant fare on July 1, 1977, was the DPFI formula fare.

(e) *Intra-Hawaii markets.* For intra-Hawaii markets, the Board's flexibility zones are based not on the SIFL, but on the standard Hawaiian fare level (''SHFL''), which is equal to 110 percent of the first class fare in effect on

July 1, 1977, as adjusted by the Board for cost increases.

[PS–92, 45 FR 24118, Apr. 9, 1980, as amended by PS–95, 45 FR 42255, June 24, 1980; PS–96, 45 FR 48604, July 21, 1980]

§ 399.32 Zone of limited suspension for domestic passenger fares.

(a) *Applicability.* This section sets forth the Board's policy on passenger fares for scheduled service by certificated air carriers in the following areas, except to the extent that greater flexibility is set forth in § 399.33:

(1) Within the 48 contiguous States and the District of Columbia (''the Mainland''); and

(2) Between the Mainland and Puerto Rico, the Virgin Islands, Hawaii, or Alaska.

(b) *Downward flexibility.* Each carrier may set fares in each market at any amount below the SIFL. The Board will not suspend such a fare on the ground that its level is unreasonable, except in the following extraordinary circumstances:

(1) There is a high probability that the fare would be found to be unlawful after investigation;

(2) There is a substantial likelihood that the fare is predatory so that there would be an immediate and irreparable harm to competition if the fare were allowed to go into effect;

(3) The harm to competition is greater than the injury to the traveling public if the proposed fare were unavailable; and

(4) The suspension is in the public interest.

(c) [Reserved]

(d) *Upward flexibility.* Each carrier may set fares above the SIFL as follows, and where they are so set, the Board will not suspend them on the grounds that their level is unreasonable except upon a clear showing of abuse of market power that the Board does not expect to be corrected through marketplace forces:

(1) For service on the Mainland: Up to 30 percent above the sum of the SIFL plus $14. Each time after January 13, 1981, that the Board adjusts the SIFL for cost increases in accordance with § 399.31(c), it will adjust the $14 figure by the same percentage rounded to the nearest whole dollar. The Board order announcing the adjustment will be published in the FEDERAL REGISTER and served on all certificated carriers, and copies will be available through the Domestic Fares and Rates Division, Bureau of Domestic Aviation, Civil Aeronautics Board, Washington, D.C. 20428.

(2) For service between the Mainland and Puerto Rico, the Virgin Islands, Hawaii, or Alaska: Up to 30 percent above the SIFL.

(e) *Fares above the zone.* Tariff filings that state fares above the applicable zone must include the data and information set forth in § 221.165 of this chapter. For peak fares, this must include a description of the carrier's off-peak fares that are available in the market. The Board will suspend a fare above the zone that it finds not to be justified by cost or competitive factors.

[PS–94, 45 FR 40973, June 17, 1980, as amended by PS–96, 45 FR 48604, July 21, 1980; PS–101, 46 FR 11809, Feb. 11, 1981]

§ 399.33 Additional fare flexibility.

For scheduled service in the areas set forth in § 399.32(a), certificated air carriers have the following fare flexibility in addition to that set forth in § 399.32:

(a) *First class.* Carriers may without restriction set the level of first class fares.

(b) *Small aircraft.* Carriers may without restriction set the level of fares for service with aircraft designed to have a maximum passenger capacity of 60 or fewer seats.

(c) *Through service and on-line connecting service.* For through service and on-line connecting service, carriers may set their fares up to the sum of the local fares minus one tax-rounded coach ceiling terminal charge for each local fare after the first, if that level is higher than the ceiling set forth in § 399.32(d). The Board will not suspend such a fare on the ground that its level is unreasonable except upon a clear showing of abuse of market power that the Board does not expect to be corrected through marketplace forces.

[PS–92, 45 FR 24119, Apr. 9, 1980, as amended by PS–94, 45 FR 40974, June 17, 1980; PS–96, 45 FR 48604, July 21, 1980]

§ 399.34 Intra-Hawaii and Intra-Puerto Rico/Virgin Islands fare flexibility.

For scheduled service within Hawaii, and within and between Puerto Rico and the Virgin Islands, certificated air carriers have the fare flexibility set forth in §§ 399.32 and 399.33, except that:

(a) Instead of the limits set forth in § 399.32(d), the upper limit of the zone for Puerto Rico/Virgin Islands is 30 percent above the SIFL, and for Hawaii is 30 percent above the SHFL; and

(b) The fare flexibility set forth in § 399.33(a) (first class) does not apply to service within Hawaii.

APPENDIX A TO § 399.34—UNITED STATES-PUERTO RICO ENTITY

[Normal fares in selected markets—comparison with SIFL]

Market	Rate-making mileage	DPFI formula fare July 1977	July 1977 normal fare level				DPFI formula May 1980	May 1980 normal fare level			
			Peak		Offpeak			Peak		Offpeak	
			Mid week	Week end	Mid week	Week end		Mid week	Week end	Mid week	Week end
San Juan:											
Atlanta	1,547	$130.81	.....	.....	.....	.....	$203.53	.....	.....	.....	.....
Eastern	.....	.....	$113	$113	$107	$107	.....	$176	$176	$166	$166
Boston	1,674	139.04	.....	.....	.....	.....	216.33	.....	.....	.....	.....
American	.....	.....	.....	.....	.....	.....	.....	209	218	199	209
Eastern	.....	.....	122	128	116	122	.....	209	218	198	209
Chicago	2,072	164.83	.....	.....	.....	.....	256.45	.....	.....	.....	.....
American	.....	.....	149	149	143	143	.....	232	232	222	222
Eastern	.....	.....	149	149	143	143	.....	232	232	222	222
Miami	1,045	97.09	.....	.....	.....	.....	151.06	.....	.....	.....	.....
American	.....	.....	.....	.....	.....	.....	.....	121	131	113	121
Delta	.....	.....	.....	.....	.....	.....	.....	121	131	113	121
Eastern	.....	.....	78	84	72	78	.....	121	131	112	121
Pan Am (National)	.....	.....	78	84	72	78	.....	122	122	122	122
New York	1,597	134.05	.....	.....	.....	.....	208.57	.....	.....	.....	.....
American	.....	.....	108	114	102	108	.....	175	196	175	196
Eastern	.....	.....	108	114	102	108	.....	175	196	175	196
Pan Am	.....	.....	.....	.....	.....	.....	.....	147	147	147	147
Phildelaphia	1,576	132.69	.....	.....	.....	.....	206.45	.....	.....	.....	.....
American	.....	.....	115	121	109	115	.....	197	208	187	197
Eastern	.....	.....	115	121	109	115	.....	175	196	175	196
Washington	1,565	131.97	.....	.....	.....	.....	205.34	.....	.....	.....	.....
American	.....	.....	114	120	108	114	.....	187	197	176	187
Eastern	.....	.....	114	120	108	114	.....	195	206	184	195
Pan Am (National)	.....	.....	.....	.....	.....	.....	.....	147	147	147	147

APPENDIX B TO § 399.34—SELECTED FARE AND SERVICE DATA FOR SEATTLE-ALASKA MARKETS

Market	Rate-making mileage	Actual July 1977 Y fare	DPFI formula fare May 1980 [1]	SIFL formula fare May 1980 [10]	Y fare as of June 1980 [2]		O. & D. passengers Y/E Aug. 30, 1979 [3]	Carriers providing single plane service June 1980 [4]
					Alaska Airlines	Wien Alaska		
Seattle:								
Anchorage	1,448	$119.00	$193.52	$185.14	$159	$159	196,630	AS/NW/WA/WC
Cordova	1,293	118.62	176.85	184.55	178	.....	4,330	AS
Fairbanks	1,533	131.00	201.85	203.81	204	204	44,910	AS/NW/WC
Gustavus (Via JNU)	950	109.62	140.74	170.55	138	.....	1,340	AS
Juneau	909	90.62	137.04	140.99	141	141	40,110	AS/WC
Ketchikan	680	71.62	112.96	111.43	112	112	34,970	AS/WC
Petersburg (Via KTN)	790	89.22	124.07	138.81	138	.....	6,870	AS
Sitka	862	85.62	131.48	133	133.21	.....	17,240	AS
Wrangell (Via KTN)	762	89.22	121.30	138.81	138	.....	4,120	AS
Yakutat	1,092	117.62	155.56	182.99	175	.....	1,500	AS
Kenai [5]	1,468	124.28	198.37	193.35	.....	159	2,470	WC
King Salmon [6]	1,603	167.94	209.26	261.28	.....	200	4,090	WC
Prudhoe Bay [7]	1,802	190.74	229.63	296.75	.....	273	960	WC
Kodiak [8]	1,439	119.00	192.59	185.14	.....	155	11,140	WC
Homer [9]	1,449	143.40	193.52	223.10	.....	159	1,250	WC

[1] $25.14 plus 13.75¢ per mile (0–500); 10.49¢ per mile (501–1500); 10.08¢ per mile (1501 and over). See Order 80–4–211.
[2] Domestic Tariffs.
[3] O. & D. Origin Destination Survey of Airline Passenger Traffic, Table 8, 12 months ended September 30, 1979.
[4] AS=Alaska Airlines; NW=Northwest Orient Airlines; WA=Western Airlines; WC=Wien Air Alaska.

[5] Via Anchorage ($15.28).
[6] Via Anchorage ($48.94).
[7] Via Fairbanks ($59.74).
[8] Local WA Fare.
[9] Via Kodiak ($24.40).
[10] July 1977 fare increased by cumulative adjustment factor of 1.5558% per Order 80–4–211.

APPENDIX C TO § 399.34—ADJUSTMENT OF THE INTRA-HAWAIIAN FARE LEVEL JULY 1, 1977, TO REFLECT COST AT 12.35 PERCENT RETURN

	Regulatory actual Y.E. March 1977			Cost inflation adjusted to July 1, 1977			July 1, 1977, at 12.35 pct R.O.I.
	Aloha	Hawaiian	Total	Aloha	Hawaiian	Total	
RPM's (000)	321,578	404,793	726,371	321,578	404,793	726,371	726,371
ASM's (000)	489,128	638,050	1,127,178	489,128	638,050	1,127,178	1,127,178
Load Factor (percent)	65.75	63.44	64.44	65.75	63.44	64.44	64.4
Yield (dollars)[2]	$0.1427	$0.1453	$0.1441	$0.1427	$0.1453	$0.1441	$0.1589
Operating Revenue—Total	$47,648	$71,599	$119,247				
Passenger Related Revenue	$46,301	$59,942	$106,243	$46,301	$59,942	$106,243	$116,966
Operating Expense—Total	$45,195	$68,836	$114,031				
Passenger Related Expenses	$43,858	$57,501	$101,359	[1] $45,937	$59,013	[1] $104,950	$104,950
Operating Profit—Passenger	$2,443	$2,441	$4,884	$364	$929	$1,293	$12,016
Interest Expense	$741	$2,583	$3,324	$741	$2,583	$3,324	$3,324
Earnings Before Tax	$1,702	$(142)	$1,560	$(377)	$(1,654)	$(2,031)	$8,692
Tax at 48 Percent	$817	$68	$749	$181	$794	$975	$4,172
Net Income	$885	$(74)	$811	$(196)	$(860)	$(1,056)	$4,520
Return Element	$1,626	$2,509	$4,135	$545	$1,723	$2,268	$7,844
Investment	$16,192	$47,326	$63,518	$16,192	$47,326	$63,518	$63,518
Return on Investment (percent)	10.04	5.30	6.51	3.37	3.64	3.57	12.35
Increase Factor[3]							10.27

[1] Cost inflation to July 1, 1977; 1.047 percent for Aloha, 1.026 for Hawaiian. The differing rates for the two carriers, having equivalent aircraft and duplicate route structures, is due primarily to a shift by Hawaiian to larger DC–9–50 aircraft starting in the fourth quarter of 1976.
[2] Passenger revenue divided by RPM's.
[3] Passenger yield at 12.35 percent return divided by actual passenger yield for the year ended March 1977.

[PS–96, 45 FR 48604, July 21, 1980]

§ 399.35 Special tariff permission.

(a) *Definition.* As used in this section, *to grant STP* means to approve a carrier's application for Special Tariff Permission to file a tariff on less than the statutory notice set forth in § 221.160(a) of this chapter.

(b) *Lower fares, rates, and charges.* It is the policy of the Board to grant STP for tariffs that state lower fares, rates, or charges and any rules affecting only those lower fares, rates, or charges, except that:

(1) The Board will not grant STP to match a tariff filed on statutory notice; and

(2) The Board will not grant STP if the proposed fares, rates, charges, or rules raise significant questions of lawfulness, that is, could reasonably be expected to be found unjust or unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or predatory, under current statutory or Board guidelines. In these situations, if the carrier files the tariff on statutory notice and at the same time applies for STP to advance the tariff's effective date, the Board will use its best efforts to act within 15 days to grant or deny STP.

(c) *Higher fares or rates.* For tariffs that state higher fares or rates, and any rules affecting only those fares or rates, the Board's policy on STP is, except in unusual or emergency circumstances:

(1) To grant STP if the resulting fares or rates are within a statutory or Board-established zone of fare or rate flexibility; and

(2) Otherwise, to deny STP.

[PS–94, 45 FR 40974, June 17, 1980, as amended by PS–109, 48 FR 4279, Jan. 31, 1983]

§ 399.36 Unreasonable discrimination.

(a) As used in this section:

(1) *Unreasonable discrimination* means unjust discrimination or unreasonable preference or prejudice; and

(2) *Rate* means rate, fare, or charge.

(b) Except in unusual circumstances or as provided in paragraph (c) of this section, the Board will find a rate for domestic air transportation to constitute unreasonable discrimination only if:

(1) There is a reasonable probability that the rate will result in significant long-run economic injury to passengers or shippers;

(2) The rate is in fact discriminatory according to a reasonable cost allocation or other rational basis;

(3) The rate does not provide transportation or other statutorily recognized benefits that justify the discrimination; and

(4) Actual and potential competitive forces cannot reliably be expected to eliminate the undesirable effects of the discrimination within a reasonable period.

(c) A rate that discriminates on the basis of the status of the traffic carried will not be presumed to be unreasonably discriminatory, unless the use of the status categories in question is contrary to established national antidiscrimination policy.

[PS–93, 45 FR 36062, May 29, 1980]

§ 399.37 Joint fares.

There should be joint fares in all markets over all routings within the contiguous 48 states and the District of Columbia as follows:

(a) *Level.* The level shall not exceed the sum of the maximum local fares permitted by this subpart minus one tax-rounded coach ceiling terminal charge for each interline connection, and in any event shall not exceed the sum of the actual local fares.

(b) *Division.* Joint fares shall be divided according to the relative costs of the mileage flown by each carrier participating in the interline movement. However, where a joint fare is equal to the sum of the actual local fares, each carrier shall get the local fare as its share.

[PS–92, 45 FR 24119, Apr. 9, 1980, as amended by PS–95, 45 FR 42255, June 24, 1980]

§ 399.39 Equipment purchase deposits.

Equipment purchase deposits are advance payments made by air carriers to manufacturers for the purchase of equipment to be delivered in the future, or funds segregated by air carriers for this purpose. It is the policy of the Board not to recognize equipment purchase deposits in an air carrier's investment base for ratemaking purposes. When equipment is acquired by an air carrier and placed in air-transport service, the Board will recognize in the air carrier's investment base interest on purchase deposits on such equipment capitalized and amortized in accordance with the Uniform System of Accounts and Reports for Certificated Air Carriers (part 241 of this chapter).

[PS–32, 32 FR 5370, Mar. 30, 1967]

§ 399.40 Tariffs for domestic air transportation on or after January 1, 1983.

The Board will not approve or accept any tariff filings for interstate of overseas air transportation to be performed on or after January 1, 1983. Any tariffs for such transportation that do not specify an earlier expiration date shall expire at midnight on December 31, 1982.

[PS–107, 47 FR 14893, Apr. 7, 1982]

§ 399.41 Zones of limited suspension for international cargo rates.

(a) *Applicability.* This section states the Board's policy for suspending rate changes for the transportation of property in foreign air transportation. It does not affect the Board's authority to suspend any rate as unjustly discriminatory, unduly preferential, or unduly prejudicial. This section applies to rate changes by all direct air carriers and direct foreign air carriers.

(b) *Standard foreign rate levels.* For each market in foreign air transportation, the standard foreign rate level for the carriage of property shall be the bulk general commodity rates in effect in that market on April 1, 1982, as adjusted in accordance with paragraph (f) of this section. However, the general commodity rate for shipments larger than 500 kg. shall be deemed to be the same as the 500 kg. rate for the purposes of this paragraph, regardless of any different rate in effect in the market.

(c) *Ceilings of limited rate suspension.* Except as provided in paragraph (d) of this section, the Board will not suspend as unreasonable any proposed rate for foreign air transportation of property equal to or less than the following levels:

(1) For all bulk rates (GCR's and SCR's) in the Atlantic region, 20 percent above the standard foreign rate level.

(2) For all bulk rates (GCR's and SCR's) in the Pacific region, 15 percent above the standard foreign rate level.

(3) For all bulk rates (GCR's and SCR's) in the Western Hemisphere region (except Mexico and Canada), 5 percent above the standard foreign rate level.

(4) For all bulk rates (GCR's and SCR's) in Canada/Mexico transborder markets, 10 percent above the standard foreign rate level for the Western Hemisphere.

(5) For all container rates, no maximum level.

(d) *Extraordinary circumstances.* The Board may suspend any tariff if it finds that:

(1) The suspension is in the public interest because of unreasonable regulatory action by a foreign government with respect to rate proposals of an air carrier, or

(2) All of the following extraordinary circumstances are present:

(i) It is highly probable that the fare would be found unreasonable after investigation;

(ii) There is a substantial likelihood of immediate and irreparable harm to the public if the rate is allowed to go into effect; and

(iii) The suspension is required by the public interest.

(e) *Burden of proof.* Persons requesting tariff suspension under paragraph (d) of this section shall have the burden of producing convincing evidence that the conditions of that paragraph are present.

(f) *Standard foreign rate level adjustments.* (1) The Board will periodically adjust the standard foreign rate levels to reflect the percentage change in average operating costs per available ton-mile since the previous adjustment.

(2) Costs will be averaged for three regions—the Atlantic, the Pacific, and Western Hemisphere—and applied equally among all markets in each region.

(3) Cost computations will be based on scheduled freighter and combination service by U.S. air carriers.

(4) Adjustments will be made on April 1 and October 1 of each year, or more frequently as the Board finds appropriate.

(5) In computing costs under this section, the Board will make no adjustments for load factors, aircraft utilization, or other matters due to operational decisions made solely by carrier management. However, the Board retains the discretion to normalize costs for strikes, mandatory aircraft groundings, and other occurrences not solely due to management decisions.

(g) *Definitions.* For the purpose of this section:

(1) *GCR* means general commodity rate.

(2) *SCR* means specific commodity rate.

(3) *Container rate* means any rate specifically applicable to property tendered to the carrier in a unit load devise.

[PS–109, 48 FR 4279, Jan. 31, 1983]

§ 399.42 Flight equipment depreciation and residual values.

For rate-making purposes, for air carriers receiving subsidy under section 406 of the Act, it is the policy of the Board that flight equipment depreciation will be based on the conventional straight-line method of accrual, employing the service lives and residual values set forth below:

[In percent]

	Service life in years	Residual value as percent of cost
Turbofan equipment:		
4-engine	14	2
3-engine	14	2
2-engine	14	2
Turbojet equipment:		
4-engine	10	5
2-engine	10	5
Turboprop equipment:		
4-engine	12	5
2-engine	10	15
Wide-body equipment:		
4-engine	16	10
3-engine	16	10

[PS–54, 38 FR 24643, Sept. 10, 1973, as amended by PS–99, 45 FR 82625, Dec. 16, 1980]

§ 399.43 Treatment of leased aircraft.

In determining the appropriate treatment of leased aircraft for ratemaking purposes, it is the Board's policy to recognize actual rental expenses. In unusual circumstances where the leased aircraft value (determined on a constructive depreciated basis) in relation to net book value of owned aircraft operated by the same air carrier is significantly in excess of the ratio for the aggregate of the domestic trunklines and local service carriers (computed on the same basis), a reasonable profit element may be added which shall reflect the additional risks of operations with the leased aircraft, to the extent that such risks are not compensated by the return on investment. Such profit element would be determined by applying the standard rate of return, less 6 percentage points, to the value of the leased aircraft, on a constructive depreciated basis, to the extent the ratio of such value to depreciated cost of owned aircraft plus the value of leased aircraft exceeds the average for the domestic air carriers. Rental cost plus allowable profit, if any, will not be recognized in amounts exceeding depreciation plus return on investment computed as if the aircraft had been purchased by the carrier.

[PS–44, 36 FR 7229, Apr. 16, 1971]

§ 399.44 Treatment of deferred Federal income taxes for rate purposes.

For rate-making purposes other than the determination of subsidy under section 406(b), it is the policy of the Board that Federal income tax expense should be based on the normal taxes that would be paid under the depreciation standards used for rate making, and that accumulated reserves for deferred taxes should be excluded from the recognized capitalization for rate-base purposes.

[PS–46, 36 FR 7232, Apr. 16, 1971]

EXAMPLE OF SIFL ADJUSTMENT

[Methodology for determining change in operating expense per available seat-mile]

[See footnotes at end of table]

Year ended September 1979	Trunks	Locals	Trunks plus locals	Total passenger/cargo [16]
Total operating expense [1] (millions)	$16,455	$2,522	$18,977	$19,384
Less:				
All-cargo expenses [2]	269	.....	269	269
Belly offset [3]	952	153	1,105	1,153
Nonscheduled [4]	141	46	187	205
Transport related [5]	379	31	410	416
Plus: Capitalized lease adjustment [10]	119	2	121	121
Passenger operating expense	14,833	2,294	17,127	17,462
Passenger fuel cost [11]	.....	.....	4,103	N.A.
Scheduled service ASM's (mils.)	281,671	33,051	314,722	318,459
Passenger nonfuel operating expense per ASM (dollars)	.....	.....	.04138	N.A.
Passenger fuel expense per ASM (dollars)	.....	.....	.01304	N.A.
Total passenger expense per ASM (dollars)	.....	.....	.05442	.05483
Year ended September 1978				
Total operating expense [1] (millions)	14,081	2,033	16,114	16,448
Less:				
All-cargo expenses [2]	282	.....	282	282
Belly offset [3]	869	152	1,021	1,065
Nonscheduled [4]	193	53	246	256
Transport related [5]	419	30	449	454
Plus: Capitalized lease adjustment [10]	78	1	79	79
Passenger operating expense	12,396	1,799	14,195	14,470
Passenger fuel cost [11]	.....	.....	3,129	N.A.
Scheduled service ASM's (mils.)	262,068	27,067	289,135	292,255
Passenger nonfuel operating expense per ASM (dollars)	.....	.....	.03827	N.A.

[Methodology for determining change in operating expense per available seat-mile]
[See footnotes at end of table]

Year ended September 1979	Trunks	Locals	Trunks plus locals	Total passenger/cargo [16]
Passenger fuel expense per ASM (dollars)	.....	.....	.01082	N.A.
Total passenger expense per ASM (dollars)	.....	.....	.04909	.04951
Percent change in nonfuel operating expense per ASM (percent)	.....	.....	8.13	N.A.
Projected change in nonfuel expense from April 1, 1979 to April 1, 1980 [6]	.....	.....	8.13	N.A.
Estimated change in fuel cost, year ended September 1979 average to April 1, 1980 [14]	.....	.....	73.06	N.A.
Nonfuel operating expense per ASM at April 1, 1980 [7] (dollars)	.....	.....	.04474	N.A.
Fuel expense per ASM at April 1, 1980 [7] (dollars)	.....	.....	.02257	N.A.
Total expense per ASM at April 1, 1980 [7] (dollars)	.....	.....	.06731	[15] .06782
Year ended March 1977				
Total operating expense [1] (millions)	$11,726	$1,520	$13,316	$13,601
Less:				
All-cargo expense [2]	238	.....	238	238
Belly offset [3]	729	96	825	865
Nonscheduled [4]	220	35	225	266
Transport related [5]	427	111	538	554
Passenger operating expense	10,112	1,348	11,460	11,678
Passenger fuel cost	2,190	230	2,420	N.A.
Scheduled service ASM's (mils.)	239,593	23,428	263,021	265,837
Operating expense per ASM (dollars)	.04221	.05754	.04357	.04393
Projected expense per ASM (dollars) as at July 1, 1977 [13]	.....	.....	.....	.04593
Projected operating expense per ASM as at April 1, 1980 (page 1) (dollars)	.....	.....	.....	.06782
Ceiling adjustment factor [8] (percent)	.....	.....	.....	47.66

D.P.F.I. formula effective July 15, 1977 [12]:	
Terminal charge	$16.16
Plus	.0884/mile (0–500 miles).
Plus	.0674/mile (501–1,500 miles).
Plus	.0648/mile (over 1,500 miles).
Ceiling formula through April 30, 1980 [9]:	
Terminal charge	$23.86
Plus	.1305/mile (0–500 miles).
Plus	.0995/mile (501–1,500 miles).
Plus	.0957/mile (over 1,500 miles).

[1] Total operating expense for all operations and service (in millions).
[2] Scheduled all-cargo operations expense.
[3] Total scheduled-service cargo revenue, less scheduled all-cargo operations revenue, carried as a by-product in aircraft belly compartments. Includes freight, express, priority and non-priority U.S. mail, and excess baggage.
[4] Total non-scheduled revenues times 0.95, assuming charter operations would only be conducted at a profit.
[5] Total transport-related expense, less any excess of expense over total transport-related revenues.
[6] We here project costs from April 1, 1979 (the midpoint of the data year ended September 1979) to April 1, 1980 the resultant increase factor effective through April 30, 1980.
[7] Operating expense per ASM for year-ended September, 1979, times projected change.
[8] Projected operating expense per ASM on April 1, 1980 divided by the operating expense as at July 1, 1977.
[9] Adjustment results in a 2.5 percent increase in level over current January 1, 1980 factor.
[10] Additional rental expense that would have been incurred had leases not been capitalized under FASB–13, less actual amortization of capitalized lease expense.
[11] Total fuel cost, scheduled service, times complement of rate of All-Cargo expense to total Operating Expense.
[12] Order 77–7–26.
[13] Year ended March, 1977 cost per ASM, times cost escalation factor of 1.04543 (to July 5, 1977). See DPFI workpapers, Y.E. March, 1977.
[14] Estimated average cost per gallon for the trunk plus local service carriers at April 1, 1980, divided by the average for the year ended September, 1979 (48.33¢).
[15] Change in Trunks plus Locals cost per ASM as at April 1, 1980, to year ended September, 1979 times total Psgr/Cargo cost for the year ended September, 1979.
[16] Includes Alaskan, Hawaiian and other regional carriers.

[PS–92, 45 FR 24119, Apr. 9, 1980]

Subpart D [Reserved]

Subpart E—Policies Relating to Hearing Matters

§ 399.60 Standards for determining priorities of hearing.

(a) *General.* This policy statement describes the general standards which will be used by the Board in determining the order in which it will designate for hearing those matters on its docket which are to be decided after notice and hearing. Among such matters are applications for certificates of public convenience and necessity or for foreign air carrier permits; applications under section 408 of the Act for approval of consolidations or acquisitions of control; complaint cases; and various rate-making proceedings.

(b) *Standards.* Matters will be assigned for hearing in accordance with the degree of relative priority which each matter is entitled to on the basis of the comparative public interest involved therein. Among other things, the Board will take into account:

(1) Statutory requirements for preference or statutory limitations on the time within which the Board shall act;

(2) The impact of delay on the public or particular persons;

(3) The need for promptly securing compliance with the provisions of the Act;

(4) The time for which the matter has already been pending and which would be required to dispose of it;

(5) Whether the application requests renewal of an existing temporary authorization; and

(6) In matters relating to operating authority:

(i) Whether a proposal might reduce subsidy or increase economy of operations;

(ii) Whether an application proposes new service;

(iii) The volume of traffic that might be affected by the grant or denial of the proposal;

(iv) The period that has elapsed since the Board considered the service needs of the places or areas involved; and

(v) The relative availability of necessary staff members of the carriers, communities and the Board, in the light of other proceedings already in progress, to handle the processing of the case.

Interested persons may urge upon the Board such considerations as they believe should lead it to accord a particular application a priority different from that which the Board has given it.

§ 399.61 Presentations of public and civic bodies in route proceedings.

For the purpose of implementing the Board's policy to provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence and otherwise to expedite route proceedings, and in light of experience, the following guidelines are hereby established:

(a) Public and civic bodies which represent the same geographic area or community should consolidate their presentation of evidence, briefs or oral argument to the examiner and the Board;

(b) A public body or a civic organization, or several such bodies or organizations whose presentation of evidence is consolidated, should keep to a minimum the number of witnesses used to present the factual evidence in support of the community's position;

(c) Exhibits offered in evidence by a public body or civic organization should be limited to evidence of the economic characteristics of the community and area involved, data as to community of interest and traffic, evidence with respect to the sufficiency of existing service, and airport data, and should not include data relating to number of electricity, water and gas meters, telephones, schools, freight car loadings, building permits, sewer connections, or volume of bank deposits in the community.

§ 399.62 Target dates in hearing cases.

(a) *Applicability.* This section applies to initial and recommended decisions of administrative law judges, final decisions, and decisions on petitions for review or reconsideration in cases in which the Board has ordered a trial-type hearing before an administrative law judge.

(b) *Issuance of target dates.* In cases to which this section applies, the Board or the administrative law judge, as the situation calls for, shall issue a notice of the target date for the completion of

the initial or recommended decision, final decision, or decision on a petition for review or reconsideration. The Board or the administrative law judge shall endeavor to render the pending decision not later than the target date.

(c) *Time for promulgating target dates.* (1) In the case of initial, recommended, or final decisions, notice of target dates shall be issued, served, and filed within 20 days of the submission of closing briefs, or the conclusion of oral argument to the administrative law judge or the Board, as may be appropriate.

(2) In the case of petitions for review or for reconsideration, notices of target dates shall be issued, served, and filed within 20 days of the date for the filing of answers: *Provided*, That, in the case of petitions for reconsideration of Board decisions awarding new route authority, the Board shall, in lieu of issuing individual target dates, endeavor to render its decision no later than the day preceding the effective date of the new authority awarded.

[PS–71, 41 FR 41407, Sept. 22, 1976, as amended by PS–73, 42 FR 21611, Apr. 28, 1977]

§ 399.63 Role of staff in route proceedings.

(a) *General.* This policy statement establishes the standards applicable to staff participation in oral hearing cases involving award of route authority.

(b) *Standards.* The staff's role during such hearings, primarily because it acts in the broad public interest, and not for a particular private or local interest, is to assure that essential evidence is introduced to resolve the public interest issues; that the evidence submitted by the parties is subject to adversary testing, and that decisional options are developed with the public interest in mind. In route cases designated by the Board that offer the opportunity for developing new policies to adapt to the administration of the Federal Aviation Act or that raise unusual evidentiary issues, a prehearing presentation by staff of decisional options will contribute to a better trial record, be consistent with traditional notions of fundamental fairness, better serve the Board's decisionmaking needs and ultimately serve the public interest. In any route case where the Board has not required the staff to participate by making a prehearing presentation, the staff shall present a prehearing presentation of decisional options if the administrative law judge finds that there exists unusual policy or evidentiary issues which clearly require such a presentation. We believe it is not desirable for the staff to advocate the adoption of a single decisional option at the outset of a case. Accordingly,

(1) In route cases designated by the Board that offer the opportunity for developing new policies, the staff shall make a prehearing presentation of the decisional options available, and describe the kinds of evidence needed or available to develop each option. The staff need not and should not be required to develop evidence on each option. In every case, after the close of the hearing, however, the staff shall advocate a position based upon one or more of the decisional options identified in its prehearing presentation or developed at trial.

(2) In any route case in which the administrative law judge finds that there exists unusual policy or evidentiary issues clearly requiring a prehearing presentation, the staff shall submit a prehearing statement of the decisional options available.

(3) To the extent possible, the Board, in its instituting orders, will identify or designate the cases which involve the development of new policies or unusual evidentiary issues that will require the type of staff participation described in § 399.63(b)(1).

[PS–76, 43 FR 19354, May 5, 1978]

Subpart F—Policies Relating to Rulemaking Proceedings

§ 399.70 Cross-references to the Office of the Secretary's Rulemaking Procedures.

The rules and policies relating to the disposition of rulemaking petitions by the Department of Transportation Office of the Secretary are located in its rulemaking procedures contained in 49 CFR part 5. The criteria for identifying significant rules and determining whether a regulatory analysis will be

performed are set forth in the Department's Regulatory Policies and Procedures, 44 FR 11034, February 26, 1979, and Executive Order 12866.

[Doc. No. OST-96-1429, 61 FR 29019, June 7, 1996]

§ 399.73 Definition of small business for Regulatory Flexibility Act.

For the purposes of the Department's implementation of chapter 6 of title 5, United States Code (Regulatory Flexibility Act), a direct air carrier or foreign air carrier is a small business if it provides air transportation only with small aircraft as defined in § 298.3 of this chapter (up to 60 seats/18,000 pound payload capacity).

[Doc. No. OST-96-1429, 61 FR 29019, June 7, 1996]

Subpart G—Policies Relating to Enforcement

§ 399.80 Unfair and deceptive practices of ticket agents.

It is the policy of the Board to regard any of the following enumerated practices (among others) by a ticket agent as an unfair or deceptive practice or unfair method of competition:

(a) Misrepresentations[1] which may induce members of the public to believe that the ticket agent is an air carrier.

(b) Using or displaying or permitting or suffering to be used or displayed the name, trade name, slogan or any abbreviation thereof, of the ticket agent, in advertisements, on or in places of business, or on aircraft in connection with the name of an air carrier with whom it does business, in such manner that it may mislead or confuse the traveling public with respect to the agency status of the ticket agent.

(c) Misrepresentations as to the quality or kind of service, type or size of aircraft, time of departure or arrival, points served, route to be flown, stops to be made, or total trip-time from point of departure to destination.

(d) Misrepresentation as to qualifications of pilots or safety record or certification of pilots, aircraft or air carriers.

(e) Misrepresentations that passengers are directly insured when they are not so insured; for example, where the only insurance in force is that protecting the air carrier in event of liability.

(f) Misrepresentations as to fares and charges for air transportation or services in connection therewith.

(g) Misrepresentation that special discounts or reductions are available, when such discounts or reductions are not specific in the lawful tariffs of the air carrier which is to perform the transportation.

(h) Advertising or otherwise offering for sale or selling air transportation or services in connection therewith at less than the rates, fares and charges specified in the currently effective tariffs of the air carrier or air carriers who are engaged to perform such air transportation or services, or offering or giving rebates or other concessions thereon, or assisting, suffering or permitting persons to obtain such air transportation or services at less than such lawful rates, fares and charges.

(i) Misrepresentations that special priorities for reservations are available when such special considerations are not in fact granted to members of the public generally.

(j) Selling air transportation to persons on a reservation or charter basis for specified space, flight, or time, or representing that such definite reservation or charter is or will be available or has been arranged, without a binding commitment with an air carrier for the furnishing of such definite reservation or charter as represented or sold.

(k) Selling or issuing tickets or other documents to passengers to be exchanged or used for air transportation knowing or having reason to know or believe that such tickets or other documents will not be or cannot be legally honored by air carriers for air transportation.

(l) Failing or refusing to make proper refunds promptly when service cannot

[1] The word ''misrepresentation'' used in this list includes any statement or representation made in advertising or made orally to members of the public which is false, fraudulent, deceptive or misleading, or which has the tendency or capacity to deceive or mislead.

be performed as contracted or representing that such refunds are obtainable only at some other point, thus depriving persons of the immediate use of the money to arrange other transportation, or forcing them to suffer unnecessary inconveniences and delays or requiring them to accept transportation at higher cost, or under less desirable circumstances, or on less desirable aircraft than that represented at the time of sale.

(m) Misrepresentations regarding the handling, forwarding or routing of baggage or other property, or the loss or tracing thereof, or failing or refusing to honor proper claims for loss of or damage to baggage or other property.

(n) Misrepresentation as to the requirements that must be met by persons or organizations in order to qualify for charter or group fare flights.

§ 399.81 Unrealistic or deceptive scheduling.

(a) It is the policy of the Board to consider unrealistic scheduling of flights by any air carrier providing scheduled passenger air transportation to be an unfair or deceptive practice and an unfair method of competition within the meaning of section 411 of the Act.

(b) With respect to the advertising of scheduled performance, it is the policy of the Board to regard as an unfair or deceptive practice or an unfair method of competition the use of any figures purporting to reflect schedule or on-time performance without indicating the basis of the calculation, the time period involved, and the pairs of points or the percentage of systemwide operations, thereby represented and whether the figures include all scheduled flights or only scheduled flights actually performed.

[PS–111, 49 FR 40567, Oct. 17, 1984, as amended by PS–114, 50 FR 456, Jan. 4, 1985]

§ 399.82 Passing off of carrier identity by affiliation between carriers.

(a) *Applicability.* This policy shall apply to proceedings in which the Board, in exercising its regulatory powers with respect to air carriers and foreign air carriers, is required to determine whether carriers have engaged in unfair or deceptive practices, or unfair methods of competition. The standards herein shall not be construed to supersede any action previously taken by the Board in a particular proceeding dealing with the subject matter of this statement, but to the extent not inconsistent therewith shall provide standards which supplement, or implement such specific Board action. The limitation of this policy statement to certain affiliated carriers should not be construed as an indication that the Board will permit other carriers to pass off by means of activities which are inconsistent with the minimum safeguards set forth in paragraph (c) of this section. In such cases the Board may determine in an adjudicatory proceeding that the activities engaged in have a tendency to pass off and constitute an unfair or deceptive practice or an unfair method of competition.

(b) *Definition.* For the purpose of this statement, the term *affiliation,* as between an air carrier and a foreign air carrier, shall mean that one of the carriers directly or indirectly has one of the following relationships to the other:

(1) Owns or controls 10 percent or more of the securities of the other, with or without an accompanying power to vote;

(2) Is in control of the other within the meaning of section 408 of the Act;

(3) Has any of the interlocking relationships described in section 409 of the Act;

(4) Is jointly controlled with the other carrier, directly or indirectly by a third person;

(5) Provides general agency services for the other carrier.

For the purpose of this statement, *general agency services* shall mean services performed under an agreement between an air carrier and a foreign air carrier which provides for the general representation of one by the other in a specified area or point, in relation to services such as the following: Solicitation and sale of passenger, express, and cargo transportation; airport transportation and hotel accommodations; local advertising and publicity, local sales offices; passenger services; local government representation; purchase,

lease or other acquisition of equipment; or aircraft and transit services, aircraft inspection, aircraft dispatch.

(c) *Minimum safeguards.* The minimum safeguards which the Board will consider as adequate to foreclose passing off by affiliated carriers are as follows:

(1) An air carrier and any affiliated foreign air carrier shall not engage in joint public relations activities at points served by both carriers which tend to pass off the services of one carrier as the services of the other carrier or as part of a unified system of which each is a part;

(2) Where one affiliated carrier provides general agency services for the other carrier, at points served by both carriers, it shall specifically identify all flights of the other carrier as flights of that carrier without reference to any relationship to the carrier performing the agency services;

(3) All forms of display (including aircraft insignia), scheduled publications, advertising, or printed matter employed by affiliated carriers shall not state or imply that the services of either carrier are performed in common with the other carrier or as part of a single system. In cases where it is necessary to indicate that any agency service is performed by one affiliated carrier for the other, the references to the carrier performing the agency should be sufficiently subordinated to the name of the other carrier as to emphasize the limited role of the agent;

(4) Telephone facilities at points served by both carriers should preserve the identity of the individual carriers;

(5) Where joint traffic or sales facilities are maintained by affiliated carriers, the separate identity of each carrier should be maintained by reasonably comparable use of display advertising, desk-space, personnel uniforms, and other facilities and activities;

(6) Where one carrier sells time payment tickets for travel over the other carrier (except interline travel), the application form should identify the carrier performing the transportation;

(7) The respective personnel of the affiliated carriers shall preserve the individual identity of the respective carriers in all public dealings.

(d) *Unfair and deceptive practice.* It is the policy of the Board to regard any joint activity of an affiliated air carrier and a foreign air carrier as an unfair or deceptive practice or unfair method of competition where such joint activity does not satisfy the minimum safeguards enumerated in the preceding subsection.

(e) *Exceptions.* Exceptions to a safeguard set forth in paragraph (c) of this section may be recognized for activities in a foreign country if the Board finds that special circumstances pertaining to the country render the safeguard inappropriate. Exceptions on other grounds may be recognized pursuant to § 399.4.

[PS–29, 30 FR 13781, Oct. 29, 1965]

§ 399.83 Unfair or deceptive practice of air carrier, foreign air carrier, or ticket agent in orally confirming to prospective passenger reserved space on scheduled flights.

It is the policy of the Board to consider the practice of an air carrier, foreign air carrier, or ticket agent, of stating to a prospective passenger by telephone or other means of communication that a reservation of space on a scheduled flight in air transportation is confirmed before a passenger has received a ticket specifying thereon his confirmed reserved space, to be an unfair or deceptive practice and an unfair method of competition in air transportation or the sale thereof within the meaning of section 411 of the Act, unless the tariff of the particular air carrier or foreign air carrier provides for confirmation of reserved space by the means so used.

[PS–58, 39 FR 38096, Oct. 29, 1974]

§ 399.84 Price advertising.

The Board considers any advertising or solicitation by a direct air carrier, indirect air carrier, or an agent of either, for passenger air transportation, a tour (i.e., a combination of air transportation and ground accommodations), or a tour component (e.g., a hotel stay) that states a price for such air transportation, tour, or tour component to be an unfair or deceptive practice, unless the price stated is the entire price to be paid by the customer to the air carrier, or agent, for such air

transportation, tour, or tour component.

[PS–113, 49 FR 49440, Dec. 20, 1984]

§ 399.85 [Reserved]

§ 399.86 Payments for non-air transportation services for air cargo.

The Board considers that payments by air carriers and foreign air carriers to shippers, indirect air carriers, or foreign indirect air carriers for non-air transportation preparation of air cargo shipments are for services ancillary to the air transportation, and are not prohibited under section 403 of the Act.

[PS–86, 44 FR 45609, Aug. 3, 1979]

§ 399.87 [Reserved]

Subpart H—Other Policies Relating to Interests, Activities, and Relationships of Air Carriers

§ 399.91 Air carrier participation in programs of technical assistance to airlines of less developed countries.

(a) *Applicability*. This policy shall apply to proceedings under sections 408, 409, and 412 of the Act in which the Board is required to make any determination as to the public interest or consistency with the Act of any agreement or relationship sought to be entered into by an air carrier, or officer or director thereof, with a foreign airline in connection with the performance of some activity pursuant to a technical assistance contract financed by an agency of the U.S. Government.

(b) *Policy*. It is the policy of the Board that all U.S. air carriers interested in performing contracts for aviation technical assistance to foreign airlines should have equal access to information necessary to bid on such contracts, and should be given equal consideration thereafter in the award of such contracts based upon customary contracting criteria and subject to the considerations set forth below:

(1) The air carrier selected should possess the necessary technical and managerial skills and economic strength to perform the assigned task in the recipient country to the credit of the United States. Where familiarity with the particular language and culture of the recipient country are important to the success of the project, weight should be given to the capabilities of all interested carriers in this regard, including particularly those which a route carrier may have acquired through service to the country or area.

(2) Where a single U.S. route carrier is serving or is certificated to serve the recipient country or the region in which it is located, and where initiation or continued operation of the route by such carrier is an important national interest objective of the United States, weight should be given to any evidence that an award of the contract to the route carrier as opposed to any other U.S. carrier would be held to achieve this objective.

(3) An air carrier performing a technical assistance contract will necessarily occupy a close special relationship with the airline and government of the recipient country. Over and above the terms of any specific contract, there is latent in such relationship the possibility of a relative preference for such carrier over a competing U.S. air carrier in matters of interline traffic, governmental restrictions, etc. Accordingly, where more than one U.S. route carrier is certificated to serve the recipient country and more than one such carrier wishes to perform the technical assistance, none of such carriers should be awarded the contract over the objection of any other except under very unusual circumstances.

(4) Technical assistance contracts should contain realistic objectives and require competent performance at reasonable cost and within a reasonable period of time consistent with the ability of the foreign airline to become self-sufficient.

(5) Technical assistance contracts should not be awarded to a U.S. route carrier with major economic interests hostile to those of the U.S. route carrier serving the country.

(6) Technical assistance contracts should not be awarded to subsidized carriers except under special circumstances. Such circumstances should include at least a showing (i) that the subsidized carrier has special qualifications, the utilization of which

is required in the national interest by the circumstances of a particular program, and (ii) that performance of the contract will not interfere with the primary business of the subsidized carrier which is to provide air transportation in the United States. In the latter connection, it is to be recognized that participation with maximum effectiveness in a technical assistance program would not only divert the attention of top management from certificated services but might also involve the assignment of the most competent senior operational and technical personnel, the diversion of funds at least on a short-term basis, and the possible transfer from certificated services of aircraft and related equipment. Normally, therefore, unless substantial evidence and arguments are produced to the contrary, participation by subsidized carriers in technical assistance programs will be considered inconsistent with the public interest.

[PS–22, 29 FR 5788, May 1, 1964]

Subpart I—Policies Relating to Disclosure of Information

§ 399.101 Public release of Board decisions in cases where the action of the Board is subject to the review or approval of the President.

(a) By Executive Order 11920, 41 FR 23665 (June 11, 1976), effective July 11, 1976, the President has authorized the issuance for public inspection of decisions by the Board in cases where the action of the Board is subject to the review or approval of the President in accordance with section 801 of the Federal Aviation Act. In the interest of national security, and in order to allow for consideration of appropriate action under Executive Order 11652, Executive Order 11920 provides that decisions shall be withheld from public disclosure for five days after submission to the President but may be released on or after the sixth day following receipt by the President as to all unclassified portions of the text if the Board is not notified by the Assistant to the President for National Security Affairs or his designee that all or part of the decision shall be withheld from public disclosure.

(b) It is the policy of the Board to release to the public all decisions by the Board in section 801 cases as promptly as possible following submission of such decision to the President. Upon receipt of notice by the Assistant to the President for National Security Affairs as required by the Executive Order, the Board shall promptly provide one copy for public inspection in the Docket Section and one copy for public inspection and copying in the Public Reference Room, and shall promptly thereafter print and process the decision for more general distribution in accordance with Board procedures. Where the Board is required to withhold portions of the text of its decision it shall make public those portions of its decision which may be publicly released. Where the Board is required to withhold public release of its decision in its entirety it shall nonetheless publicly indicate that its decision has been transmitted to the President. The Board shall not publicly indicate that its decision has been transmitted to the President in those cases in which the Assistant to the President for National Security Affairs or his designee determines that classification of the existence of the decision is appropriate and so informs the Board. The provisions are also applicable to decisions submitted to the President for review pursuant to section 801(b) of the Act.

[PS–72, 41 FR 46291, Oct. 20, 1976]

Subpart J—Policies Relating to Federal Preemption of State Economic Regulations

AUTHORITY: Secs. 102, 105, 204, 401, 403, and 416 of the Federal Aviation Act of 1958, as amended; 72 Stat. 740, 743, 754, 758, 771; 49 U.S.C. 1302, 1305, 1324, 1371, 1373, and 1386.

SOURCE: PS–83, 44 FR 9951, Feb. 15, 1979, unless otherwise noted.

§ 399.111 All operations of federally authorized carriers to be regulated by the Board.

(a) All operations of Federally authorized carriers are subject to the requirements of Title IV of the Act, including certification and tariff-filing

requirements, unless otherwise exempted from one or more of those requirements by Board order or regulation.

(b) When any intrastate air carrier that in August 1, 1977, was operating primarily in intrastate air transportation regulated by a State receives the authority to provide interstate air transportation, any authority received from such State shall be considered to be part of its authority to provide air transportation received from the Board under Title IV of the Act, until suspended, amended, or terminated as provided under such title.

Subpart K—Policies Relating to Certificate Duration

§ 399.120 Duration of certificates in limited-entry markets.

All certificate authority that the Department grants to U.S. air carriers in carrier selection proceedings will be awarded in the form of experimental certificates of five years' duration pursuant to section 401(d)(8) of the Federal Aviation Act. This provision does not alter or amend permanent certificates issued prior to January 1, 1985.

[Doc. No. 43403, 51 FR 43188, Dec. 1, 1986]

CHAPTER III—COMMERCIAL SPACE TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

(Parts 400 to 1199)

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SUBCHAPTER A—GENERAL

PART 400—BASIS AND SCOPE

Sec.
400.1 Basis.
400.2 Scope.

AUTHORITY: 49 U.S.C. 70101–70121.

SOURCE: Docket No. 43810, 53 FR 11013, Apr. 4, 1988, unless otherwise noted.

§ 400.1 Basis.

The basis for the regulations in this chapter is the Commercial Space Launch Act of 1984, and applicable treaties and international agreements to which the United States is party.

§ 400.2 Scope.

These regulations set forth the procedures and requirements applicable to the authorization and supervision under 49 U.S.C. Subtitle IX, chapter 701, of commercial space transportation activities conducted in the United States or by a U.S. citizen. The regulations in this chapter do not apply to amateur rocket activities or to space activities carried out by the United States Government on behalf of the United States Government.

[Doc. No. FAA–4999–5535, 65 FR 56656, Sept. 19, 2000]

PART 401—ORGANIZATION AND DEFINITIONS

Sec.
401.1 The Office of Commercial Space Transportation.
401.3 The Director of Commercial Space Transportation.
401.5 Definitions.

AUTHORITY: 49 U.S.C. 70101–70121.

SOURCE: Docket No. 43810, 53 FR 11013, Apr. 4, 1988, unless otherwise noted.

§ 401.1 The Office of Commercial Space Transportation.

The Office of Commercial Space Transportation, referred to in these regulations as the ''Office,'' is a line of business within the Federal Aviation Administration and is located in the Federal Aviation Administration Headquarters, 800 Independence Avenue, SW., Room 331, Washington, DC 20591.

[Amdt. 401–3, 68 FR 35289, June 13, 2003]

§ 401.3 The Director of Commercial Space Transportation.

The Office is headed by an Associate Administrator appointed by the Secretary of Transportation to exercise the Secretary's authority to license and otherwise regulate commercial space launch activities and to discharge the Secretary's responsibility to encourage, facilitate and promote commercial space launches by the United States private sector.

[53 FR 11013, Apr. 4, 1988, as amended by Amdt. 401–3, 68 FR 35289, June 13, 2003]

§ 401.5 Definitions.

As used in this chapter—

Act means 49 U.S.C. Subtitle IX, Commercial Space Transportation, ch. 701—Commercial Space Launch Activities, 49 U.S.C. 70101–70121.

Amateur rocket activities means launch activities conducted at private sites involving rockets powered by a motor or motors having a total impulse of 200,000 pound-seconds or less and a total burning or operating time of less than 15 seconds, and a rocket having a ballistic coefficient-*i.e.*, gross weight in pounds divided by frontal area of rocket vehicle-less than 12 pounds per square inch.

Associate Administrator means the Associate Administrator for Commercial Space Transportation, Federal Aviation Administration, or any person designated by the Associate Administrator to exercise the authority or discharge the responsibilities of the Associate Administrator.

Contingency abort means cessation of vehicle flight during ascent or descent in a manner that does not jeopardize public health and safety and the safety of property, in accordance with mission rules and procedures. Contingency abort includes landing at an alternative location that has been designated as a contingency abort location in advance of vehicle flight.

Emergency abort means cessation of vehicle flight during ascent or descent in a manner that minimizes risk to public health and safety and the safety of property. Emergency abort involves failure of a vehicle, safety-critical system, or flight safety system such that contingency abort is not possible.

Federal launch range means a launch site, from which launches routinely take place, that is owned and operated by the government of the United States.

Flight safety system means a system designed to limit or restrict the hazards to public health and safety and the safety of property presented by a launch vehicle or reentry vehicle while in flight by initiating and accomplishing a controlled ending to vehicle flight. A flight safety system may be destructive resulting in intentional break up of a vehicle or non-destructive, such as engine thrust termination enabling vehicle landing or safe abort capability.

Hazardous materials means hazardous materials as defined in 49 CFR 172.101.

Launch means to place or try to place a launch vehicle or reentry vehicle and any payload from Earth in a suborbital trajectory, in Earth orbit in outer space, or otherwise in outer space, and includes activities involved in the preparation of a launch vehicle for flight, when those activities take place at a launch site in the United States. The term launch includes the flight of a launch vehicle and pre-flight ground operations beginning with the arrival of a launch vehicle or payload at a U.S. launch site. For purposes of an ELV launch, flight ends after the licensee's last exercise of control over its launch vehicle. For purposes of an orbital RLV launch, flight ends after deployment of a payload for an RLV having payload deployment as a mission objective. For other orbital RLVs, flight ends upon completion of the first sustained, steady-state orbit of an RLV at its intended location.

Launch accident means

(1) A fatality or serious injury (as defined in 49 CFR 830.2) to any person who is not associated with the flight;

(2) Any damage estimated to exceed $25,000 to property not associated with the flight that is not located at the launch site or designated recovery area.

(3) An unplanned event occurring during the flight of a launch vehicle resulting in the known impact of a launch vehicle, its payload or any component thereof:

(i) For an expendable launch vehicle (ELV), outside designated impact limit lines; and

(ii) For an RLV, outside a designated landing site.

Launch incident means an unplanned event occurring during the flight of a launch vehicle, other than a launch accident, involving a malfunction of a flight safety system or safety-critical system or failure of the licensee's safety organization, design or operations.

Launch operator means a person who conducts or who will conduct the launch of a launch vehicle and any payload.

Launch site means the location on Earth from which a launch takes place (as defined in a license the Secretary issues or transfers under this chapter) and necessary facilities at that location.

Launch vehicle means a vehicle built to operate in, or place a payload in, outer space or a suborbital rocket.

Mishap means a launch or reentry accident, launch or reentry incident, launch site accident, failure to complete a launch or reentry as planned, or an unplanned event or series of events resulting in a fatality or serious injury (as defined in 49 CFR 830.2), or resulting in greater than $25,000 worth of damage to a payload, a launch or reentry vehicle, a launch or reentry support facility or government property located on the launch or reentry site.

Operation of a launch site means the conduct of approved safety operations at a permanent site to support the launching of vehicles and payloads.

Operation of a reentry site means the conduct of safety operations at a permanent site on Earth at which a reentry vehicle and its payload, if any, is intended to land.

Payload means an object that a person undertakes to place in outer space by means of a launch vehicle, including components of the vehicle specifically designed or adapted for that object.

Person means an individual or an entity organized or existing under the laws of a state or country.

Reenter; reentry means to return or attempt to return, purposefully, a reentry vehicle and its payload, if any, from Earth orbit or from outer space to Earth. The term ''reenter; reentry'' includes activities conducted in Earth orbit or outer space to determine reentry readiness and that are critical to ensuring public health and safety and the safety of property during reentry flight. The term ''reenter; reentry'' also includes activities conducted on the ground after vehicle landing on Earth to ensure the reentry vehicle does not pose a threat to public health and safety or the safety of property.

Reentry accident means any unplanned event occurring during the reentry of a reentry vehicle resulting in the known impact of the reentry vehicle, its payload, or any component thereof outside a designated reentry site; a fatality or serious injury (as defined in 49 CFR 830.2) to any person who is not associated with the reentry; or any damage estimated to exceed $25,000 to property not associated with the reentry and not located within a designated reentry site.

Reentry incident means any unplanned event occurring during the reentry of a reentry vehicle, other than a reentry accident, involving a malfunction of a reentry safety-critical system or failure of the licensee's safety organization, procedures, or operations.

Reentry operator means a person responsible for conducting the reentry of a reentry vehicle as specified in a license issued by the FAA.

Reentry site means the location on Earth where a reentry vehicle is intended to return. It includes the area within three standard deviations of the intended landing point (the predicted three-sigma footprint).

Reentry vehicle means a vehicle designed to return from Earth orbit or outer space to Earth substantially intact. A reusable launch vehicle that is designed to return from Earth orbit or outer space to Earth substantially intact is a reentry vehicle.

Reusable launch vehicle (RLV) means a launch vehicle that is designed to return to Earth substantially intact and therefore may be launched more than one time or that contains vehicle stages that may be recovered by a launch operator for future use in the operation of a substantially similar launch vehicle.

Safety-critical means essential to safe performance or operation. A safety-critical system, subsystem, condition, event, operation, process or item is one whose proper recognition, control, performance or tolerance is essential to system operation such that it does not jeopardize public safety.

Vehicle safety operations personnel means those persons whose job performance is critical to public health and safety or the safety of property during RLV or reentry operations.

State and United States means, when used in a geographical sense, the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the United States Virgin Islands, Guam, and any other commonwealth, territory, or possession of the United States; and

United States citizen means:

(1) Any individual who is a citizen of the United States;

(2) Any corporation, partnership, joint venture, association, or other entity organized or existing under the laws of the United States or any State; and

(3) Any corporation, partnership, joint venture, association, or other entity which is organized or exists under the laws of a foreign nation, if the controlling interest in such entity is held by an individual or entity described in paragraph (1) or (2) of this definition. *Controlling interest* means ownership of an amount of equity in such entity sufficient to direct management of the entity or to void transactions entered into by management. Ownership of at least fifty-one percent of the equity in an entity by persons described in paragraph (1) or (2) of this definition creates a rebuttable presumption that such interest is controlling.

[Doc. No. FAA–1999–5535, 65 FR 56656, Sept. 19, 2000, as amended by Amdt. 401–2, 65 FR 62861, Oct. 19, 2000]

SUBCHAPTER B—PROCEDURE

PART 404—REGULATIONS AND LICENSING REQUIREMENTS

Subpart A—General

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404.19 Hearings.

AUTHORITY: 49 U.S.C. 70101–70121.

SOURCE: Docket No. 43810, 53 FR 11013, Apr. 4, 1988, unless otherwise noted.

Subpart A—General

§ 404.1 Scope.

Under 49 U.S.C. 70105, this part establishes procedures for issuing regulations to implement the provisions of 49 U.S.C. Subtitle IX, chapter 701, and for eliminating or waiving requirements of Federal law otherwise applicable to the licensing of commercial space transportation activities under 49 U.S.C. Subtitle IX, chapter 701.

[Doc. No. FAA–1999–5535, 65 FR 56657, Sept. 19, 2000]

§ 404.3 Filing of petitions to the Associate Administrator.

(a) Any person may petition the Associate Administrator to issue, amend, or repeal a regulation to eliminate as a requirement for a license any requirement of Federal law applicable to commercial space launch and reentry activities and the operation of launch and reentry sites or to waive any such requirement in the context of a specific application for a license.

(b) Each petition filed under this section shall:

(1) Be submitted in duplicate to the Documentary Services Division, Attention Docket Section, Room 4107, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590;

(2) Set forth the text or substance of the regulation or amendment proposed, the regulation to be repealed, or the licensing requirement to be eliminated or waived;

(3) In the case of a petition for a waiver, explain the nature and extent of the relief sought;

(4) Contain any facts, views, and data available to the petitioner to support the action requested; and

(5) In the case of a petition for a waiver, be submitted at least 60 days before the proposed effective date of the waiver unless good cause for later submission is shown in the petition.

(c) A petition for rulemaking filed under this section shall contain a summary, which the Associate Administrator may cause to be published in the FEDERAL REGISTER, which includes:

(1) A brief description of the general nature of the action requested; and

(2) A brief description of the pertinent reasons presented in the petition for instituting the rulemaking.

[53 FR 11013, Apr. 4, 1988, as amended by Amdt. 404–1, 65 FR 56657, Sept. 19, 2000; Amdt. 404–2, 68 FR 35289, June 13, 2003]

§ 404.5 Action on petitions.

(a) *General.* No public hearing, argument or other proceeding is held on a petition before its disposition under this section.

(b) *Grants.* In the case of a petition for a waiver, the Associate Administrator may grant the waiver if the Associate Administrator determines that the waiver is in the public interest and will not jeopardize public health and safety, the safety or property, or any national security or foreign policy interest of the United States. In all other cases, if the Associate Administrator determines that the petition contains adequate justification, the Associate Administrator initiates a rulemaking action under Subpart B of this part.

(c) *Denials.* If the Associate Administrator determines that the petition does not justify initiating rulemaking action or granting the waiver, the petition is denied.

(d) *Notification.* Whenever the Associate Administrator determines that a petition should be granted or denied, the petitioner is notified of the Associate Administrator's action and the reasons supporting it.

[53 FR 11013, Apr. 4, 1988, as amended by Amdt. 404–2, 68 FR 35289, June 13, 2003]

Subpart B—Rulemaking

§ 404.11 General.

(a) Unless the Associate Administrator finds, for good cause, that notice is impractical, unnecessary, or contrary to the public interest, a notice of proposed rulemaking is issued and interested persons are invited to participate in proceedings related to each substantive rule proposed.

(b) Unless the Associate Administrator determines that notice and comment is necessary or desirable, interpretive rules, general statements of policy, and rules relating to organization, procedure, or practice are issued as final rules without notice or other proceedings.

(c) In the Associate Administrator's discretion, interested persons may be invited to participate in the rulemaking proceedings described in § 404.19 of this Subpart.

[53 FR 11013, Apr. 4, 1988, as amended by Amdt. 404–2, 68 FR 35289, June 13, 2003]

§ 404.13 Petitions for extension of time to comment.

(a) Any person may petition the Associate Administrator for an extension of time to submit comments in response to a notice of proposed rulemaking. The petition shall be submitted in duplicate not less than three days before expiration of the time stated in the notice. The filing of the petition does not automatically extend the time for petitioner's comments.

(b) The Associate Administrator grants the petition only if the petitioner shows a substantive interest in the proposed rule and good cause for the extension, and if the extension is in the public interest. If an extension is granted, it is granted as to all persons and is published in the FEDERAL REGISTER.

[53 FR 11013, Apr. 4, 1988, as amended by Amdt. 404–2, 68 FR 35289, June 13, 2003]

§ 404.15 Consideration of comments received.

All timely comments are considered before final action is taken on a rulemaking proposal. Late filed comments may be considered to the extent possible, provided they do not cause undue additional expense or delay.

§ 404.17 Additional rulemaking proceedings.

The Director may initiate any additional rulemaking proceedings, if necessary or desirable. For example, the Associate Administrator may invite interested persons to present oral arguments, participate in conferences, appear at informal hearings, or participate in any other proceedings.

[53 FR 11013, Apr. 4, 1988, as amended by Amdt. 404–2, 68 FR 35289, June 13, 2003]

§ 404.19 Hearings.

(a) Sections 556 and 557 of Title 5, United States Code, do not apply to hearings held under this part. As a fact-finding forum, each hearing held under this part is nonadversarial and there are no formal pleadings or adverse parties. Any rule issued in a proceeding in which a hearing is held is not based exclusively on the record of the hearing, but on the entire record of the rulemaking proceeding.

(b) The Associate Administrator designates a representative to conduct any hearing held under this part. The FAA Chief Counsel designates a legal officer for the hearing.

[53 FR 11013, Apr. 4, 1988, as amended by Amdt. 404–2, 68 FR 35289, June 13, 2003]

PART 405—INVESTIGATIONS AND ENFORCEMENT

Sec.

405.1 Monitoring of licensed and other activities.
405.3 Authority to modify, suspend or revoke.
405.5 Emergency orders.

AUTHORITY: 49 U.S.C. 70101–70121.

SOURCE: Docket No. 43810, 53 FR 11014, Apr. 4, 1988, unless otherwise noted.

§ 405.1 Monitoring of licensed and other activities.

Each licensee must allow access by and cooperate with Federal officers or employees or other individuals authorized by the Associate Administrator to observe licensed facilities and activities, including launch sites and reentry sites, as well as manufacturing, production, and testing facilities, or assembly sites used by any contractor or a licensee in the production, assembly, or testing of a launch or reentry vehicle and in the integration of a payload with its launch or reentry vehicle. Observations are conducted to monitor the activities of the licensee or contractor at such time and to such extent as the Associate Administrator considers reasonable and necessary to determine compliance with the license or to perform the Associate Administrator's responsibilities pertaining to payloads for which no Federal license, authorization, or permit is required.

[Doc. No. FAA–1999–5535, 65 FR 56657, Sept. 19, 2000]

§ 405.3 Authority to modify, suspend or revoke.

(a) Upon application by the licensee or upon the Office's own initiative, the Office may modify a license issued under this chapter if the Office finds that the modification is consistent with the requirements of the Act.

(b) If the Office finds that a licensee has substantially failed to comply with any requirement of the Act, any regulation issued under the Act, the terms and conditions of a license, or any other applicable requirement, or that public health and safety, the safety of property or any national security or foreign policy interest of the United States so require, the Office may suspend or revoke any license issued to such licensee under this chapter.

(c) Unless otherwise specified by the Office, any modification, suspension or revocation made by the Office under this section:

(1) Takes effect immediately; and

(2) Continues in effect during any review of such action under Part 406 of this chapter.

(d) Whenever the Office takes any action under this section, the Office immediately notifies the licensee in writing of the Office's finding and the action which the Office has taken or proposes to take regarding such finding.

§ 405.5 Emergency orders.

The Associate Administrator may immediately terminate, prohibit, or suspend a licensed launch, reentry, or operation of a launch or reentry site if the Associate Administrator determines that—

(a) The licensed launch, reentry, or operation of a launch or reentry site is detrimental to public health and safety, the safety of property, or any national security or foreign policy interest of the United States; and

(b) The detriment cannot be eliminated effectively through the exercise of other authority of the Office.

[53 FR 11014, Apr. 4, 1988, as amended by Amdt. 405–1, 65 FR 56657, Sept. 19, 2000]

PART 406—INVESTIGATIONS, ENFORCEMENT, AND ADMINISTRATIVE REVIEW

Subpart A—Investigations and Enforcement

Sec.

406.1 Hearings in license and payload actions.
406.3 Submissions; oral presentation in license and payload actions.
406.5 Administrative law judge's recommended decision in license and payload actions.
406.7 [Reserved]
406.9 Civil penalties.
406.10–406.100 [Reserved]

Subpart B—Rules of Practice in FAA Space Transportation Adjudications

406.101 Applicability.
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judge and Assistant Chief Counsel for Litigation.
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406.175 Appeal from initial decision.
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406.179 Judicial review of a final decision and order.

AUTHORITY: 49 U.S.C. 70101–70121.

SOURCE: Docket No. FAA–2001–8607, 66 FR 2180, Jan. 10, 2001, unless otherwise noted.

Subpart A—Investigations and Enforcement

§406.1 Hearings in license and payload actions.

(a) Pursuant to 49 U.S.C. 70110, the following are entitled to a determination on the record after an opportunity for a hearing in accordance with 5 U.S.C. 554.

(1) An applicant for a license and a proposed transferee of a license regarding any decision to issue or transfer a license with conditions or to deny the issuance or transfer of such license;

(2) An owner or operator of a payload regarding any decision to prevent the launch or reentry of the payload; and

(3) A licensee regarding any decision to suspend, modify, or revoke a license or to terminate, prohibit, or suspend any licensed activity therefore.

(b) An administrative law judge will be designated to preside over any hearing held under this part.

§406.3 Submissions; oral presentation in license and payload actions.

(a) Determinations in license and payload actions under this subpart will be made on the basis of written submissions unless the administrative law judge, on petition or on his or her own initiative, determines that an oral presentation is required.

(b) Submissions shall include a detailed exposition of the evidence or arguments supporting the petition.

(c) Petitions shall be filed as soon as practicable, but in no event more than 30 days after issuance of decision or finding under §406.1.

§406.5 Administrative law judge's recommended decision in license and payload actions.

(a) The Associate Administrator, who shall make the final decision on the matter at issue, shall review the recommended decision of the administrative law judge. The Associate Administrator shall make such final decision within thirty days of issuance of the recommended decision.

(b) The authority and responsibility to review and decide rests solely with the Associate Administrator and may not be delegated.

§406.7 [Reserved]

§406.9 Civil penalties.

(a) *Civil penalty liability.* Under 49 U.S.C. 70115(c), a person found by the FAA to have violated a requirement of the Act, a regulation issued under the Act, or any term or condition of a license issued or transferred under the Act, is liable to the United States for a civil penalty of not more than $100,000 for each violation, as adjusted for inflation. A separate violation occurs for each day the violation continues.

(b) *Delegations.* The authority to impose civil penalties is exercised by an agency attorney as described in §406.105.

(c) *Notice of proposed civil penalty.* A civil penalty action is initiated when the agency attorney advises a person, referred to as the respondent, of the

charges or other reasons upon which the FAA bases the proposed action and allows the respondent to answer the charges and to be heard as to why the civil penalty should not be imposed. A notice of proposed civil penalty states the facts alleged; any requirement of the Act, a regulation issued under the Act, or any term or condition of a license issued or transferred under the Act allegedly violated by the respondent; and the amount of the proposed civil penalty. Not later than 30 days after receipt of the notice of proposed civil penalty the respondent may elect to proceed by one or more of the following:

(1) Pay the amount of the proposed civil penalty or an agreed upon amount, in which case the agency attorney will issue either an order imposing civil penalty or a compromise order in that amount.

(2) Submit to the agency attorney one of the following:

(i) Written information, including documents and witnesses statements, demonstrating that a violation did not occur or that a penalty, or the amount of the proposed penalty, is not warranted by the circumstances.

(ii) A written request to reduce the proposed civil penalty, the amount of reduction, and the reasons and any document supporting a reduction of the proposed civil penalty, including records indicating a financial inability to pay or records showing that payment of the proposed civil penalty would prevent the person from continuing in business.

(iii) A written request for an informal conference to discuss the matter with the agency attorney and to submit relevant information.

(3) Request that a final notice of proposed civil penalty be issued so that the respondent may request a hearing in accordance with paragraph (g) of this section.

(d) *Final notice of proposed civil penalty*. A final notice of proposed civil penalty (final notice) provides the last opportunity for the respondent to request a hearing.

(1) The agency attorney issues a final notice if one of the following occurs:

(i) The respondent fails to respond to the notice of proposed civil penalty not later than 30 days after the date the respondent received the notice of proposed civil penalty.

(ii) The parties have not agreed to a resolution of the action after participating in informal procedures under paragraph (c)(2) of this section.

(iii) The respondent requests the issuance of a final notice in accordance with paragraph (c)(3) of this section.

(2) Not later than 15 days after the date the respondent received the final notice of proposed civil penalty, the respondent shall do one of the following:

(i) Submit the amount of the proposed civil penalty or an agreed-upon amount, in which case the agency attorney issues either an order imposing civil penalty or a compromise order in that amount.

(ii) Request a hearing in accordance with paragraph (g) of this section.

(e) *Order imposing civil penalty*. An order imposing civil penalty is the final order of the Secretary imposing a civil penalty. An order imposing civil penalty is issued for a violation described in paragraph (a) of this section after notice and an opportunity for a hearing.

(1) The agency attorney either issues an order imposing civil penalty, or another document becomes an order imposing civil penalty, as described below.

(i) The agency attorney issues an order imposing civil penalty if, in response to a notice of proposed civil penalty or a final notice of proposed civil penalty, the respondent pays or agrees to pay a civil penalty in the amount proposed or an agreed upon amount (other than an agreement for a compromise order under paragraph (f) of this section).

(ii) Unless the respondent requests a hearing not later than 15 days after the date the respondent received a final notice of proposed civil penalty, the final notice of proposed civil penalty becomes an order imposing civil penalty.

(iii) Unless an appeal is filed with the FAA decisionmaker in accordance with §406.175, if the administrative law judge finds that a violation occurred and determines that a civil penalty, in an amount found appropriate by the administrative law judge, is warranted, an initial decision of an administrative

law judge under subpart B of this part becomes an order imposing civil penalty.

(iv) Unless a complaint is filed with a United States district court in accordance with §406.176, if the FAA decisionmaker finds that a violation occurred and determines that a civil penalty, in an amount found appropriate by the FAA decisionmaker, is warranted, a final decision and order of the FAA decisionmaker under subpart B of this part becomes an order imposing civil penalty. If a person seeks judicial review not later than 60 days after the final decision and order has been served on the respondent, the final decision and order is stayed.

(2) [Reserved]

(f) *Compromise order.* The agency attorney at any time may agree to compromise any civil penalty with no finding of violation. Under such agreement, the agency attorney issues a compromise order stating:

(1) The respondent agrees to pay a civil penalty.

(2) The FAA makes no finding of a violation.

(3) The compromise order may not be used as evidence of a prior violation in any subsequent civil penalty action or license action.

(g) *Request for hearing.* Any respondent who has been issued a final notice of proposed civil penalty may, not later than 15 days after the date the respondent received the final notice, request a hearing under subpart B of this part.

(1) The respondent must file a written request for hearing with the Docket Management System (Docket Management System, U.S. Department of Transportation, Room PL 401, 400 Seventh Street, SW., Washington, DC 20590–0001) and must serve a copy of the request on the agency attorney. Sections 406.113 and 406.115 state how filing and service must be done.

(2) The request for hearing must be dated and signed.

(h) *Method of payment.* A respondent must pay a civil penalty by check or money order, payable to the Federal Aviation Administration.

(i) *Collection of civil penalties.* If a respondent does not pay a civil penalty imposed by an order imposing civil penalty or a compromise order within 60 days after service of the final order, the FAA may refer the order to the United States Department of Treasury or Department of Justice to collect the civil penalty.

(j) *Exhaustion of administrative remedies.* A respondent may seek judicial review of a final decision and order of the FAA decisionmaker as provided in §406.179. A respondent has not exhausted administrative remedies for purposes of judicial review if the final order is one of the following:

(1) An order imposing civil penalty issued by an agency attorney under paragraph (e)(1)(i) of this section.

(2) A final notice of proposed civil penalty that becomes an order imposing civil penalty under paragraph (e)(1)(ii) of this section.

(3) An initial decision of an administrative law judge that was not appealed to the FAA decisionmaker.

(4) A compromise order under paragraph (f) of this section.

(k) *Compromise.* The FAA may compromise or remit a civil penalty that has been proposed or imposed under this section.

§§406.10–406.100 [Reserved]

Subpart B—Rules of Practice in FAA Space Transportation Adjudications

§406.101 Applicability.

(a) *Adjudications to which these rules apply.* These rules apply to the following adjudications:

(1) A civil penalty action in which the respondent has requested a hearing under §406.9.

(2) [Reserved]

(b) [Reserved]

§406.103 Definitions that apply in part 406.

For the purpose of this part:

Administrative law judge means an administrative law judge appointed pursuant to the provisions of 5 U.S.C. 3105.

Attorney means a person licensed by a state, the District of Columbia, or a territory of the United States to practice law or appear before the courts of that state or territory.

Complainant in a civil penalty action means the proponent of the civil penalty in the FAA.

FAA decisionmaker means the Associate Administrator for Commercial Space Transportation, or the Administrator of the Federal Aviation Administration, acting in the capacity of the decisionmaker on appeal; or a person who has been delegated the authority to act for the FAA decisionmaker. As used in this part, the FAA decisionmaker is the official authorized to issue a final decision and order of the Secretary in an action.

Mail means U.S. first class mail, U.S. certified mail, U.S. registered mail, or an express courier service.

Party means the respondent or the complainant.

Personal delivery includes hand-delivery or use of a same-day messenger service. ''Personal delivery'' does not include the use of Government interoffice mail service.

Properly addressed means using an address contained in agency records; a residential, business, or other address used by a person on any document submitted under this part; or any other address determined by other reasonable and available means.

Respondent means a person who has been charged with a violation.

§ 406.105 Separation of functions for prosecuting civil penalties and advising the FAA decisionmaker.

(a) *Agency attorney.* The authority to prosecute civil penalties within the FAA is exercised by an agency attorney in accordance with § 406.9.

(1) The following officials have the authority to act as the agency attorney under this part: The Deputy Chief Counsel; the Assistant Chief Counsel for Enforcement; the Assistant Chief Counsel for Regulations; the Assistant Chief Counsel for Europe, Africa, and Middle East Area Office; each Regional Counsel; and each Center Counsel. This authority may be delegated further.

(2) An agency attorney may not include:

(i) The Chief Counsel or the Assistant Chief Counsel for Litigation;

(ii) Any attorney on the staff of the Assistant Chief Counsel for Litigation who advises the FAA decisionmaker regarding an initial decision or any appeal to the FAA decisionmaker; or

(iii) Any attorney who is supervised in a civil penalty action by a person who provides such advice to the FAA decisionmaker in that action or a factually-related action.

(b) *Advisors to the FAA decisionmaker.* (1) The Chief Counsel, the Assistant Chief Counsel for Litigation or an attorney on the staff of the Assistant Chief Counsel for Litigation, will advise the FAA decisionmaker regarding an initial decision or any appeal of an action to the FAA decisionmaker.

(2) An agency employee engaged in the performance of investigative or prosecutorial functions must not, in that case or a factually-related case, participate or give advice in a decision by the administrative law judge or by the FAA decisionmaker on appeal, except as counsel or a witness in the public proceedings.

§ 406.107 Appearances of parties, and attorneys and representatives.

(a) Any party may appear and be heard in person.

(b) Any party may be accompanied, represented, or advised by an attorney or representative designated by the party.

(1) An attorney or representative who represents a party must file a notice of appearance in the action with the Docket Management System and must serve a copy of the notice of appearance on each other party before participating in any proceeding governed by this subpart.

(2) The attorney or representative must include his or her name, address, and telephone number in the notice of appearance.

(3) That attorney or representative in any proceeding governed by this subpart may examine the party.

(4) Service of a document on the party's attorney or representative is considered to be service on the party.

(c) An agency attorney represents the complainant.

§ 406.109 Administrative law judges—powers and limitations.

(a) *Powers of an administrative law judge.* In accordance with the rules of

this subpart, an administrative law judge may:

(1) Give notice of, and hold, prehearing conferences and hearings;

(2) Administer oaths and affirmations;

(3) Issue subpoenas authorized by law and requested by the parties;

(4) Rule on offers of proof;

(5) Receive relevant and material evidence;

(6) Regulate the course of the hearing in accordance with the rules of this subpart;

(7) Hold conferences to settle or to simplify the issues by consent of the parties;

(8) Dispose of procedural motions and requests; and

(9) Make findings of fact and conclusions of law, and issue an initial decision.

(b) *Duties to maintain the record.* (1) The administrative law judge must file with the DMS, or instruct the party to file with the DMS, a copy of each document that is submitted to the administrative law judge that has not been filed with DMS, except the portions of those documents that contain confidential information.

(2) The administrative law judge must file with the DMS a copy of each ruling and order issued by the administrative law judge, except those portions that contain confidential information.

(3) The administrative law judge must file with the DMS, or instruct the court reporter to file with the DMS, a copy of each transcript and exhibit, except those portions that contain confidential information.

(4) The administrative law judge must maintain any confidential information filed in accordance with §406.117 and deliver it to the Assistant Chief Counsel for Litigation when the administrative law judge no longer needs it.

(c) *Limitations on the power of the administrative law judge.* The administrative law judge may not issue an order of contempt, award costs to any party, or impose any sanction not specified in this subpart. If the administrative law judge imposes any sanction not specified in this subpart, a party may file an interlocutory appeal of right pursuant to §406.173(c). This section does not preclude an administrative law judge from issuing an order that bars a person from a specific proceeding based on a finding of obstreperous or disruptive behavior in that specific proceeding.

(d) *Disqualification.* The administrative law judge may disqualify himself or herself at any time. A party may file a motion, pursuant to §406.141(f)(8), requesting that an administrative law judge be disqualified from the proceedings.

§406.111 Signing documents.

(a) *Signature required.* The party, or the party's attorney or representative, must sign each document tendered for filing or served on each party.

(b) *Effect of signing a document.* By signing a document, the party, or the party's attorney or representative, certifies that he or she has read the document and, based on reasonable inquiry and to the best of that individual's knowledge, information, and belief, the document is—

(1) Consistent with these rules;

(2) Warranted by existing law or that a good faith argument exists for extension, modification, or reversal of existing law; and

(3) Not unreasonable or unduly burdensome or expensive, not made to harass any person, not made to cause unnecessary delay, not made to cause needless increase in the cost of the proceedings, or for any other improper purpose.

(c) *Sanctions.* If an individual signs a document in violation of this section, the administrative law judge or the FAA decisionmaker must:

(1) Strike the pleading signed in violation of this section;

(2) Strike the request for discovery or the discovery response signed in violation of this section and preclude further discovery by the party;

(3) Deny the motion or request signed in violation of this section;

(4) Exclude the document signed in violation of this section from the record;

(5) Dismiss the interlocutory appeal and preclude further appeal on that issue by the party who filed the appeal until an initial decision has been entered on the record; or

(6) Dismiss the appeal of the administrative law judge's initial decision to the FAA decisionmaker.

§ 406.113 Filing documents with the Docket Management System (DMS) and sending documents to the administrative law judge and Assistant Chief Counsel for Litigation.

(a) *The Docket Management System (DMS).* (1) Documents filed in a civil penalty adjudication are kept in the Docket Management System (DMS), except for documents that contain confidential information in accordance with § 406.117. The DMS is an electronic docket. Documents that are filed are scanned into the electronic docket and an index is made of all documents that have been filed so that any person may view the index and documents as provided in paragraph (f) of this section.

(2) A party is not required to file written interrogatories and responses, requests for production of documents or tangible items and responses, and requests for admission and responses with the Docket Management System or submit them to administrative law judge, except as provided in § 406.143.

(b) *Method of filing.* A person filing a document must mail or personally deliver the signed original and one copy of each document to the DMS at Docket Management System, U.S. Department of Transportation, Plaza Level 401, 400 7th Street, SW., Washington, DC 20590–0001. A person must serve a copy of each document on each party in accordance with § 406.115.

(c) *Date of filing.* The date of filing is the date of personal delivery; or if mailed, the mailing date shown on any certificate of service, the date shown on the postmark if there is no certificate of service, or other mailing date shown by other evidence if there is no certificate of service or postmark. The date shown in the DMS index is not necessarily the date of service. It is the date the DMS received the document.

(d) *Form.* DMS scans the documents into its electronic docket. To ensure that DMS can scan the document and correctly identify it in the index, each person filing a document must comply with the following:

(1) Each document must be legible. It may be handwritten, typewritten, or printed from a computer.

(2) Each document must have a caption on its first page, clearly visible, with the following information:

(i) ''FAA Space Adjudication.''

(ii) Case name, such as ''In the matter of X Corporation.''

(iii) FAA Case Number and DMS docket number, if assigned.

(iv) Name of the document being filed, including the party filing the document, such as ''Respondent's Motion to Dismiss.''

(v) ''Confidential information filed with administrative law judge'' or ''Confidential information filed with Assistant Chief Counsel for Litigation'' if the party is filing confidential information under § 406.117.

(3) The document must be capable of being scanned and be easy to read both in paper form and as scanned into the electronic docket. A document that meets the following specifications is capable of being scanned using automatic feeders and is easy to read both in paper form and as scanned into the electronic docket. Documents that do not meet these specifications may not be legible.

(i) On white paper.

(ii) On paper not larger than 8½ by 11 inches.

(iii) In black ink.

(iv) Text double-spaced. Footnotes and long quotes may be single spaced.

(v) At least 12 point type.

(vi) Margins at least 1 inch on each side.

(vii) The original not bound or hole-punched, only held together with removable metal clips or the like. The copy that is filed or sent to the administrative law judge or Assistant Chief Counsel for Litigation, and the copy served on another party, need not meet this specification.

(viii) The original has no tabs. The copy that is filed or sent to the administrative law judge or Assistant Chief Counsel for Litigation, and the copy served on another party, need not meet this specification.

(e) *Sending documents to the administrative law judge or Assistant Chief Counsel for Litigation.* Sending the document directly to the administrative law judge or to the Assistant Chief Counsel for Litigation is not a substitute for

filing the original with the DMS, except for confidential information under §406.117.

(f) *Viewing and copying the record.* Any person may view and copy the record, except for confidential information, as follows:

(1) During regular business hours at the Docket Management System, U.S. Department of Transportation, Plaza Level 401, 400 7th Street, SW., Washington, DC 20590–0001.

(2) Through the Internet at http://dms.dot.gov.

(3) By requesting it from the Docket Management System and paying reasonable costs.

§406.115 Serving documents on other parties.

(a) *Service required.* A person must serve on each other party at the time of filing a copy of any document filed with the Docket Management System. Service on a party's attorney or representative of record is adequate service on the party.

(b) *Method of service.* A person must serve documents by personal delivery or by mail.

(c) *Certificate of service.* A person may attach a certificate of service to a document filed with the DMS. Any certificate of service must include a statement, dated and signed by the individual filing the document, that the document was served on each party, the method of service, and the date of service.

(d) *Date of service.* The date of service is the date of personal delivery; or if mailed, the mailing date shown on the certificate of service, the date shown on the postmark if there is no certificate of service, or other mailing date shown by other evidence if there is no certificate of service or postmark. The date shown in the DMS index is not necessarily the date of service. It is the date the DMS received the document.

(e) *Additional time after service by mail.* Whenever a party has a right or a duty to act or to make any response within a prescribed period after service by mail, or on a specified date after service by mail, 5 days is added to the prescribed period.

(f) *Service by the administrative law judge.* The administrative law judge must serve a copy of each document including, but not limited to, notices of pre-hearing conferences and hearings, rulings on motions, decisions, and orders, upon each party to the proceedings by personal delivery or by mail.

(g) *Service made.* A document is deemed served in accordance with this subpart if it was properly addressed; was sent in accordance with this subpart; and was returned, not claimed, or refused. Service is considered valid as of the date and the time that the document was mailed, or personal delivery of the document was refused.

(h) *Presumption of service.* There is a presumption of service where a party or a person, who customarily receives mail, or receives it in the ordinary course of business, at either the person's residence or the person's principal place of business, acknowledges receipt of the document.

§406.117 Confidential information.

(a) *Filing confidential information.* If a party wants certain information that the party is filing not made available to the public, the party must do the following:

(1) Place the information in a separate sealed envelope and clearly mark the envelope ''CONFIDENTIAL.'' At least the first page of the document in the envelope also must be marked ''CONFIDENTIAL.''

(2) Attach to this envelope a cover document marked ''Confidential information filed with administrative law judge'' or ''Confidential information filed with Assistant Chief Counsel for Litigation.'' The cover document must include, at the least, a short statement of what is being filed, such as ''Respondent's motion for confidentiality order.''

(3) Unless such a motion has already been granted, enclose a motion for confidentiality order in accordance with paragraph (c) of this section. The motion must be in the sealed envelope if it contains confidential information; otherwise the motion must be outside of the sealed envelope.

(b) *Marked information not made public.* If a party files a document in a sealed envelope clearly marked ''CONFIDENTIAL'' the document may not

be made available to the public unless and until the administrative law judge or the FAA decisionmaker decides it may be made available to the public in accordance with 49 U.S.C. 70114.

(c) *Motion for confidentiality order.* If a party is filing, is requested to provide in discovery, or intends to offer at the hearing, information that the party does not wish to be available to the public, the party must file a motion for a confidentiality order.

(1) The party must state the specific grounds for withholding the information from the public.

(2) If the party claims that the information is protected under 49 U.S.C. 70114, and if both the complainant and the respondent agree that the information is protected under that section, the administrative law judge must grant the motion. If one party does not agree that the information is protected under 49 U.S.C. 70114 the administrative law judge must decide. Either party may file an interlocutory appeal of right under § 406.173(c).

(3) If the party claims that the information should be protected on grounds other than those provided by 49 U.S.C. 70114 the administrative law judge must grant the motion if, based on the motion and any response to the motion, the administrative law judge determines that disclosure would be detrimental to safety, disclosure would not be in the public interest, or that the information is not otherwise required to be made available to the public.

(4) If the administrative law judge determines that the information is not necessary to decide the case or would not otherwise lead to the discovery of relevant material, the administrative law judge must preclude any inquiry into the matter by any party.

(5) If the administrative law judge determines that the requested material may be disclosed during discovery, the administrative law judge may order that the material may be discovered and disclosed under limited conditions or may be used only under certain terms and conditions.

(6) If the administrative law judge determines that the requested material is necessary to decide the case, or would otherwise lead to the discovery of relevant material, and that a confidentiality order is warranted, the administrative law judge must—

(i) Provide an opportunity for review of the document by the attorneys of record off the record.

(ii) Provide procedures for excluding the information from the record, or order that portion of the record that includes confidential information be closed.

(iii) Order that the parties must not disclose the information in any manner and the parties must not use the information in any other proceeding.

(7) If an administrative law judge orders a record closed, in whole or in part:

(i) The closed record is not available to the public.

(ii) The closed record is available to the parties' attorneys of record.

(iii) The administrative law judge may determine whether the closed record is available to the parties, the parties' representatives, or other persons such as witnesses for a party.

(iv) No party, attorney of record, representative of record, or person who receives information from such persons, may disclose information that has been protected under this section except to a person authorized by this section or the administrative law judge to receive it.

(v) If a person other than one authorized by this section desires to view or copy a closed record, the person must file a motion to open the record.

§ 406.119 Computation of time.

(a) This section applies to any period of time prescribed or allowed by this subpart, by notice or order of the administrative law judge or the FAA decisionmaker, or by any applicable statute.

(b) The date of an act, event, or default, after which a designated time period begins to run, is not included in a computation of time under this subpart.

(c) The last day of a time period is included in a computation of time unless it is a Saturday, Sunday, or a legal holiday. If the last day of the time period is a Saturday, Sunday, or legal holiday, the time period runs until the end

of the next day that is not a Saturday, Sunday, or legal holiday.

§406.121 Extension of time.

Before an appeal is filed with the FAA decisionmaker, the parties may seek an extension of time as follows:

(a) *Extension of time by agreement of the parties.* The parties may agree to extend for a reasonable period the time for filing a document under this subpart with the agreement of the administrative law judge. The party seeking the extension of time must submit a draft order to the administrative law judge for signature, file it with the Docket Management System, and serve it on each party.

(b) *Motion for extension of time.* If the parties do not agree to an extension of time for filing a document, a party desiring an extension may file with the Docket Management System and serve a written motion for an extension of time not later than 7 days before the document is due unless good cause for the late filing is shown. The administrative law judge may grant the extension of time if good cause for the extension is shown.

(c) *Failure to rule.* If the administrative law judge fails to rule on a written motion for an extension of time by the date the document is due, the motion for an extension of time is granted for no more than 20 days after the original date the document was to be filed.

§406.123 Waivers.

Waivers of any rights provided by statute or regulation must be in writing or by stipulation made at a hearing and entered into the record. The parties must set forth the precise terms of the waiver and any conditions.

§406.127 Complaint and answer in civil penalty adjudications.

(a) *Complaint*—(1) *Filing.* The complainant must file the original and one copy of the complaint with the Docket Management System, or may file a written motion pursuant to §406.141(f)(1) instead of filing a complaint, not later than 20 days after receipt by the complainant of a request for hearing. The complainant should suggest a location for the hearing when filing the complaint.

(2) *Service.* The complainant must personally deliver or mail a copy of the complaint to the respondent, or the respondent's attorney or representative who has filed a notice of appearance in accordance with §406.107.

(3) *Contents of complaint.* The final notice of proposed civil penalty issued under §406.9(d) may be filed as the complaint. A complaint must set forth the following in sufficient detail to provide notice:

(i) The facts alleged.

(ii) Any requirement of the Act, a regulation issued under the Act, or any term or condition of a license issued or transferred under the Act allegedly violated by the respondent.

(iii) The proposed civil penalty.

(b) *Answer*—(1) *Time for filing.* The respondent must file an answer to the complaint, or may file a written motion pursuant to §406.141(f)(2) instead of filing an answer, not later than 30 days after service of the complaint.

(2) *Form.* The answer must be in writing. The answer may be in the form of a letter but must be dated and signed by the person responding to the complaint. The answer must be legible, and may be handwritten, typed, or printed from a computer.

(3) *Filing and service.* A respondent must file the answer with the Docket Management System and serve a copy of the answer on the agency attorney who filed the complaint.

(4) *Contents of answer*—(i) *Specific denial of allegations required.* The respondent must admit, deny, or state that the respondent is without sufficient knowledge or information to admit or deny, each numbered paragraph of the complaint. Any statement or allegation contained in the complaint that is not specifically denied in the answer constitutes an admission of the truth of that allegation. An administrative law judge shall treat a general denial of the complaint as a failure to file an answer.

(ii) *Affirmative defenses.* The answer must specifically state any affirmative defense that the respondent asserts.

(iii) *Request for relief.* The answer may include a brief statement of any relief requested.

(iv) *Hearing location.* The respondent should suggest a location for the hearing when filing the answer.

(5) *Failure to file answer.* A respondent's failure to file an answer without good cause constitutes an admission of the truth of each allegation contained in the complaint.

§ 406.133 Amendment of pleadings.

(a) *Time.* A party must file with the Docket Management System and serve on each other party any amendment to a complaint or an answer as follows:

(1) Not later than 15 days before the scheduled date of a hearing, a party may amend a complaint or an answer without the consent of the administrative law judge.

(2) Less than 15 days before the scheduled date of a hearing, the administrative law judge may allow amendment of a complaint or an answer only for good cause shown in a motion to amend.

(b) *Responses.* The administrative law judge must allow a reasonable time, but not more than 20 days from the date of filing, for other parties to respond to an amendment to a complaint or answer.

§ 406.135 Withdrawal of complaint or request for hearing.

At any time before or during a hearing, the complainant may withdraw a complaint or a party may withdraw a request for a hearing without the consent of the administrative law judge. If the complainant withdraws the complaint or a party withdraws the request for a hearing and the answer, the administrative law judge must dismiss the proceedings under this subpart with prejudice.

§ 406.137 Intervention.

(a) A person may file with the Docket Management System and serve on each other party a motion for leave to intervene as a party in an adjudication. Except for good cause shown, a motion for leave to intervene must be filed not later than 10 days before the hearing.

(b) The administrative law judge may grant a motion for leave to intervene if the administrative law judge finds that—

(1) Intervention will not unduly broaden the issues or delay the proceedings, and

(2) The intervener will be bound by any order or decision entered in the action or the intervener has a property, financial, or other legitimate interest that may not be addressed adequately by the parties.

(c) The administrative law judge may determine the extent to which an intervener may participate in the proceedings.

§ 406.139 Joint procedural or discovery schedule.

(a) *General.* The parties may agree to submit a schedule for filing all prehearing motions or for conducting discovery or both.

(b) *Form and content of schedule.* If the parties agree to a joint procedural or discovery schedule, one of the parties must file with the Docket Management System and serve the joint schedule, setting forth the dates to which the parties have agreed. One of the parties must draft an order establishing a joint schedule for the administrative law judge.

(1) The joint schedule may include, but need not be limited to, times for requests for discovery, any objections to discovery requests, responses to discovery requests, submission of prehearing motions, responses to prehearing motions, exchange of exhibits to be introduced at the hearing, and lists of witnesses that may be called at the hearing.

(2) Each party must sign the original joint schedule.

(c) *Time.* The parties may agree to submit all prehearing motions and responses and may agree to close discovery in the proceedings under the joint schedule within a reasonable time before the date of the hearing, but not later than 15 days before the hearing.

(d) *Order establishing joint schedule.* The administrative law judge must approve the joint schedule filed by the parties by signing the joint schedule and filing it with the Docket Management System.

(e) *Disputes.* The administrative law judge must resolve any dispute regarding discovery or regarding compliance

with the joint schedule as soon as possible so that the parties may continue to comply with the joint schedule.

(f) *Sanctions for failure to comply with joint schedule.* If a party fails to comply with the order establishing a joint schedule, the administrative law judge may direct that party to comply with a motion to compel discovery; or, limited to the extent of the party's failure to comply with a motion or discovery request, the administrative law judge may:

(1) Strike that portion of a party's pleadings;

(2) Preclude prehearing or discovery motions by that party;

(3) Preclude admission of that portion of a party's evidence at the hearing; or

(4) Preclude that portion of the testimony of that party's witnesses at the hearing.

§406.141 Motions.

(a) *General.* A party applying for an order or ruling not specifically provided in this subpart must do so by motion. A party must comply with the requirements of this section when filing a motion for consideration by the administrative law judge or the FAA decisionmaker on appeal.

(b) *Contents.* A party must state the relief sought by the motion and the particular grounds supporting that relief. If a party has evidence in support of a motion, the party must attach any evidence, including affidavits, to the motion.

(c) *Form and time.* Except for oral motions heard on the record, a motion made prior to the hearing must be in writing. Unless otherwise agreed by the parties or for good cause shown, a party must file any prehearing motion with the Docket Management System and serve each other party not later than 30 days before the hearing.

(d) *Answers to motions.* Any party may file and serve an answer, with affidavits or other evidence in support of the answer, not later than 10 days after service of a written motion on that party. When a motion is made during a hearing, the answer may be made at the hearing on the record, orally or in writing, within a reasonable time determined by the administrative law judge.

(e) *Rulings on motions.* The administrative law judge must rule on all motions as follows:

(1) *Discovery motions.* The administrative law judge must resolve all pending discovery motions not later than 10 days before the hearing.

(2) *Prehearing motions.* The administrative law judge must resolve all pending prehearing motions not later than 7 days before the hearing. If the administrative law judge issues a ruling or order orally, the administrative law judge must serve a written copy of the ruling or order, within 3 days, on each party. In all other cases, the administrative law judge must issue rulings and orders in writing and must serve a copy of the ruling or order on each party.

(3) *Motions made during the hearing.* The administrative law judge may issue rulings and orders on motions made during the hearing orally. Oral rulings or orders on motions must be made on the record.

(f) *Specific motions*—(1) *Complainant's motion to dismiss a request for a hearing as prematurely filed.* The complainant may file a motion to dismiss a request for a hearing as prematurely filed instead of filing a complaint. If the motion is not granted, the complainant must file the complaint and must serve a copy of the complaint on each party not later than 10 days after service of the administrative law judge's ruling or order on the motion to dismiss. If the motion to dismiss is granted and the proceedings are terminated without a hearing, the respondent may file an appeal in accordance with §406.175. If required by the decision on appeal, the complainant must file a complaint and must serve a copy of the complaint on each party not later than 10 days after service of the decision on appeal.

(2) *Respondent's motions instead of an answer.* A respondent may file one or more of the following motions instead of filing an answer. If the administrative law judge denies the motion, the respondent must file an answer not later than 10 days after service of the denial of the motion.

(i) *Respondent's motion to dismiss complaint for failure to state a claim for*

which a civil penalty may be imposed. A respondent may file a motion to dismiss the complaint for failure to state a claim for which a civil penalty may be imposed instead of filing an answer. The motion must show that the complaint fails to state a violation of the Act, a regulation issued under the Act, or any term or condition of a license issued or transferred under the Act.

(ii) *Respondent's motion to dismiss allegations or complaint for staleness.* Instead of filing an answer to the complaint, a respondent may move to dismiss the complaint, or that part of the complaint that alleges a violation that occurred more than 5 years before an agency attorney issued a notice of proposed civil penalty to the respondent, as provided by 28 U.S.C. 2462.

(iii) *Respondent's motion for more definite statement.* A respondent may file a motion requesting a more definite statement of the allegations contained in the complaint instead of filing an answer. The respondent must set forth, in detail, the indefinite or uncertain allegations contained in a complaint or response to any pleading and must submit the details that the party believes would make the allegation or response definite and certain. If the administrative law judge grants the motion, the complainant must supply a more definite statement not later than 15 days after service of the ruling granting the motion. If the complainant fails to supply a more definite statement, the administrative law judge must strike the allegations in the complaint to which the motion is directed. If the administrative law judge denies the motion, the respondent must file an answer and must serve a copy of the answer on each party not later than 10 days after service of the order of denial.

(3) *Other motions to dismiss.* A party may file a motion to dismiss, specifying the grounds for dismissal.

(4) *Complainant's motion for more definite statement.* The complainant may file a motion requesting a more definite statement if an answer fails to respond clearly to the allegations in the complaint. The complainant must set forth, in detail, the indefinite or uncertain allegations contained in the answer and must submit the details that the complainant believes would make the allegation or response definite and certain. If the administrative law judge grants the motion, the respondent must supply a more definite statement not later than 15 days after service of the ruling on the motion. If the respondent fails to supply a more definite statement, the administrative law judge must strike those statements in the answer to which the motion is directed. An administrative law judge shall treat a respondent's failure to supply a more definite statement as an admission of unanswered allegations in the complaint.

(5) *Other motions for more definite statement.* A party may file a motion for more definite statement of any pleading that requires or permits a response under this subpart. A party must set forth, in detail, each indefinite or uncertain allegation contained in a pleading or response and must submit the details that would make each allegation definite and certain.

(6) *Motion to strike.* Any party may make a motion to strike any insufficient allegation or defense, or any redundant, immaterial, or irrelevant matter in a pleading. A party must file a motion to strike and must serve a copy on each party before a response to that pleading is required under this subpart or, if a response is not required, not later than 10 days after service of the pleading.

(7) *Motion for decision.* A party may make a motion for decision, regarding all or any part of the proceedings, at any time before the administrative law judge has issued an initial decision in the proceedings. The administrative law judge must grant a party's motion for decision if the pleadings, depositions, answers to interrogatories, admissions, matters that the administrative law judge has officially noticed, or evidence introduced during the hearing show that there is no genuine issue of material fact and that the party making the motion is entitled to a decision as a matter of law. The party making the motion for decision has the burden of showing that there is no genuine issue of material fact disputed by the parties.

(8) *Motion for disqualification.* A party may file a motion for disqualification. A party may file the motion at any

time after the administrative law judge has been assigned to the proceedings but must make the motion before the administrative law judge files an initial decision in the proceedings.

(i) *Motion and supporting affidavit.* A party must state the grounds for disqualification, including, but not limited to, personal bias, pecuniary interest, or other factors showing reason for disqualification, in the motion for disqualification. A party must submit an affidavit with the motion for disqualification that sets forth, in detail, the matters alleged to constitute grounds for disqualification.

(ii) *Answer.* A party may respond to the motion for disqualification not later than 5 days after service of the motion for disqualification.

(iii) *Decision on motion for disqualification.* The administrative law judge must issue a decision on the motion for disqualification not later than 15 days after the motion has been filed. If the administrative law judge finds that the motion for disqualification and supporting affidavit show a basis for disqualification, the administrative law judge must withdraw from the proceedings immediately. If the administrative law judge finds that disqualification is not warranted, the administrative law judge must deny the motion and state the grounds for the denial on the record. If the administrative law judge fails to rule on a party's motion for disqualification within 15 days after the motion has been filed, the motion is granted.

§406.143 Discovery.

(a) *Initiation of discovery.* Any party may initiate discovery described in this section, without the consent or approval of the administrative law judge, at any time after a complaint has been filed.

(b) *Methods of discovery.* The following methods of discovery are permitted under this section: depositions on oral examination or written questions of any person; written interrogatories directed to a party; requests for production of documents or tangible items to any person; and requests for admission by a party. A party is not required to file written interrogatories and responses, requests for production of documents or tangible items and responses, and requests for admission and responses with the Docket Management System or submit any of them to the administrative law judge. In the event of a discovery dispute, a party must attach a copy of these documents in support of a motion filed under this section.

(c) *Service on the agency.* A party must serve each discovery request directed to the agency or any agency employee with the agency attorney.

(d) *Time for response to discovery request.* Unless otherwise directed by this subpart or agreed by the parties, a party must respond to a request for discovery, including filing objections to a request for discovery, not later than 30 days after service of the request.

(e) *Scope of discovery.* Subject to the limits on discovery set forth in paragraph (f) of this section, a party may discover any matter that is not privileged and that is relevant to the subject matter of the proceeding. A party may discover information that relates to the claim or defense of any party including the existence, description, nature, custody, condition, and location of any document or other tangible item and the identity and location of any person having knowledge of discoverable matter. A party may discover facts known, or opinions held, by an expert who any other party expects to call to testify at the hearing. A party has no ground to object to a discovery request on the basis that the information sought would not be admissible at the hearing if the information sought during discovery is reasonably calculated to lead to the discovery of admissible evidence.

(f) *Limiting discovery.* The administrative law judge must limit the frequency and extent of discovery permitted by this section if a party shows that—

(1) The information requested is cumulative or repetitious;

(2) The information requested can be obtained from another less burdensome and more convenient source;

(3) The party requesting the information has had ample opportunity to obtain the information through other discovery methods permitted under this section; or

(4) The method or scope of discovery requested by the party is unduly burdensome or expensive.

(g) *Confidentiality order.* A party or person who has received a discovery request for information that is related to a trade secret, confidential or sensitive material, competitive or commercial information, proprietary data, or information on research and development, may file and serve a motion for a confidentiality order in accordance with § 406.117.

(h) *Protective order.* A party or a person who has received a request for discovery may file a motion for protective order and must serve a copy of the motion for protective order on each party. The party or person making the motion must show that the protective order is necessary to protect the party or the person from annoyance, embarrassment, oppression, or undue burden or expense. As part of the protective order, the administrative law judge may:

(1) Deny the discovery request;

(2) Order that discovery be conducted only on specified terms and conditions, including a designation of the time or place for discovery or a determination of the method of discovery; or

(3) Limit the scope of discovery or preclude any inquiry into certain matters during discovery.

(i) *Duty to supplement or amend response.* A party who has responded to a discovery request has a duty to supplement or amend the response, as soon as the information is known, as follows:

(1) A party must supplement or amend any response to a question requesting the identity and location of any person having knowledge of discoverable matters.

(2) A party must supplement or amend any response to a question requesting the identity of each person who will be called to testify at the hearing as an expert witness and the subject matter and substance of that witness' testimony.

(3) A party must supplement or amend any response that was incorrect when made or any response that was correct when made but is no longer correct, accurate, or complete.

(j) *Depositions.* The following rules apply to all depositions taken pursuant to this section:

(1) *Form.* A deposition must be taken on the record and reduced to writing. The person being deposed must sign the deposition unless the parties agree to waive the requirement of a signature.

(2) *Administration of oaths.* Within the United States, or a territory or possession subject to the jurisdiction of the United States, a party must take a deposition before a person authorized to administer oaths by the laws of the United States or authorized by the law of the place where the examination is held. In a foreign country, a party must take a deposition in any manner allowed by the Federal Rules of Civil Procedure.

(3) *Notice of deposition.* A party must serve a notice of deposition, stating the time and place of the deposition and the name and address of each person to be examined,on the person to be deposed, must submit the notice to the administrative law judge, and must file the notice with the Docket Management System, and must serve the notice on each party, not later than 7 days before the deposition. A party may serve a notice of deposition less than 7 days before the deposition only with consent of the administrative law judge. If a subpoena duces tecum is to be served on the person to be examined, the party must attach to the notice of deposition a copy of the subpoena duces tecum that describes the materials to be produced at the deposition.

(4) *Use of depositions.* A party may use any part or all of a deposition at a hearing authorized under this subpart only upon a showing of good cause. The deposition may be used against any party who was present or represented at the deposition or who had reasonable notice of the deposition.

(k) *Interrogatories.* (1) A party may not serve more than 30 interrogatories to each other party. Each subpart of an interrogatory must be counted as a separate interrogatory.

(2) A party must file a motion for leave to serve more than 30 interrogatories on a party before serving additional interrogatories on a party. The administrative law judge must grant the motion only if the party shows good cause for the party's failure to inquire about the information previously and that the information cannot reasonably be obtained using less burdensome discovery methods or be obtained from other sources.

(3) A party must answer each interrogatory separately and completely in writing.

(4) A party, or the party's attorney or representative of record, must sign the party's responses to interrogatories.

(5) If a party objects to an interrogatory, the party must state the objection and the reasons for the objection.

(6) An opposing party may offer into evidence any part or all of a party's responses to interrogatories at a hearing under this subpart to the extent that the response is relevant, material, and not repetitious.

(l) *Requests for admission*. A party may serve a written request for admission of the truth of any matter within the scope of discovery under this section or the authenticity of any document described in the request. A party must set forth each request for admission separately. A party must serve a copy of each document referenced in the request for admission unless the document has been provided or is reasonably available for inspection and copying.

(1) *Time.* A party's failure to respond to a request for admission is not later than 30 days after service of the request constitutes an admission of the truth of the statement or statements contained in the request for admission. The administrative law judge may determine that a failure to respond to a request for admission does not constitute an admission of the truth if a party shows that the failure was due to circumstances beyond the control of the party or the party's attorney or representative.

(2) *Response.* A party may object to a request for admission. The objection must be in writing and signed by the party or the party's attorney or representative of record, and must state the reasons for objection. A party may specifically deny the truth of the matter or describe the reasons why the party is unable to truthfully deny or admit the matter. If a party is unable to deny or admit the truth of the matter, the party must show that the party has made reasonable inquiry into the matter or that the information known to, or readily obtainable by, the party is insufficient to enable the party to admit or deny the matter. A party may admit or deny any part of the request for admission. If an administrative law judge determines that a response does not comply with the requirements of this rule or that the response is insufficient, the matter is admitted.

(3) *Effect of admission*. Any matter admitted or treated as admitted under this section is conclusively established for the purpose of the hearing and appeal.

(m) *Motion to compel discovery*. A party may make a motion to compel discovery if a person refuses to answer a question during a deposition, a party fails or refuses to answer an interrogatory, a person gives an evasive or incomplete answer during a deposition or when responding to an interrogatory, or a party fails or refuses to produce documents or tangible items. During a deposition, the proponent of a question may complete the deposition or may adjourn the examination before making a motion to compel if a person refuses to answer.

(n) *Failure to comply with a discovery order or order to compel.* If a party fails to comply with a discovery order or an order to compel, the administrative law judge, limited to the extent of the party's failure to comply with the discovery order or motion to compel, may:

(1) Strike that portion of a party's pleadings;

(2) Preclude prehearing or discovery motions by that party;

(3) Preclude admission of that portion of a party's evidence at the hearing; or

(4) Preclude that portion of the testimony of that party's witnesses at the hearing.

§ 406.147 Notice of hearing.

(a) *Notice.* The administrative law judge must give each party at least 60 days notice of the date, time, and location of the hearing.

(b) *Date, time, and location of the hearing.* The administrative law judge must set a reasonable date, time, and location for the hearing within the United States. The administrative law judge must consider the need for discovery and any joint procedural or discovery schedule submitted by the parties when determining the hearing date. The administrative law judge must give due regard to the convenience of the parties, the location where the majority of the witnesses reside or work, and whether a scheduled air carrier serves the location.

(c) *Earlier hearing.* With the consent of the administrative law judge, the parties may agree to hold the hearing on an earlier date than the date specified in the notice of hearing.

(d) *Space hearing consolidated with aviation hearing under 14 CFR part 13 subpart G.* With the consent of the administrative law judge, the parties may agree to hold the hearing, or parts of the hearing, together with a hearing under 14 CFR part 13 subpart G if the cases involve some common issues of fact. If the hearings are consolidated, the administrative law judge may issue a consolidated initial decision covering both cases. The Administrator will serve as the FAA decisionmaker on appeal for both cases and will issue a consolidated decision, with the Associate Administrator for Commercial Space Transportation serving as an advisor to the FAA decisionmaker.

§ 406.149 Evidence.

(a) *General.* A party is entitled to present the party's case or defense by oral, documentary, or demonstrative evidence, to submit rebuttal evidence, and to conduct any cross-examination that may be required for a full and true disclosure of the facts.

(b) *Admissibility.* A party may introduce any oral, documentary, or demonstrative evidence in support of the party's case or defense. The administrative law judge must admit any oral, documentary, or demonstrative evidence introduced by a party but must exclude irrelevant, immaterial, or unduly repetitious evidence.

(c) *Hearsay evidence.* Hearsay evidence is admissible in proceedings governed by this subpart. The fact that evidence submitted by a party is hearsay goes only to the weight of the evidence and does not affect its admissibility.

§ 406.151 Standard of proof.

The administrative law judge must issue an initial decision or must rule in a party's favor only if the decision or ruling is supported by, and in accordance with, the reliable, probative, and substantial evidence contained in the record. In order to prevail, the party with the burden of proof must prove the party's case or defense by a preponderance of reliable, probative, and substantial evidence.

§ 406.153 Burden of proof.

(a) Except in the case of an affirmative defense, in a civil penalty adjudication the burden of proof is on the complainant.

(b) Except as otherwise provided by statute or rule, the proponent of a motion, request, or order has the burden of proof.

(c) A party who has asserted an affirmative defense has the burden of proving the affirmative defense.

§ 406.155 Offer of proof.

A party whose evidence has been excluded by a ruling of the administrative law judge may offer the evidence for the record on appeal.

§ 406.157 Expert or opinion witnesses.

An employee of the FAA may not be called as an expert or opinion witness for any party other than the agency, in any proceeding governed by this part. An employee of a respondent may not be called as an expert or opinion witness for the complainant in any proceeding governed by this part to which the respondent is a party.

§ 406.159 Subpoenas.

(a) *Request for subpoena.* A party may obtain from the administrative law judge a subpoena to compel the attendance of a witness at a deposition or hearing or to require the production of

documents or tangible items. The administrative law judge must deliver the subpoena, signed by the administrative law judge but otherwise in blank, to the party. The party must complete the subpoena, stating the title of the action and the date and time for the witness' attendance or production of documents or items. The party who obtained the subpoena must serve the subpoena on the witness.

(b) *Motion to quash or modify the subpoena.* A party, or any person upon whom a subpoena has been served, may file a motion to quash or modify the subpoena at or before the time specified in the subpoena for compliance. The applicant must describe, in detail, the basis for the motion to quash or modify the subpoena including, but not limited to, a statement that the testimony, document, or tangible evidence is not relevant to the proceeding, that the subpoena is not reasonably tailored to the scope of the proceeding, or that the subpoena is unreasonable and oppressive. A motion to quash or modify the subpoena will stay the effect of the subpoena pending a decision by the administrative law judge on the motion.

(c) *Enforcement of subpoena.* Upon a showing that a person has failed or refused to comply with a subpoena, the Secretary may apply to the appropriate district court of the United States to seek enforcement of the subpoena in accordance with 49 U.S.C. 70115(c). A party may request the Secretary to seek such enforcement.

§ 406.161 Witness fees.

(a) *General.* Unless otherwise authorized by the administrative law judge, the party who applies for a subpoena to compel the attendance of a witness at a deposition or hearing, or the party at whose request a witness appears at a deposition or hearing, must pay the witness fees described in this section.

(b) *Amount.* Except for an employee of the agency who appears at the direction of the agency, a witness who appears at a deposition or hearing is entitled to the same fees and mileage expenses as are paid to a witness in a court of the United States in comparable circumstances.

§ 406.163 Record.

(a) *Exclusive record.* The transcript of all testimony in the hearing; all exhibits received into evidence; the complaint, answer, and amendments thereto; all motions, applications, and requests, and responses thereto; and all rulings constitute the exclusive record for decision of the proceedings and the basis for the issuance of any orders in the proceeding.

(b) A person may keep the original document, data, or other evidence, with the consent of the administrative law judge, by substituting a legible copy for the record.

§ 406.165 Argument before the administrative law judge.

(a) *Argument during the hearing.* During the hearing, the administrative law judge must give the parties a reasonable opportunity to present arguments on the record supporting or opposing motions, objections, and rulings if the parties request an opportunity for argument. The administrative law judge may request written arguments during the hearing if the administrative law judge finds that submission of written arguments would be reasonable.

(b) *Final oral argument.* At the conclusion of the hearing and before the administrative law judge issues an initial decision in the proceedings, the parties are entitled to submit oral proposed findings of fact and conclusions of law, exceptions to rulings of the administrative law judge, and supporting arguments for the findings, conclusions, or exceptions. At the conclusion of the hearing, a party may waive final oral argument.

(c) *Post-hearing briefs.* The administrative law judge may request written post-hearing briefs before the administrative law judge issues an initial decision if the administrative law judge finds that submission of written briefs would be reasonable. If a party files a written post-hearing brief, the party must include proposed findings of fact and conclusions of law, exceptions to rulings of the administrative law judge, and supporting arguments for the findings, conclusions, or exceptions. The administrative law judge must give the parties a reasonable opportunity, not more than 30 days after

receipt of the transcript, to prepare and submit the briefs.

§ 406.167 Initial decision.

(a) *Contents.* The administrative law judge must issue an initial decision at the conclusion of the hearing. In each oral or written decision, the administrative law judge must include findings of fact and conclusions of law, and the grounds supporting those findings and conclusions, upon all material issues of fact, the credibility of witnesses, the applicable law, any exercise of the administrative law judge's discretion, the amount of any civil penalty found appropriate by the administrative law judge, and a discussion of the basis for any order issued in the proceedings. The administrative law judge is not required to provide a written explanation for rulings on objections, procedural motions, and other matters not directly relevant to the substance of the initial decision. If the administrative law judge refers to any previous unreported or unpublished initial decision, the administrative law judge must make copies of that initial decision available to all parties and the FAA decisionmaker.

(b) *Oral decision.* Except as provided in paragraph (c) of this section, at the conclusion of the hearing, the administrative law judge must issue the initial decision and order orally on the record.

(c) *Written decision.* The administrative law judge may issue a written initial decision not later than 30 days after the conclusion of the hearing or submission of the last posthearing brief if the administrative law judge finds that issuing a written initial decision is reasonable. The administrative law judge must serve a copy of any written initial decision on each party.

§ 406.173 Interlocutory appeals.

(a) *General.* Unless otherwise provided in this subpart, a party may not appeal a ruling or decision of the administrative law judge to the FAA decisionmaker until the initial decision has been entered on the record. A decision or order of the FAA decisionmaker on an interlocutory appeal does not constitute a final order of the Secretary for the purposes of judicial review under 5 U.S.C. chapter 7.

(b) *Interlocutory appeal for cause.* If a party files a written request for an interlocutory appeal for cause, or orally requests an interlocutory appeal for cause, the proceedings are stayed until the administrative law judge issues a decision on the request. If the administrative law judge grants the request, the proceedings are stayed until the FAA decisionmaker issues a decision on the interlocutory appeal. The administrative law judge must grant an interlocutory appeal for cause if a party shows that delay of the interlocutory appeal would be detrimental to the public interest or would result in undue prejudice to any party.

(c) *Interlocutory appeals of right.* If a party notifies the administrative law judge of an interlocutory appeal of right, the proceedings are stayed until the FAA decisionmaker issues a decision on the interlocutory appeal. A party may file an interlocutory appeal, without the consent of the administrative law judge, before an initial decision has been entered in the case of:

(1) A ruling or order by the administrative law judge barring a party, or a party's attorney or representative, from the proceedings.

(2) A ruling or order by the administrative law judge allegedly in violation of the limitations on the administrative law judge under § 406.109(c).

(3) Failure of the administrative law judge to grant a motion for a confidentiality order based on 49 U.S.C. 70114, under § 406.117(c)(2).

(4) Failure of the administrative law judge to dismiss the proceedings in accordance with § 406.135.

(d) *Procedure.* A party must file with the Docket Management System and serve each other party a notice of interlocutory appeal, with supporting documents, not later than 10 days after the administrative law judge's decision forming the basis of an interlocutory appeal of right or not later than 10 days after the administrative law judge's decision granting an interlocutory appeal for cause. A party must file with the Docket Management System a reply brief, if any, and serve a copy of the reply brief on each party, not later than 10 days after service of the appeal brief. The FAA decisionmaker must render a decision on the interlocutory

appeal, on the record and as a part of the decision in the proceedings, within a reasonable time after receipt of the interlocutory appeal.

(e) *Rejection of interlocutory appeal.* The FAA decisionmaker may reject frivolous, repetitive, or dilatory appeals, and may issue an order precluding one or more parties from making further interlocutory appeals in a proceeding in which there have been frivolous, repetitive, or dilatory interlocutory appeals.

§406.175 Appeal from initial decision.

(a) *Notice of appeal.* A party may appeal the initial decision, and any decision not previously appealed pursuant to §406.173, by filing with the Docket Management System and serving on each party a notice of appeal. A party must file the notice of appeal not later than 10 days after entry of the oral initial decision on the record or service of the written initial decision on the parties.

(b) *Issues on appeal.* A party may appeal only the following issues:

(1) Whether each finding of fact is supported by a preponderance of reliable, probative, and substantial evidence;

(2) Whether each conclusion of law is made in accordance with applicable law, precedent, and public policy; and

(3) Whether the administrative law judge committed any prejudicial errors during the hearing that support the appeal.

(c) *Perfecting an appeal.* Unless otherwise agreed by the parties, a party must perfect an appeal, not later than 50 days after entry of the oral initial decision on the record or service of the written initial decision on the party, by filing an appeal brief.

(1) *Extension of time by agreement of the parties.* The parties may agree to extend the time for perfecting the appeal with the consent of the FAA decisionmaker, who serves a letter confirming the extension of time on each party.

(2) *Motion for extension.* If the parties do not agree to an extension of time for perfecting an appeal, a party desiring an extension of time may file a motion for an extension and must serve a copy of the motion on each party. The FAA decisionmaker may grant an extension if good cause for the extension is shown in the motion.

(d) *Appeal briefs.* A party must file the appeal brief with the Docket Management System and serve each party.

(1) A party must set forth, in detail, the party's specific objections to the initial decision or rulings in the appeal brief. A party also must set forth, in detail, the basis for the appeal, the reasons supporting the appeal, and the relief requested in the appeal. If the party relies on evidence contained in the record for the appeal, the party must specifically refer to the pertinent evidence contained in the record in the appeal brief.

(2) The FAA decisionmaker may dismiss an appeal, on the FAA decisionmaker's own initiative or upon motion of any other party, where a party has filed a notice of appeal but fails to perfect the appeal by timely filing an appeal brief.

(e) *Reply brief.* Unless otherwise agreed by the parties, any party may file a reply brief with the Docket Management System and serve on each other party not later than 35 days after the appeal brief has been served on that party. If the party relies on evidence contained in the record for the reply, the party must specifically refer to the pertinent evidence contained in the record in the reply brief.

(1) *Extension of time by agreement of the parties.* The parties may agree to extend the time for filing a reply brief with the consent of the FAA decisionmaker, who will serve a letter confirming the extension of time on each party.

(2) *Motion for extension.* If the parties do not agree to an extension of time for filing a reply brief, a party desiring an extension of time may file and serve a motion for an extension and must serve a copy of the motion on each party. The FAA decisionmaker may grant an extension if good cause for the extension is shown in the motion.

(f) *Other briefs.* The FAA decisionmaker may allow any person to submit an amicus curiae brief in an appeal of an initial decision. A party may not file more than one appeal brief or reply brief without permission of the FAA decisionmaker. A party may file with

the Docket Management System a motion for permission to file an additional brief and must serve a copy of the motion on each other party. The party may not file the additional brief with the motion. The FAA decisionmaker may grant permission to file an additional brief if the party demonstrates good cause for allowing additional argument on the appeal. The FAA decisionmaker will allow a reasonable time for the party to file the additional brief.

(g) *Number of copies.* A party must file the original brief and two copies of the brief with the Docket Management System and serve one copy on each other party.

(h) *Oral argument.* The FAA decisionmaker has sole discretion to permit oral argument on the appeal. On the FAA decisionmaker's own initiative or upon written motion by any party, the FAA decisionmaker may find that oral argument will contribute substantially to the development of the issues on appeal and may grant the parties an opportunity for oral argument.

(i) *Waiver of objections on appeal.* If a party fails to object to any alleged error regarding the proceedings in an appeal or a reply brief, the party waives any objection to the alleged error. The FAA decisionmaker is not required to consider any objection or argument in a brief if the party does not specifically refer in the brief to the pertinent evidence from the record.

(j) *FAA decisionmaker's decision on appeal.* The FAA decisionmaker will review the record, the briefs on appeal, and the oral argument, if any, to determine if the administrative law judge committed prejudicial error in the proceedings or that the initial decision should be affirmed, modified, or reversed. The FAA decisionmaker may affirm, modify, or reverse the initial decision, make any necessary findings, or may remand the case for any proceedings that the FAA decisionmaker determines may be necessary.

(1) The FAA decisionmaker may raise any issue, on the FAA decisionmaker's own initiative, that is required for proper disposition of the proceedings. The FAA decisionmaker will give the parties a reasonable opportunity to submit arguments on the new issues before making a decision on appeal. If an issue raised by the FAA decisionmaker requires the consideration of additional testimony or evidence, the FAA decisionmaker will remand the case to the administrative law judge for further proceedings and an initial decision related to that issue. If an issue raised by the FAA decisionmaker is solely an issue of law or the issue was addressed at the hearing but was not raised by a party in the briefs on appeal, a remand of the case to the administrative law judge for further proceedings is not required but may be provided in the discretion of the FAA decisionmaker.

(2) The FAA decisionmaker will issue the final decision and order of the Administrator on appeal in writing and will serve a copy of the decision and order on each party.

(3) A final decision and order of the FAA decisionmaker is precedent in any other civil penalty action under this part. Any issue, finding or conclusion, order, ruling, or initial decision of an administrative law judge that has not been appealed to the FAA decisionmaker is not precedent in any other civil penalty action.

§ 406.177 Petition to reconsider or modify a final decision and order of the FAA decisionmaker on appeal.

(a) *General.* Any party may petition the FAA decisionmaker to reconsider or modify a final decision and order issued by the FAA decisionmaker on appeal from an initial decision. A party must file a petition to reconsider or modify with the Docket Management System not later than 30 days after service of the FAA decisionmaker's final decision and order on appeal and must serve a copy of the petition on each party. The FAA decisionmaker will not reconsider or modify an initial decision and order issued by an administrative law judge that has not been appealed by any party to the FAA decisionmaker.

(b) *Contents.* A party must state briefly and specifically the alleged errors in the final decision and order on appeal, the relief sought by the party, and the grounds that support, the petition to reconsider or modify.

(1) If the petition is based, in whole or in part, on allegations regarding the consequences of the FAA decisionmaker's decision, the party must describe these allegations and must describe, and support, the basis for the allegations.

(2) If the petition is based, in whole or in part, on new material not previously raised in the proceedings, the party must set forth the new material and include affidavits of prospective witnesses and authenticated documents that would be introduced in support of the new material. The party must explain, in detail, why the new material was not discovered through due diligence prior to the hearing.

(c) *Repetitious and frivolous petition.* The FAA decisionmaker will not consider a repetitious or frivolous petition. The FAA decisionmaker may summarily dismiss any repetitious or frivolous petition to reconsider or modify.

(d) *Reply to petition.* Any other party may reply to a petition to reconsider or modify, not later than 10 days after service of the petition on that party, by filing a reply. A party must serve a copy of the reply on each party.

(e) *Effect of filing petition.* Unless otherwise ordered by the FAA decisionmaker, filing a petition under this section stays the effective date of the FAA decisionmaker's final decision and order on appeal, and tolls the time allowed for judicial review.

(f) *FAA decisionmaker's decision on petition.* The FAA decisionmaker may affirm, modify, or reverse the final decision and order on appeal, or may remand the case for any proceedings that the FAA decisionmaker determines may be necessary.

§406.179 Judicial review of a final decision and order.

(a) A person may seek judicial review of a final decision and order of the FAA decisionmaker as provided in 5 U.S.C. chapter 7 and 28 U.S.C. 1331. A party seeking judicial review must file with a United States district court.

(b) In accordance with §406.9(e)(iv), if a person seeks judicial review not later than 60 days after the final decision and order has been served on the respondent, the final decision and order is stayed.

(c) In accordance with §406.9(i), if a respondent does not pay a civil penalty and does not file an appeal with the United States district court within 60 days after service of the final decision and order, the FAA may refer the order to the United States Department of Treasury or Department of Justice to collect the civil penalty.

SUBCHAPTER C—LICENSING

PART 411 [RESERVED]

PART 413—LICENSE APPLICATION PROCEDURES

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§ 413.1 Scope.

(a) This part prescribes the procedures applicable to applications submitted under this chapter to conduct licensed activities. These procedures apply to all applications for issuance of a license, transfer of an existing license, and renewal of an existing license.

(b) Use the following table to locate specific requirements:

Subject	Part
(1) Launch License	415
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[Amdt. 413–5, 68 FR 35289, June 13, 2003]

§ 413.3 Who must obtain a license.

(a) A person must obtain a license—

(1) To launch a launch vehicle from the United States;

(2) To operate a launch site within the United States;

(3) To reenter a reentry vehicle in the United States; or

(4) To operate a reentry site within the United States.

(b) An individual who is a U.S. citizen or an entity organized under the laws of the United States or any State must obtain a license—

(1) To launch a launch vehicle outside the United States;

(2) To operate a launch site outside of the United States;

(3) To reenter a reentry vehicle outside of the United States; or

(4) To operate a reentry site outside of the United States.

(c) A foreign entity in which a United States citizen has a controlling interest, as defined in § 401.5 of this chapter, must obtain a launch license to launch a launch vehicle from or a license to operate a launch site within—

(1) Any place that is both outside the United States and outside the territory of any foreign nation, unless there is an agreement in force between the United States and a foreign nation providing that such foreign nation shall exercise jurisdiction over the launch or the operation of the launch site; or

(2) The territory of any foreign nation if there is an agreement in force between the United States and that foreign nation providing that the United States shall exercise jurisdiction over the launch or the operation of the launch site.

(d) A foreign entity in which a U.S. citizen has a controlling interest, as defined in § 401.5 of this chapter, must obtain a license to reenter a reentry vehicle or to operate a reentry site in—

(1) Any place that is outside the United States and outside the territory of any foreign nation, unless there is an agreement in force between the United States and a foreign nation providing that such foreign nation shall exercise jurisdiction over the reentry or the operation of the reentry site; or

(2) The territory of any foreign nation if there is an agreement in force between the United States and that foreign nation providing that the United States shall exercise jurisdiction over the reentry or the operation of the reentry site.

[Doc. No. FAA–1999–5535, 65 FR 56658, Sept. 19, 2000]

§413.5 Pre-application consultation.

A prospective applicant shall consult with the FAA before submitting an application to discuss the application process and potential issues relevant to the FAA's licensing decision. Early consultation enables an applicant to identify potential licensing issues at the planning stage when changes to a license application or to proposed licensed activities are less likely to result in significant delay or costs to the applicant.

§413.7 Application.

(a) *Form.* An application must be in writing, in English and filed in duplicate with the Federal Aviation Administration, Associate Administrator for Commercial Space Transportation, AST–200, Room 331, 800 Independence Avenue, S.W., Washington, D.C. 20591. Attention: Licensing and Safety Division, Application Review.

(b) *Administrative information.* An application must identify the following:

(1) The name and address of the applicant;

(2) The name, address, and telephone number of any person to whom inquiries and correspondence should be directed; and

(3) The type of license for which the applicant is applying.

(c) *Signature and certification of accuracy.* An application must be legibly signed, dated, and certified as true, complete, and accurate by one of the following:

(1) *For a corporation:* An officer authorized to act for the corporation in licensing matters.

(2) *For a partnership or a sole proprietorship:* A general partner or proprietor, respectively.

(3) *For a joint venture, association, or other entity:* An officer or other individual duly authorized to act for the joint venture, association, or other entity in licensing matters.

§413.9 Confidentiality.

(a) Any person furnishing information or data to the FAA may request in writing that trade secrets or proprietary commercial or financial data be treated as confidential. The request must be made at the time the information or data is submitted, and state the period of time for which confidential treatment is desired.

(b) Information or data for which any person or agency requests confidentiality must be clearly marked with an identifying legend, such as ''Proprietary Information,'' ''Proprietary Commercial Information,'' ''Trade Secret,'' or ''Confidential Treatment Requested.'' Where this marking proves impracticable, a cover sheet containing the identifying legend must be securely attached to the compilation of information or data for which confidential treatment is requested.

(c) If a person requests that previously submitted information or data be treated confidentially, the FAA will do so to the extent practicable in light of any prior distribution of the information or data.

(d) Information or data for which confidential treatment has been requested or information or data that qualifies for exemption under section 552(b)(4) of Title 5, United States Code, will not be disclosed to the public unless the Associate Administrator determines that the withholding of the information or data is contrary to the public or national interest.

§413.11 Acceptance of an application.

The FAA will initially screen an application to determine whether the application is sufficiently complete to enable the FAA to initiate the reviews or evaluations required under any applicable part of this chapter. After completion of the initial screening, the FAA notifies the applicant, in writing, of one of the following:

(a) The application is accepted and the FAA will initiate the reviews or evaluations required for a licensing determination under this chapter; or

(b) The application is so incomplete or indefinite as to make initiation of the reviews or evaluations required for a licensing determination under this chapter inappropriate, and the application is rejected. The notice will state the reason(s) for rejection and corrective actions necessary for the application to be accepted. The FAA may return a rejected application to the applicant or may hold it pending additional submissions by the applicant.

§ 413.13 Complete application.

Acceptance by the FAA of an application does not constitute a determination that the application is complete. If, in addition to the information required by the applicable parts of this chapter, the FAA requires other information necessary for a determination that public health and safety, safety of property and national security and foreign policy interests of the United States are protected during the conduct of a licensed activity, an applicant shall submit the additional information required to show compliance with this chapter.

§ 413.15 Review period.

(a) *180-day review*. Unless otherwise specified in this chapter, the FAA reviews and makes a determination on a license application within 180 days of receipt of an accepted application.

(b) *Review period tolled*. If an accepted application does not provide sufficient information to continue or complete the reviews or evaluations required by this chapter for a licensing determination, or an issue exists that would affect a licensing determination, the FAA notifies the applicant, in writing, and informs the applicant of any information required to complete the application. If further review is impracticable, the 180-day review period shall be tolled pending receipt by the FAA of the requested information.

(c) *120-day notice*. If the FAA has not made a licensing determination within 120 days of receipt of an accepted application, the FAA informs the applicant, in writing, of any outstanding information needed to complete the reviews or evaluations required by this chapter for a licensing determination, or of any pending issues that would affect the licensing determination.

§ 413.17 Continuing accuracy of application; supplemental information; amendment.

(a) An applicant is responsible for the continuing accuracy and completeness of information furnished to the FAA as part of a pending license application. If at any time information provided by an applicant as part of a license application is no longer accurate and complete in all material respects, the applicant shall submit a statement furnishing the new or corrected information. As part of its submission, the applicant shall recertify the accuracy and completeness of the application in accordance with section 413.7. An applicant's failure to comply with any of the requirements set forth in this paragraph is a sufficient basis for denial of a license application.

(b) An applicant may amend or supplement a license application at any time prior to issuance or transfer of a license.

(c) Willful false statements made in any application or document relating to an application or license are punishable by fine and imprisonment under section 1001 of Title 18, United States Code, and by administrative sanctions in accordance with part 405 of this chapter.

§ 413.19 Issuance of a license.

After the FAA completes its reviews and makes the approvals and determinations required by this chapter for a license, the FAA issues a license to an applicant in accordance with this chapter.

§ 413.21 Denial of a license application.

(a) The FAA informs a license applicant, in writing, if its application has been denied and states the reasons for denial.

(b) An applicant whose license application is denied may either:

(1) Attempt to correct any deficiencies identified by the FAA and request reconsideration of the revised application. The FAA has 60 days or the number of days remaining in the 180-day review period, whichever is greater, within which to reconsider its licensing determination; or

(2) Request a hearing in accordance with part 406 of this chapter, for the purpose of showing why the application should not be denied.

(c) An applicant whose license application is denied after reconsideration under paragraph (b)(1) of this section may request a hearing in accordance with paragraph (b)(2) of this section.

§ 413.23 License renewal.

(a) *Eligibility*. A licensee may apply to renew its license by submitting to the

FAA a written application for renewal of the license at least 90 days before the expiration date of the license.

(b) *Application.*(1) A license renewal application shall satisfy the requirements set forth in this part and any other applicable part of this chapter.

(2) The application may incorporate by reference information provided as part of the application for the expiring license or any modification to that license.

(3) The applicant must describe any proposed changes in its conduct of licensed activities and provide any additional clarifying information required by the FAA.

(c) *Review of application.* The FAA conducts the reviews required under this chapter for a license to determine whether the applicant's license may be renewed for an additional term. The FAA may incorporate by reference any findings that are part of the record for the expiring license.

(d) *Grant of license renewal.* After completion by the FAA of the reviews required by this chapter for a license and issuance of the requisite approvals and determinations, the FAA issues an order amending the expiration date of the license. The FAA may impose additional or revised terms and conditions necessary to protect public health and safety and the safety of property and to protect U.S. national security and foreign policy interests.

(e) *Denial of license renewal.* The FAA informs a licensee, in writing, if the licensee's application for renewal has been denied and states the reasons for denial. A licensee whose application for renewal is denied may follow the procedures set forth in section 413.21 of this part.

PART 415—LAUNCH LICENSE

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APPENDIX A TO PART 415—FAA/USSPACECOM LAUNCH NOTIFICATION FORM

AUTHORITY: 49 U.S.C. 70101–70121.

SOURCE: Amdt. 415–03, 64 FR 19616, Apr. 21, 1999, unless otherwise noted.

Subpart A—General

§ 415.1 Scope.

This part prescribes requirements for obtaining a license to launch a launch vehicle, other than a reusable launch vehicle (RLV), and post-licensing requirements with which a licensee shall comply to remain licensed. Requirements for preparing a license application are contained in part 413 of this subchapter. Requirements for obtaining a license to launch an RLV and conduct an RLV mission are contained in part 431 of this subchapter.

[Doc. No. FAA–1999–5535, 65 FR 56658, Sept. 19, 2000]

§ 415.3 Types of launch licenses.

(a) *Launch-specific license.* A launch-specific license authorizes a licensee to conduct one or more launches, having the same launch parameters, of one type of launch vehicle from one launch site. The license identifies, by name or mission, each launch authorized under the license. A licensee's authorization to launch terminates upon completion of all launches authorized by the license or the expiration date stated in the license, whichever occurs first.

(b) *Launch operator license.* A launch operator license authorizes a licensee to conduct launches from one launch site, within a range of launch parameters, of launch vehicles from the same family of vehicles transporting specified classes of payloads. A launch operator license remains in effect for five years from the date of issuance.

§ 415.5 Policy and safety approvals.

To obtain a launch license, an applicant must obtain policy and safety approvals from the FAA. Requirements for obtaining these approvals are contained in subparts B, C and F of this part. Only a launch license applicant may apply for the approvals, and may apply for either approval separately and in advance of submitting a complete license application, using the application procedures contained in part 413 of this subchapter.

§ 415.7 Payload determination.

A payload determination is required for a launch license unless the proposed payload is exempt from payload review under § 415.53 of this part. The FAA conducts a payload review, as described in subpart D of this part, to make the determination. Either a launch license applicant or a payload owner or operator may request a review of its proposed payload using the application procedures contained in part 413 of this subchapter. Upon receipt of an application, the FAA may conduct a payload review independently of a launch license application.

§ 415.9 Issuance of a launch license.

(a) The FAA issues a launch license to an applicant who has obtained all approvals and determinations required under this chapter for a license.

(b) A launch license authorizes a licensee to conduct a launch or launches in accordance with the representations contained in the licensee's application, subject to the licensee's compliance with terms and conditions contained in license orders accompanying the license, including financial responsibility requirements.

§ 415.11 Additional license terms and conditions.

The FAA may modify a launch license at any time by modifying or adding license terms and conditions to ensure compliance with the Act and regulations.

§ 415.13 Transfer of a launch license.

(a) Only the FAA may transfer a launch license.

(b) An applicant for transfer of a launch license shall submit a license application in accordance with part 413 of this subchapter and shall meet the requirements of part 415 of this subchapter. The FAA will transfer a license to an applicant who has obtained all of the approvals and determinations required under this chapter for a license. In conducting its reviews and issuing approvals and determinations, the FAA may incorporate by reference

any findings made part of the record to support the initial licensing determination. The FAA may modify a license to reflect any changes necessary as a result of a license transfer.

§ 415.15 Rights not conferred by launch license.

Issuance of a launch license does not relieve a licensee of its obligation to comply with all applicable requirements of law or regulation that may apply to its activities, nor does issuance confer any proprietary, property or exclusive right in the use of any federal launch range or related facilities, airspace, or outer space.

§§ 415.16–415.20 [Reserved]

Subpart B—Policy Review and Approval

§ 415.21 General.

The FAA issues a policy approval to a license applicant unless the FAA determines that a proposed launch would jeopardize U.S. national security or foreign policy interests, or international obligations of the United States. A policy approval is part of the licensing record on which the FAA's licensing determination is based.

§ 415.23 Policy review.

(a) The FAA reviews a license application to determine whether it presents any issues affecting U.S. national security or foreign policy interests, or international obligations of the United States.

(b) *Interagency consultation.* (1) The FAA consults with the Department of Defense to determine whether a license application presents any issues affecting U.S. national security.

(2) The FAA consults with the Department of State to determine whether a license application presents any issues affecting U.S. foreign policy interests or international obligations.

(3) The FAA consults with other federal agencies, including the National Aeronautics and Space Administration, authorized to address issues identified under paragraph (a) of this section, associated with an applicant's launch proposal.

(c) The FAA advises an applicant, in writing, of any issue raised during a policy review that would impede issuance of a policy approval. The applicant may respond, in writing, or revise its license application.

§ 415.25 Application requirements for policy review.

In its launch license application, an applicant shall—

(a) Identify the model and configuration of any launch vehicle proposed for launch by the applicant.

(b) Identify structural, pneumatic, propellant, propulsion, electrical and avionics systems used in the launch vehicle and all propellants.

(c) Identify foreign ownership of the applicant as follows:

(1) For a sole proprietorship or partnership, identify all foreign ownership;

(2) For a corporation, identify any foreign ownership interests of 10% or more; and

(3) For a joint venture, association, or other entity, identify any participating foreign entities.

(d) Identify proposed launch vehicle flight profile(s), including:

(1) Launch site;

(2) Flight azimuths, trajectories, and associated ground tracks and instantaneous impact points;

(3) Sequence of planned events or maneuvers during flight;

(4) Range of nominal impact areas for all spent motors and other discarded mission hardware, within three standard deviations of the mean impact point (a 3-sigma footprint); and

(5) For each orbital mission, the range of intermediate and final orbits of each vehicle upper stage, and their estimated orbital lifetimes.

§ 415.27 Denial of policy approval.

The FAA notifies an applicant, in writing, if it has denied policy approval for a license application. The notice states the reasons for the FAA's determination. The applicant may respond to the reasons for the determination and request reconsideration.

§§ 415.28–415.30 [Reserved]

Subpart C—Safety Review and Approval for Launch From a Federal Launch Range

§ 415.31 General.

(a) The FAA conducts a safety review to determine whether an applicant is capable of launching a launch vehicle and its payload without jeopardizing public health and safety and safety of property. The FAA issues a safety approval to a license applicant proposing to launch from a federal launch range if the applicant satisfies the requirements of this subpart and has contracted with the federal launch range for the provision of safety-related launch services and property, as long as those launch services and the proposed use of launch property are within the federal launch range's experience. The FAA evaluates on an individual basis all other safety-related launch services and property associated with an applicant's proposal. A safety approval is part of the licensing record on which the FAA's licensing determination is based.

(b) The FAA advises an applicant, in writing, of any issue raised during a safety review that would impede issuance of a safety approval. The applicant may respond, in writing, or revise its license application.

§ 415.33 Safety organization.

(a) An applicant shall maintain a safety organization and document it by identifying lines of communication and approval authority for all launch safety decisions. Lines of communication, both within the applicant's organization and between the applicant and any federal launch range providing launch services, shall be employed to ensure that personnel perform launch safety operations in accordance with range safety requirements and with plans and procedures required by this subpart. Approval authority shall be employed to ensure compliance with range safety requirements and with plans and procedures required by this subpart.

(b) *Safety official.* An applicant shall identify by name, title, and qualifications, a qualified safety official authorized to examine all aspects of the applicant's launch safety operations and to monitor independently personnel compliance with the applicant's safety policies and procedures. The safety official shall report directly to the person responsible for an applicant's licensed launches, who shall ensure that all of the safety official's concerns are addressed prior to launch.

§ 415.35 Acceptable flight risk.

(a) *Flight risk through orbital insertion or impact.* Acceptable flight risk through orbital insertion for an orbital launch vehicle, and through impact for a suborbital launch vehicle, is measured in terms of the expected average number of casualties (E_c) to the collective members of the public exposed to debris hazards from any one launch. To obtain safety approval, an applicant shall demonstrate that the risk level associated with debris from an applicant's proposed launch shall not exceed an expected average number of 0.00003 casualties per launch ($E_c \leq 30 \times 10^{-6}$).

(b) *Hazard identification and risk assessment.* To demonstrate compliance with this section, an applicant shall submit an analysis that identifies hazards and assesses risks to public health and safety and safety of property associated with nominal and non-nominal flight under its launch proposal.

(c) A launch vehicle shall be designed to ensure that flight risks meet the criteria set forth in this section. An applicant shall identify and describe the following:

(1) Launch vehicle structure, including physical dimensions and weight;

(2) Hazardous and safety critical systems, including propulsion systems; and

(3) Drawings and schematics for each system identified under paragraph (c)(2) of this section.

(d) A launch vehicle shall be operated in a manner that ensures that flight risks meet the criteria set forth in this section. An applicant shall identify all launch operations and procedures that must be performed to ensure acceptable flight risks.

§415.37 Flight readiness and communications plan.

(a) *Flight readiness requirements.* An applicant shall designate an individual responsible for flight readiness. The applicant shall submit the following procedures for verifying readiness for safe flight:

(1) Launch readiness review procedures involving the applicant's flight safety personnel and federal launch range personnel involved in the launch. The procedures shall ensure a launch readiness review is conducted during which the individual designated under paragraph (a) of this section is provided with the following information to make a judgement as to flight readiness:

(i) Flight-readiness of safety-related launch property and services to be provided by a federal launch range;

(ii) Flight-readiness of launch vehicle and payload;

(iii) Flight-readiness of flight safety systems;

(iv) Mission rules and launch constraints;

(v) Abort, hold and recycle procedures;

(vi) Results of dress rehearsals and simulations conducted in accordance with paragraph (a)(4) of this section;

(vii) Unresolved safety issues as of the launch readiness review and plans for addressing and resolving them; and

(viii) Any additional safety information required by the individual designated under paragraph (a) of this section to determine flight readiness.

(2) Procedures that ensure mission constraints, rules and abort procedures are listed and consolidated in a safety directive or notebook approved by licensee flight safety and federal launch range personnel;

(3) Procedures that ensure currency and consistency of licensee and federal launch range countdown checklists;

(4) Dress rehearsal procedures that—

(i) Ensure crew readiness under nominal and non-nominal flight conditions;

(ii) Contain criteria for determining whether to dispense with one or more dress rehearsals; and

(iii) Verify currency and consistency of licensee and federal launch range countdown checklists.

(5) Procedures for ensuring the licensee's flight safety personnel adhere to federal launch range crew rest rules.

(b) *Communications plan requirements.* An applicant shall submit a communications plan providing licensee and federal launch range personnel communications procedures during countdown and flight. Effective issuance and communication of safety-critical information during countdown shall include hold/resume, go/no go and abort commands by licensee and federal launch range personnel during countdown. The communications plan shall describe the authority of licensee and federal launch range personnel, by individual or position title, to issue these commands. The communications plan shall also ensure that—

(1) Communication networks are assigned so that personnel identified under paragraph (b) of this section have direct access to real-time safety-critical information required for issuing hold/resume, go/no go and abort decisions and commands;

(2) Personnel identified under paragraph (b) of this section monitor common intercom channel(s) during countdown and flight; and

(3) A protocol is established for utilizing defined radio telephone communications terminology.

(c) An applicant shall submit procedures that ensure that licensee and federal launch range personnel receive a copy of the communications plan required by paragraph (b) of this section, and that the federal launch range concurs in the communications plan.

§415.39 Safety at end of launch.

To obtain safety approval, an applicant must demonstrate for any proposed launch that for all launch vehicle stages or components that reach earth orbit—

(a) There will be no unplanned physical contact between the vehicle or its components and the payload after payload separation;

(b) Debris generation will not result from the conversion of energy sources into energy that fragments the vehicle or its components. Energy sources include chemical, pressure, and kinetic energy; and

(c) Stored energy will be removed by depleting residual fuel and leaving all fuel line valves open, venting any pressurized system, leaving all batteries in a permanent discharge state, and removing any remaining source of stored energy. Other equivalent procedures may be approved in the course of the licensing process.

§ 415.41 Accident investigation plan.

(a) An applicant shall submit an accident investigation plan (AIP) containing the applicant's procedures for reporting and responding to launch accidents, launch incidents, or other mishaps, as defined in § 401.5 of this chapter. The AIP shall be signed by an individual authorized to sign and certify the application in accordance with § 413.7(c) of this chapter, and the safety official designated under § 415.33(b) of this subpart.

(b) *Reporting requirements.* An AIP shall provide for—

(1) Immediate notification to the Federal Aviation Administration (FAA) Washington Operations Center in case of a launch accident, a launch incident or a mishap that involves a fatality or serious injury (as defined in 49 CFR § 830.2).

(2) Notification within 24 hours to the Associate Administrator for Commercial Space Transportation or the Federal Aviation Administration (FAA) Washington Operations Center in the event of a mishap, other than those in § 415.41 (b) (1), that does not involve a fatality or serious injury (as defined in 49 CFR 830.2).

(3) Submission of a written preliminary report to the FAA, Associate Administrator for Commercial Space Transportation, in the event of a launch accident or launch incident, as defined in § 401.5 of this chapter, within five days of the event. The report shall identify the event as either a launch accident or launch incident, and shall include the following information:

(i) Date and time of occurrence;

(ii) Description of event;

(iii) Location of launch;

(iv) Launch vehicle;

(v) Any payload;

(vi) Vehicle impact points outside designated impact lines, if applicable;

(vii) Number and general description of any injuries;

(viii) Property damage, if any, and an estimate of its value;

(ix) Identification of hazardous materials, as defined in § 401.5 of this chapter, involved in the event, whether on the launch vehicle, payload, or on the ground;

(x) Action taken by any person to contain the consequences of the event; and

(xi) Weather conditions at the time of the event.

(c) *Response plan.* An AIP shall contain procedures that—

(1) Ensure the consequences of a launch accident, launch incident or other mishap are contained and minimized;

(2) Ensure data and physical evidence is preserved;

(3) Require the licensee to report to and cooperate with FAA and National Transportation Safety Board (NTSB) investigations and designate one or more points of contact for the FAA or NTSB; and

(4) Require the licensee to identify and adopt preventive measures for avoiding recurrence of the event.

(d) *Investigation plan.* An AIP shall contain—

(1) Procedures for investigating the cause of a launch accident, launch incident or other mishap;

(2) Procedures for reporting investigation results to the FAA; and

(3) Delineated responsibilities, including reporting responsibilities for personnel assigned to conduct investigations and for any one retained by the licensee to conduct or participate in investigations.

§ 415.43 Denial of safety approval.

The FAA notifies an applicant, in writing, if it has denied safety approval for a license application. The notice states the reasons for the FAA's determination. The applicant may respond to the reasons for the determination and request reconsideration.

§§415.44–415.50 [Reserved]

Subpart D—Payload Review and Determination

§415.51 General.

The FAA reviews a payload proposed for launch to determine whether a license applicant or payload owner or operator has obtained all required licenses, authorization, and permits, unless the payload is exempt from review under §415.53 of this subpart. If not otherwise exempt, the FAA reviews a payload proposed for launch to determine whether its launch would jeopardize public health and safety, safety of property, U.S. national security or foreign policy interests, or international obligations of the United States. A payload determination is part of the licensing record on which the FAA's licensing determination is based.

§415.53 Payloads not subject to review.

The FAA does not review payloads that are—

(a) Subject to regulation by the Federal Communications Commission (FCC) or the Department of Commerce, National Oceanic and Atmospheric Administration (NOAA); or

(b) Owned or operated by the U.S. Government.

§415.55 Classes of payloads.

The FAA may review and issue findings regarding a proposed class of payload, e.g., communications, remote sensing or navigation. However, each payload is subject to compliance monitoring by the FAA before launch to determine whether its launch would jeopardize public health and safety, safety of property, U.S. national security or foreign policy interests, or international obligations of the United States. The licensee is responsible for providing current information, in accordance with §415.79(a), regarding a payload proposed for launch not later than 60 days before a scheduled launch.

§415.57 Payload review.

(a) *Timing.* A payload review may be conducted as part of a license application review or may be requested by a payload owner or operator in advance of or apart from a license application.

(b) *Interagency consultation.* The FAA consults with other agencies to determine whether launch of a proposed payload or payload class would present any issues affecting public health and safety, safety of property, U.S. national security or foreign policy interests, or international obligations of the United States.

(1) The FAA consults with the Department of Defense to determine whether launch of a proposed payload or payload class would present any issues affecting U.S. national security.

(2) The FAA consults with the Department of State to determine whether launch of a proposed payload or payload class would present any issues affecting U.S. foreign policy interests or international obligations.

(3) The FAA consults with other federal agencies, including the National Aeronautics and Space Administration, authorized to address issues identified under paragraph (b) of this section associated with an applicant's launch proposal.

(c) The FAA advises a person requesting a payload determination, in writing, of any issue raised during a payload review that would impede issuance of a license to launch that payload or payload class. The person requesting payload review may respond, in writing, or revise its application.

§415.59 Information requirements for payload review.

(a) A person requesting review of a particular payload or payload class shall identify the following:

(1) Payload name;

(2) Payload class;

(3) Physical dimensions and weight of the payload;

(4) Payload owner and operator, if different from the person requesting payload review;

(5) Orbital parameters for parking, transfer and final orbits;

(6) Hazardous materials, as defined in §401.5 of this chapter, and radioactive materials, and the amounts of each;

(7) Intended payload operations during the life of the payload; and

(8) Delivery point in flight at which the payload will no longer be under the licensee's control.

(b) [Reserved]

§ 415.61 Issuance of payload determination.

(a) The FAA issues a favorable payload determination unless it determines that launch of the proposed payload would jeopardize public health and safety, safety of property, U.S. national security or foreign policy interests, or international obligations of the United States. The FAA advises any person who has requested a payload review of its determination, in writing. The notice states the reasons for the determination in the event of an unfavorable determination.

(b) Any person issued an unfavorable payload determination may respond to the reasons for the determination and request reconsideration.

§ 415.63 Incorporation of payload determination in license application.

A favorable payload determination issued for a payload or class of payload may be included by a license applicant as part of its application. However, any change in information provided under section 415.59 of this subpart must be reported in accordance with section 413.17 of this chapter. The FAA determines whether a favorable payload determination remains valid in light of reported changes and may conduct an additional payload review.

§ 415.64–415.70 [Reserved]

Subpart E—Post-Licensing Requirements—Launch License Terms and Conditions

§ 415.71 Public safety responsibility.

A launch licensee is responsible for ensuring the safe conduct of a licensed launch and for ensuring that public safety and safety of property are protected at all times during the conduct of a licensed launch.

§ 415.73 Continuing accuracy of license application; application for modification of license.

(a) A launch licensee is responsible for the continuing accuracy of representations contained in its application for the entire term of the license. A launch licensee must conduct a licensed launch and carry out launch safety procedures in accordance with its application. A licensee's failure to comply with the requirements of this paragraph is sufficient basis for suspension or revocation of a license.

(b) After a launch license has been issued, a licensee must apply to the FAA for modification of the license if:

(1) The launch licensee proposes to conduct a launch or carry out a launch safety procedure or operation in a manner that is not authorized by the license; or

(2) Any representation contained in the license application that is material to public health and safety or safety of property would no longer be accurate and complete or would not reflect the launch licensee's procedures governing the actual conduct of a launch. A change is material to public health and safety or safety of property if it alters or affects the licensee's launch plans or procedures submitted in accordance with subpart D of this part, class of payload, orbital destination, type of launch vehicle, flight path, launch site, launch point, or any safety system, policy, procedure, requirement, criteria or standard.

(c) An application to modify a launch license shall be prepared and submitted in accordance with part 413 of this chapter. The launch licensee shall indicate any part of its license or license application that would be changed or affected by a proposed modification.

(d) The FAA reviews approvals and determinations required by this chapter to determine whether they remain valid in light of a proposed modification. The FAA approves a modification that satisfies the requirements set forth in this part.

(e) Upon approval of modification, the FAA issues either a written approval to the launch licensee or a license order modifying the license if a stated term or condition of the license is changed, added or deleted. A written approval has the full force and effect of a license order and is part of the licensing record.

§415.75 Agreement(s) with federal launch range.

Prior to conducting a licensed launch from a federal launch range, a launch licensee or applicant shall enter into an agreement with a federal launch range providing for access to and use of U.S. Government property and services required to support a licensed launch from the facility and for public safety related operations and support. The agreement shall be in effect for the conduct of any licensed launch. A launch licensee shall comply with any requirements of the agreement(s) that may affect public safety and safety of property during the conduct of a licensed launch, including flight safety procedures and requirements.

§415.77 Records.

(a) A launch licensee shall maintain all records necessary to verify that licensed launches are conducted in accordance with representations contained in the licensee's application. A launch licensee shall retain records for three years after completion of all launches conducted under the license.

(b) In the event of a launch accident or launch incident, as defined in §405.1 of this chapter, a launch licensee shall preserve all records related to the event. Records shall be retained until completion of any federal investigation and until the FAA advises the licensee that the records need not be retained. The licensee shall make available to federal officials for inspection and copying all records required to be maintained under these regulations.

§415.79 Launch reporting requirements.

(a) Not later than 60 days before each flight conducted under a launch operator license, a licensee shall provide the FAA the following launch-specific information:

(1) Payload information contained in §415.59 of this part;

(2) Flight information, including the launch vehicle, planned flight path, including staging and impact locations, and on-orbit activity of the launch vehicle including payload delivery point(s); and

(3) Mission specific launch waivers, approved or pending, from a federal launch range from which the launch will take place, that are unique to the launch and may affect public safety.

(b) Not later than noon, EST, 15 days before each licensed flight a licensee shall submit to the FAA a completed Federal Aviation Administration/U.S. Space Command (FAA/USSPACECOM) Launch Notification Form (OMB No. 2120–0608).

(c) A launch licensee shall report a launch accident, launch incident, or a mishap that involves a fatality or serious injury (as defined in 49 CFR 830.2) immediately to the Federal Aviation Administration (FAA) Washington Operations Center and provide a written preliminary report in the event of a launch accident or launch incident, in accordance with the accident investigation plan (AIP) submitted as part of its license application under §415.41 of this part.

§415.81 Registration of space objects.

(a) To assist the U.S. Government in implementing Article IV of the 1975 Convention on Registration of Objects Launched into Outer Space, each licensee shall provide to the FAA the information required by paragraph (b) of this section for all objects placed in space by a licensed launch, including a launch vehicle and any components, except:

(1) Any object owned and registered by the U.S. Government; and

(2) Any object owned by a foreign entity.

(b) For each object that must be registered in accordance with this section, not later than thirty (30) days following the conduct of a licensed launch, a licensee shall submit the following information:

(1) The international designator of the space object(s);

(2) Date and location of launch;

(3) General function of the space object; and

(4) Final orbital parameters, including:

(i) Nodal period;

(ii) Inclination;

(iii) Apogee; and

(iv) Perigee.

§ 415.83 Financial responsibility requirements.

A launch licensee shall comply with financial responsibility requirements specified in a license or license order.

§ 415.85 Compliance monitoring.

A launch licensee shall allow access by, and cooperate with, federal officers or employees or other individuals authorized by the FAA to observe any activities of the licensee, or of the licensee's contractors or subcontractors, associated with the conduct of a licensed launch.

§§ 415.86–415.90 [Reserved]

Subpart F—-Safety Review and Approval for Launch From a Launch Site Not Operated by a Federal Launch Range

§ 415.91 General.

The FAA evaluates on an individual basis the safety-related elements of an applicant's proposal to launch a launch vehicle from a launch site not operated by a federal launch range. The FAA issues a safety approval to a license applicant proposing to launch from a launch site not operated by a federal launch range when the FAA determines that the launch demonstrates an equivalent level of safety to that provided by a launch from a federal launch range as set forth in subpart C of this part. A safety approval is part of the licensing record on which the FAA's licensing determination is based.

§ 415.93 Denial of safety approval.

The FAA notifies an applicant, in writing, if it has denied safety approval for a license application. The notice states the reasons for the FAA's determination. The applicant may respond to the reasons for the determination and request reconsideration.

§§ 415.94–415.100 [Reserved]

Subpart G—Environmental Review

§ 415.101 General.

An applicant shall provide the FAA with information for the FAA to analyze the environmental impacts associated with a proposed launch. The information provided by an applicant must be sufficient to enable the FAA to comply with the requirements of the National Environment Policy Act, 42 U.S.C. 4321 *et seq.* (NEPA), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA, 40 CFR parts 1500–1508, and the FAA's Procedures for Considering Environmental Impacts, FAA Order 1050.1D.

§ 415.103 Environmental information.

An applicant shall submit environmental information concerning:

(a) A proposed launch site not covered by existing environmental documentation;

(b) A proposed launch vehicle with characteristics falling measurably outside the parameters of existing environmental documentation;

(c) A proposed launch from an established launch site involving a vehicle with characteristics falling measurably outside the parameters of any existing environmental impact statement that applies to that site;

(d) A proposed payload that may have significant environmental impacts in the event of a mishap; and

(e) Other factors as determined by the FAA.

APPENDIX A TO PART 415—FAA/USSPACECOM LAUNCH NOTIFICATION FORM

Form Approved OMB No. 2120-0608

U.S. Department of Transportation
Federal Aviation Administration

FAA/USSPACECOM Launch Notification

1) Launch Site & Launch Date:
2) Earliest and Latest possible Launch Time (GMT):
3) List of objects to achieve orbit - to include payload description, Rocket bodies, and all other objects:
4) Launch Booster, sustainer, and strap-on descriptions:
5) Launch operator POC - to include name, address, & phone numbers:
6) Orbital Parameters for all objects achieving orbit a) inertial launch azimuth at liftoff:
b) inertial flight azimuth after liftoff:
c) epoch time:
d) nominal period (min):
e) inclination (deg):
f) eccentricity:
g) semimajor axis (km):
h) argument of perigee (deg):
i) right ascension of ascending node (deg):
j) mean anomaly (deg):
k) start time of orbit (hh:mm:ss after launch):
l) end time of orbit (hh:mm:ss after launch):
7) Injection data a) injection point latitude (deg n or s) & longitude (deg e):
b) inertial azimuth at injection point:
c) height above earth (km):

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FAA/USSPACECOM Launch Notification
d) injection time (hh:mm:ss after liftoff):
8) Sequence of Events from liftoff to final injection. Give the times (hh:mm:ss after liftoff) a) separation of each motor:
b) ignition of each motor:
c) cutoff of each motor:
d) jettison of pieces:
e) maneuvers:
f) reorientations:
g) deorbit:
h) ejection of special packages or other experiments:
9) Optional - Schedule for events (not included in no. 8), such as ejection or experiments, maneuvering (unclassified missions), jettison of parts, extension of antenna and solar arrays, venting, spinning or despinning attitude changes, reorientation, or anything which may affect the orbital characteristics:
10) A brief narrative description of the mission:
11) Transmitting frequencies and power (required only if space surveillance is required), including device, band, power (watts), frequency (mhz), and emission scheduled by fixed program, command, or transponder tracking:
12) Orbital objects cataloging instructions (include all orbital objects listed in no. 3, including common name, international designation, and country:

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PARTS 417–419 [RESERVED]

PART 420—LICENSE TO OPERATE A LAUNCH SITE

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APPENDIX E TO PART 420—TABLES FOR EXPLOSIVE SITE PLAN

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Subpart A—General

§420.1 Scope.

This part prescribes the information and demonstrations that must be provided to the FAA as part of a license application, the bases for license approval, license terms and conditions, and post-licensing requirements with which a licensee shall comply to remain licensed. Requirements for preparing a license application are contained in part 413 of this subchapter.

§420.3 Applicability.

This part applies to any person seeking a license to operate a launch site or to a person licensed under this part. A person operating a site that only supports amateur rocket activities, as defined in 14 CFR 401.5, does not need a license under this part to operate the site.

§420.5 Definitions.

For the purpose of this part.

Ballistic coefficient means the weight of an object divided by the quantity product of the coefficient of drag of the object and the area of the object.

Compatibility means the chemical property of materials that may be located together without increasing the probability of an accident or, for a given quantity, the magnitude of the effects of such an accident.

Debris dispersion radius (D_{max}) means the estimated maximum distance from a launch point that debris travels given a worst-case launch vehicle failure and flight termination early in flight. For an expendable launch vehicle, flight termination is assumed to occur at 10 seconds into flight.

Downrange area means a portion of a flight corridor beginning where a launch area ends and ending 5,000 nautical miles from the launch point, or where the IIP leaves the surface of the Earth, whichever is shorter, for an orbital launch vehicle; and ending with

an impact dispersion area for a guided sub-orbital launch vehicle.

E,F,G coordinate system means an orthogonal, Earth-fixed, geocentric, right-handed system. The origin of the coordinate system is at the center of an ellipsoidal Earth model. The E-axis is positive directed through the Greenwich meridian. The F-axis is positive directed though 90 degrees east longitude. The EF-plane is coincident with the ellipsoidal Earth model's equatorial plane. The G-axis is normal to the EF-plane and positive directed through the north pole.

E,N,U coordinate system means an orthogonal, Earth-fixed, topocentric, right-handed system. The origin of the coordinate system is at a launch point. The E-axis is positive directed east. The N-axis is positive directed north. The EN-plane is tangent to an ellipsoidal Earth model's surface at the origin and perpendicular to the geodetic vertical. The U-axis is normal to the EN-plane and positive directed away from the Earth.

Effective casualty area (A_c) means the aggregate casualty area of each piece of debris created by a launch vehicle failure at a particular point on its trajectory. The effective casualty area for each piece of debris is the area within which 100 percent of the unprotected population on the ground are assumed to be a casualty, and outside of which 100 percent of the population are assumed not to be a casualty. An effective casualty area accounts for the characteristics of the debris piece, including its size, the path angle of its trajectory, impact explosions, and debris skip, splatter, and bounce. An effective casualty area also accounts for the size of a person.

Explosive means any chemical compound or mechanical mixture that, when subjected to heat, impact, friction, detonation or other suitable initiation, undergoes a rapid chemical change that releases large volumes of highly heated gases that exert pressure in the surrounding medium. The term applies to materials that either detonate or deflagrate.

Explosive division means the division within hazard class 1 of an explosive as defined in the United Nations Organization classification system for transport of dangerous goods, and as determined in accordance with 49 CFR part 173, subpart C.

Explosive equivalent means a measure of the blast effects from explosion of a given quantity of material expressed in terms of the weight of trinitrotoluene (TNT) that would produce the same blast effects when detonated.

Explosive hazard facility means a facility at a launch site where solid propellant, liquid propellant, or other explosives are stored or handled.

Flight azimuth means the initial direction in which a launch vehicle flies relative to true north expressed in degrees-decimal-degrees.

Flight corridor means an area on the Earth's surface estimated to contain the hazardous debris from nominal flight of a launch vehicle, and non-nominal flight of a launch vehicle assuming a perfectly functioning flight termination system or other flight safety system.

Guided suborbital launch vehicle means a suborbital rocket that employs an active guidance system.

Hazard class means the class of an explosive as defined by the United Nations Organization classification system for transport of dangerous goods, and as determined in accordance with 49 CFR part 173, subpart C.

Impact dispersion area means an area representing an estimated three standard deviation dispersion about a nominal impact point of an intermediate or final stage of a suborbital launch vehicle.

Impact dispersion factor means a constant used to estimate, using a stage apogee, a three standard deviation dispersion about a nominal impact point of an intermediate or final stage of a suborbital launch vehicle.

Impact dispersion radius (R_i) means a radius that defines an impact dispersion area.

Impact range means the distance between a launch point and the impact point of a suborbital launch vehicle stage.

Impact range factor means a constant used to estimate, when multiplied by a stage apogee, the nominal impact point of an intermediate or final stage of a suborbital launch vehicle.

Instantaneous impact point (IIP) means an impact point, following thrust termination of a launch vehicle. IIP may be calculated with or without atmospheric drag effects.

Instantaneous impact point (IIP) range rate means a launch vehicle's estimated IIP velocity along the Earth's surface.

Intraline distance means the minimum distance permitted between any two explosive hazard facilities in the ownership, possession or control of one launch site customer.

Launch area means, for a flight corridor defined in accordance with appendix A of this part, the portion of a flight corridor from the launch point to a point 100 nautical miles in the direction of the flight azimuth. For a flight corridor defined in accordance with appendix B of this part, a launch area is the portion of a flight corridor from the launch point to the enveloping line enclosing the outer boundary of the last debris dispersion circle.

Launch point means a point on the Earth from which the flight of a launch vehicle begins, and is defined by its geodetic latitude, longitude and height on an ellipsoidal Earth model.

Launch site accident means an unplanned event occurring during a ground activity at a launch site resulting in a fatality or serious injury (as defined in 49 CFR 830.2) to any person who is not associated with the activity, or any damage estimated to exceed $25,000 to property not associated with the activity.

Net explosive weight (NEW) means the total weight, expressed in pounds, of explosive material or explosive equivalency contained in an item.

Nominal means, in reference to launch vehicle performance, trajectory, or stage impact point, a launch vehicle flight where all launch vehicle aerodynamic parameters are as expected, all vehicle internal and external systems perform as planned, and there are no external perturbing influences (e.g., winds) other than atmospheric drag and gravity.

Overflight dwell time means the period of time it takes for a launch vehicle's IIP to move past a populated area. For a given populated area, the overflight dwell time is the time period measured along the nominal trajectory IIP ground trace from the time point whose normal with the trajectory intersects the most uprange part of the populated area to the time point whose normal with the trajectory intersects the most downrange part of the populated area.

Overflight exclusion zone means a portion of a flight corridor which must remain clear of the public during the flight of a launch vehicle.

Populated area means a land area with population.

Population density means the number of people per unit area in a populated area.

Position data means data referring to the current position of a launch vehicle with respect to flight time expressed through the X, Y, Z coordinate system.

Public means people and property that are not involved in supporting a licensed launch, and includes those people and property that may be located within the boundary of a launch site, such as visitors, any individual providing goods or services not related to launch processing or flight, and any other launch operator and its personnel.

Public area means any area outside a hazard area and is an area that is not in the possession, ownership or other control of a launch site operator or of a launch site customer who possesses, owns or otherwise controls that hazard area.

Public area distance means the minimum distance permitted between a public area and an explosive hazard facility.

Public traffic route distance means the minimum distance permitted between a public highway or railroad line and an explosive hazard facility.

Trajectory means the position and velocity components as a function of time of a launch vehicle relative to an x, y, z coordinate system, expressed in $x, y, z, \dot{x}, \dot{y}, \dot{z}$.

Unguided sub-orbital launch vehicle means a sub-orbital rocket that does not have a guidance system.

X, Y, Z coordinate system means an orthogonal, Earth-fixed, topocentric, right-handed system. The origin of the coordinate system is at a launch point. The x-axis coincides with the initial

launch azimuth and is positive in the downrange direction. The y-axis is positive to the left looking downrange. The xy-plane is tangent to the ellipsoidal earth model's surface at the origin and perpendicular to the geodetic vertical. The z-axis is normal to the xy-plane and positive directed away from the earth.

φ_0,λ_0,h_0 means a latitude, longitude, height system where φ_0 is the geodetic latitude of a launch point, λ_0 is the east longitude of the launch point, and h_0 is the height of the launch point above the reference ellipsoid. φ_0 and λ_0 are expressed in degrees-decimal-degrees.

§§ 420.6–420.14 [Reserved]

Subpart B—Criteria and Information Requirements for Obtaining a License

§ 420.15 Information requirements.

(a) *General*—(1) *Launch site operator.* An applicant shall identify the name and address of the applicant, and the name, address, and telephone number of any person to whom inquiries and correspondence should be directed.

(2) *Launch site.* An applicant shall provide the name and location of the proposed launch site and include the following information:

(i) A list of downrange equipment;

(ii) A description of the layout of the launch site, including launch points;

(iii) The types of launch vehicles to be supported at each launch point;

(iv) The range of launch azimuths planned from each launch point; and

(v) The scheduled operational date.

(3) *Foreign ownership.* Identify foreign ownership of the applicant, as follows:

(i) For a sole proprietorship or partnership, all foreign owners or partners;

(ii) For a corporation, any foreign ownership interest of 10 percent or more; and

(iii) For a joint venture, association, or other entity, any foreign entities participating in the entity.

(b) *Environmental.* An applicant shall provide the FAA with information for the FAA to analyze the environmental impacts associated with the operation of the proposed launch site. The information provided by an applicant must be sufficient to enable the FAA to comply with the requirements of the National Environment Policy Act, 42 U.S.C. 4321 *et seq.* (NEPA), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA, 40 CFR parts 1500–1508, and the FAA's Procedures for Considering Environmental Impacts, FAA Order 1050.1D. An applicant shall submit environmental information concerning a proposed launch site not covered by existing environmental documentation, and other factors as determined by the FAA.

(c) *Launch site location.* (1) Except as provided by paragraph (c)(2) of this section, an applicant shall provide the information necessary to demonstrate compliance with §§ 420.19–420.29.

(2) An applicant who is proposing to locate a launch site at an existing launch point at a federal launch range is not required to comply with paragraph (c)(1) of this section if a launch vehicle of the same type and class as proposed for the launch point has been safely launched from the launch point.

(d) *Explosive site plan.* (1) Except as provided by paragraph (d)(2) of this section, an applicant shall submit an explosive site plan that complies with §§ 420.63, 420.65, 420.67, and 420.69.

(2) If an applicant plans to operate a launch site located on a federal launch range, and if the applicant is required by the federal launch range to comply with the federal launch range's explosive safety requirements, the applicant shall submit the explosive site plan submitted to the federal launch range.

(e) *Launch site operations.* An applicant shall provide the information necessary to demonstrate compliance with the requirements of §§ 420.53, 420.55, 420.57, 420.59, 420.61, and 420.71.

§ 420.17 Bases for issuance of a license.

(a) The FAA will issue a license under this part when the FAA determines that:

(1) The application provides the information required by § 420.15;

(2) The FAA has completed an analysis of the environmental impacts associated with the proposed operation of the launch site, in accordance with NEPA, 40 CFR parts 1500–1508, and FAA Order 1050.1D;

(3) The launch site location meets the requirements of §§ 420.19, 420.21, 420.23, 420.25, 420.27, and 420.29;

(4) The applicant has completed the agreements required by § 420.31;

(5) The application demonstrates that the applicant shall satisfy the requirements of §§ 420.53, 420.55, 420.57, 420.59, 420.61 and 420.71;

(6) The explosive site plan meets the criteria of §§ 420.63, 420.65, 420.67 and 420.69; and

(7) Issuing a license would not jeopardize foreign policy or national security interests of the United States.

(b) The FAA advises an applicant, in writing, of any issue arising during an application review that would lead to denial. The applicant may respond in writing, submit additional information, or amend its license application.

§ 420.19 Launch site location review—general.

(a) To gain approval for a launch site location, an applicant shall demonstrate that for each launch point proposed for the launch site, at least one type of expendable or reusable launch vehicle can be flown from the launch point safely. For purposes of the launch site location review:

(1) A safe launch must possess a risk level estimated, in accordance with the requirements of this part, not to exceed an expected average number of 0.00003 casualties (E_c) to the collective member of the public exposed to hazards from the flight ($E_c \leq 30 \times 10^{-6}$).

(2) Types of launch vehicles include orbital expendable launch vehicles, guided sub-orbital expendable launch vehicles, unguided sub-orbital expendable launch vehicles, and reusable launch vehicles. Orbital expendable launch vehicles are further classified by weight class, based on the weight of payload the launch vehicle can place in a 100-nm orbit, as defined in table 1.

(b) If an applicant proposes to have more than one type of launch vehicle flown from a launch point, the applicant shall demonstrate that each type of expendable or reusable launch vehicle planned to be flown from the launch point can be flown from the launch point safely.

(c) If an applicant proposes to have more than one weight class of orbital expendable launch vehicles flown from a launch point, the applicant shall demonstrate that the heaviest weight class planned to be flown from the launch point can be flown from the launch point safely.

TABLE 1 OF § 420.19—ORBITAL EXPENDABLE LAUNCH VEHICLE CLASSES BY PAYLOAD WEIGHT (LBS)

100 nm orbit	Weight class			
	Small	Medium	Medium large	Large
28 degrees inclination*	≤4400	>4400 to ≤11100	>11100 to ≤18500	>18500
90 degrees inclination	≤3300	>3300 to ≤8400	>8400 to ≤15000	>15000

*28 degrees inclination orbit from a launch point at 28 degrees latitude.

§ 420.21 Launch site location review—launch site boundary.

(a) The distance from any proposed launch point to the closest launch site boundary must be at least as great as the debris dispersion radius of the largest launch vehicle type and weight class proposed for the launch point.

(b) For a launch site supporting any expendable launch vehicle, an applicant shall use the largest distance provided by table 2 for the type and weight class of any launch vehicle proposed for the launch point.

(c) For a launch site supporting any reusable launch vehicle, an applicant shall determine the debris dispersion radius that represents the maximum distance from a launch point that debris travels given a worst-case launch vehicle failure in the launch area. An applicant must clearly and convincingly demonstrate the validity of its proposed debris dispersion radius.

TABLE 2 OF § 420.21—MINIMUM DISTANCE FROM LAUNCH POINT TO LAUNCH SITE BOUNDARY (FEET)

Orbital expendable launch vehicle class			Type of suborbital launch vehicle		
Small	Medium	Medium large	Large	Guided	Unguided
7300	9300	10600	13000	8000	1600

§ 420.23 Launch site location review—flight corridor.

(a) *Guided orbital expendable launch vehicle.* For a guided orbital expendable launch vehicle, an applicant shall define a flight corridor that:

(1) Encompasses an area that the applicant estimates, in accordance with the requirements of this part, to contain debris with a ballistic coefficient of ≥ 3 pounds per square foot, from any non-nominal flight of a guided orbital expendable launch vehicle from the launch point to a point 5000 nm downrange, or where the IIP leaves the surface of the Earth, whichever is shorter;

(2) Includes an overflight exclusion zone where the public risk criteria of 30×10^{-6} would be exceeded if one person were present in the open; and

(3) Uses one of the methodologies provided in appendix A or B of this part. The FAA will approve an alternate method if an applicant provides a clear and convincing demonstration that its proposed method provides an equivalent level of safety to that required by appendix A or B of this part.

(b) *Guided sub-orbital expendable launch vehicle.* For a guided sub-orbital expendable launch vehicle, an applicant shall define a flight corridor that:

(1) Encompasses an area that the applicant estimates, in accordance with the requirements of this part, to contain debris with a ballistic coefficient of ≥ 3 pounds per square foot, from any non-nominal flight of a guided sub-orbital expendable launch vehicle from the launch point to impact with the earth's surface;

(2) Includes an impact dispersion area for the launch vehicle's last stage;

(3) Includes an overflight exclusion zone where the public risk criteria of 30×10^{-6} would be exceeded if one person were present in the open; and

(4) Uses one of the methodologies provided in appendices A or B to this part. The FAA will approve an alternate method if an applicant provides a clear and convincing demonstration that its proposed method provides an equivalent level of safety to that required by appendix A or B of this part.

(c) *Unguided sub-orbital expendable launch vehicle.* (1) For an unguided suborbital expendable launch vehicle, an applicant shall define the following using the methodology provided by appendix D of this part:

(i) Impact dispersion areas that the applicant estimates, in accordance with the requirements of this part, to contain the impact of launch vehicle stages from nominal flight of an unguided sub-orbital expendable launch vehicle from the launch point to impact with the earth's surface; and

(ii) An overflight exclusion zone where the public risk criteria of 30×10^{-6} would be exceeded if one person were present in the open.

(2) The FAA will approve an alternate method if an applicant provides a clear and convincing demonstration that its proposed method provides an equivalent level of safety to that required by appendix D of this part.

(3) An applicant shall base its analysis on an unguided suborbital launch vehicle whose final launch vehicle stage apogee represents the intended use of the launch point.

(d) *Reusable launch vehicle.* For a reusable launch vehicle, an applicant shall define a flight corridor that contains the hazardous debris from nominal and non-nominal flight of a reusable launch vehicle. The applicant must provide a clear and convincing demonstration of the validity of its flight corridor.

§ 420.25 Launch site location review—risk analysis.

(a) If a flight corridor or impact dispersion area defined by section 420.23

contains a populated area, the applicant shall estimate the casualty expectation associated with the flight corridor or impact dispersion area. An applicant shall use the methodology provided in appendix C to this part for guided orbital or suborbital expendable launch vehicles and appendix D for unguided suborbital launch vehicles. The FAA will approve an alternate method if an applicant provides a clear and convincing demonstration that its proposed method provides an equivalent level of safety to that required by appendix C or D of this part. For a reusable launch vehicle, an applicant must provide a clear and convincing demonstration of the validity of its risk analysis.

(b) If the estimated expected casualty exceeds 30×10^{-6}, the FAA will not approve the location of the proposed launch point.

§ 420.27 Launch site location review—information requirements.

An applicant shall provide the following launch site location review information in its application:

(a) A map or maps showing the location of each launch point proposed, and the flight azimuth, IIP, flight corridor, and each impact range and impact dispersion area for each launch point;

(b) Each launch vehicle type and any launch vehicle class proposed for each launch point;

(c) Trajectory data;

(d) Wind data, including each month and any percent wind data used in the analysis;

(e) Any launch vehicle apogee used in the analysis;

(f) Each populated area located within a flight corridor or impact dispersion area;

(g) The estimated casualty expectancy calculated for each populated area within a flight corridor or impact dispersion area;

(h) The effective casualty areas used in the analysis;

(i) The estimated casualty expectancy for each flight corridor or set of impact dispersion areas; and

(j) If populated areas are located within an overflight exclusion zone, a demonstration that there are times when the public is not present or that the applicant has an agreement in place to evacuate the public from the overflight exclusion zone during a launch.

§ 420.29 Launch site location review for unproven launch vehicles.

An applicant for a license to operate a launch site for an unproven launch vehicle shall provide a clear and convincing demonstration that its proposed launch site location provides an equivalent level of safety to that required by this part.

§ 420.31 Agreements.

(a) Except as provided by paragraph (c) of this section, an applicant shall complete an agreement with the local U.S. Coast Guard district to establish procedures for the issuance of a Notice to Mariners prior to a launch and other such measures as the Coast Guard deems necessary to protect public health and safety.

(b) Except as provided by paragraph (c) of this section, an applicant shall complete an agreement with the FAA Air Traffic Control (ATC) office having jurisdiction over the airspace through which launches will take place, to establish procedures for the issuance of a Notice to Airmen prior to a launch and for closing of air routes during the launch window and other such measures as the FAA ATC office deems necessary to protect public health and safety.

(c) An applicant that plans to operate a launch site located on a federal launch range does not have to comply with section 420.31 if the applicant is using existing federal launch range agreements with the U.S. Coast Guard and the FAA ATC office having jurisdiction over the airspace through which launches will take place.

§§ 420.32–420.40 [Reserved]

Subpart C—License Terms and Conditions

§ 420.41 License to operate a launch site—general.

(a) A license to operate a launch site authorizes a licensee to operate a launch site in accordance with the representations contained in the licensee's

application, with terms and conditions contained in any license order accompanying the license, and subject to the licensee's compliance with 49 U.S.C. subtitle IX, ch. 701 and this chapter.

(b) A license to operate a launch site authorizes a licensee to offer its launch site to a launch operator for each launch point for the type and any weight class of launch vehicle identified in the license application and upon which the licensing determination is based.

(c) Issuance of a license to operate a launch site does not relieve a licensee of its obligation to comply with any other laws or regulations; nor does it confer any proprietary, property, or exclusive right in the use of airspace or outer space.

§ 420.43 Duration.

A license to operate a launch site remains in effect for five years from the date of issuance unless surrendered, suspended, or revoked before the expiration of the term and is renewable upon application by the licensee.

§ 420.45 Transfer of a license to operate a launch site.

(a) Only the FAA may transfer a license to operate a launch site.

(b) The FAA will transfer a license to an applicant who has submitted an application in accordance with 14 CFR part 413, satisfied the requirements of § 420.15, and obtained each approval required by § 420.17 for a license.

(c) The FAA may incorporate by reference any findings made part of the record that supported a prior related licensing determination.

§ 420.47 License modification.

(a) Upon application or upon its own initiative, the FAA may modify a license to operate a launch site at any time by issuing a license order that adds, removes, or modifies a license term or condition to ensure compliance with the Act and the requirements of this chapter.

(b) After a license to operate a launch site has been issued, a licensee shall apply to the FAA for modification of its license if:

(1) The licensee proposes to operate the launch site in a manner that is not authorized by the license; or

(2) The licensee proposes to operate the launch site in a manner that would make any representation contained in the license application that is material to public health and safety or safety of property no longer accurate and complete.

(c) An application to modify a license shall be prepared and submitted in accordance with part 413 of this chapter. The licensee shall indicate any part of its license or license application that would be changed or affected by a proposed modification.

(d) The FAA approves a modification request that satisfies the requirements of this part.

(e) Upon approval of a license modification, the FAA issues either a written approval to the licensee or a license order modifying the license if a stated term or condition of the license is changed, added, or deleted. A written approval has the full force and effect of a license order and is part of the licensing record.

§ 420.49 Compliance monitoring.

A licensee shall allow access by and cooperate with federal officers or employees or other individuals authorized by the FAA to observe any activities of the licensee, its customers, its contractors, or subcontractors, associated with licensed operation of the licensee's launch site.

Subpart D—Responsibilities of a Licensee

§ 420.51 Responsibilities—general.

(a) A licensee shall operate its launch site in accordance with the representations in the application upon which the licensing determination is based.

(b) A licensee is responsible for compliance with 49 U.S.C. Subtitle IX, ch. 701 and for meeting the requirements of this chapter.

§ 420.53 Control of public access.

(a) A licensee shall prevent unauthorized access to the launch site, and unauthorized, unescorted access to explosive hazard facilities or other hazard areas not otherwise controlled by a

launch operator, through the use of security personnel, surveillance systems, physical barriers, or other means approved as part of the licensing process.

(b) A licensee shall notify anyone entering the launch site of safety rules and emergency and evacuation procedures prior to that person's entry unless that person has received a briefing on those rules and procedures within the previous year.

(c) A licensee shall employ warning signals or alarms to notify any persons at the launch site of any emergency.

§ 420.55 Scheduling of launch site operations.

(a) A licensee shall develop and implement procedures to schedule operations to ensure that each operation carried out by a customer at the launch site does not create the potential for a mishap that could result in harm to the public because of the proximity of the operations, in time or place, to operations of any other customer. A customer includes any launch operator, and any contractor, subcontractor or customer of the launch site operator's customer at the launch site.

(b) A licensee shall provide its launch site scheduling requirements to each customer before the customer begins operations at the launch site.

§ 420.57 Notifications.

(a) A licensee shall notify each launch operator and any other customer of any limitations on the use of the launch site. A licensee shall also communicate limitations on the use of facilities provided to customers by the launch site operator.

(b) A licensee shall maintain its agreement, made in accordance with § 420.31(a), with the local U.S. Coast Guard district.

(c) A licensee shall maintain its agreement, made in accordance with § 420.31(b), with the FAA ATC office having jurisdiction over the airspace through which launches will take place.

(d) At least two days prior to flight of a launch vehicle, the licensee shall notify local officials and all owners of land adjacent to the launch site of the flight schedule.

§ 420.59 Launch site accident investigation plan.

(a) *General.* A licensee shall develop and implement a launch site accident investigation plan that contains the licensee's procedures for reporting, responding to, and investigating launch site accidents, as defined by § 420.5, and for cooperating with federal officials in case of a launch accident. The launch site accident investigation plan must be signed by an individual authorized to sign and certify the application in accordance with § 413.7(c) of this chapter.

(b) *Reporting requirements.* A launch site accident investigation plan shall provide for—

(1) Immediate notification to the Federal Aviation Administration (FAA) Washington Operations Center in the event of a launch site accident.

(2) Submission of a written preliminary report to the FAA, Associate Administrator for Commercial Space Transportation, within five days of any launch site accident. The report must include the following information:

(i) Date and time of occurrence;

(ii) Location of the event;

(iii) Description of the event;

(iv) Number of injuries, if any, and general description of types of injuries suffered;

(v) Property damage, if any, and an estimate of its value;

(vi) Identification of hazardous materials, as defined by § 401.5 of this chapter, involved in the event;

(vii) Any action taken to contain the consequences of the event; and

(viii) Weather conditions at the time of the event.

(c) *Response plan.* A launch site accident investigation plan shall contain procedures that—

(1) Ensure the consequences of a launch site accident are contained and minimized;

(2) Ensure data and physical evidence are preserved;

(3) Require the licensee to report to and cooperate with FAA or National Transportation Safety Board (NTSB) investigations and designate one or more points of contact for the FAA or NTSB; and

(4) Require the licensee to identify and adopt preventive measures for avoiding recurrence of the event.

(d) *Investigation plan.* A launch site accident investigation plan must contain—

(1) Procedures for investigating the cause of a launch site accident;

(2) Procedures for reporting launch site accident investigation results to the FAA; and

(3) Delineated responsibilities, including reporting responsibilities for personnel assigned to conduct investigations and for any one retained by the licensee to conduct or participate in investigations.

(e) *Launch accidents.* A launch site accident investigation plan shall contain—

(1) Procedures for participating in an investigation of a launch accident for launches launched from the launch site;

(2) Require the licensee to cooperate with FAA or National Transportation Safety Board (NTSB) investigations of a launch accident for launches launched from the launch site.

(f) *Applicability of other accident investigation procedures.* Accident investigation procedures developed in accordance with 29 CFR 1910.119 and 40 CFR part 68 will satisfy the requirements of paragraphs (c) and (d) of this section to the extent that they include the elements required by paragraphs (c) and (d) of this section.

§ 420.61 Records.

(a) A licensee shall maintain all records, data, and other material needed to verify that its operations are conducted in accordance with representations contained in the licensee's application. A licensee shall retain records for three years.

(b) In the event of a launch or launch site accident, a licensee shall preserve all records related to the event. Records shall be retained until completion of any federal investigation and the FAA advises the licensee that the records need not be retained.

(c) A licensee shall make available to federal officials for inspection and copying all records required to be maintained under the regulations.

§ 420.63 Explosive siting.

(a) Except as otherwise provided by paragraph (b) of this section, a licensee shall ensure that the configuration of the launch site is in accordance with an explosive site plan, and that the licensee's explosive site plan is in compliance with the requirements of §§ 420.65—420.69. The explosive site plan shall include:

(1) A scaled map that shows the location of all proposed explosive hazard facilities at the proposed launch site and that shows actual and minimal allowable distances between each explosive hazard facility and all other explosive hazard facilities and each public area, including the launch site boundary;

(2) A listing of the maximum quantities of liquid and solid propellants and other explosives to be located at each explosive hazard facility, including the class and division for each solid explosive and the hazard and compatibility group for each liquid propellant; and

(3) A description of each activity to be conducted in each explosive hazard facility.

(b) A licensee operating a launch site located on a federal launch range does not have to comply with the requirements in §§ 420.65–420.69 if the licensee is in compliance with the federal launch range's explosive safety requirements.

(c) For explosive siting issues not otherwise addressed by the requirements of §§ 420.65–420.69, a launch site operator must clearly and convincingly demonstrate a level of safety equivalent to that otherwise required by part 420.

§ 420.65 Handling of solid propellants.

(a) A launch site operator shall determine the maximum total quantity of solid propellants and other solid explosives by class and division, in accordance with 49 CFR part 173, Subpart C, to be located in each explosive hazard facility where solid propellants or other solid explosives will be handled.

(b) When explosive divisions 1.1 and 1.3 explosives are located in the same explosive hazard facility, the total quantity of explosive shall be treated

as division 1.1 for quantity-distance determinations; or, a launch site operator may add the net explosive equivalent weight of the division 1.3 items to the net weight of division 1.1 items to determine the total quantity of explosives.

(c) A launch site operator shall separate each explosive hazard facility where solid propellants and other solid explosives are handled from all other explosive hazard facilities, each public area and the launch site boundary by a distance no less than those provided for each quantity and explosive division in appendix E, table E–1.

(d) A launch site operator shall follow the following separation rules:

(1) A launch site operator shall employ no less than the applicable public area distance to separate an explosive hazard facility from each public area and from the launch site boundary.

(2) A launch site operator shall employ no less than an intraline distance to separate an explosive hazard facility from all other explosive hazard facilities used by a single customer.

(3) For explosive division 1.1 only, a launch site operator may employ no less than 60% of the applicable public area distance, or the public traffic route distance, to separate an explosive hazard facility from a public area that consists only of a public highway or railroad line.

(4) A launch site operator may use linear interpolation for NEW quantities between table entries.

(5) A launch site operator shall measure separation distance from the closest debris or explosive hazard source in an explosive hazard facility.

§ 420.67 Storage or handling of liquid propellants.

(a) For an explosive hazard facility where liquid propellants are handled or stored, a launch site operator shall determine the total quantity of liquid propellant and, if applicable pursuant to paragraph (a)(3) of this section, the explosive equivalent of liquid propellant in each explosive hazard facility in accordance with the following:

(1) The quantity of liquid propellant in a tank, drum, cylinder, or other container is the net weight in pounds of the propellant in the container. The determination of quantity shall include any liquid propellant in associated piping to any point where positive means are provided for interrupting the flow through the pipe, or interrupting a reaction in the pipe in the event of a mishap.

(2) Where two or more containers of compatible liquid propellants are handled or stored together in an explosive hazard facility, the total quantity of propellant to determine the minimum separation distance between the explosive hazard facility and all other explosive hazard facilities and each public area shall be the total quantity of liquid propellant in all containers, unless:

(i) The containers are separated one from the other by the appropriate distance as provided by paragraph (b)(2) of this section; or

(ii) The containers are subdivided by intervening barriers, such as diking, that prevent mixing.

(iii) If paragraph (a)(2)(i) or (ii) of this section apply, a launch site operator shall use the quantity of propellant requiring the greatest separation distance pursuant to paragraph (b) of this section to determine the minimum separation distance between the explosive hazard facility and all other explosive hazard facilities and each public area.

(3) Where two or more containers of incompatible liquid propellants will be handled or stored together in an explosive hazard facility, a launch site operator shall determine the explosive equivalent in pounds of the combined liquids, using the formulas provided in appendix E, table E–2, to determine the minimum separation distance between the explosive hazard facility and other explosive hazard facilities and public areas unless the containers are separated one from the other by the appropriate distance as determined in paragraph (b)(3) of this section. A launch site operator shall then use the quantity of liquid propellant requiring the greatest separation distance to determine the minimum separation distance between the explosive hazard facility and all other explosive hazard facilities and each public area.

(4) A launch site operator shall convert quantities of liquid propellants

from gallons to pounds using the conversion factors provided in appendix E, table E–3 and the following equation:

Pounds of propellant = gallons × density of propellant (pounds per gallon).

(b) A launch site operator shall use appendix E, table E–3 to determine hazard and compatibility groups and shall separate liquid propellants from each other and from each public area using distances no less than those provided in appendix E, tables E–4 through E–7 in accordance with the following:

(1) A launch site operator shall measure minimum separation distances from the hazard source in an explosive hazard facility, such as a container, building, segment, or positive cutoff point in piping, closest to each explosive hazard facility.

(2) A launch site operator shall measure the minimum separation distance between compatible liquid propellants using the ''intragroup and compatible'' distance for the propellant quantity and hazard group that requires the greater distance prescribed by appendix E, tables E–4, E–5, and E–6.

(3) A launch site operator shall measure the minimum separation distance between liquid propellants of different compatibility groups using the ''public area and incompatible'' distance for the propellant quantity and hazard group that requires the greater distance provided in appendix E, tables E–4, E–5, and E–6, unless the propellants of different compatibility groups are subdivided by intervening barriers that prevent mixing. If such barriers are present, the minimum separation distance shall be the ''intragroup and compatible'' distance for the propellant quantity and group that requires the greater distance provided in appendix E, tables E–4, E–5, and E–6.

(4) A launch site operator shall separate liquid propellants from each public area using a distance no less than the ''public area and incompatible'' distance provided in appendix E, tables E–4, E–5, and E–6.

(5) A launch site operator shall separate each explosive hazard facility that contains liquid propellants where explosive equivalents apply pursuant to paragraph (a)(3) of this section from all other explosive hazard facilities of a single customer using the intraline distance provided in appendix E, table E–7, and from each public area using the public area distance provided in appendix E, table E–7.

§ 420.69 Solid and liquid propellants located together.

(a) A launch site operator proposing an explosive hazard facility where solid and liquid propellants are to be located together shall determine the minimum separation distances between the explosive hazard facility and other explosive hazard facilities and public areas in accordance with one method provided in paragraphs (b), (c), or (d) of this section.

(b) A launch site operator shall determine the minimum separation distances between the explosive hazard facility and all other explosive hazard facilities and public areas required for the liquid propellants in accordance with section 420.67(b)(5), and add the minimum separation distances between the explosive hazard facility and all other explosive hazard facilities and public areas required for the solid propellants in accordance with section 420.65, treating the solid propellants as explosive division 1.1.

(c) A launch site operator shall determine the minimum separation distances between the explosive hazard facility and all other explosive hazard facilities and public areas required for the liquid propellants in accordance with section 420.67(b)(5), and add the minimum separation distances between the explosive hazard facility and all other explosive hazard facilities and public areas required for the solid propellants in accordance with section 420.65, using the explosive equivalent of the explosive division 1.3.

(d) A launch site operator shall conduct an analysis of the maximum credible event (MCE), or the worst case explosion that is expected to occur. If the MCE shows that there will be no simultaneous explosion reaction of the liquid propellant tanks and the solid propellant motors, then the minimum distance between the explosive hazard facility and all other explosive hazard facilities and public areas must be based on the MCE.

§ 420.71 Lightning protection.

(a) *Lightning protection.* A licensee shall ensure that the public is not exposed to hazards due to the initiation of explosives by lightning.

(1) *Elements of a lighting protection system.* Unless an explosive hazard facility meets the conditions of paragraph (a)(3) of this section, all explosive hazard facilities shall have a lightning protection system to ensure explosives are not initiated by lightning. A lightning protection system shall meet the requirements of this paragraph and include the following:

(i) *Air terminal.* An air terminal to intentionally attract a lightning strike.

(ii) *Down conductor.* A low impedance path connecting an air terminal to an earth electrode system.

(iii) *Earth electrode system.* An earth electrode system to dissipate the current from a lightning strike to ground.

(2) *Bonding and surge protection.* A lightning protection system must meet the requirements of this paragraph and include the following:

(i) *Bonding.* All metallic bodies shall be bonded to ensure that voltage potentials due to lightning are equal everywhere in the explosive hazard facility. Any fence within six feet of a lightning protection system shall have a bond across each gate and other discontinuations and shall be bonded to the lightning protection system. Railroad tracks that run within six feet of the lightning protection system shall be bonded to the lightning protection system.

(ii) *Surge protection.* A lightning protection system shall include surge protection to reduce transient voltages due to lightning to a harmless level for all metallic power, communication, and instrumentation lines entering an explosive hazard facility.

(3) *Circumstances where no lightening protection system is required.* No lightning protection system is required for an explosive hazard facility when a lightning warning system is available to permit termination of operations and withdrawal of the public to public area distance prior to an electrical storm, or for an explosive hazard facility containing explosives that cannot be initiated by lightning. If no lightning protection system is required, a licensee must ensure the withdrawal of the public to a public area distance prior to an electrical storm.

(4) *Testing and inspection.* Lightning protection systems shall be visually inspected semiannually and shall be tested once each year for electrical continuity and adequacy of grounding. A licensee shall maintain at the explosive hazard facility a record of results obtained from the tests, including any action taken to correct deficiencies noted.

(b) *Electrical power lines.* A licensee shall ensure that electric power lines at its launch site meet the following requirements:

(1) Electric power lines shall be no closer to an explosive hazard facility than the length of the lines between the poles or towers that support the lines unless an effective means is provided to ensure that energized lines cannot, on breaking, come in contact with the explosive hazard facility.

(2) Towers or poles supporting electrical distribution lines that carry between 15 and 69 KV, and unmanned electrical substations shall be no closer to an explosive hazard facility than the public area distance for that explosive hazard facility.

(3) Towers or poles supporting electrical transmission lines that carry 69 KV or more, shall be no closer to an explosive hazard facility than the public area distance for that explosive hazard facility.

APPENDIX A TO PART 420—METHOD FOR DEFINING A FLIGHT CORRIDOR

(a) Introduction

(1) This appendix provides a method for constructing a flight corridor from a launch point for a guided suborbital launch vehicle or any one of the four classes of guided orbital launch vehicles from table 1, §420.19, without the use of local meteorological data or a launch vehicle trajectory.

(2) A flight corridor includes an overflight exclusion zone in a launch area and, for a guided suborbital launch vehicle, an impact dispersion area in a downrange area. A flight corridor for a guided suborbital launch vehicle ends with the impact dispersion area, and, for the four classes of guided orbital launch vehicles, 5000 nautical miles (nm) from the launch point.

(b) Data requirements

(1) Maps. An applicant shall use any map for the launch site region with a scale not less than 1:250,000 inches per inch in the launch area and 1:20,000,000 inches per inch in the downrange area. As described in paragraph (b)(2), an applicant shall use a mechanical method, a semi-automated method, or a fully-automated method to plot a flight corridor on maps. A source for paper maps acceptable to the FAA is the U.S. Dept. of Commerce, National Oceanic and Atmospheric Administration, National Ocean Service.

(i) Projections for mechanical plotting method. An applicant shall use a conic projection. The FAA will accept a ''Lambert-Conformal'' conic projection. A polar aspect of a plane-azimuthal projection may also be used for far northern launch sites.

(ii) Projections for semi-automated plotting method. An applicant shall use cylindrical, conic, or plane projections for semi-automated plotting. The FAA will accept ''Mercator'' and ''Oblique Mercator'' cylindrical projections. The FAA will accept ''Lambert-Conformal'' and ''Albers Equal-Area'' conic projections. The FAA will accept ''Lambert Azimuthal Equal-Area'' and ''Azimuthal Equidistant'' plane projections.

(iii) Projections for fully-automated plotting method. The FAA will accept map projections used by geographical information system software scaleable pursuant to the requirements of paragraph (b)(1).

(2) Plotting Methods.

(i) Mechanical method. An applicant may use mechanical drafting equipment such as pencil, straight edge, ruler, protractor, and compass to plot the location of a flight corridor on a map. The FAA will accept straight lines for distances less than or equal to 7.5 times the map scale on map scales greater than or equal to 1:1,000,000 inches per inch (in/in); or straight lines representing 100 nm or less on map scales less than 1:1,000,000 in/in.

(ii) Semi-automated method. An applicant may employ the range and bearing techniques in paragraph (b)(3) to create latitude and longitude points on a map. The FAA will accept straight lines for distances less than or equal to 7.5 times the map scale on map scales greater than or equal to 1:1,000,000 inches per inch (in/in); or straight lines representing 100 nm or less on map scales less than 1:1,000,000 in/in.

(iii) Fully-automated method. An applicant may use geographical information system software with global mapping data scaleable in accordance with paragraph (b)(1).

(3) Range and bearing computations on an ellipsoidal Earth model.

(i) To create latitude and longitude pairs on an ellipsoidal Earth model, an applicant shall use the following equations to calculate geodetic latitude (+N) and longitude (+E) given the launch point geodetic latitude (+N), longitude (+E), range (nm), and bearing (degrees, positive clockwise from North).

(A) Input. An applicant shall use the following input in making range and bearing computations. Angle units must be in radians.

$$\phi_1 = \text{Geodetic latitude of launch point (radians)}$$

$$= \phi_1\ (\text{DDD}) \cdot \frac{\pi}{180}\ \text{(radians per degree)}$$

$$\lambda_1 = \text{Longitude of launch point (DDD)}$$

$$= \lambda\ (\text{DDD}) \cdot \frac{\pi}{180}\ \text{(radians per degree)}$$

$$S = \text{Range from launch point (nm)}$$

$$= S\ (\text{DDD}) \cdot \frac{\pi}{180}\ \text{(radians per degree)}$$

$$\alpha_{12} = \text{Azimuth bearing from launch point (deg)}$$

$$= \alpha_{12}(\text{DDD}) \cdot \frac{\pi}{180}\ \text{(radians per degree)}$$

(B) Computations. An applicant shall use the following equations to determine the latitude (φ_2) and longitude (λ_2) of a target point situated ''S'' nm from the launch point on an azimuth bearing (α_{12}) degrees.

$$f = 1 - \frac{b}{a} \qquad \text{(Equation A1)}$$

where:

a = WGS–84 semi-major axis (3443.91846652 nmi)
b = WGS–84 semi-minor axis (3432.37165994 nmi)

$$\varepsilon^2 = \frac{\left(a^2 - b^2\right)}{b^2} \qquad \text{(Equation A2)}$$

$$\theta = \frac{S}{b} \text{ (radians)} \qquad \text{(Equation A3)}$$

$$\beta_1 = \tan^{-1}\left[\frac{\left(b \cdot \sin\phi_1\right)}{\left(a \cdot \cos\phi_1\right)}\right] \qquad \text{(Equation A4)}$$

$$g = \left(\cos\beta_1\right)\left(\cos\alpha_{12}\right) \qquad \text{(Equation A5)}$$

$$h = \left(\cos\beta_1\right)\left(\sin\alpha_{12}\right) \qquad \text{(Equation A6)}$$

$$m = \frac{\left[1 + \left(\frac{\varepsilon^2}{2}\right)\sin^2\beta_1\right]\left[1 - h^2\right]}{2} \qquad \text{(Equation A7)}$$

$$n = \frac{\left[1 + \left(\frac{\varepsilon^2}{2}\right)\sin^2\beta_1\right]\left[\left(\sin^2\beta_1\right)(\cos\theta) + g \cdot \left(\sin\beta_1\right)(\sin\theta)\right]}{2} \qquad \text{(Equation A8)}$$

$$L = h \cdot \left[-f \cdot \theta + 3 \cdot f^2 \cdot n \cdot \sin\theta + \frac{3 \cdot f^2 \cdot m \cdot (\theta - \sin\theta \cdot \cos\theta)}{2}\right] \text{(radians)} \qquad \text{(Equation A9)}$$

$$M = m \cdot \varepsilon^2 \qquad \text{(Equation A10)}$$

$$N = n \cdot \varepsilon^2 \qquad \text{(Equation A11)}$$

$$A_1 = N \cdot \sin\theta \qquad \text{(Equation A12)}$$

$$A_2 = \left(\frac{M}{2}\right)\left(\sin\theta \cdot \cos\theta - \theta\right) \qquad \text{(Equation A13)}$$

$$A_3 = \left(\frac{5}{2}\right)\left(N^2 \cdot \sin\theta \cdot \cos\theta\right) \qquad \text{(Equation A14)}$$

$$A_4 = \left(\frac{M^2}{16}\right)\left(11 \cdot \theta - 13 \cdot \sin\theta \cdot \cos\theta - 8 \cdot \theta \cdot \cos^2\theta + 10 \cdot \sin\theta \cdot \cos^3\theta\right) \qquad \text{(Equation A15)}$$

$$A_5 = \left(\frac{M \cdot N}{2}\right)\left(3 \cdot \sin\theta + 2 \cdot \theta \cdot \cos\theta - 5 \cdot \sin\theta \cdot \cos^2\theta\right) \qquad \text{(Equation A16)}$$

$$\delta = \theta - A_1 + A_2 + A_3 + A_4 + XA_5 (\text{radians}) \qquad (\text{Equation A17})$$

$$\sin\beta_2 = \sin\beta_1 \cdot \cos\delta + g \cdot \sin\delta \qquad (\text{Equation A18})$$

$$\cos\beta_2 = \left[h^2 + \left(g \cdot \cos\delta - \sin\beta_1 \cdot \sin\delta\right)^2\right]^{\frac{1}{2}} \qquad (\text{Equation A19})$$

$$\phi_2 = \left\{\tan^{-1}\left[\frac{(a \cdot \sin\beta_2)}{(b \cdot \cos\beta_2)}\right]\right\} \cdot \left(\frac{180}{\pi}\right) (\text{geodetic latitude of target point, DDD}) \qquad (\text{Equation A20})$$

$$\Lambda = \tan^{-1}\left[\frac{(\sin\delta \cdot \sin\alpha_{12})}{(\cos\beta_1 \cdot \cos\delta - \sin\beta_1 \cdot \sin\delta \cdot \cos\alpha_{12})}\right] \qquad (\text{Equation A21})$$

$$\lambda_2 = (\lambda_1 + \Lambda + L)\left(\frac{180}{\pi}\right) (\text{longitude of target point, DDD}) \qquad (\text{Equation A22})$$

(ii) To create latitude and longitude pairs on an ellipsoidal Earth model, an applicant shall use the following equations to calculate the distance (S) of the geodesic between two points (P_1 and P_2), the forward azimuth (α_{12}) of the geodesic at P_1, and the back azimuth (α_{21}) of the geodesic at P_2, given the geodetic latitude (+N), longitude (+E) of P_1 and P_2. Azimuth is measured positively clockwise from North.

(A) Input. An applicant shall use the following input. Units must be in radians.

$$\begin{aligned}
\phi_1 &= \text{Geodetic latitude of launch point (radians)} \\
&= \phi_1(\text{DDD}) \cdot \frac{\pi}{180} (\text{radians per degree}) \\
\lambda_1 &= \text{Longitude of launch point (DDD)} \\
&= \lambda_1(\text{DDD}) \cdot \frac{\pi}{180} (\text{radians per degree}) \\
S &= \text{Range from launch point (nm)} \\
&= S(\text{DDD}) \cdot \frac{\pi}{180} (\text{radians per degree}) \\
\alpha_{12} &= \text{Azimuth bearing from launch point (deg)} \\
&= \alpha_{12}(\text{DDD}) \cdot \frac{\pi}{180} (\text{radians per degree})
\end{aligned}$$

(B) Computations. An applicant shall use the following equations to determine the distance (S), the forward azimuth (α_{12}) of the geodesic at P_1, and the back azimuth (α_{12}) of the geodesic at P_2.

$$f = 1 - \frac{b}{a} \qquad (\text{Equation A23})$$

where:

a = WGS–84 semi-major axis (3443.91846652 nmi)

b = WGS–84 semi-minor axis (3432.37165994 nmi)

$$L = \lambda_2 - \lambda_1 \qquad \text{(Equation A24)}$$

$$\beta_1 = \tan^{-1}\left[\frac{(b \cdot \sin\phi_1)}{\alpha \cdot \cos\phi_1}\right] \qquad \text{(Equation A25)}$$

$$\beta_2 = \tan^{-1}\left[\frac{(b \cdot \sin\phi_2)}{\alpha \cdot \cos\phi_2}\right] \qquad \text{(Equation A26)}$$

$$A = \sin\beta_1 \cdot \sin\beta_2 \qquad \text{(Equation A27)}$$

$$B = \cos\beta_1 \cdot \cos\beta_2 \qquad \text{(Equation A28)}$$

$$\cos\delta = A + B \cdot \cos L \qquad \text{(Equation A29)}$$

$$n = \frac{(a-b)}{(a+b)} \qquad \text{(Equation A30)}$$

$$(\beta_2 - \beta_1) = (\phi_2 - \phi_1) + 2 \cdot \left\lfloor A \cdot \left(n + n^2 + n^3\right) - B \cdot \left(n - n^2 + n^3\right)\right\rfloor \cdot \sin(\phi_2 - \phi_1) \text{ radians} \qquad \text{(Equation A31)}$$

$$\sin\delta = \left\{(\sin L \cdot \cos\beta_2)^2 + \left[\sin(\beta_2 - \beta_1) + 2 \cdot \cos\beta_2 \cdot \sin\beta_1 \cdot \sin^2(L/2)\right]^2\right\}^{\frac{1}{2}} \qquad \text{(Equation A32)}$$

$$\delta = \tan^{-1}\left(\frac{\sin\delta}{\cos\delta}\right) \text{evaluated in positive radians} \le \pi \qquad \text{(Equation A33)}$$

$$c = \frac{B \cdot \sin L}{\sin\delta} \qquad \text{(Equation A34)} \qquad\qquad m = 1 - c^2 \qquad \text{(Equation A35)}$$

$$S = b \cdot \left\{\begin{array}{l} \delta \cdot \left[1 + f + f^2\right] + A \cdot \left[\left(f + f^2\right) \cdot \sin\delta - \left(f^2 \cdot \delta^2\right)/(2 \cdot \sin\delta)\right] \\ -(m/2)\left[\left(f + f^2\right)(\delta + \sin\delta \cdot \cos\delta) - \left(f^2 \cdot \delta^2\right)/(\tan\delta)\right] \\ -\left(A^2 \cdot f^2/2\right) \cdot \sin\delta \cdot \cos\delta \\ +\left(f^2 \cdot m^2/16\right)\left[\delta + \sin\delta \cdot \cos\delta - 2 \cdot \sin\delta \cdot \cos^3\delta - 8\delta^2/(\tan\delta)\right] \\ +\left(A^2 \cdot m \cdot f^2/2\right)\left[\sin\delta \cdot \cos^2 + \delta + \delta^2/(\sin\delta)\right] \text{ in the same units as "a" and "b"} \end{array}\right\} \qquad \text{(Equation A36)}$$

$$\Lambda = L + c \cdot \left\{ \begin{array}{l} \left\{ \delta \cdot \left(f + f^2 \right) - \left(A \cdot f^2 / 2 \right) \left[\sin\delta + 2\delta^2 / \left(\sin\delta \right) \right] \right\} \\ + \left(m \cdot f^2 / 4 \right) \left[\sin\delta\cos\delta - 5\delta + 4\delta^2 / \left(\tan\delta \right) \right] \end{array} \right\} \text{radians} \qquad \text{(Equation A37)}$$

$$\alpha_{12} = \tan^{-1} \left\{ \frac{\left(\cos\beta_2 \cdot \sin\Lambda \right)}{\left[\sin\left(\beta_2 - \beta_1 \right) + 2 \cdot \cos\beta_2 \cdot \sin\beta_1 \cdot \sin^2\left(\Lambda / 2 \right) \right]} \right\} \cdot \left(\frac{180}{\pi} \right) \text{degrees} \qquad \text{(Equation A38)}$$

$$\alpha_{21} = \tan^{-1} \left\{ \frac{\left(-\cos\beta_1 \cdot \sin\Lambda \right)}{\left[2 \cdot \cos\beta_1 \cdot \sin\beta_2 \cdot \sin^2\left(\Lambda / 2 \right) - \sin\left(\beta_2 - \beta_1 \right) \right]} \right\} \cdot \left(\frac{180}{\pi} \right) \text{degrees} \qquad \text{(Equation A39)}$$

(c) Creation of a Flight Corridor

(1) To define a flight corridor, an applicant shall:

(i) Select a guided suborbital or orbital launch vehicle, and, for an orbital launch vehicle, select from table 1 of §420.19 a launch vehicle weight class that best represents the launch vehicle the applicant plans to support at its launch point;

(ii) Select a debris dispersion radius (D_{max}) from table A–1 corresponding to the guided suborbital launch vehicle or orbital launch vehicle class selected in paragraph (c)(1)(i);

(iii) Select a launch point geodetic latitude and longitude; and

(iv) Select a flight azimuth.

(2) An applicant shall define and map an overflight exclusion zone using the following method:

(i) Select a debris dispersion radius (D_{max}) from table A–1 and a downrange distance (D_{OEZ}) from table A–2 to define an overflight exclusion zone for the guided suborbital launch vehicle or orbital launch vehicle class selected in paragraph (c)(1)(i).

(ii) An overflight exclusion zone is described by the intersection of the following boundaries, which are depicted in figure A–1:

(A) An applicant shall define an uprange boundary with a half-circle arc of radius D_{max} and a chord of length twice D_{max} connecting the half-circle arc endpoints. The uprange boundary placement on a map has the chord midpoint positioned on the launch point with the chord oriented along an azimuth ±90°from the launch azimuth and the half-circle arc located uprange from the launch point.

(B) An applicant shall define the downrange boundary with a half-circle arc of radius D_{max} and a chord of length twice D_{max} connecting the half-circle arc endpoints. The downrange boundary placement on a map has the chord midpoint intersecting the nominal flight azimuth line at a distance D_{OEZ} inches downrange with the chord oriented along an azimuth ±90°from the launch azimuth and the half-circle arc located downrange from the intersection of the chord and the flight azimuth line.

(C) Crossrange boundaries of an overflight exclusion zone are defined by two lines segments. Each is parallel to the flight azimuth with one to the left side and one to the right side of the flight azimuth line. Each line connects an uprange half-circle arc endpoint to a downrange half-circle arc endpoint as shown in figure A–1.

(iii) An applicant shall identify the overflight exclusion zone on a map that meets the requirements of paragraph (b).

(3) An applicant shall define and map a flight corridor using the following method:

(i) In accordance with paragraph (b), an applicant shall draw a flight corridor on one or more maps with the D_{max} origin centered on the intended launch point and the flight corridor centerline (in the downrange direction) aligned with the initial flight azimuth. The flight corridor is depicted in figure A–2 and its line segment lengths are tabulated in table A–3.

(ii) An applicant shall define the flight corridor using the following boundary definitions:

(A) An applicant shall draw an uprange boundary, which is defined by an arc-line GB (figure A–2), directly uprange from and centered on the intended launch point with radius D_{max}.

(B) An applicant shall draw line CF perpendicular to and centered on the flight azimuth line, and positioned 10 nm downrange from the launch point. The applicant shall use the length of line CF provided in table A–3 corresponding to the guided suborbital launch vehicle or orbital launch vehicle class selected in paragraph (c)(1)(i).

(C) An applicant shall draw line DE perpendicular to and centered on the flight azimuth line, and positioned 100 nm downrange from the launch point. The applicant shall use the length of line DE provided in table A–3 corresponding to the guided suborbital launch vehicle or orbital launch vehicle class selected in paragraph (c)(1)(i).

(D) Except for a guided suborbital launch vehicle, an applicant shall draw a downrange boundary, which is defined by line HI and is drawn perpendicular to and centered on the

flight azimuth line, and positioned 5,000 nm downrange from the launch point. The applicant shall use the length of line HI provided in table A–3 corresponding to the orbital launch vehicle class selected in paragraph (c)(1)(i).

(E) An applicant shall draw crossrange boundaries, which are defined by three lines on the left side and three lines on the right side of the flight azimuth. An applicant shall construct the left flight corridor boundary according to the following, and as depicted in figure A–3 :

(1) The first line (line BC in figure A–3) is tangent to the uprange boundary arc, and ends at endpoint C of line CF, as depicted in figure A–3;

(2) The second line (line CD in figure A–3) begins at endpoint C of line BC and ends at endpoint D of line DH, as depicted in figure A–3;

(3) For all orbital launch vehicles, the third line (line DH in figure A–3) begins at endpoint D of line CD and ends at endpoint H of line HI, as depicted in figure A–3; and

(4) For a guided suborbital launch vehicle, the line DH begins at endpoint D of line CD and ends at a point tangent to the impact dispersion area drawn in accordance with paragraph (c)(4) and as depicted in figure A–4.

(F) An applicant shall repeat the procedure in paragraph (c)(3)(ii)(E) for the right side boundary.

(iii) An applicant shall identify the flight corridor on a map that meets the requirements of paragraph (b).

(4) For a guided suborbital launch vehicle, an applicant shall define a final stage impact dispersion area as part of the flight corridor and show the impact dispersion area on a map, as depicted in figure A–4, in accordance with the following:

(i) An applicant shall select an apogee altitude (H_{ap}) for the launch vehicle final stage. The apogee altitude should equal the highest altitude intended to be reached by a guided suborbital launch vehicle launched from the launch point.

(ii) An applicant shall define the impact dispersion area by using an impact range factor [$IP(H_{ap})$] and a dispersion factor [$DISP(H_{ap})$] as shown below:

(A) An applicant shall calculate the impact range (D) for the final launch vehicle stage. An applicant shall set D equal to the maximum apogee altitude (H_{ap}) multiplied by the impact range factor as shown below:

$$D = H_{ap} \cdot IP\left(H_{ap}\right) \qquad \text{(Equation A40)}$$

where: $IP(H_{ap})$ = 0.4 for an apogee less than 100 km; and $IP(H_{ap})$ = 0.7 for an apogee 100 km or greater.

(B) An applicant shall calculate the impact dispersion radius (R) for the final launch vehicle stage. An applicant shall set R equal to the maximum apogee altitude (H_{ap}) multiplied by the dispersion factor as shown below:

$$R = H_{ap} \cdot DISP\left(H_{ap}\right) \qquad \text{(Equation A41)}$$

where: $DISP(H_{ap})$ = 0.05

(iii) An applicant shall draw the impact dispersion area on a map with its center on the predicted impact point. An applicant shall then draw line DH in accordance with paragraph (c)(3)(ii)(E)(4).

(d) Evaluate the Flight Corridor

(1) An applicant shall evaluate the flight corridor for the presence of any populated areas. If an applicant determines that no populated area is located within the flight corridor, then no additional steps are necessary.

(2) If a populated area is located in an overflight exclusion zone, an applicant may modify its proposal or demonstrate that there are times when no people are present or that the applicant has an agreement in place to evacuate the public from the overflight exclusion zone during a launch.

(3) If a populated area is located within the flight corridor, an applicant may modify its proposal and create another flight corridor pursuant to appendix A, use appendix B to narrow the flight corridor, or complete a risk analysis in accordance with appendix C.

TABLE A–1—DEBRIS DISPERSION RADIUS (D_{max}) (IN)

Orbital launch vehicles				Suborbital launch vehicles
Small	Medium	Medium large	Large	Guided
87,600 (1.20 nm)	111,600 (1.53 nm)	127,200 (1.74 nm)	156,000 (2.14 nm)	96,000 (1.32 nm)

TABLE A–2—OVERFLIGHT EXCLUSION ZONE DOWNRANGE DISTANCE (D_{oez}) (IN)

Orbital launch vehicles				Suborbital launch vehicles
Small	Medium	Medium large	Large	Guided
240,500 (3.30 nm)	253,000 (3.47 nm)	310,300 (4.26 nm)	937,700 (12.86 nm)	232,100 (3.18 nm)

Table A-3: Flight Corridor Line Segment Lengths

D_{max} (in)		Line Segment Lengths (x 10^6 inches)		
Orbital Launch Vehicles		$\overline{CF}$	$\overline{DE}$	$\overline{HI}$
Small	87600 (1.20 nm)	2.87620 (39.45 nm)	8.59452 (117.87 nm)	128.566 (1763.27 nm)
Medium	111,600 (1.53 nm)	2.97220 (40.76 nm)	8.64252 (118.53 nm)	128.566 (1763.27 nm)
Med-Large	127,200 (1.74 nm)	3.03460 (41.62 nm)	8.67372 (118.96 nm)	128.566 (1763.27 nm)
Large	156,000 (2.14 nm)	3.14979 (43.20 nm)	8.73131 (119.75 nm)	128.566 (1763.27 nm)
Suborbital Launch Vehicles		$\overline{CF}$	$\overline{DE}$	$\overline{HI}$
Guided	96,000 (1.32 nm)	2.90980 (39.91 nm)	8.61132 (118.10 nm)	N/A

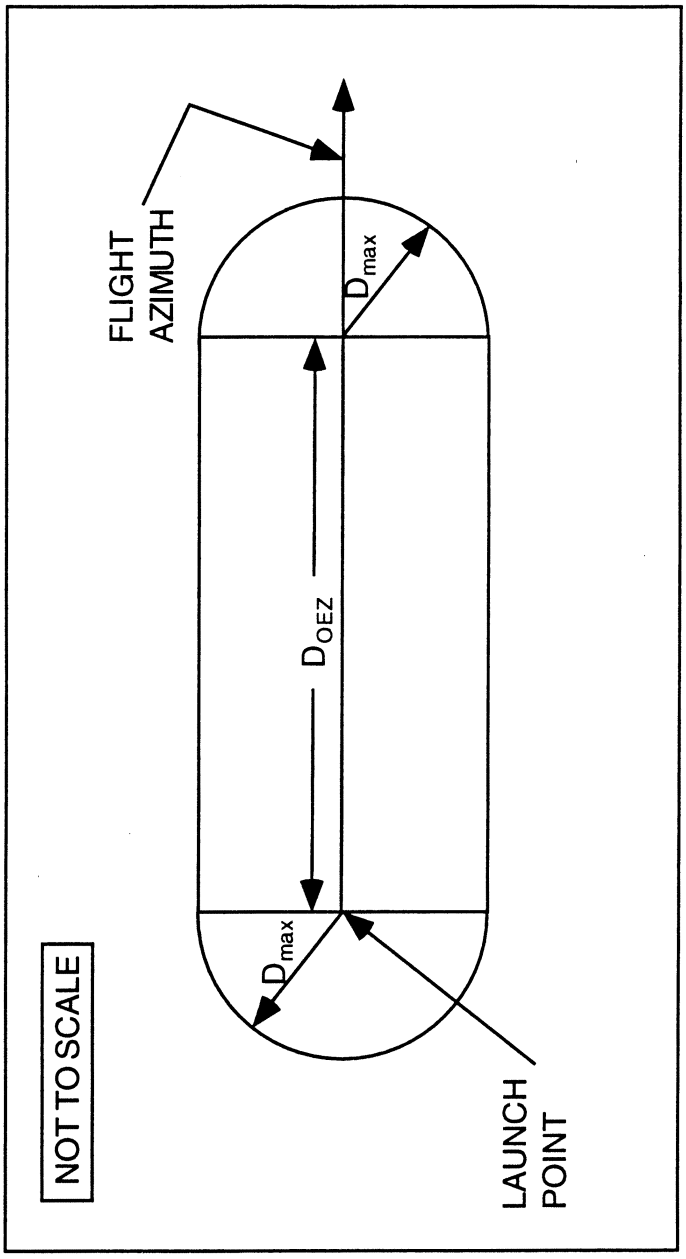

Figure A-1
Overflight Exclusion Zone

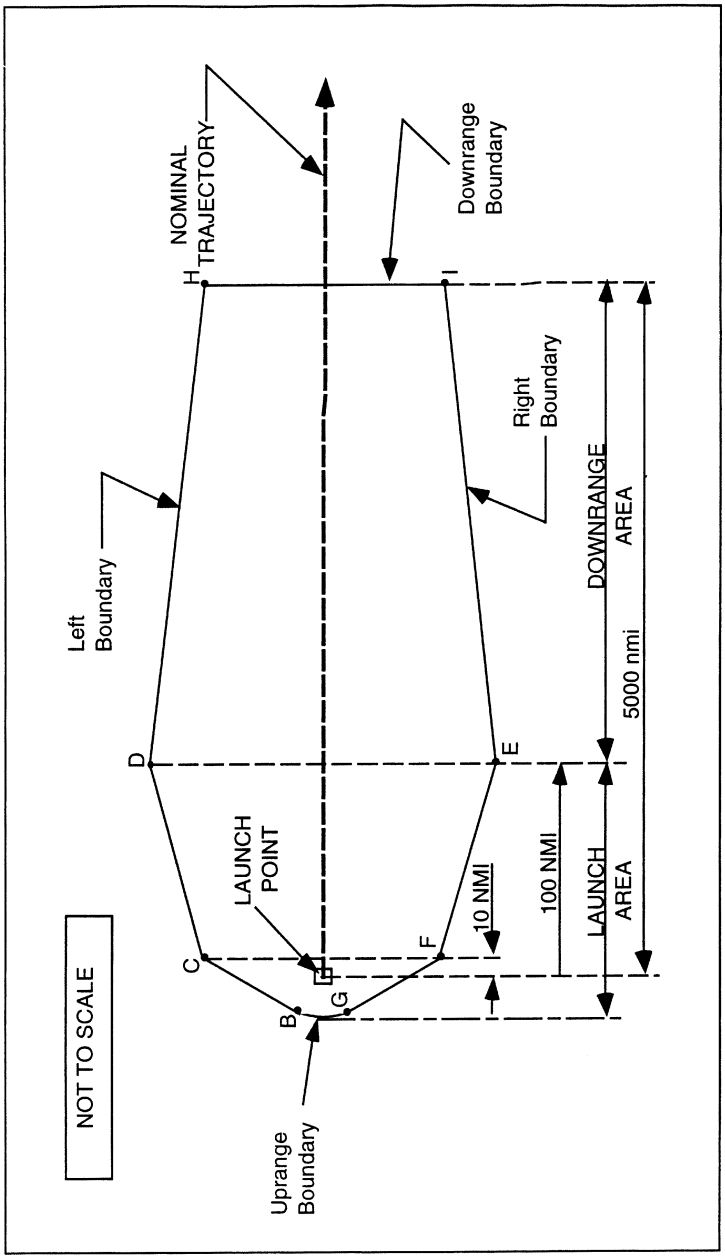

Figure A-2
Flight Corridor

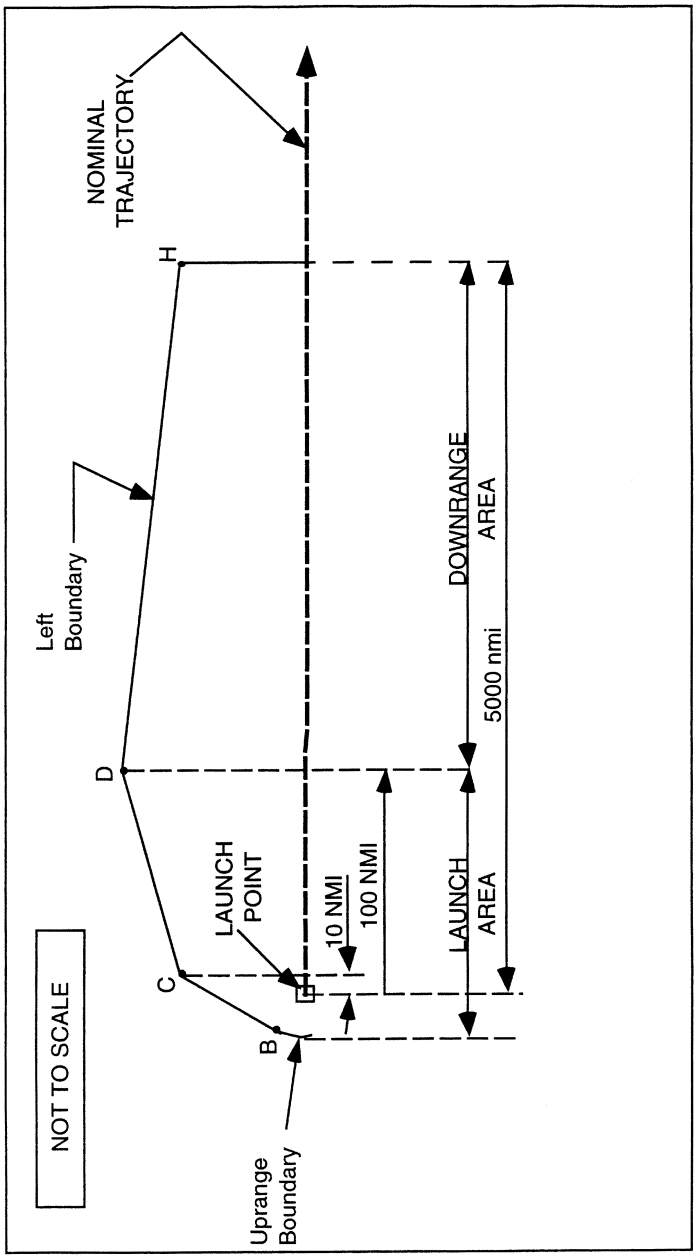

Figure A-3
Construction of Left Boundary of Flight Corridor

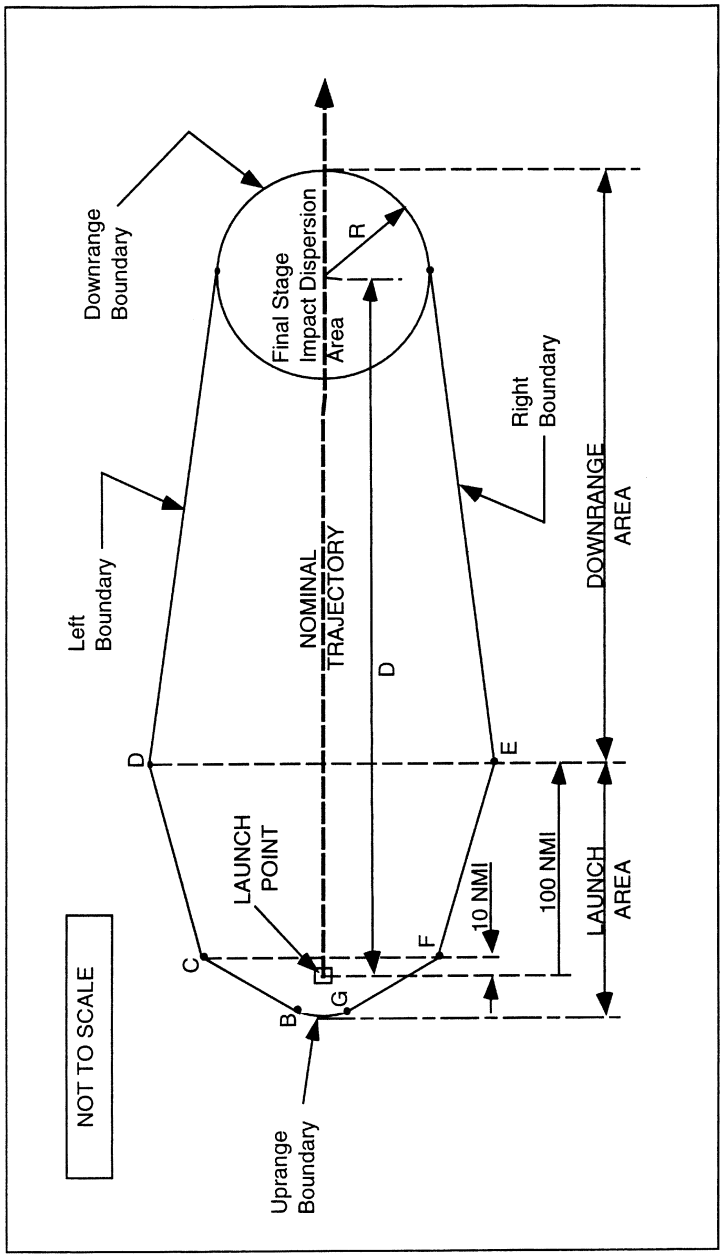

Figure A-4
Flight Corridor for Guided Sub-Orbital Launch Vehicles

APPENDIX B TO PART 420—METHOD FOR DEFINING A FLIGHT CORRIDOR

(a) Introduction

(1) This appendix provides a method to construct a flight corridor from a launch point for a guided suborbital launch vehicle or any one of the four weight classes of guided orbital launch vehicles from table 1, §420.19, using local meteorological data and a launch vehicle trajectory.

(2) A flight corridor is constructed in two sections—one section comprising a launch area and one section comprising a downrange area. The launch area of a flight corridor reflects the extent of launch vehicle debris impacts in the event of a launch vehicle failure and applying local meteorological conditions. The downrange area reflects the extent of launch vehicle debris impacts in the event of a launch vehicle failure and applying vehicle imparted velocity, malfunctions turns, and vehicle guidance and performance dispersions.

(3) A flight corridor includes an overflight exclusion zone in the launch area and, for a guided suborbital launch vehicle, an impact dispersion area in the downrange area. A flight corridor for a guided suborbital launch vehicle ends with an impact dispersion area and, for the four classes of guided orbital launch vehicles, 5,000 nautical miles (nm) from the launch point, or where the IIP leaves the surface of the Earth, whichever is shorter.

(b) Data Requirements

(1) Launch area data requirements. An applicant shall satisfy the following data requirements to perform the launch area analysis of this appendix. The data requirements are identified in table B–1 along with sources where data acceptable to the FAA may be obtained.

(i) An applicant must select meteorological data that meet the specifications in table B–1 for the proposed launch site.

TABLE B–1—LAUNCH AREA DATA REQUIREMENTS

Data category	Data item	Data source
Meteorological Data	Local statistical wind data as a function of altitude up to 50,000 feet. Required data include: altitude (ft), atmospheric density (slugs/ft^3), mean East/West meridianal (u) and North/South zonal (v) wind (ft/sec), standard deviation of u and v wind (ft/sec), correlation coefficient, number of observations and wind percentile (%).	These data may be obtained from: Global Gridded Upper Air Statistics, Climate Applications Branch National Climatic Data Center.
Nominal Trajectory Data	State vector data as function of time after liftoff in topocentric launch point centered X,Y,Z,X,Y,Z coordinates with the X-axis aligned with the flight azimuth. Trajectory time intervals shall not be greater than one second. XYZ units are in feet and X,Y,Z units are in ft/sec.	Actual launch vehicle trajectory data; or trajectory generation software that meets the requirements of paragraph (b)(1)(ii).
Debris Data	A fixed ballistic coefficient equal to 3 lbs/ft^2 is used for the launch area.	N/A.
Geographical Data	Launch point geodetic latitude on a WGS–84 ellipsoidal Earth model.	Geographical surveys or Global Positioning System.
	Launch point longitude on an ellipsoidal Earth model.	
	Maps using scales of not less than 1:250,000 inches per inch within 100 nm of a launch point and 1:20,000,000 inches per inch for distances greater than 100 nm from a launch point.	Map types with scale and projection information are listed in the Defense Mapping Agency, Public Sale, Aeronautical Charts and Publications Catalog. The catalog and maps may be ordered through the U.S. Dept. of Commerce, National Oceanic and Atmospheric Administration, National Ocean Service.

(ii) For a guided orbital launch vehicle, an applicant shall obtain or create a launch vehicle nominal trajectory. An applicant may use trajectory data from a launch vehicle manufacturer or generate a trajectory using trajectory simulation software. Trajectory time intervals shall be no greater than one second. If an applicant uses a trajectory computed with commercially available software, the software must calculate the trajectory using the following parameters, or clearly and convincingly demonstrated equivalents:

(A) Launch location:

(*1*) Launch point, using geodetic latitude and longitude to four decimal places; and

(*2*) Launch point height above sea level.

(B) Ellipsoidal Earth:

(*1*) Mass of Earth;

(*2*) Radius of Earth;

(*3*) Earth flattening factor; and

(*4*) Gravitational harmonic constants (J2, J3, J4).

(C) Vehicle characteristics:

(*1*) Mass as a function of time;

(*2*) Thrust as a function of time;

(*3*) Specific impulse (I_{SP}) as a function of time; and

(*4*) Stage dimensions.

(D) Launch events:

(*1*) Stage burn times; and

(*2*) Stage drop-off times.

(E) Atmosphere:

(*1*) Density as a function of altitude;

(*2*) Pressure as a function of altitude;

(*3*) Speed of sound as a function of altitude; and

(*4*) Temperature as a function of altitude.

(F) Winds:

(1) Wind direction as a function of altitude; and

(2) Wind magnitude as a function of altitude.

(I) Aerodynamics: drag coefficient as a function of mach number for each stage of flight showing subsonic, transonic and supersonic mach regions for each stage.

(iii) An applicant shall use a ballistic coefficient (β) of 3 lbs/ft^2 for debris impact computations.

(iv) An applicant shall satisfy the map and plotting requirements for a launch area of appendix A, paragraph (b).

(2) Downrange area data requirements. An applicant shall satisfy the following data requirements to perform the downrange area analysis of this appendix.

(i) The launch vehicle weight class and method of generating a trajectory used in the launch area shall be used by an applicant in the downrange area as well. Trajectory time intervals must not be greater than one second.

(ii) An applicant shall satisfy the map and plotting data requirements for a downrange area of appendix A, paragraph (b).

(c) Construction of a Launch Area of a Flight Corridor

(1) An applicant shall construct a launch area of a flight corridor using the processes and equations of this paragraph for each trajectory position. An applicant shall repeat these processes at time points on the launch vehicle trajectory for time intervals of no greater than one second. When choosing wind data, an applicant shall use a time period of between one and 12 months.

(2) A launch area analysis must include all trajectory positions whose Z-values are less than or equal to 50,000 ft.

(3) Each trajectory time is denoted by the subscript ''i''. Height intervals for a given atmospheric pressure level are denoted by the subscript ''j'.

(4) Using data from the GGUAS CD-ROM, an applicant shall estimate the mean atmospheric density, maximum wind speed, height interval fall times and height interval debris dispersions for 15 mean geometric height intervals.

(i) The height intervals in the GGUAS source data vary as a function of the following 15 atmospheric pressure levels expressed in millibars: surface, 1000, 850, 700, 500, 400, 300, 250, 200, 150, 100, 70, 50, 30, 10. The actual geometric height associated with each pressure level varies depending on the time of year. An applicant shall estimate the mean geometric height over the period of months selected in subparagraph (1) of this paragraph for each of the 15 pressure levels as shown in equation B1.

$$\bar{H}_j = \frac{\sum_{m=1}^{k} h_m \cdot n_m}{\sum_{m=1}^{k} n_m} \qquad \text{(Equation B1)}$$

where:

$\bar{H}_j$ = mean geometric height h_m = geometric height for a given month n_m = number of observations for a given month

k = number of wind months of interest

(ii) The atmospheric densities in the source data also vary as a function of the 15 atmospheric pressure levels. The actual atmospheric density associated with each pressure level varies depending on the time of year. An applicant shall estimate the mean atmospheric density over the period of months selected in accordance with subparagraph (1) of this paragraph for each of the 15 pressure levels as shown in equation B2.

$$\bar{\rho}_j \frac{\sum_{m=1}^{k} \rho_m \cdot n_m}{\sum_{m=1}^{k} n_m} \qquad \text{(Equation B2)}$$

where:

ρ_j = mean atmospheric density

$\bar{\rho}_m$ = atmospheric density for a given month

n_m = number of observations for a given month

k = number of wind months of interest

(iii) An applicant shall estimate the algebraic maximum wind speed at a given pressure level as follows and shall repeat the process for each pressure level.

(A) For each month, an applicant shall calculate the monthly mean wind speed ($\overline{W}_{az}$) for 360 azimuths using equation B3;

(B) An applicant shall select the maximum monthly mean wind speed from the 360 azimuths;

(C) An applicant shall repeat subparagraphs (c)(4)(iii)(A) and (B) for each month of interest; and

(D) An applicant shall select the maximum mean wind speed from the range of months. The absolute value of this wind is designated W_{max} for the current pressure level.

(iv) An applicant shall calculate wind speed using the means for winds from the West (u) and winds from the North (v). An applicant shall use equation B3 to resolve the winds to a specific azimuth bearing.

$$\overline{W}_{az} = u \cdot \cos(90 - az) + v \cdot \sin(90 - az) \qquad \text{(Equation B3)}$$

where:

az = wind azimuth
u = West zonal wind component
v = North zonal wind component
$\overline{W}_{az}$ = mean wind speed at azimuth for each month

(v) An applicant shall estimate the interval fall time over a height interval assuming the initial descent velocity is equal to the terminal velocity (V_T). An applicant shall use equations B4 through B6 to estimate the fall time over a given height interval.

$$\Delta H_j = \overline{H}_{j+1} - \overline{H}_j \qquad \text{(Equation B4)}$$

$$V_{Tj} = \left[\frac{2 \cdot \beta}{\frac{\left(\overline{\rho}_{j+1} + \overline{\rho}_j\right)}{2}} \right]^{0.5} \qquad \text{(Equation B5)}$$

$$t_j = \frac{\Delta H_j}{V_{Tj}} \qquad \text{(Equation B6)}$$

where:

ΔH_{Tj}= height difference between two mean geometric heights
β= ballistic coefficient
$\overline{\rho x}$= mean atmospheric density for the corresponding mean geometric heights
V_{Tj} = terminal velocity

(vi) An applicant shall estimate the interval debris dispersion (D_j) by multiplying the interval fall time by the algebraic maximum mean wind speed (W_{max}) as shown in equation B7.

$$D_j = t_j \cdot W_{max} \qquad \text{(Equation B7)}$$

(5) Once the Dj are estimated for each height interval, an applicant shall determine the total debris dispersion (D_i) for each Z_i using a linear interpolation and summation exercise, as shown below in equation B8. An applicant shall use a launch point height of zero equal to the surface level of the nearest GGUAS grid location.

$$D_i = D_j \cdot \left(\frac{Z_i - \overline{H}_i}{H_{j+1} - \overline{H}_i} \right) + \sum_{n=1}^{j-1} D_n \qquad \text{(Equation B8)}$$

where:

n = number of height intervals below jth height interval

(6) Once all the D_i radii have been calculated, an applicant shall produce a launch area flight corridor in accordance with the requirements of subparagraphs (c)(6)(i)–(iv).

(i) On a map meeting the requirements of appendix A, paragraph (b), an applicant shall plot the X_i position location on the flight azimuth for the corresponding Z_i position;

(ii) An applicant shall draw a circle of radius D_i centered on the corresponding X_i position; and

(iii) An applicant shall repeat the instructions in subparagraphs (c)(6)(i)–(ii) for each D_i radius.

(iv) The launch area of a flight corridor is the enveloping line that encloses the outer boundary of the D_i circles as shown in Fig. B–1. The uprange portion of a flight corridor is described by a semi-circle arc that is a

portion of either the most uprange D_i dispersion circle, or the overflight exclusion zone (defined by subparagraph (c)(7)), whichever is further uprange.

(7) An applicant shall define an overflight exclusion zone in the launch area in accordance with the requirements of appendix A, subparagraph (c)(2).

(8) An applicant shall draw the launch area flight corridor and overflight exclusion zone on a map or maps that meet the requirements of table B–1.

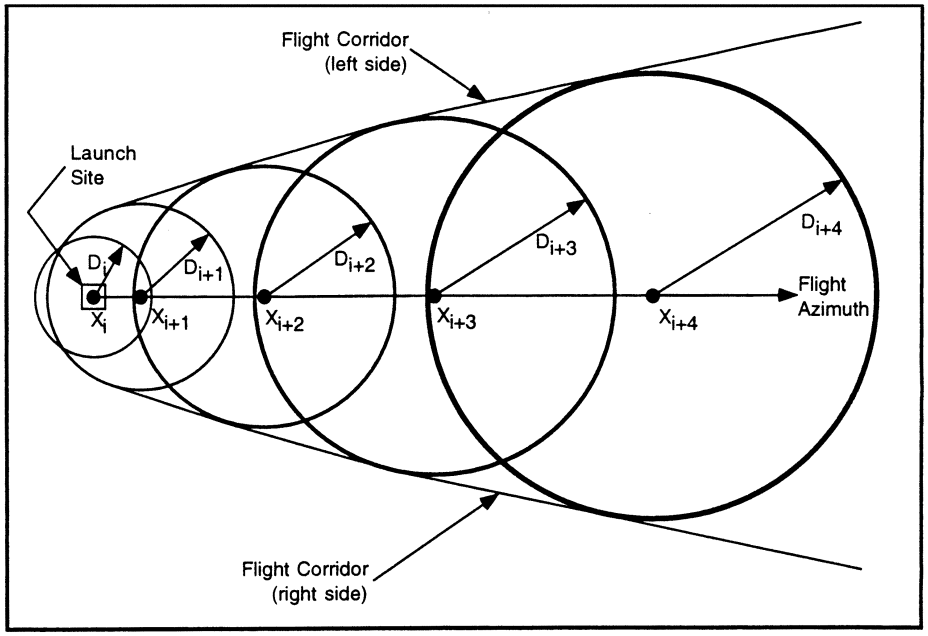

Figure B - 1: Launch Area of a Flight Corridor

(d) Construction of a Downrange Area of a Flight Corridor

(1) The downrange area analysis estimates the debris dispersion for the downrange time points on a launch vehicle trajectory. An applicant shall perform the downrange area analysis using the processes and equations of this paragraph.

(2) The downrange area analysis shall include trajectory positions at a height (the Z_i-values) greater than 50,000 feet and nominal trajectory IIP values less than or equal to 5,000 nm. For a guided suborbital launch vehicle, the final IIP value for which an applicant must account is the launch vehicle final stage impact point. Each trajectory time shall be one second or less and is denoted by the subscript ''i'.

(3) An applicant shall compute the downrange area of a flight corridor boundary in four steps, from each trajectory time increment: determine a reduction ratio factor; calculate the launch vehicle position after simulating a malfunction turn; rotate the state vector after the malfunction turn in the range of three degrees to one degree as a function of X_i distance downrange; and compute the IIP of the resulting trajectory. The locus of IIPs describes the boundary of the downrange area of a flight corridor. An applicant shall use the following subparagraphs, (d)(3)(i)–(v), to compute the downrange area of the flight corridor boundary:

(i) Compute the downrange Distance to the final IIP position for a nominal trajectory as follows:

(A) Using equations B30 through B69, determine the IIP coordinates (φ_{max}, λ_{max}) for the nominal state vector before the launch vehicle enters orbit where α in equation B30 is the nominal flight azimuth angle measured from True North.

(B) Using the range and bearing equations of appendix A, paragraph (b)(3), determine

the distance (S_{max}) from the launch point coordinates (φ_{lp}, λ_{lp}) to the IIP coordinates (φ_{max}, λ_{max}) computed in accordance with (3)(i)(A) of this paragraph.

(C) The distance for S_{max} may not exceed 5000 nm. In cases when the actual value exceeds 5000 nm the applicant shall use 5000 nm for S_{max}.

(ii) Compute the reduction ratio factor (F_n) for each trajectory time increment as follows:

(A) Using equations B30 through B69, determine the IIP coordinates (φ_i, λ_i) for the nominal state vector where α in equation B30 is the nominal flight azimuth angle measured from True North.

(B) Using the range and bearing equations of appendix A, paragraph (b)(3), determine the distance (S_i) from the launch point coordinates (φ_{lp}, λ_{lp}) to the IIP coordinates (φ_i, λ_i) computed in (3)(ii)(A) of this paragraph.

(C) The reduction ratio factor is:

$$F_{ri} = \left(1 - \frac{S_i}{S_{max}}\right) \qquad \text{(Equation B9)}$$

(iii) An applicant shall compute the launch vehicle position and velocity components after a simulated malfunction turn for each X_i using the following method.

(A) Turn duration (Δt) = 4 sec.

(B) Turn angle (θ)

$$\theta = (F_{ri}) * 45 \text{ degrees.} \qquad \text{(Equation B10)}$$

The turn angle equations perform a turn in the launch vehicle's yaw plane, as depicted in figure B–2.

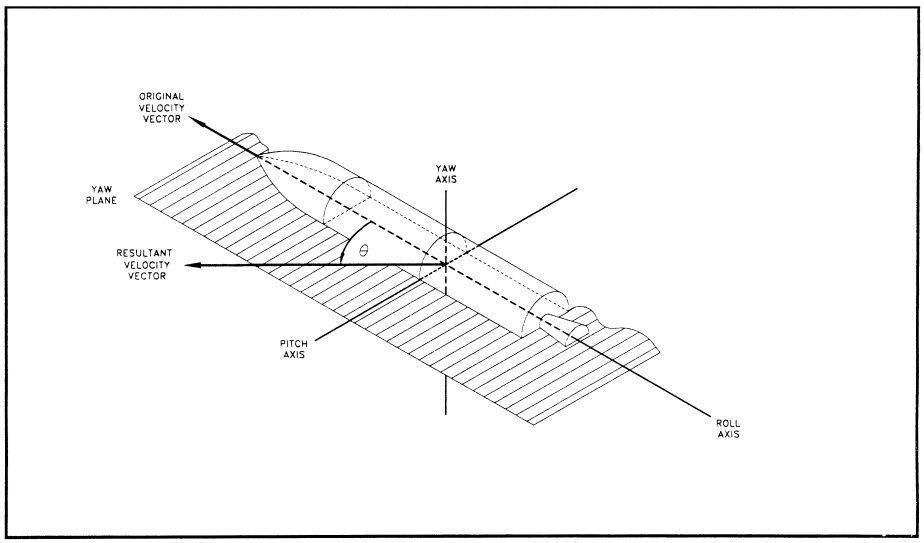

Figure B-2: Velocity Vector Turn Angle in Yaw Plane

(C) Launch vehicle velocity magnitude at the beginning of the turn (V_b) and velocity magnitude at the end of the turn (V_e)

$$V_b = \left(\dot{X}_I^2 + \dot{Y}_i^2 + \dot{Z}_i^2\right)^{0.5} \text{ ft/sec} \qquad \text{(Equation B11)}$$

$$V_e = \left(\dot{X}_{i+5}^2 + \dot{Y}_{i+5}^2 + \dot{X}_{i+5}^2\right)^{0.5} \text{ ft/sec} \qquad \text{(Equation B12)}$$

(D) Average velocity magnitude over the turn duration ($\overline{V}$)

$$\overline{V}_i = \frac{(V_b + V_e)}{2} \text{ ft/sec} \qquad \text{(Equation B13)}$$

(E) Velocity vector path angle (γ_i) at turn epoch

$$\gamma_i = \tan^{-1}\left[\frac{\dot{Z}_i}{\left(\dot{X}_i^2 + \dot{Y}_i^2\right)^{0.5}}\right] \qquad \text{(Equation B14)}$$

(F) Launch vehicle position components at the end of turn duration

$$X_{90L} = X_i + \overline{V}_i \cdot \Delta t \cdot \cos\left(\frac{-\theta}{2}\right) \cdot \cos(\gamma_i)$$

$$X_{90R} = X_i + \overline{V}_i \cdot \Delta t \cdot \cos\left(\frac{\theta}{2}\right) \cdot \cos(\gamma_i)$$

$$Y_{90L} = Y_i + \overline{V}_i \cdot \Delta t \cdot \sin\left(\frac{-\theta}{2}\right)$$

$$Y_{90R} = Y_i + \overline{V}_i \cdot \Delta t \cdot \sin\left(\frac{\theta}{2}\right)$$

$$Z_{90L} = Z_i + \overline{V}_i \cdot \Delta t \cdot \cos\left(\frac{-\theta}{2}\right) \cdot \sin(\gamma_i) - \left(\frac{1}{2}\right) \cdot g_1 \cdot \Delta t^2 \qquad \text{(Equations B15 - B20)}$$

$$Z_{90R} = Z_i + \overline{V}_i \cdot \Delta t \cdot \cos\left(\frac{\theta}{2}\right) \cdot \sin(\gamma_i) - \left(\frac{1}{2}\right) \cdot g_1 \cdot \Delta t^2$$

where: $g_1 = 32.17405$ ft/sec^2

(G) Launch vehicle velocity components at the end of turn duration

$$\dot{X}_{90L} = (X_{90L} - X_i)/\Delta t$$

$$\dot{X}_{90R} = (X_{90R} - X_i)/\Delta t$$

$$\dot{Y}_{90L} = \left|(Y_{90L} - Y_i)/\Delta t\right|$$

$$\dot{Y}_{90R} = (-1)\cdot\left|(Y_{90R} - Y_i)/\Delta t\right| \qquad \text{(Equations B21 - B26)}$$

$$\dot{Z}_{90L} = (Z_{90L} - Z_i)/\Delta t$$

$$\dot{Z}_{90R} = (Z_{90R} - Z_i)/\Delta t$$

(iv) An applicant shall rotate the trajectory state vector at the end of the turn duration to the right and left to define the right-lateral flight corridor boundary and the left-lateral flight corridor boundary, respectively. An applicant shall perform the trajectory rotation in conjunction with a trajectory transformation from the X_{90}, Y_{90}, Z_{90}, $\dot{X}_{90}$, $\dot{Y}_{90}$, $\dot{Z}_{90}$, components to E, N, U, $\dot{E}$, $\dot{N}$, $\dot{U}$. The trajectory subscripts ''R'' and ''L'' from equations B15 through B26 have been discarded to reduce the number of equations. An applicant shall transform from to E,N,U,$\dot{E}$,$\dot{N}$,$\dot{U}$ to E,F,G,$\dot{E}$,$\dot{F}$,$\dot{G}$. An applicant shall use the equations of paragraph (d)(3)(iv)(A)–(F) to produce the EFG components necessary to estimate each instantaneous impact point.

(A) An applicant must calculate the flight angle (α)

$$\Delta\alpha_i = 3 - 2\cdot f_l\cdot(1 - F_{ri}) \qquad \text{(Equation B27)}$$

$$\alpha_{Li} = (\text{Flight Azimuth} - \Delta\alpha_i)$$

for left lateral boundary computations (Equation B28)

- OR

$$\alpha_{Ri} = (\text{Flight Azimuth} - \Delta\alpha_i)$$

for right lateral boundary computations (Equation B29)

where: $$f_l = \begin{Bmatrix} 0.0 : F_{ri} \geq 0.8 \\ 1.0 : F_{ri} < 0.8 \end{Bmatrix}$$

(B) An applicant shall transform X_{90},Y_{90},Z_{90} to E,N,U

$$E = X_{90}\sin(\alpha) - Y_{90}\cos(\alpha)$$

$$N = X_{90}\cos(\alpha) + Y_{90}\sin(\alpha) \qquad \text{(Equations B30 - B32)}$$

$$U = Z_{90}$$

(C) An applicant shall transform to $\dot{X}_{90}$, $\dot{Y}_{90}$, $\dot{Z}_{90}$ to $\dot{E}$, $\dot{N}$, $\dot{U}$.

$$\dot{E} = \dot{X}_{90}\sin(\alpha) - \dot{Y}_{90}\cos(\alpha)$$

$$\dot{N} = \dot{X}_{90}\cos(\alpha) + \dot{Y}_{90}\sin(\alpha) \qquad \text{(Equations B33 - B35)}$$

$$\dot{U} = \dot{Z}_{90}$$

(D) An applicant shall transform the launch point coordinates ($\varphi_0\lambda_0, h_0$) to E_0, F_0, G_0

$$R = a_E\left\{1 - e^2\left[\sin^2(\phi_0)\right]\right\}^{-0.5}$$

where: $a_E = 20925646.3255$ ft

$$e^2 = 0.00669437999013$$

$$E_0 = (R + h_0)\cos(\phi_0)\cos(\lambda_0) \qquad \text{(Equations B36 - B39)}$$

$$F_0 = (R + h_0)\cos(\phi_0)\sin(\lambda_0)$$

$$G_0 = \left[R(1 - e^2) + h_0\right]\sin(\phi_0)$$

(E) An applicant shall transform E,N,U to E_{90}, F_{90}, G_{90}

$$E_{90} = E\cos(270 - \lambda_0) + N\cos(90 - \phi_0)\sin(270 - \lambda_0) - U\sin(90 - \phi_0)\sin(270 - \lambda_0) \qquad \text{(Equations B40 - B42)}$$

$$F_{90} = E\sin(270 - \lambda_0) + N\cos(90 - \phi_0)\cos(270 - \lambda_0) - U\sin(90 - \phi_0)\cos(270 - \lambda_0)$$

$$G_{90} = N\sin(90 - \phi_0) + U\cos(90 - \phi_0) + G_0$$

(F) An applicant shall transform to $\dot{E},\dot{N},\dot{U}$ TO $\dot{E},\dot{F},\dot{G}$

$$\dot{E}_{90} = \dot{E}\cos(270 - \lambda_0) + \dot{N}\cos(90 - \phi_0)\sin(270 - \lambda_0) - \dot{U}\sin(90 - \phi_0)\sin(270 - \lambda_0) \qquad \text{(Equations B43 - B45)}$$

$$\dot{F}_{90} = \dot{E}\sin(270 - \lambda_0) + \dot{N}\cos(90 - \phi_0)\cos(270 - \lambda_0) - \dot{U}\sin(90 - \phi_0)\cos(270 - \lambda_0)$$

$$\dot{G}_{90} = \dot{N}\sin(90 - \phi_0) + \dot{U}\cos(90 - \phi_0)$$

(v) The IIP computation implements an iterative solution to the impact point problem. An applicant shall solve equations B46 through B69, with the appropriate substitutions, up to a maximum of five times. Each repetition of the equations provides a more accurate prediction of the IIP. An applicant shall use the required IIP computations of paragraphs (d)(3)(v)(A)–(W) below. An applicant shall use this IIP computation for both the left-and right-lateral offsets. The IIP computations will result in latitude and longitude pairs for the left-lateral flight corridor boundary and the right-lateral flight corridor boundary. An applicant shall use the lines connecting the latitude and longitude pairs to describe the entire downrange area boundary of the flight corridor up to 5000 nm or a final stage impact dispersion area.

(A) An applicant shall approximate the radial distance ($r_{k,1}$) from the geocenter to the IIP. The distance from the center of the Earth ellipsoid to the launch point shall be used for the initial approximation of $r_{k,1}$ as shown in equation B46.

$$r_{k,1} = \left(E_0^2 + F_0^2 + G_0^2\right)^{0.5} \qquad \text{(Equation B46)}$$

(B) An applicant shall compute the radial distance (r) from the geocenter to the launch vehicle position.

$$r = \left(E_{90}^2 + F_{90}^2 + G_{90}^2\right)^{0.5} \qquad \text{(Equation B47)}$$

If $r < r_{k,l}$ then the launch vehicle position is below the Earth's surface and an impact point cannot be computed. An applicant must restart the calculations with the next trajectory state vector.

(C) An applicant shall compute the inertial velocity components.

$$\dot{E}l_{90} = \dot{E}_{90} - \omega \cdot F_{90}$$
$$\dot{F}l_{90} = \dot{F}_{90} + \omega \cdot E_{90} \qquad \text{(Equations B48-B49)}$$

where: $\omega = 4.178074 \times 10^{-3}$ deg/sec

(D) An applicant shall compute the magnitude of the inertial velocity vector.

$$v_0\left(\dot{E}I_{90}^2 + \dot{F}I_{90}^2 + \dot{G}_{90}^2\right)^{0.5} \qquad \text{(Equation B50)}$$

(E) An applicant shall compute the eccentricity of the trajectory ellipse multiplied by the cosine of the eccentric anomaly at epoch (ε_c).

$$\varepsilon_c = \left(\frac{r \cdot v_0^2}{K}\right) - 1 \qquad \text{(Equation B51)}$$

where: $K = 1.407644 \times 10^{16}$ ft^3/sec^2

(F) An applicant shall compute the semi-major axis of the trajectory ellipse (a^t).

$$a_t = \frac{r}{1 - \varepsilon_c} \qquad \text{(Equation B52)}$$

If a_t 0 or a_t then the trajectory orbit is not elliptical, but is hyperbolic or parabolic, and an impact point cannot be computed. The launch vehicle has achieved escape velocity and the applicant may terminate computations.

(G) An applicant shall compute the eccentricity of the trajectory ellipse multiplied by the sine of the eccentric anomaly at epoch (ε_s).

$$\varepsilon_s = \frac{\left(E_{90}\dot{E}I_{90} + F_{90}\dot{F}I_{90} + G_{90}\dot{G}_{90}\right)}{\left(K \cdot a_t\right)^{0.5}} \qquad \text{(Equation B53)}$$

(H) An applicant shall compute the eccentricity of the trajectory ellipse squared (ε^2).

$$\varepsilon^2 = \left(\varepsilon_c^2 + \varepsilon_s^2\right) \qquad \text{(Equation B54)}$$

If $a_t(1-\varepsilon) - a_E] > 0$ and $\varepsilon \geq 0$ then the trajectory perigee height is positive and an impact point cannot be computed. The launch vehicle has achieved Earth orbit and the applicant may terminate computations.

(I) An applicant shall compute the eccentricity of the trajectory ellipse multiplied by the cosine of the eccentric anomaly at impact (ε_{c_k}).

$$\varepsilon_{c_k} = \frac{\left(a_t - r_{k,l}\right)}{a_t} \qquad \text{(Equation B55)}$$

(J) An applicant shall compute the eccentricity of the trajectory ellipse multiplied by the sine of the eccentric anomaly at impact (ε_{s_k}).

$$\varepsilon_{s_k} = -\left(\varepsilon^2 - \varepsilon^2{}_{c_k}\right)^{0.5} \qquad \text{(Equation B56)}$$

If $\varepsilon_{s_k} < 0$ then the trajectory orbit does not intersect the Earth's surface and an impact point cannot be computed. The launch vehicle has achieved Earth orbit and the applicant may terminate computations.

(K) An applicant shall compute the cosine of the difference between the eccentric anomaly at impact and the eccentric anomaly at epoch ($\Delta\varepsilon_{c_k}$).

$$\Delta\varepsilon_{c_k} = \frac{\left(\varepsilon_{c_k} \cdot \varepsilon_c\right) + \left(\varepsilon_{s_k} \cdot \varepsilon_s\right)}{\varepsilon^2} \qquad \text{(Equation B57)}$$

(L) An applicant shall compute the sine of the difference between the eccentric anomaly at impact and the eccentric anomaly at epoch ($\Delta\varepsilon_{s_k}$).

$$\Delta\varepsilon_{s_k} = \frac{\left(\varepsilon_{s_k} \cdot \varepsilon_c\right) - \left(\varepsilon_{c_k} \cdot \varepsilon_s\right)}{\varepsilon^2} \qquad \text{(Equation B58)}$$

(M) An applicant shall compute the f-series expansion of Kepler's equations.

$$f_2 = \frac{\left(\Delta\varepsilon_{c_k} - \varepsilon_c\right)}{\left(1 - \varepsilon_c\right)} \qquad \text{(Equation B59)}$$

(N) An applicant shall compute the g-series expansion of Kepler's equations.

$$g_2 = \left(\Delta\varepsilon_{s_k} + \varepsilon_s - \varepsilon_{s_k}\right)\left(\frac{a_t^3}{K}\right)^{0.5} \qquad \text{(Equation B60)}$$

(O) An applicant shall compute the E,F,G coordinates at impact (E_i, F_i, G_i).

$$E_k = f_2 \cdot E_{90} + g_2 \cdot \dot{E}l_{90}$$
$$F_k = f_2 \cdot F_{90} + g_2 \cdot \dot{F}l_{90} \qquad \text{(Equations B61-B63)}$$
$$G_k = f_2 \cdot G_{90} + g_2 \cdot \dot{G}_{90}$$

(P) An applicant shall approximate the distance from the geocenter to the launch vehicle position at impact ($r_{k,2}$).

$$r_{k,2} = \frac{a_E}{\left[\left(\frac{e^2}{1-e^2}\right)\left(\frac{G_k}{r_{k,1}}\right)^2 + 1\right]^{0.5}} \qquad \text{(Equation B64)}$$

where:

a_E = 20925646.3255 ft

e^2 = 0.00669437999013

(Q) An applicant shall let $r_{k+1,1} = r_{k,2}$, substitute $r_{k+1,1}$ for $r_{k,1}$ in equation B55 and repeat equations B55—B64 up to four more times increasing ''k'' by an increment of one on each loop (e.g. kε{1, 2, 3, 4, 5}). If $|r_{5,1} - r_{5,2}| > 1$ then the iterative solution does not converge and an impact point does not meet the accuracy tolerance of plus or minus one foot. An applicant must try more iterations, or restart the calculations with the next trajectory state vector.

(R) An applicant shall compute the difference between the eccentric anomaly at impact and the eccentric anomaly at epoch ($\Delta\varepsilon$).

$$\Delta\varepsilon = \tan^{-1}\left(\frac{\Delta\varepsilon_{s_5}}{\Delta\varepsilon_{c_5}}\right) \qquad \text{(Equation B65)}$$

(S) An applicant shall compute the time of flight from epoch to impact (t).

$$t = \left(\Delta\varepsilon + \varepsilon_s - \varepsilon_{s_5}\right)\left(\frac{a_t^3}{K}\right)^{0.5} \qquad \text{(Equation B66)}$$

(T) An applicant shall compute the geocentric latitude at impact (φ').

$$\phi'_i = \sin^{-1}\left(\frac{G_5}{r5,2}\right) \qquad \text{(Equation B67)}$$

Where: $+90° > \varphi'_i > -90°$

(U) An applicant shall compute the geodetic latitude at impact (φ).

$$\phi_i = \tan^{-1}\left[\frac{\tan\left(\phi'_i\right)}{\left(1-e^2\right)}\right] \qquad \text{(Equation B68)}$$

Where: $+90° > \varphi_i > -90°$

(V) An applicant shall compute the East longitude at impact (λ).

$$\lambda_i = \tan^{-1}\left(\frac{F_5}{E_5}\right) - \omega t \qquad \text{(Equation B69)}$$

(W) If the range from the launch point to the impact point is equal to or greater than 5000 nm, an applicant shall terminate IIP computations.

(4) For a guided suborbital launch vehicle, an applicant shall define a final stage impact dispersion area as part of the flight corridor and show the area on a map using the following procedure:

(i) For equation B70 below, an applicant shall use an apogee altitude (H_{ap}) corresponding to the highest altitude reached by the launch vehicle final stage in the applicant's launch vehicle trajectory analysis done in accordance with paragraph (b)(1)(ii).

(ii) An applicant shall define the final stage impact dispersion area by using a dispersion factor [$DISP(H_{ap})$] as shown below. An applicant shall calculate the impact dispersion radius (R) for the final launch vehicle stage. An applicant shall set R equal to the maximum apogee altitude (H_{ap}) multiplied by the dispersion factor as shown below:

$$R = H_{ap} \cdot DISP\left(H_{ap}\right) \qquad \text{(Equation B70)}$$

where: $DISP(H_{ap}) = 0.05$

(5) An applicant shall combine the launch area and downrange area flight corridor and any final stage impact dispersion area for a guided suborbital launch vehicle.

(i) On the same map with the launch area flight corridor, an applicant shall plot the latitude and longitude positions of the left and right sides of the downrange area of the flight corridor calculated in accordance with subparagraph (d)(3).

(ii) An applicant shall connect the latitude and longitude positions of the left side of the downrange area of the flight corridor sequentially starting with the last IIP calculated on the left side and ending with the first IIP calculated on the left side. An applicant shall repeat this procedure for the right side.

(iii) An applicant shall connect the left sides of the launch area and downrange portions of the flight corridor. An applicant shall repeat this procedure for the right side.

(iv) An applicant shall plot the overflight exclusion zone defined in subparagraph (c)(7).

(v) An applicant shall draw any impact dispersion area on the downrange map with the center of the impact dispersion area on the launch vehicle final stage impact point obtained from the applicant's launch vehicle trajectory analysis done in accordance with subparagraph (b)(1)(ii).

(e) Evaluate the Launch Site

(1) An applicant shall evaluate the flight corridor for the presence of populated areas. If no populated area is located within the flight corridor, then no additional steps are necessary.

(2) If a populated area is located in an overflight exclusion zone, an applicant may modify its proposal or demonstrate that there are times when no people are present or that the applicant has an agreement in place to evacuate the public from the overflight exclusion zone during a launch.

(3) If a populated area is located within the flight corridor, an applicant may modify its proposal or complete an overflight risk analysis in accordance with appendix C.

APPENDIX C TO PART 420—RISK ANALYSIS

(a) Introduction

(1) This appendix provides a method for an applicant to estimate the expected casualty (E_c) for a launch of a guided expendable launch vehicle using a flight corridor generated either by appendix A or appendix B. This appendix also provides an applicant options to simplify the method where population at risk is minimal.

(2) An applicant shall perform a risk analysis when a populated area is located within a flight corridor defined by either appendix A or appendix B. If the estimated expected casualty exceeds 30×10^{-6}, an applicant may either modify its proposal, or if the flight corridor used was generated by the appendix A method, use the appendix B method to narrow the flight corridor and then redo the overflight risk analysis pursuant to this appendix. If the estimated expected casualty still exceeds 30×10^{-6} the FAA will not approve the location of the proposed launch point.

(b) Data Requirements

(1) An applicant shall obtain the data specified by subparagraphs (b)(2) and (3) and summarized in table C–1. Table C–1 provides sources where an applicant may obtain data acceptable to the FAA. An applicant must also employ the flight corridor information from appendix A or B, including flight azimuth and, for an appendix B flight corridor, trajectory information.

(2) Population data. Total population (N) and the total landmass area within a populated area (A) are required. Population data up to and including 100 nm from the launch point are required at the U.S. census block group level. Population data downrange from 100 nm are required at no greater than $1^\circ \times 1^\circ$ latitude/longitude grid coordinates.

(3) Launch vehicle data. Launch vehicle data consist of the launch vehicle failure probability (P_f), the launch vehicle effective casualty area (A_c), trajectory position data, and the overflight dwell time (t_d). The failure probability is a constant ($P_f = 0.10$) for a guided orbital or suborbital expendable launch vehicle. Table C–3 provides effective casualty area data based on IIP range. Trajectory position information is provided from distance computations provided by this appendix for an appendix A flight corridor, or trajectory data used in appendix B for an appendix B flight corridor. The dwell time (t_d) may be determined from trajectory data produced when creating an appendix B flight corridor.

TABLE C–1—OVERFLIGHT ANALYSIS DATA REQUIREMENTS

Data category	Data item	Data source
Population Data	Total population within a populated area (N).	Within 100 nm of the launch point: U.S. census data at the census block-group level. Downrange from 100 nm beyond the launch point, world population data are available from:
	Total landmass area within the populated area (A).	Carbon Dioxide Information Analysis Center (CDIAC) Oak Ridge National Laboratory Database—Global Population Distribution (1990), Terrestrial Area and Country Name Information on a One by One Degree Grid Cell Basis (DB1016 (8–1996)
Launch Vehicle Data	Failure probability—$P_f = 0.10$	N/A.
	Effective casualty area (A_c)	See table C–3.
	Overflight dwell time	Determined by range from the launch point or trajectory used by applicant.
	Nominal trajectory data (for an appendix B flight corridor only).	See appendix B, table B–1.

(c) Estimating Corridor Casualty Expectation

(1) A corridor casualty expectation [E_C(Corridor)] estimate is the sum of the expected casualty measurement of each populated area inside a flight corridor.

(2) An applicant shall identify and locate each populated area in the proposed flight corridor.

(3) An applicant shall determine the probability of impact in each populated area using the procedures in subparagraphs (5) or (6) of this paragraph. Figures C–1 and C–2 illustrate an area considered for probability of impact (P_i) computations by the dashed-lined box around the populated area within a flight corridor, and figure C–3 illustrates a populated area in a final stage impact dispersion area. An applicant shall then estimate the E_C for each populated area in accordance with subparagraphs (7) and (8) of this paragraph.

(4) The P_i computations do not directly account for populated areas whose areas are bisected by an appendix A flight corridor centerline or an appendix B nominal trajectory ground trace. Accordingly, an applicant must evaluate P_i for each of the bi-sections as two separate populated areas, as shown in figure C–4, which shows one bi-section to the left of an appendix A flight corridor's centerline and one to its right.

(5) Probability of impact (P_i) computations for a populated area in an appendix A flight corridor. An applicant shall compute P_i for

each populated area using the following method:

(i) For the launch and downrange areas, but not for a final stage impact dispersion area for a guided suborbital launch vehicle, an applicant shall compute P_i for each populated area using the following equation:

$$P_i = \frac{\left(\frac{|y_2 - y_1|}{\sigma_y}\right)}{6\sqrt{2\pi}} \cdot \left(\exp\left(\frac{-\left(y_1/\sigma_y\right)^2}{2} \right) + 4 \cdot \exp\left[\frac{-\left(\frac{y_1 + y_2}{2\sigma_y}\right)^2}{2} \right] + \exp\left(\frac{-\left(y_2/\sigma_y\right)^2}{2} \right) \right) \cdot \left[\frac{P_f}{C} \cdot \frac{(x_2 - x_1)}{\dot{R}} \right] \quad \text{(Equation C1)}$$

where:

x_1, x_2 = closest and farthest downrange distance (nm) along the flight corridor centerline to the populated area (see figure C–1)

y_1, y_2 = closest and farthest cross range distance (nm) to the populated area measured from the flight corridor centerline (see figure C–1)

σ_y = one-third of the cross range distance from the centerline to the flight corridor boundary (see figure C–1)

exp = exponential function (e^x)

P_f = probability of failure = 0.10

$\dot{R}$ = IIP range rate (nm/sec) (see table C–2)

C = 643 seconds (constant)

TABLE C–2—IIP RANGE RATE VS. IIP RANGE

IIP range (nm)	IIP range rate (nm/s)
0–75	0.75
76–300	1.73
301–900	4.25
901–1700	8.85
1701–2600	19.75
2601–3500	42.45
3501–4500	84.85
4501–5250	154.95

(ii) For each populated area within a final stage impact dispersion area, an applicant shall compute P_i using the following method:

(A) An applicant shall estimate the probability of final stage impact in the x and y sectors of each populated area within the final stage impact dispersion area using equations C2 and C3:

$$P_x = \frac{\left(\frac{|x_2 - x_1|}{\sigma_x}\right)}{6\sqrt{2\pi}} \cdot \left(\exp\left(\frac{-\left(x_1/\sigma_x\right)^2}{2} \right) + 4 \cdot \exp\left[\frac{-\left(\frac{x_1 + x_2}{2\sigma_x}\right)^2}{2} \right] + \exp\left(\frac{-\left(x_2/\sigma_x\right)^2}{2} \right) \right) \quad \text{(Equation C2)}$$

where:

X_1, X_2 = closest and farthest downrange distance, measured along the flight corridor centerline, measured from the nominal impact point to the populated area (see figure C–3)

σ_x = one-third of the impact dispersion radius (see figure C–3)

exp = exponential function (e^x)

$$P_y = \frac{\left(\frac{|y_2 - y_1|}{\sigma_y}\right)}{6\sqrt{2\pi}} \cdot \left(\exp\left(\frac{-\left(y_1/\sigma_y\right)^2}{2} \right) + 4 \cdot \exp\left[\frac{-\left(\frac{y_1 + y_2}{2\sigma_y}\right)^2}{2} \right] + \exp\left(\frac{-\left(y_2/\sigma_y\right)^2}{2} \right) \right) \quad \text{(Equation C3)}$$

where:

y_1, y_2 = closest and farthest cross range distance to the populated area measured from the flight corridor centerline (see figure C–3)

σ_y = one-third of the impact dispersion radius (see figure C–3)

exp = exponential function (e^x)

(B) If a populated area intersects the impact dispersion area boundary so that the x_2 or y_2 distance would otherwise extend outside the impact dispersion area, the x_2 or y_2 distance should be set equal to the impact dispersion area radius. The x_2 distance for populated area A in figure C–3 is an example. If a populated area intersects the flight azimuth, an applicant shall solve equation C3 by obtaining the solution in two parts. An applicant shall determine, first, the probability between $y_1 = 0$ and $y_2 = a$ and, second, the probability between $y_1 = 0$ and $y_2 = b$, as depicted in figure C–4. The probability P_y is then equal to the sum of the probabilities of the two parts. If a populated area intersects the line that is normal to the flight azimuth on the impact point, an applicant shall solve equation C2 by obtaining the solution in two parts in the same manner as with the values of x.

(C) An applicant shall calculate the probability of impact for each populated area using equation C4 below:

$$P_l = P_s \cdot P_x \cdot P_y \qquad \text{(Equation C4)}$$

where: $P_s = 1 - P_f = 0.90$

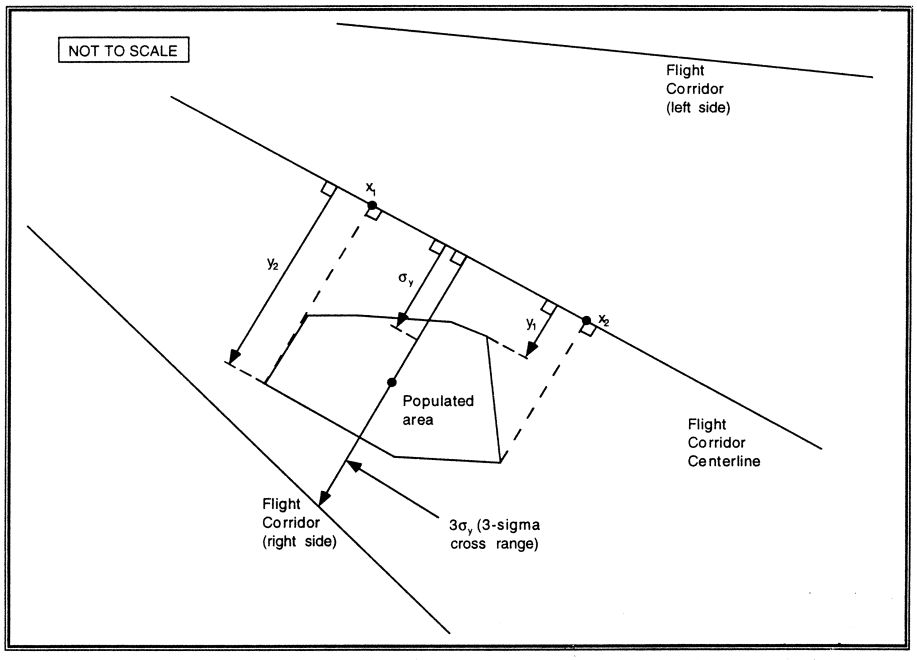

Figure C-1: Analysis of an Appendix A Flight Corridor

(6) Probability of impact computations for a populated area in an appendix B flight corridor. An applicant shall compute P_i using the following method:

(i) For the launch and downrange areas, but not for a final stage impact dispersion area for a guided suborbital launch vehicle, an applicant shall compute P_i for each populated area using the following equation:

$$P_i = \frac{\left(\frac{|y_2 - y_1|}{\sigma_y}\right)}{6\sqrt{2\pi}} \cdot \left(\exp\left(\frac{-\left(y_1/\sigma_y\right)^2}{2} \right) + 4 \cdot \exp\left[\frac{-\left(\frac{y_1 + y_2}{2\sigma_y}\right)^2}{2} \right] + \exp\left(\frac{-\left(y_2/\sigma_y\right)^2}{2} \right) \right) \cdot \left(\frac{P_f}{t} \cdot t_d \right) \quad \text{(Equation C5)}$$

where:

y_1, y_2 = closest and farthest cross range distance (nm) to a populated area measured from the nominal trajectory IIP ground trace (see figure C–2)

σ_y = one-third of the cross range distance (nm) from nominal trajectory to the flight corridor boundary (see figure C–2)

exp = exponential function (e^x)

P_f = probability of failure = 0.10

t = flight time from lift-off to orbital insertion (seconds)

t_d = overflight dwell time (seconds)

(ii) For each populated area within a final stage impact dispersion area, an applicant shall compute P_i using the following method:

(A) An applicant shall estimate the probability of final stage impact in the x and y sectors of each populated area within the final stage impact dispersion area using equations C6 and C7:

$$P_x = \frac{\left(\frac{|x_2 - x_1|}{\sigma_x}\right)}{6\sqrt{2\pi}} \cdot \left(\exp\left(\frac{-\left(x_1/\sigma_x\right)^2}{2} \right) + 4 \cdot \exp\left[\frac{-\left(\frac{x_1 + x_2}{2\sigma_x}\right)^2}{2} \right] + \exp\left(\frac{-\left(x_2/\sigma_x\right)^2}{2} \right) \right) \quad \text{(Equation C6)}$$

where:

x_1, x_2 = closest and farthest downrange distance, measured along nominal trajectory IIP ground trace, measured from the nominal impact point to the populated area (see figure C–3)

σ_x = one-third of the impact dispersion radius (see figure C–3)

exp = exponential function (e^x)

$$P_y = \frac{\left(\frac{|y_2 - y_1|}{\sigma_y}\right)}{6\sqrt{2\pi}} \cdot \left(\exp\left(\frac{-\left(y_1/\sigma_y\right)^2}{2} \right) + 4 \cdot \exp\left[\frac{-\left(\frac{y_1 + y_2}{2\sigma_y}\right)^2}{2} \right] + \exp\left(\frac{-\left(y_2/\sigma_y\right)^2}{2} \right) \right) \quad \text{(Equation C7)}$$

where:

y_1, y_2 = closest and farthest cross range distance to the populated area measured from the nominal trajectory IIP ground trace (see figure C–3)

σ_y = one-third of the impact dispersion radius (see figure C–3)

exp = exponential function (e^x)

(B) If a populated area intersects the impact dispersion area boundary so that the x_2 or y_2 distance would otherwise extend outside the impact dispersion area, the x_2 or y_2 distance should be set equal to the impact dispersion area radius. The x_2 distance for populated area A in figure C–3 is an example. If a populated area intersects the flight azimuth, an applicant shall solve equation C7 by obtaining the solution in two parts. An applicant shall determine, first, the probability between $y_1 = 0$ and $y_2 = a$ and, second, the probability between $y_1 = 0$ and $y_2 = b$, as depicted in figure C–4. The probability P_y is then equal to the sum of the probabilities of the two parts. If a populated area intersects the line that is normal to the flight azimuth on the impact point, an applicant shall solve equation C6 by obtaining the solution in two

parts in a similar manner with the values of x.

(C) An applicant shall calculate the probability of impact for each populated area using equation C8 below:

$$P_I = P_s \cdot P_x \cdot P_y \qquad \text{(Equation C8)}$$

where: $P_s = 1 - P_f = 0.90$

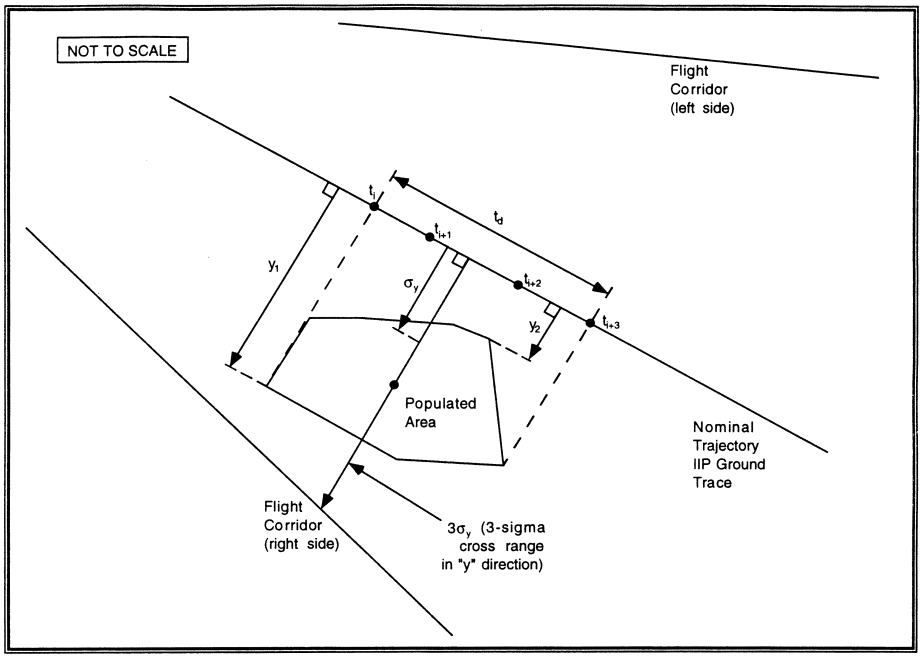

Figure C-2: Analysis of an Appendix B Flight Corridor

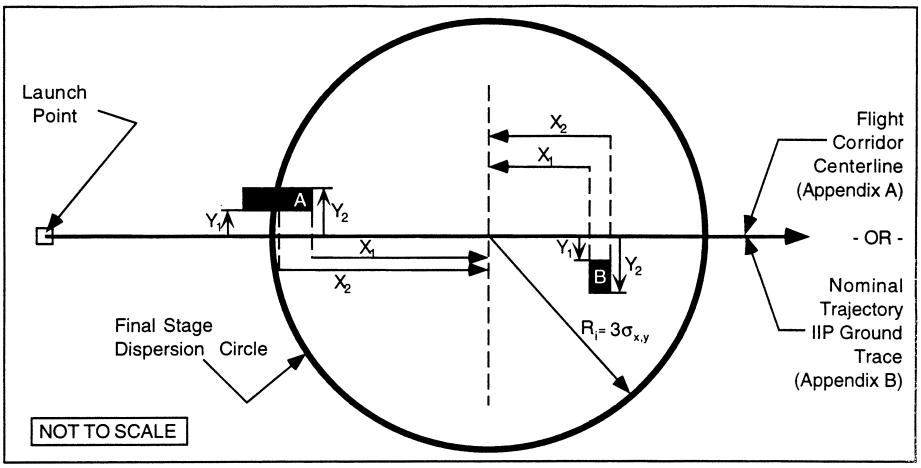

Figure C-3: Appendix A and B Final Stage Impact Risk Analysis

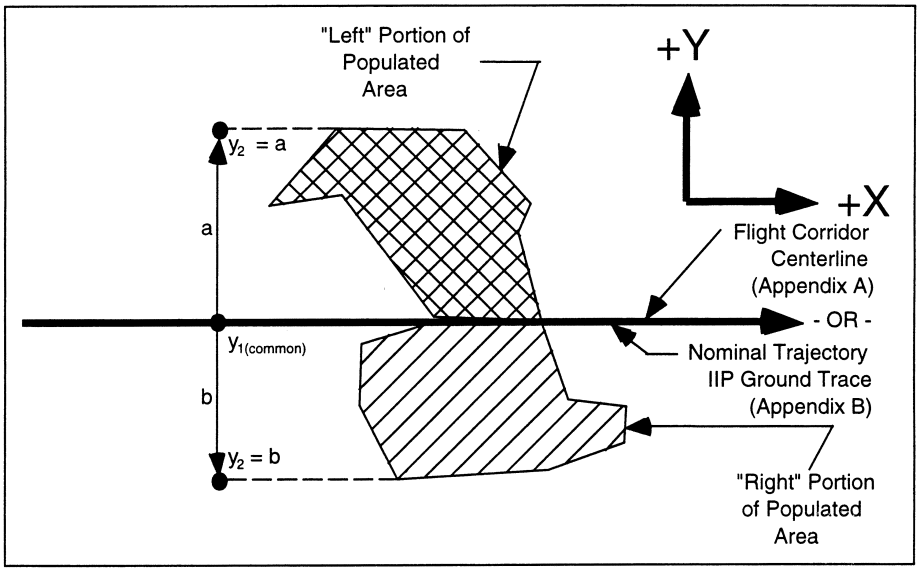

Figure C-4: Flight Azimuth Intersecting a Populated Area

(7) Using the P_i calculated in either subparagraph (c)(5) or (6) of this paragraph, an applicant shall calculate the casualty expectancy for each populated area within the flight corridor in accordance with equation C9. E_{ck} is the casualty expectancy for a given populated area as shown in equation C9, where individual populated areas are designated with the subscript ''k''.

$$E_{ck} = P_i \cdot \left(\frac{A_c}{A_k} \right) \cdot N_k \qquad \text{(Equation C9)}$$

where:

A_c = casualty area (from table C–3)
A_k = populated area
N_k = population in A_k

TABLE C–3—EFFECTIVE CASUALTY AREA (MILES^2) AS A FUNCTION OF IIP RANGE (NM)

IIP Range (nmi)	Orbital launch vehicles				Suborbital launch vehicles
	Small	Medium	Medium large	Large	Guided
0–49	0.43	0.53	0.71	1.94	0.43
50–1749	0.13	0.0022	0.11	0.62	0.13
1750–5000	3.59×10^{-6}	8.3×10^{-4}	1.08×10^{-1}	7.17×10^{-1}	3.59×10^{-6}

(8) An applicant shall estimate the total corridor risk using the following summation of risk:

$$\mathrm{Ec(Corridor)} = \left(\sum_{k=1}^{n} \mathrm{E}_{c_k} \right) \qquad \text{(Equation C10)}$$

(9) Alternative casualty expectancy (E_C) analyses. An applicant may employ specified variations to the analysis defined by subparagraphs (c)(1)–(8). Those variations are identified in subparagraphs (9)(i) through (vi) of this paragraph. Subparagraphs (i) through (iv) permit an applicant to make conservative assumptions that would lead to an overestimation of the corridor E_C compared with the analysis defined by subparagraphs (c)(1)–(8). In subparagraphs (v) and (vi), an applicant that would otherwise fail the analysis prescribed by subparagraphs (c)(1)–(8) may avoid (c)(1)–(8)'s overestimation of the probability of impact in each populated area. An applicant employing a variation shall identify the variation used, show and discuss the specific assumptions made to modify the analysis defined by subparagraphs (c)(1)–(8), and demonstrate how each assumption leads to overestimation of the corridor E_C compared with the analysis defined by subparagraphs (c)(1)–(c)(8).

(i) Assume that P_x and P_y have a value of 1.0 for all populated areas.

(ii) Combine populated areas into one or more larger populated areas, and use a population density for the combined area or areas equal to the most densely populated area.

(iii) For any given populated area, assume P_y has a value of one.

(iv) For any given P_x sector (an area spanning the width of a flight corridor and bounded by two time points on the trajectory IIP ground trace) assume P_y has a value of one and use a population density for the sector equal to the most densely populated area.

(v) For a given populated area, divide the populated area into smaller rectangles, determine P_i for each individual rectangle, and sum the individual impact probabilities to determine P_i for the entire populated area.

(vi) For a given populated area, use the ratio of the populated area to the area of the P_i rectangle from the subparagraph (c)(1)–(8) analysis.

(d) Evaluation of Results

(1) If the estimated expected casualty does not exceed $30x10^{-6}$, the FAA will approve the launch site location.

(2) If the estimated expected casualty exceeds 30×10^{-6}, then an applicant may either modify its proposal, or, if the flight corridor used was generated by the appendix A method, use the appendix B method to narrow the flight corridor and then perform another appendix C risk analysis.

APPENDIX D TO PART 420—IMPACT DISPERSION AREAS AND CASUALTY EXPECTANCY ESTIMATE FOR AN UNGUIDED SUBORBITAL LAUNCH VEHICLE

(a) Introduction

(1) This appendix provides a method for determining the acceptability of the location of a launch point from which an unguided suborbital launch vehicle would be launched. The appendix describes how to define an overflight exclusion zone and impact dispersion areas, and how to evaluate whether the public risk presented by the launch of an unguided suborbital launch vehicle remains at acceptable levels.

(2) An applicant shall base its analysis on an unguided suborbital launch vehicle whose final launch vehicle stage apogee represents the intended use of the launch point.

(3) An applicant shall use the apogee of each stage of an existing unguided suborbital launch vehicle with a final launch vehicle stage apogee equal to the one proposed, and

calculate each impact range and dispersion area using the equations provided.

(4) This appendix also provides a method for performing an impact risk analysis that estimates the expected casualty (E_c) within each impact dispersion area. This appendix provides an applicant options to simplify the method where population at risk is minimal.

(5) If the estimated E_c is less than or equal to 30×10^{-6}, the FAA will approve the launch point for unguided suborbital launch vehicles. If the estimated E_c exceeds 30×10^{-6}, the proposed launch point will fail the launch site location review.

(b) Data Requirements

(1) An applicant shall employ the apogee of each stage of an existing unguided suborbital launch vehicle whose final stage apogee represents the maximum altitude to be reached by unguided suborbital launch vehicles launched from the launch point. The apogee shall be obtained from one or more actual flights of an unguided suborbital launch vehicle launched at an 84 degree elevation.

(2) An applicant shall satisfy the map and plotting data requirements of appendix A, paragraph (b).

(3) Population data. An applicant shall use total population (N) and the total landmass area within a populated area (A) for all populated areas within an impact dispersion area. Population data up to and including 100 nm from the launch point are required at the U.S. census block group level. Population data downrange from 100 nm are required at no greater than $1°\times1°$ latitude/longitude grid coordinates.

(c) Overflight Exclusion Zone and Impact Dispersion Areas

(1) An applicant shall choose a flight azimuth from a launch point.

(2) An applicant shall define an overflight exclusion zone as a circle with a radius of 1600 feet centered on the launch point.

(3) An applicant shall define an impact dispersion area for each stage of the suborbital launch vehicle chosen in accordance with subparagraph (b)(1) in accordance with the following:

(i) An applicant shall calculate the impact range for the final launch vehicle stage (D_n). An applicant shall set D_n equal to the last stage apogee altitude (H_n) multiplied by an impact range factor [$IP(H_n)$] in accordance with the following:

$$D_n = H_n \cdot IP(H_n) \qquad \text{(Equation D1)}$$

where:

$IP(H_n)$ = 0.4 for an apogee less than 100 km, and

$IP(H_n)$ = 0.7 for an apogee of 100 km or greater.

(ii) An applicant shall calculate the impact range for each intermediate stage (D_i), where $i \in \{1, 2, 3, \ldots (n-1)\}$, and where n is the total number of launch vehicle stages. Using the apogee altitude (H_i) of each intermediate stage, an applicant shall use equation D1 to compute the impact range of each stage by substituting H_i for H_n. An applicant shall use the impact range factors provided by equation D1.

(iii) An applicant shall calculate the impact dispersion radius for the final launch vehicle stage (R_n). An applicant shall set R_n equal to the last stage apogee altitude (H_n) multiplied by an impact dispersion factor [$DISP(H_n)$] in accordance with the following:

$$R_n = H_n \cdot DISP(H_n) \qquad \text{(Equation D2)}$$

where:

$DISP(H_n)$ = 0.4 for an apogee less than 100 km, and

$DISP(Hn)$ = 0.7 for an apogee of 100 km or greater.

(iv) An applicant shall calculate the impact dispersion radius for each intermediate stage (R_i), where $i \in \{1, 2, 3, \ldots (n-1)\}$ and where n is the total number of launch vehicle stages. Using the apogee altitude (H_i) of each intermediate stage, an applicant shall use equation D2 to compute an impact dispersion radius of each stage by substituting H_i for H_n. An applicant shall use the dispersion factors provided by equation D2.

(4) An applicant shall display an overflight exclusion zone, each intermediate and final stage impact point (D_i through D_n), and each impact dispersion area for the intermediate and final launch vehicle stages on maps in accordance with paragraph (b)(2).

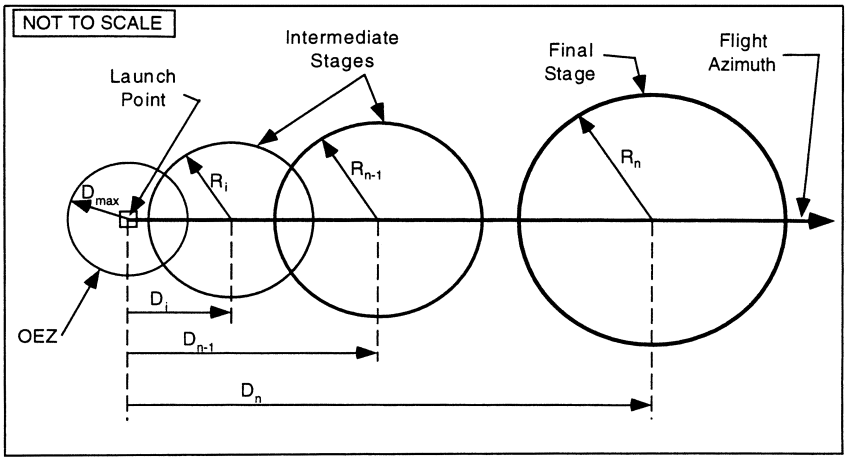

Figure D-1
Unguided Suborbital Launch Vehicle Overflight Exclusion Zone and Impact Dispersion Areas

(d) Evaluate the Overflight Exclusion Zone and Impact Dispersion Areas

(1) An applicant shall evaluate the overflight exclusion zone and each impact dispersion area for the presence of any populated areas. If an applicant determines that no populated area is located within the overflight exclusion zone or any impact dispersion area, then no additional steps are necessary.

(2) If a populated area is located in an overflight exclusion zone, an applicant may modify its proposal or demonstrate that there are times when no people are present or that the applicant has an agreement in place to evacuate the public from the overflight exclusion zone during a launch.

(3) If a populated area is located within any impact dispersion area, an applicant may modify its proposal and define a new overflight exclusion zone and new impact dispersion areas, or perform an impact risk analysis in accordance with paragraph (e).

(e) Impact Risk Analysis

(1) An applicant shall estimate the expected average number of casualties, E_C, within the impact dispersion areas according to the following method:

(i) An applicant shall calculate the E_c by summing the impact risk for the impact dispersion areas of the final launch vehicle stage and all intermediate stages. An applicant shall estimate E_c for the impact dispersion area of each stage by using equations D3 through D7 for each of the populated areas located within the impact dispersion areas.

(ii) An applicant shall estimate the probability of impacting inside the X and Y sectors of each populated area within each impact dispersion area using equations D3 and D4:

$$P_x = \frac{\left(\frac{x_2}{\sigma_x} - \frac{x_1}{\sigma_x}\right)}{6\sqrt{2\pi}} \cdot \left(\exp\left(\frac{-\left(\frac{x_1}{\sigma_x}\right)^2}{2} \right) + 4 \cdot \exp\left[\frac{-\left(\frac{x_1 + x_2}{2\sigma_x}\right)^2}{2} \right] + \exp\left(\frac{-\left(\frac{x_2}{\sigma_x}\right)^2}{2} \right) \right) \qquad \text{(Equation D3)}$$

where:

x_1, x_2 = closest and farthest downrange distance to populated area (see figure D–2)

σ_x = one-third of the impact dispersion radius (see figure D–2)

exp = exponential function (e^x)

$$P_y = \frac{\left(\frac{|y_2|}{\sigma_y} - \frac{|y_1|}{\sigma_y}\right)}{6\sqrt{2\pi}} \cdot \left(\exp\left[\frac{-\left(y_1/\sigma_y\right)^2}{2} \right] + 4 \cdot \exp\left[\frac{-\left(\frac{y_1 + y_2}{2\sigma_y}\right)^2}{2} \right] + \exp\left[\frac{-\left(y_2/\sigma_y\right)^2}{2} \right] \right) \quad \text{(Equation D4)}$$

where:

y_1, y_2 = closest and farthest cross range distance to the populated area (see figure D–2)

σ_y = one-third of the impact dispersion radius (see figure D–2)

exp = exponential function (e^x)

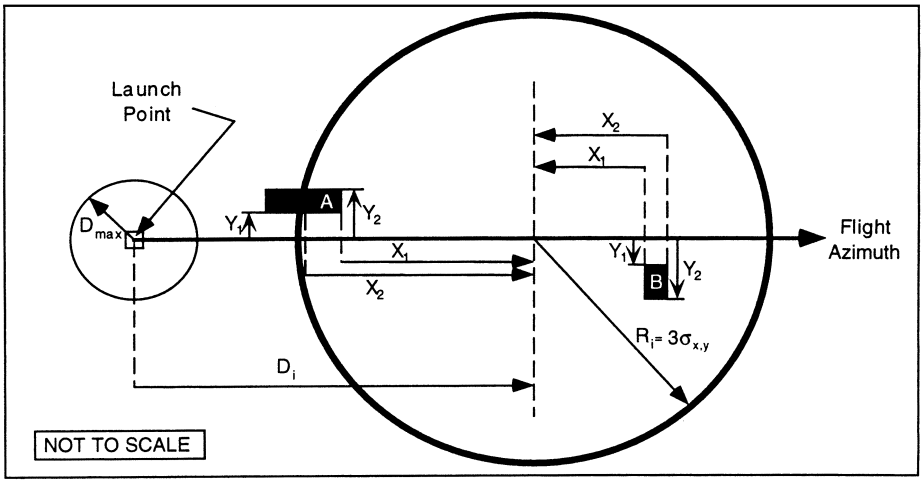

Figure D-2
Intermediate and Final Stage Impact Risk Analysis

(iii) If a populated area intersects the impact dispersion area boundary so that the x_2 or y_2 distance would otherwise extend outside the impact dispersion area, the x_2 or y_2 distance should be set equal to the impact dispersion area radius. The x_2 distance for populated area A in figure D–2 is an example.

(iv) If a populated area intersects the flight azimuth, an applicant shall solve equation D4 by obtaining the solution in two parts. An applicant shall determine, first, the probability between $y_1 = 0$ and $y_2 = a$ and, second, the probability between $y_1 = 0$ and $y_2 = b$, as depicted in figure D–3. The probability P_y is then equal to the sum of the probabilities of the two parts. If a populated area intersects the line that is normal to the flight azimuth on the impact point, an applicant shall solve equation D3 by obtaining the solution in two parts in the same manner as with the values of x.

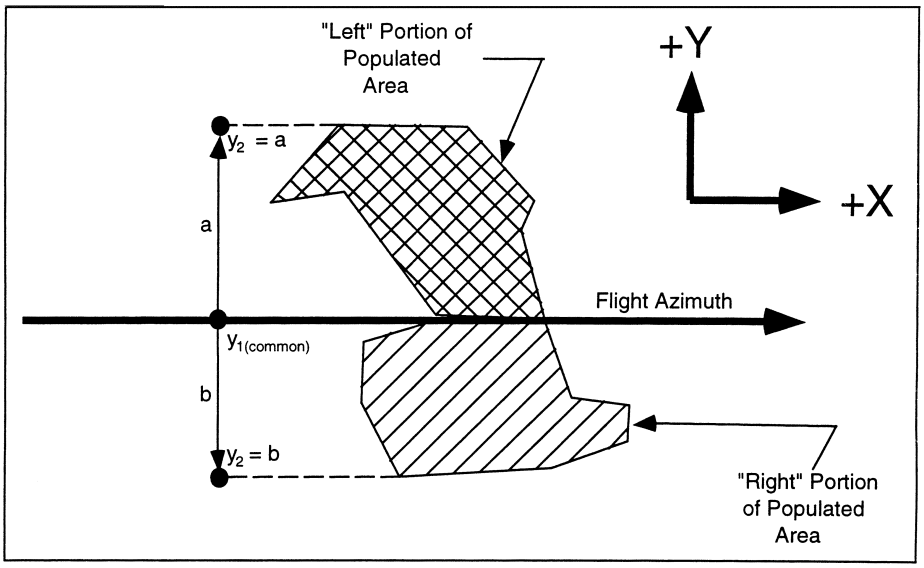

Figure D-3
Flight Azimuth Intersecting a Populated Area

(v) An applicant shall calculate the probability of impact (P_i) for each populated area using the following equation:

$$P_i = P_s \cdot P_x \cdot P_y \qquad \text{(Equation D5)}$$

where:

P_s = probability of success = 0.98

(vi) An applicant shall calculate the casualty expectancy for each populated area. E_{ck} is the casualty expectancy for a given populated area as shown in equation D6, where individual populated areas are designated with the subscript ''k''.

$$E_{ck} = P_i \cdot \left(\frac{A_c}{A_k} \right) \cdot N_k \qquad \text{(Equation D6)}$$

where:

$k \{ \{1, 2, 3, \ldots, n\}$
A_c = casualty area (from table D–1)
A_k = populated area
N_k = population in A_k

TABLE D–1—EFFECTIVE CASUALTY AREA (A_c) VS. IMPACT RANGE

Impact range (nm)	Effective casualty area (miles^2)
0–4	9×10^{-3}
5–49	9×10^{-3}
50–1,749	1.1×10^{-5}
1,750–4,999	3.6×10^{-6}
5,000–more	3.6×10^{-6}

(vii) An applicant shall estimate the total risk using the following summation of risk:

$$Ec(Corridor) = \left(\sum_{k=1}^{n} E_{c_k} \right) \qquad \text{(Equation D7)}$$

(viii) Alternative casualty expectancy (E_c) analysis. An applicant may employ specified variations to the analysis defined by subparagraphs (d)(1)(i)–(vii). Those variations are identified in subparagraphs (viii)(A) through (F) of this paragraph. Subparagraphs (A) through (D) permit an applicant to make conservative assumptions that would lead to an overestimation of E_c compared with the analysis defined by subparagraphs (d)(1)(i)–(vii). In subparagraphs (E) and (F), an applicant that would otherwise fail the analysis prescribed by subparagraphs (d)(1)(i)–(vii) may avoid (d)(1)(i)–(vii)'s overestimation of the probability of impact in each populated area. An applicant employing a variation shall identify the variation used, show and discuss the specific assumptions made to modify the analysis defined by subparagraphs (d)(1)(i)–(vii), and demonstrate how each assumption leads to overestimation of the corridor E_c compared with the analysis defined by subparagraphs (d)(1)(i)–(vii).

(A) Assume that P_x and P_y have a value of 1.0 for all populated areas.

(B) Combine populated areas into one or more larger populated areas, and use a population density for the combined area or areas equal to the most densely populated area.

(C) For any given populated area, assume P_x has a value of one.

(D) For any given populated area, assume P_y has a value of one.

(E) For a given populated area, divide the populated area into smaller rectangles, determine P_i for each individual rectangle, and sum the individual impact probabilities to determine P_i for the entire populated area.

(F) For a given populated area, use the ratio of the populated area to the area of the P_i rectangle used in the subparagraph (d)(1)(i)–(vii) analysis.

(2) If the estimated expected casualty does not exceed 30×10^{-6}, the FAA will approve the launch point.

(3) If the estimated expected casualty exceeds 30×10^{-6}, then an applicant may modify its proposal and then repeat the impact risk analysis in accordance with this appendix D. If no set of impact dispersion areas exist which satisfy the FAA's risk threshold, the applicant's proposed launch site will fail the launch site location review.

APPENDIX E TO PART 420—TABLES FOR EXPLOSIVE SITE PLAN

TABLE E–1—QUANTITY DISTANCE REQUIREMENTS FOR SOLID EXPLOSIVES

Quantity (lbs.) (over)	Quantity (lbs.) (not over)	Public area distance (ft.) for division 1.1	Public area distance (ft.) for division 1.3	Intraline distance (ft.) for division 1.1	Intraline distance (ft.) for division 1.3
0	1,000	1,250	75	D = 18 $W^{1/3}$	50
1,000	5,000	.....	115	.....	75
5,000	10,000	.....	150	.....	100
10,000	20,000	.....	190	.....	125
20,000	30,000	.....	215	.....	145
30,000	40,000	D = 40 $W^{1/3}$	235	.....	155
40,000	50,000	.....	250	.....	165
50,000	60,000	.....	260	.....	175
60,000	70,000	.....	270	.....	185
70,000	80,000	.....	280	.....	190
80,000	90,000	.....	195	.....	195
90,000	100,000	.....	300	.....	200
100,000	200,000	D=2.42 $W^{0.577}$	375	.....	250
200,000	250,000	.....	413	.....	275
250,000	300,000	D = 50 $W^{1/3}$	450	.....	300
300,000	400,000	.....	525	.....	350
400,000	500,000	.....	600	.....	400
500,000	1,000,000	.....	800	.....	500
Greater than 1,000,000	.....	D = 50 $W^{1/3}$	D = 8 $W^{1/3}$	D = 5 $W^{1/3}$	

"D" equals the minimum separation distance in feet.
"W" equals the NEW of propellant.

TABLE E–2—LIQUID PROPELLANT EXPLOSIVE EQUIVALENTS

Propellant combinations	Explosive equivalent
LO_2/LH_2	The larger of: $8W^{2/3}$ where W is the weight of LO_2/LH_2, or 14% of W.
LO_2/LH_2 + LO_2/RP–1	Sum of (20% for LO_2/RP–1) + the larger of: $8W^{2/3}$ where W is the weight of LO_2/LH_2, or 14% of W.
LO_2/R–1	20% of W up to 500,000 pounds plus 10% of W over 500,000 pounds, where W is the weight of LO_2RP–1.

TABLE E–2—LIQUID PROPELLANT EXPLOSIVE EQUIVALENTS—Continued

Propellant combinations	Explosive equivalent
N_2O_4/N_2H_4 (or UDMH or UDMH/N_2H_4 Mixture)	10% of W, where W is the weight of the propellant.

TABLE E–3—PROPELLANT HAZARD AND COMPATIBILITY GROUPINGS AND FACTORS TO BE USED WHEN CONVERTING GALLONS OF PROPELLANT INTO POUNDS

Propellant	Hazard group	Compatibility group	Pounds/ gallon	At temperature °F
Hydrogen Peroxide	II	A	11.6	68
Hydrazine	III	C	8.4	68
Liquid Hydrogen	III	C	0.59	−423
Liquid Oxygen	II	A	9.5	−297
Nitrogen Tetroxide	I	A	12.1	68
RP–1	I	C	6.8	68
UDMH	III	C	6.6	68
UDMH/Hydrazine	III	C	7.5	68

TABLE E–4—HAZARD GROUP I

Pounds of propellant		Public area and incompatible	Intragroup and compatible	Pounds of propellant		Public area and incompatible	Intragroup and compatible
Over	Not over	Distance in feet	Distance in feet	Over	Not over	Distance in feet	Distance in feet
0	100	30	25	5,000	6,000	80	60
100	200	35	30	6,000	7,000	85	65
200	300	40	35	7,000	8,000	85	65
300	400	45	35	8,000	9,000	90	70
400	500	50	40	9,000	10,000	90	70
500	600	50	40	10,000	15,000	95	75
600	700	55	40	15,000	20,000	100	80
700	800	55	45	20,000	25,000	105	80
800	900	60	45	25,000	30,000	110	85
900	1,000	60	45	30,000	35,000	110	85
1,000	2,000	65	50	35,000	40,000	115	85
2,000	3,000	70	55	40,000	45,000	120	90
3,000	4,000	75	55	45,000	50,000	120	90
4,000	5,000	80	60	50,000	60,000	125	95
60,000	70,000	130	95	500,000	600,000	185	140
70,000	80,000	130	100	600,000	700,000	190	145
80,000	90,000	135	100	700,000	800,000	195	150
90,000	100,000	135	105	800,000	900,000	200	150
100,000	125,000	140	110	900,000	1,000,000	205	155
125,000	150,000	145	110	1,000,000	2,000,000	235	175
150,000	175,000	150	115	2,000,000	3,000,000	255	190
175,000	200,000	155	115	3,000,000	4,000,000	265	200
200,000	250,000	160	120	4,000,000	5,000,000	275	210
250,000	300,000	165	125	5,000,000	6,000,000	285	215
300,000	350,000	170	130	6,000,000	7,000,000	295	220
350,000	400,000	175	130	7,000,000	8,000,000	300	225
400,000	450,000	180	135	8,000,000	9,000,000	305	230
450,000	500,000	180	135	9,000,000	10,000,000	310	235

TABLE E–5—HAZARD GROUP II

Pounds of propellant		Public area and incompatible	Intragroup and compatible	Pounds of propellant		Public area and incompatible	Intragroup and compatible
Over	Not over	Distance in feet	Distance in feet	Over	Not over	Distance in feet	Distance in feet
0	100	60	30	50,000	60,000	250	125
100	200	75	35	60,000	70,000	255	130
200	300	85	40	70,000	80,000	260	130
300	400	90	45	80,000	90,000	265	135
400	500	100	50	90,000	100,000	270	135
500	600	100	50	100,000	125,000	285	140
600	700	105	55	125,000	150,000	295	145

TABLE E–5—HAZARD GROUP II—Continued

Pounds of propellant		Public area and incompatible	Intragroup and compatible	Pounds of propellant		Public area and incompatible	Intragroup and compatible
Over	Not over	Distance in feet	Distance in feet	Over	Not over	Distance in feet	Distance in feet
700	800	110	55	150,000	175,000	305	150
800	900	115	60	175,000	200,000	310	155
900	1,000	120	60	200,000	250,000	320	160
1,000	2,000	130	65	250,000	300,000	330	165
2,000	3,000	145	70	300,000	350,000	340	170
3,000	4,000	150	75	350,000	400,000	350	175
4,000	5,000	160	80	400,000	450,000	355	180
5,000	6,000	165	80	450,000	500,000	360	180
6,000	7,000	170	85	500,000	600,000	375	185
7,000	8,000	175	85	600,000	700,000	385	190
8,000	9,000	175	90	700,000	800,000	395	195
9,000	10,000	180	90	800,000	900,000	405	200
10,000	15,000	195	95	900,000	1,000,000	410	205
15,000	20,000	205	100	1,000,000	2,000,000	470	235
20,000	25,000	215	105	2,000,000	3,000,000	505	255
25,000	30,000	220	110	3,000,000	4,000,000	535	265
30,000	35,000	225	110	4,000,000	5,000,000	555	275
35,000	40,000	230	115	5,000,000	6,000,000	570	285
40,000	45,000	235	120	6,000,000	7,000,000	585	295
45,000	50,000	240	120	7,000,000	8,000,000	600	300
				8,000,000	9,000,000	610	305
				9,000,000	10,000,000	620	310

TABLE E–6—HAZARD GROUP III

Pounds of propellant		Public area and incompatible	Intragroup and compatible	Pounds of propellant		Public area and incompatible	Intragroup and compatible
Over	Not over	Distance in feet	Distance in feet	Over	Not over	Distance in feet	Distance in feet
0	100	600	30	60,000	70,000	1,200	130
100	200	600	35	70,000	80,000	1,200	130
200	300	600	40	80,000	90,000	1,200	135
300	400	600	45	90,000	100,000	1,200	135
400	500	600	50	100,000	125,000	1,800	140
500	600	600	50	125,000	150,000	1,800	145
600	700	600	55	150,000	175,000	1,800	150
700	800	600	55	175,000	200,000	1,800	155
800	900	600	60	200,000	250,000	1,800	160
900	1,000	600	60	250,000	300,000	1,800	165
1,000	2,000	600	65	300,000	350,000	1,800	170
2,000	3,000	600	70	350,000	400,000	1,800	175
3,000	4,000	600	75	400,000	450,000	1,800	180
4,000	5,000	600	80	450,000	500,000	1,800	180
5,000	6,000	600	80	500,000	600,000	1,800	185
6,000	7,000	600	85	600,000	700,000	1,800	190
7,000	8,000	600	85	700,000	800,000	1,800	195
8,000	9,000	600	90	800,000	900,000	1,800	200
9,000	10,000	600	90	900,000	1,000,000	1,800	205
10,000	15,000	1,200	95	1,000,000	2,000,000	1,800	235
15,000	20,000	1,200	100	2,000,000	3,000,000	1,800	255
20,000	25,000	1,200	105	3,000,000	4,000,000	1,800	265
25,000	30,000	1,200	110	4,000,000	5,000,000	1,800	275
30,000	35,000	1,200	110	5,000,000	6,000,000	1,800	285
35,000	40,000	1,200	115	6,000,000	7,000,000	1,800	295
40,000	45,000	1,200	120	7,000,000	8,000,000	1,800	300
45,000	50,000	1,200	120	8,000,000	9,000,000	1,800	305
50,000	60,000	1,200	125	9,000,000	10,000,000	1,800	310

TABLE E–7—DISTANCES WHEN EXPLOSIVE EQUIVALENTS APPLY

TNT equivalent weight of propellants	Distance in feet	
Not over	To public area	Intraline unbarricaded
100	1250	80
200	1250	100
300	1250	120
400	1250	130
500	1250	140
600	1250	150
700	1250	160
800	1250	170
900	1250	180
1,000	1250	190
1,500	1250	210
2,000	1250	230
3,000	1250	260
4,000	1250	280
5,000	1250	300
6,000	1250	320
7,000	1250	340
8,000	1250	360
9,000	1250	380
10,000	1250	400
15,000	1250	450
20,000	1250	490
25,000	1,250	530
30,000	1,250	560
35,000	1,310	590
40,000	1,370	620
45,000	1,425	640
50,000	1,475	660
55,000	1,520	680
60,000	1,565	700
65,000	1,610	720
70,000	1,650	740
75,000	1,685	770
80,000	1,725	780
85,000	1,760	790
90,000	1,795	800
95,000	1,825	820
100,000	1,855	830
125,000	2,115	900
150,000	2,350	950
175,000	2,565	1,000
200,000	2,770	1,050

PARTS 421–430 [RESERVED]

PART 431—LAUNCH AND REENTRY OF A REUSABLE LAUNCH VEHICLE (RLV)

Subpart A—General

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AUTHORITY: 49 U.S.C. 70101–70121.

SOURCE: Docket No. FAA–1999–5535, 65 FR 56658, Sept. 19, 2000, unless otherwise noted.

Subpart A—General

§431.1 Scope.

This part prescribes requirements for obtaining a reusable launch vehicle (RLV) mission license and post-licensing requirements with which a licensee must comply to remain licensed. Requirements for preparing a license application are contained in part 413 of this subchapter.

§431.3 Types of reusable launch vehicle mission licenses.

(a) *Mission-specific license.* A mission-specific license authorizing an RLV mission authorizes a licensee to launch and reenter, or otherwise land, one model or type of RLV from a launch site approved for the mission to a reentry site or other location approved for the mission. A mission-specific license authorizing an RLV mission may authorize more than one RLV mission and identifies each flight of an RLV authorized under the license. A licensee's authorization to conduct RLV missions terminates upon completion of all activities authorized by the license or the expiration date stated in the reentry license, whichever occurs first.

(b) *Operator license.* An operator license for RLV missions authorizes a licensee to launch and reenter, or otherwise land, any of a designated family of RLVs within authorized parameters, including launch sites and trajectories, transporting specified classes of payloads to any reentry site or other location designated in the license. An operator license for RLV missions is valid for a two-year renewable term.

§431.5 Policy and safety approvals.

To obtain either type of RLV mission license, an applicant must obtain policy and safety approvals from the FAA. Requirements for obtaining these approvals are contained in subparts B and C of this part. Only the license applicant may apply for the approvals, and may apply for either approval separately and in advance of submitting a complete license application, using the application procedures contained in part 413 of this subchapter.

§431.7 Payload and payload reentry determinations.

(a) A payload determination is required to launch a payload unless the proposed payload is exempt from payload review under §415.53 of this chapter. Requirements for obtaining a payload determination are set forth in part 415, subpart D of this chapter.

(b) A payload reentry determination is required to reenter a payload to Earth on an RLV unless the proposed payload is exempt from payload reentry review.

(c) A payload reentry determination made under a previous license application under this subchapter may satisfy the requirements of paragraph (b) of this section.

(d) The FAA conducts a review, as described in subpart D of this part, to make a payload reentry determination. Either an RLV mission license applicant or a payload owner or operator may request a review of the proposed payload using the application procedures contained in part 413 of this subchapter. Upon receipt of an application, the FAA may conduct a payload reentry review independently of an RLV mission license application.

§431.9 Issuance of a reusable launch vehicle mission license.

(a) The FAA issues either a mission-specific or operator license authorizing RLV missions to an applicant who has obtained all approvals and determinations required under this chapter for the license.

(b) An RLV mission license authorizes a licensee to launch and reenter, or otherwise land, an RLV and payload, if any, in accordance with the representations contained in the licensee's application, subject to the licensee's compliance with terms and conditions contained in license orders accompanying the license, including financial responsibility requirements.

§ 431.11 Additional license terms and conditions.

The FAA may amend an RLV mission license at any time by modifying or adding license terms and conditions to ensure compliance with 49 U.S.C. Subtitle IX, chapter 701, and applicable regulations.

§ 431.13 Transfer of a reusable launch vehicle mission license.

(a) Only the FAA may transfer an RLV mission license.

(b) An applicant for transfer of an RLV mission license shall submit a license application in accordance with part 413 of this subchapter and satisfy the applicable requirements of this part. The FAA will transfer an RLV mission license to an applicant who has obtained all of the approvals and determinations required under this chapter for an RLV mission license. In conducting its reviews and issuing approvals and determinations, the FAA may incorporate any findings made part of the record to support the initial licensing determination. The FAA may modify an RLV mission license to reflect any changes necessary as a result of a license transfer.

§ 431.15 Rights not conferred by a reusable launch vehicle mission license.

Issuance of an RLV mission license does not relieve a licensee of its obligation to comply with requirements of law that may apply to its activities.

§§ 431.16–431.20 [Reserved]

Subpart B—Policy Review and Approval for Launch and Reentry of a Reusable Launch Vehicle

§ 431.21 General.

The FAA issues a policy approval to an RLV mission license applicant upon completion of a favorable policy review. A policy approval is part of the licensing record on which the licensing determination is based.

§ 431.23 Policy review.

(a) The FAA reviews an RLV mission license application to determine whether the proposed mission presents any issues, other than those issues addressed in the safety review, that would adversely affect U.S. national security or foreign policy interests, would jeopardize public health and safety or the safety of property, or would not be consistent with international obligations of the United States.

(b) Interagency consultation is conducted as follows:

(1) The FAA consults with the Department of Defense to determine whether an RLV mission license application presents any issues adversely affecting U.S. national security.

(2) The FAA consults with the Department of State to determine whether an RLV mission license application presents any issues adversely affecting U.S. foreign policy interests or international obligations.

(3) The FAA consults with other Federal agencies, including the National Aeronautics and Space Administration, authorized to address issues identified under paragraph (a) of this section, associated with an applicant's RLV mission proposal.

(c) The FAA advises an applicant, in writing, of any issue raised during a policy review that would impede issuance of a policy approval. The applicant may respond, in writing, or revise its license application.

§ 431.25 Application requirements for policy review.

In its RLV mission license application, an applicant must—

(a) Identify the model, type, and configuration of any RLV proposed for launch and reentry, or otherwise landing on Earth, by the applicant.

(b) Identify all vehicle systems, including structural, thermal, pneumatic, propulsion, electrical, and avionics and guidance systems used in the vehicle(s), and all propellants.

(c) Identify foreign ownership of the applicant as follows:

(1) For a sole proprietorship or partnership, identify all foreign ownership;

(2) For a corporation, identify any foreign ownership interests of 10% or more; and

(3) For a joint venture, association, or other entity, identify any participating foreign entities.

(d) Identify proposed launch and reentry flight profile(s), including—

(1) Launch and reentry site(s), including planned contingency abort locations, if any;

(2) Flight trajectories, reentry trajectories, associated ground tracks, and instantaneous impact points for nominal operations, and contingency abort profiles, if any;

(3) Sequence of planned events or maneuvers during the mission; and for an orbital mission, the range of intermediate and final orbits of the vehicle and upper stages, if any, and their estimated orbital life times.

§431.27 Denial of policy approval.

The FAA notifies an applicant, in writing, if the FAA has denied policy approval for an RLV mission license application. The notice states the reasons for the FAA's determination. The applicant may respond to the reasons for the determination and request reconsideration.

§§431.28–431.30 [Reserved]

Subpart C—Safety Review and Approval for Launch and Reentry of a Reusable Launch Vehicle

§431.31 General.

(a) The FAA conducts a safety review to determine whether an applicant is capable of launching an RLV and payload, if any, from a designated launch site, and reentering the RLV and payload, if any, to a designated reentry site or location, or otherwise landing it on Earth, without jeopardizing public health and safety and the safety of property.

(b) The FAA issues a safety approval to an RLV mission license applicant that satisfies the requirements of this Subpart. The FAA evaluates on an individual basis all public safety aspects of a proposed RLV mission to ensure they are sufficient to support safe conduct of the mission. A safety approval is part of the licensing record on which the FAA's licensing determination is based.

(c) The FAA advises an applicant, in writing, of any issue raised during a safety review that would impede issuance of a safety approval. The applicant may respond, in writing, or revise its license application.

§431.33 Safety organization.

(a) An applicant shall maintain a safety organization and document it by identifying lines of communication and approval authority for all mission decisions that may affect public safety. Lines of communication within the applicant's organization, between the applicant and the launch site, and between the applicant and the reentry site, shall be employed to ensure that personnel perform RLV mission operations in accordance with plans and procedures required by this subpart. Approval authority shall be employed to ensure compliance with terms and conditions stated in an RLV mission license and with the plans and procedures required by this subpart.

(b) An applicant must designate a person responsible for the conduct of all licensed RLV mission activities.

(c) An applicant shall designate by name, title, and qualifications, a qualified safety official authorized by the applicant to examine all aspects of the applicant's operations with respect to safety of RLV mission activities and to monitor independently compliance by vehicle safety operations personnel with the applicant's safety policies and procedures. The safety official shall report directly to the person responsible for an applicant's licensed RLV mission activities, who shall ensure that all of the safety official's concerns are addressed both before a mission is initiated and before reentry or descent flight of an RLV is initiated. The safety official is responsible for—

(1) Monitoring and evaluating operational dress rehearsals to ensure they are conducted in accordance with procedures required by §431.37(a)(4) and under §431.37(a)(1)(iv) to ensure the readiness of vehiclesafety operations personnel to conduct a safe mission under nominal and non-nominal conditions; and

(2) Completing a mission readiness determination as required by §431.37 before an RLV mission is initiated. The

safety official must monitor and report to the person responsible for the conduct of licensed RLV mission activities any non-compliance with procedures listed in §§ 431.37 and 431.43, or any representation contained in the application, and the readiness of the licensee to conduct mission operations in accordance with the license and this part. The safety official is responsible for compliance with §§ 431.37 and 431.43, and with representations contained in the application.

§ 431.35 Acceptable reusable launch vehicle mission risk.

(a) To obtain safety approval for an RLV mission, an applicant must demonstrate that the proposed mission does not exceed acceptable risk as defined in this subpart. For purposes of this section, the mission commences upon initiation of the launch phase of flight and consists of launch flight through orbital insertion of an RLV or vehicle stage or flight to outer space, whichever is applicable, and reentry or descent flight, and concludes upon landing on Earth of the RLV.

(b) Acceptable risk for a proposed mission is measured in terms of the expected average number of casualties (E_c).

(1) To obtain safety approval, an applicant shall demonstrate:

(i) For public risk, the risk level to the collective members of the public exposed to vehicle or vehicle debris impact hazards associated with a proposed mission does not exceed an expected average number of 0.00003 casualties per mission (or E_c criterion of 30×10^{-6}) to members of the public from the applicant's proposed activity; and

(ii) For public risk, the risk level to an individual does not exceed .000001 per mission (or individual risk criterion of 1×10^{-6}).

(2) [Reserved]

(c) To demonstrate compliance with acceptable risk criteria in this section, an applicant shall employ a system safety process to identify the hazards and assess the risks to public health and safety and the safety of property associated with the mission, including nominal and non-nominal operation and flight of the vehicle and payload, if any. An acceptable system safety analysis identifies and assesses the probability and consequences of any reasonably foreseeable hazardous event, and safety-critical system failures during launch flight or reentry that could result in a casualty to the public.

(d) As part of the demonstration required under paragraph (c) of this section, an applicant must—

(1) Identify and describe the structure of the RLV, including physical dimensions and weight;

(2) Identify and describe any hazardous materials, including radioactive materials, and their container on the RLV;

(3) Identify and describe safety-critical systems;

(4) Identify and describe all safety-critical failure modes and their consequences;

(5) Provide drawings and schematics for eachsafety-critical system identified under paragraph (d)(3) of this section;

(6) Provide a timeline identifying all safety-critical events;

(7) Provide data that validates the applicant's system safety analyses required in paragraph (c) of this section; and

(8) Provide flight trajectory analyses covering launch or ascent of the vehicle through orbital insertion and reentry or descent of the vehicle through landing, including its three-sigma dispersion.

§ 431.37 Mission readiness.

(a) *Mission readiness requirements.* An applicant shall submit the following procedures for verifying mission readiness:

(1) Mission readiness review procedures that involve the applicant's vehicle safety operations personnel, and launch site and reentry site personnel involved in the mission. The procedures shall ensure a mission readiness review is conducted during which the designated individual responsible for the conduct of licensed activities under § 431.33(b) is provided with the following information to make a judgment as to mission readiness—

(i) Readiness of the RLV including safety-critical systems and payload for launch and reentry flight;

(ii) Readiness of the launch site, personnel, and safety-related launch property and launch services to be provided by the launch site;

(iii) Readiness of the reentry site, personnel, and safety-related property and services for reentry flight and vehicle recovery;

(iv) Readiness of vehicle safety operations personnel to support mission flight, including results of dress rehearsals and simulations conducted in accordance with paragraph (a)(4) of this section;

(v) Mission rules and constraints, including contingency abort plans and procedures, if any, as required under §431.39;

(vi) Unresolved safety issues identified during the mission readiness review and plans for addressing them; and

(vii) Any additional safety information required by the individual designated under §431.33(b) to determine launch and reentry readiness.

(2) Procedures that ensure mission constraints, rules, contingency abort and emergency abort procedures are listed and consolidated in a safety directive or notebook approved by the person designated by the applicant under §431.33(b), the launch site operator, and the reentry site operator, if any;

(3) Procedures that ensure currency and consistency of licensee, launch site operator, and reentry site operator checklists;

(4) Dress rehearsal procedures that—

(i) Ensure crew readiness under nominal and non-nominal flight conditions;

(ii) Contain criteria for determining whether to dispense with or add one or more dress rehearsals; and

(iii) Verify currency and consistency of licensee, launch site operator, and reentry site operator checklists; and

(5) Procedures for ensuring the licensee's vehicle safety operations personnel adhere to crew rest rules of this part.

(b) [Reserved]

§431.39 Mission rules, procedures, contingency plans, and checklists.

(a) An applicant shall submit mission rules, procedures, checklists, emergency plans, and contingency abort plans, if any, that ensure safe conduct of mission operations during nominal and non-nominal vehicle flight.

(b) Mission rules, procedures, checklists, emergency plans, and contingency abort plans must be contained in a safety directive, notebook, or other compilation that is approved by the safety official designated under §431.33(c) and concurred in by the launch site operator and reentry site operator, if any.

(c) Vehicle safety operations personnel must have current and consistent mission checklists.

§431.41 Communications plan.

(a) An applicant shall submit a plan providing vehicle safety operations personnel communications procedures during the mission. Procedures for effective issuance and communication of safety-critical information during the mission shall include hold/resume, go/no go, contingency abort, if any, and emergency abort commands by vehicle safety operations personnel. The communications plan shall describe the authority of vehicle safety operations personnel, by individual or position title, to issue these commands. The communications plan shall ensure that—

(1) Communication networks are assigned so that personnel identified under this section have direct access to real-time, safety-critical information required for making decisions and issuing commands;

(2) Personnel identified under this section monitor a common intercom channel for safety-critical communications during launch and reentry;

(3) A protocol is established for utilizing defined radio communications terminology; and

(4) Communications affecting the safety of the mission are recorded in a manner that accurately reflects communications made on individual channels, synchronized time coding, and sequence of communications.

(b) An applicant shall submit procedures to ensure that licensee and reentry site personnel, if any, receive a copy of the communications plan required by this section and that the reentry site operator, if any, concurs with the communications plan.

§ 431.43 Reusable launch vehicle mission operational requirements and restrictions.

(a) An applicant for RLV mission safety approval shall submit procedures—

(1) That ensure RLV mission risks do not exceed the criteria set forth in § 431.35 for nominal and non-nominal operations;

(2) That ensure conformance with the system safety process and associated hazard identification and risk assessment required under § 431.35(c);

(3) That ensure conformance with operational restrictions listed in paragraphs (c) through (e) of this section;

(4) To monitor and verify the status of RLV safety-critical systems sufficiently before enabling both launch and reentry flight to ensure public safety and during mission flight unless technically infeasible; and

(5) For human activation or initiation of a flight safety system that safely aborts the launch of an RLV if the vehicle is not operating within approved mission parameters and the vehicle poses risk to public health and safety and the safety of property in excess of acceptable flight risk as defined in § 431.35.

(b) To satisfy risk criteria set forth in § 431.35(b)(1), an applicant for RLV mission safety approval shall identify suitable and attainable locations for nominal landing and vehicle staging impact or landing, if any. An application shall identify such locations for a contingency abort if necessary to satisfy risk criteria contained in § 431.35(b)(1) during launch of an RLV. A nominal landing, vehicle staging impact and contingency abort location are suitable for launch or reentry if—

(1) For any vehicle or vehicle stage, the area of the predicted three-sigma dispersion of the vehicle or vehicle stage can be wholly contained within the designated location; and

(2) The location is of sufficient size to contain landing impacts, including debris dispersion upon impact and any toxic release.

(c) For an RLV mission—

(1) A collision avoidance analysis shall be performed in order to maintain at least a 200-kilometer separation from any inhabitable orbiting object during launch and reentry. The analysis shall address:

(i) For launch, closures in a planned launch window for ascent to outer space or, for an orbital RLV, to initial orbit through at least one complete orbit;

(ii) For reentry, the reentry trajectory;

(iii) Expansions of the closure period by subtracting 15 seconds from the closure start-time and adding 15 seconds to the closure end-time for each sequential 90 minutes elapsed time period, or portion there of, beginning at the time the state vectors of the orbiting objects were determined;

(2) The projected instantaneous impact point (IIP) of the vehicle shall not have substantial dwell time over densely populated areas during any segment of mission flight;

(3) There will be no unplanned physical contact between the vehicle or its components and payload after payload separation and debris generation will not result from conversion of energy sources into energy that fragments the vehicle or its payload. Energy sources include, but are not limited to, chemical, pneumatic, and kinetic energy; and

(4) Vehicle safety operations personnel shall adhere to the following work and rest standards:

(i) A maximum 12-hour work shift with at least 8 hours of rest after 12 hours of work, preceding initiation of an RLV reentry mission or during the conduct of a mission;

(ii) A maximum of 60 hours worked in the 7 days, preceding initiation of an RLV mission;

(iii) A maximum of 14 consecutive work days; and

(iv) A minimum 48-hour rest period after 5 consecutive days of 12-hour shifts.

(d) In addition to requirements of paragraph (c) of this section, any unproven RLV may only be operated so that during any portion of flight—

(1) The projected instantaneous impact point (IIP) of the vehicle does not have substantial dwell time over populated areas; or

(2) The expected average number of casualties to members of the public does not exceed 30×10^{-6} ($E_c \leq 30 \times 10^{-6}$)

given a probability of vehicle failure equal to 1 (pf=1) at any time the IIP is over a populated area;

(e) Any RLV that enters Earth orbit may only be operated such that the vehicle operator is able to—

(1) Monitor and verify the status of safety-critical systems before enabling reentry flight to assure the vehicle can reenter safely to Earth; and

(2) Issue a command enabling reentry flight of the vehicle. Reentry flight cannot be initiated autonomously under nominal circumstances without prior enable.

§431.45 Mishap investigation plan and emergency response plan.

(a) *Mishap investigation plan and emergency response plan.* An applicant shall submit a mishap investigation plan (MIP) containing the applicant's procedures for reporting and responding to launch and reentry accidents, launch and reentry incidents, or other mishaps, as defined in §401.5 of this chapter, that occur during the conduct of an RLV mission. An acceptable MIP satisfies the requirements of paragraphs (b)–(d) of this section. An applicant shall also submit an emergency response plan (ERP) that contains procedures for informing the affected public of a planned RLV mission. An acceptable ERP satisfies the requirements of paragraph (e) of this section. The MIP and ERP shall be signed by an individual authorized to sign and certify the application in accordance with §413.7(c) of this chapter, the person responsible for the conduct of all licensed RLV mission activities designated under §431.33(b) of this subpart, and the safety official designated under §431.33(c) of this subpart.

(b) *Report requirements.* A MIP shall provide for—

(1) Immediate notification to the FAA Washington Operations Center in case of a launch or reentry accident, launch or reentry incident, or a mishap that involves a fatality or serious injury (as defined in 49 CFR 830.2);

(2) Notification within 24 hours to the Associate Administrator for Commercial Space Transportation in the event of a mishap that does not involve a fatality or serious injury, as defined in 49 CFR 830.2; and

(3) Submission of a written preliminary report to the FAA Associate Administrator for Commercial Space Transportation in the event of a launch accident or launch incident occurring in the conduct of an RLV mission, or reentry accident or reentry incident, occurring in the conduct of an RLV mission, within 5 days of the event. The report shall identify the event as either a launch or reentry accident or incident and must include the following information:

(i) Date and time of occurrence;

(ii) Description of the event and sequence of events leading to the accident or incident, to the extent known;

(iii) Intended and actual location of launch and reentry or other landing on Earth;

(iv) Identification of the vehicle;

(v) Identification of the payload, if applicable;

(vi) Number and general description of any fatalities and injuries;

(vii) Property damage, if any, and an estimate of its value;

(viii) Identification of hazardous materials, as defined in §401.5 of this chapter, involved in the event, whether on the vehicle, payload, or on the ground;

(ix) Action taken by any person to contain the consequences of the event;

(x) Weather conditions at the time of the event; and

(xi) Potential consequences for other vehicles or systems of similar type and proposed operations.

(c) *Response plan.* A MIP must contain procedures to—

(1) Ensure the consequences of a launch accident, launch incident, reentry accident, reentry incident, or other mishap occurring in the conduct of an RLV mission are contained and minimized;

(2) Ensure data and physical evidence are preserved;

(3) Require the licensee to report and to cooperate with FAA and the National Transportation Safety Board investigations and designate one or more points of contact for the FAA or NTSB; and;

(4) Require the licensee to identify and adopt preventive measures for avoiding recurrence of the event.

(d) *Investigation plan.* A MIP shall contain—

(1) Procedures for investigating the cause of an event described in paragraph (c)(1) of this section;

(2) Procedures for reporting investigation results to the FAA;

(3) Delineated responsibilities, including reporting responsibilities, for personnel assigned to conduct investigations and for any unrelated entities retained by the licensee to conduct or participate in investigations.

(e) *Emergency response plan.* An ERP shall provide for—

(1) Notification to local officials in the event of an off-site or unplanned landing so that vehicle recovery can be conducted safely and effectively and with minimal risk to public safety. The plan must provide for the quick dissemination of up to date information to the public, and for doing so in advance of reentry or other landing on Earth to the extent practicable; and

(2) A public information dissemination plan for informing the potentially affected public, in laymen's terms and in advance of a planned reentry, of the estimated date, time and landing location for the reentry activity.

§ 431.47 Denial of safety approval.

The FAA notifies an applicant, in writing, if the FAA has denied safety approval for an RLV mission license application. The notice states the reasons for the FAA's determination. The applicant may respond to the reasons for the determination and request reconsideration.

§§ 431.48–431.50 [Reserved]

Subpart D—Payload Reentry Review and Determination

§ 431.51 General.

(a) A payload reentry review is conducted to examine the policy and safety issues related to the proposed reentry of a payload, other than a U.S. Government payload or a payload whose reentry is subject to regulation by another Federal agency, to determine whether the FAA will approve reentry of the payload.

(b) A payload reentry review may be conducted as part of an RLV mission license application review or may be requested by a payload owner or operator in advance of or separate from an RLV mission license application.

(c) A payload reentry determination will be made part of the licensing record on which the FAA's licensing determination is based.

§ 431.53 Classes of payloads.

(a) The FAA may approve the return of a type or class of payload (for example, communications or microgravity/scientific satellites).

(b) The RLV mission licensee that will return a payload approved for reentry under this section, is responsible for providing current information in accordance with § 431.57 regarding the payload proposed for reentry no later than 60 days before a scheduled RLV mission involving that payload.

§ 431.55 Payload reentry review.

(a) In conducting a payload reentry review to decide if the FAA should approve reentry of a payload, the FAA determines whether its reentry presents any issues that would adversely affect U.S. national security or foreign policy interests, would jeopardize public health and safety or the safety of property, or would not be consistent with international obligations of the United States.

(b) The FAA consults with the Department of Defense to determine whether reentry of a proposed payload presents any issues adversely affecting U.S. national security.

(c) The FAA consults with the Department of State to determine whether reentry of a proposed payload presents any issues adversely affecting U.S. foreign policy interests or international obligations.

(d) The FAA consults with other Federal agencies, including the National Aeronautics and Space Administration, authorized to address issues identified under paragraph (a) of this section.

(e) The FAA advises a person requesting a payload reentry determination, in writing, of any issue raised during a payload reentry review that would impede the issuance of a favorable determination to reenter that payload. The person requesting a payload reentry review may respond, in writing, or revise its application.

§431.57 Information requirements for payload reentry review.

A person requesting reentry review of a particular payload or payload class must identify the following:

(a) Payload name or class and function;

(b) Physical characteristics, dimensions, and weight of the payload;

(c) Payload owner and operator, if different from the person requesting the payload reentry review;

(d) Type, amount, and container of hazardous materials, as defined in §401.5 of this chapter, and radioactive materials in the payload;

(e) Explosive potential of payload materials, alone and in combination with other materials found on the payload or RLV during reentry;

(f) Designated reentry site(s); and

(g) Method for securing the payload on the RLV.

§431.59 Issuance of payload reentry determination.

(a) The FAA issues a favorable payload reentry determination unless it determines that reentry of the proposed payload would adversely affect U.S. national security or foreign policy interests, would jeopardize public health and safety or the safety of property, or would not be consistent with international obligations of the United States. The FAA responds to any person who has requested a payload reentry review of its determination in writing. The notice states the reasons for the determination in the event of an unfavorable determination.

(b) Any person issued an unfavorable payload reentry determination may respond to the reasons for the determination and request reconsideration.

§431.61 Incorporation of payload reentry determination in license application.

A favorable payload reentry determination issued for a payload or class of payload may be included by an RLV mission license applicant as part of its application. Before the conduct of an RLV mission involving a payload approved for reentry, any change in information provided under §431.57 must be reported by the licensee in accordance with §413.17 of this chapter. The FAA determines whether a favorable payload reentry determination remains valid and may conduct an additional payload reentry review.

§§431.62–431.70 [Reserved]

Subpart E—Post-Licensing Requirements—Reusable Launch Vehicle Mission License Terms and Conditions

§431.71 Public safety responsibility.

(a) A licensee is responsible for ensuring the safe conduct of an RLV mission and for protecting public health and safety and the safety of property during the conduct of the mission.

(b) A licensee must conduct a licensed RLV mission and perform RLV safety procedures in accordance with representations made in its license application. A licensee's failure to perform safety procedures in accordance with the representations made in the license application or comply with any license condition is sufficient basis for the revocation of a license or other appropriate nforcement action.

§431.73 Continuing accuracy of license application; application for modification of license.

(a) A licensee is responsible for the continuing accuracy of representations contained in its application for the entire term of the license.

(b) After a license has been issued, a licensee must apply to the FAA for modification of the license if—

(1) The licensee proposes to conduct an RLV mission or perform a safety-critical operation in a manner not authorized by the license; or

(2) Any representation contained in the license application that is material to public health and safety or the safety of property is no longer accurate and complete or does not reflect the licensee's procedures governing the actual conduct of an RLV mission. A change is material to public health and safety or the safety of property if it alters or affects the—

(i) Mission rules, procedures, checklists, emergency plans, and contingency abort plans, if any, submitted in accordance with §431.39

(ii) Class of payload;

(iii) Type of RLV;

(iv) Any safety-critical system;

(v) Type and container of the hazardous material carried by the vehicle;

(vi) Flight trajectory;

(vii) Launch site or reentry site or other landing location; or

(viii) Any safety system, policy, procedure, requirement, criteria, or standard.

(c) An application to modify an RLV mission license must be prepared and submitted in accordance with part 413 of this chapter. The licensee must indicate any part of its license or license application that would be changed or affected by a proposed modification.

(d) The FAA reviews determinations and approvals required by this chapter to determine whether they remain valid after submission of a proposed modification.

(e) Upon approval of a modification, the FAA issues either a written approval to the licensee or a license order amending the license if a stated term or condition of the license is changed, added, or deleted. An approval has the full force and effect of a license order and is part of the licensing record.

§ 431.75 Agreements.

(a) *Launch and reentry site use agreements.* Before conducting a licensed RLV mission using property and services of a Federal launch range or licensed launch or reentry site operator, a licensee or applicant shall enter into an agreement with the Federal launch range and/or licensed site operator that provides for access to and use of property and services required to support a licensed RLV mission or reentry and for public safety related operations and support. The agreement shall be in effect before any licensed RLV mission or reentry. A licensee shall comply with any requirements of the agreement that may affect public health and safety and the safety of property during the conduct of its licensed activity.

(b) *Agreements for notices to mariners and airmen.* Unless otherwise addressed in agreements between a licensed launch site operator and the U.S. Coast Guard and the FAA, respectively, a licensee authorized to conduct an RLV mission using a launch site or reentry site other than a Federal launch range shall complete the following:

(1) An agreement between the licensee and the local U.S. Coast Guard district to establish procedures for the issuance of a Notice to Mariners prior to a launch or reentry and other measures as the Coast Guard deems necessary to protect public health and safety; and

(2) An agreement between the licensee and the FAA regional office having jurisdiction over the airspace through which a launch and reentry will take place, to establish procedures for the issuance of a Notice to Airmen prior to the conduct of a licensed launch or reentry and for closing of air routes during the respective launch and reentry windows and other measures deemed necessary by the FAA regional office in order to protect public health and safety.

§ 431.77 Records.

(a) Except as specified in paragraph (b) of this section, a licensee shall maintain for 3 years all records, data, and other material necessary to verify that a licensed RLV mission is conducted in accordance with representations contained in the licensee's application.

(b) In the event of a launch accident, reentry accident, launch incident or reentry incident, as defined in §401.5 of this chapter, a licensee shall preserve all records related to the event. Records must be retained until completion of any Federal investigation and the FAA advises the licensee that the records need not be retained. The licensee shall make all records required to be maintained under the regulations available to Federal officials for inspection and copying.

§ 431.79 Reusable launch vehicle mission reporting requirements.

(a) Not less than 60 days before each RLV mission conducted under a license, a licensee shall provide the FAA with the following information:

(1) Payload information in accordance with 14 CFR §415.59 of this chapter and §431.57; and

(2) Flight information, including the vehicle, launch site, planned launch and reentry flight path, and intended

landing sites including contingency abort sites.

(3) Launch or reentry waivers, approved or pending, from a federal Federal range for at which the launch or reentry will take place, that are unique and may affect public safety.

(b) Not later than 15 days before each licensed RLV mission, a licensee must notify the FAA, in writing, of the time and date of the intended launch and reentry or other landing on Earth of the RLV and may utilize the FAA/U.S. Space Command Launch Notification Form, contained in part 415, Appendix A, of this subchapter for doing so.

(c) A licensee must report a launch accident, launch incident, reentry accident, reentry incident, or other mishap immediately to the FAA Washington Operations Center and provide a written preliminary report in the event of a launch accident, launch incident, reentry accident, or reentry incident, in accordance with the mishap investigation and emergency response plan submitted as part of its license application under § 431.45.

§ 431.81 Financial responsibility requirements.

A licensee under this part must comply with financial responsibility requirements specified in its license.

§ 431.83 Compliance monitoring.

A licensee shall allow access by, and cooperate with, Federal officers or employees or other individuals authorized by the FAA to observe any activities of the licensee, or of the licensee's contractors or subcontractors, associated with the conduct of a licensed RLV mission.

§ 431.85 Registration of space objects.

(a) To assist the U.S. Government in implementing Article IV of the 1975 Convention on Registration of Objects Launched into Outer Space, each licensee shall provide to the FAA the information required by paragraph (b) of this section for all objects placed in space by a licensed RLV mission, including an RLV and any components, except:

(1) Any object owned and registered by the U.S. Government; and

(2) Any object owned by a foreign entity.

(b) For each object that must be registered in accordance with this section, a licensee shall submit the following information not later than thirty (30) days following the conduct of a licensed RLV mission :

(1) The international designator of the space object(s);

(2) Date and location of the RLV mission initiation;

(3) General function of the space object; and

(4) Final orbital parameters, including:

(i) Nodal period;

(ii) Inclination;

(iii) Apogee; and

(iv) Perigee.

(c) A licensee shall notify the FAA when it removes an object that it has previously placed in space.

§§ 431.86–431.90 [Reserved]

Subpart F—Environmental Review

§ 431.91 General.

An applicant shall provide the FAA with sufficient information to analyze the environmental impacts associated with proposed operation of an RLV, including the impacts of anticipated activities to be performed at its reentry site. The information provided by an applicant must be sufficient to enable the FAA to comply with the requirements of the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.,* the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, 40 CFR parts 1500–1508, and the FAA's Procedures for Considering Environmental Impacts, FAA Order 1050.1D. Copies of FAA Order 1050.1D may be obtained from the Office of Environment and Energy, AEE–300, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, (202) 267–3553. Copies of FAA Order 1050.1D may be inspected in the Rules Docket at the Federal Aviation Administration, Office of the Chief Counsel, AGC–200, Room 915G, 800 Independence Avenue SW., Washington, DC 20591 weekdays between 8:30 a.m. and 5:00 p.m.

§ 431.93 Environmental information.

An applicant shall submit environmental information concerning—

(a) A designated launch and reentry site, including contingency abort locations, if any, not covered by existing FAA or other Federal environmental documentation;

(b) A proposed new RLV with characteristics falling measurably outside the parameters of existing environmental documentation;

(c) A proposed reentry to an established reentry site involving an RLV with characteristics falling measurably outside the parameters of existing environmental impact statements covering that site;

(d) A proposed payload that may have significant environmental impacts in the event of a reentry accident; and

(e) Other factors as necessary to comply with the National Environmental Policy Act.

PART 432 [RESERVED]

PART 433—LICENSE TO OPERATE A REENTRY SITE

Subpart A—General

Sec.

433.1 General.
433.3 Issuance of a license to operate a reentry site.
433.5 Operational restrictions on a reentry site.
433.7 Environmental.
433.9 Environmental information.

AUTHORITY: 49 U.S.C. 70101–70121.

SOURCE: Docket No. FAA–1999–5535, 65 FR 56665, Sept. 19, 2000, unless otherwise noted.

§ 433.1 General.

The FAA evaluates on an individual basis an applicant's proposal to operate a reentry site.

§ 433.3 Issuance of a license to operate a reentry site.

(a) The FAA issues a license to operate a reentry site when it determines that an applicant's operation of the reentry site does not jeopardize public health and safety, the safety of property, U.S. national security or foreign policy interests, or international obligations of the United States.

(b) A license to operate a reentry site authorizes a licensee to operate a reentry site in accordance with the representations contained in the licensee's application, subject to the licensee's compliance with terms and conditions contained in any license order accompanying the license.

§ 433.5 Operational restrictions on a reentry site.

A license to operate a reentry site authorizes the licensee to offer use of the site to support reentry of a reentry vehicle for which the three-sigma footprint of the vehicle upon reentry is wholly contained within the site.

§ 433.7 Environmental.

An applicant shall provide the FAA with information for the FAA to analyze the environmental impacts associated with proposed operation of a reentry site. The information provided by an applicant must be sufficient to enable the FAA to comply with the requirements of the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.* (NEPA), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA, 40 CFR Parts 1500–1508, and the FAA's Procedures for Consideration Environmental Impacts, FAA Order 1050.1D.

§ 433.9 Environmental information.

An applicant shall submit environmental information concerning a proposed reentry site not covered by existing environmental documentation for purposes of assessing reentry impacts.

PART 434 [RESERVED]

PART 435—REENTRY OF A REENTRY VEHICLE OTHER THAN A REUSABLE LAUNCH VEHICLE (RLV)

Subpart A—General

Sec.

435.1 Scope.
435.3 Types of reentry licenses.
435.5 Policy and safety approvals.
435.7 Payload reentry determination.
435.9 Issuance of a reentry license.
435.11 Additional license terms and conditions.

435.13 Transfer of a reentry license.
435.15 Rights not conferred by reentry license.
435.16–435.20 [Reserved]

Subpart B—Policy Review and Approval for Reentry of a Reentry Vehicle

435.21 General.
435.23 Policy review requirements and procedures.
435.24–435.30 [Reserved]

Subpart C—Safety Review and Approval for Reentry of a Reentry Vehicle

435.31 General.
435.33 Safety review requirements and procedures.
435.35 Acceptable reentry risk for reentry of a reentry vehicle.
435.36–435.40 [Reserved]

Subpart D—Payload Reentry Review and Determination

435.41 General.
435.43 Payload reentry review requirements and procedures.
435.44–435.50 [Reserved]

Subpart E—Post-Licensing Requirements—Reentry License Terms and Conditions

435.51 General.
435.52–435.60 [Reserved]

Subpart F—Environmental Review

435.61 General.
435.62–435.70 [Reserved]

AUTHORITY: 49 U.S.C. 70101–70121.

SOURCE: Docket No. FAA–1999–5535, 65 FR 56665, Sept. 19, 2000, unless otherwise noted.

Subpart A—General

§ 435.1 Scope.

This part prescribes requirements for obtaining a license to reenter a reentry vehicle other than a reusable launch vehicle (RLV), and post-licensing requirements with which a licensee must comply to remain licensed. Requirements for preparing a license application are contained in part 413 of this subchapter.

§ 435.3 Types of reentry licenses.

(a) *Reentry-specific license.* A reentry-specific license authorizes a licensee to reenter one model or type of reentry vehicle, other than an RLV, to a reentry site or other location approved for the reentry. A reentry-specific license may authorize more than one reentry and identifies each reentry authorized under the license. A licensee's authorization to reenter terminates upon completion of all activities authorized by the license or the expiration date stated in the reentry license, whichever occurs first.

(b) *Reentry-operator license.* A reentry operator license authorizes a licensee to reenter any of a designated family of reentry vehicles, other than an RLV, within authorized parameters, including trajectories, transporting specified classes of payloads to any reentry site designated in the license. A reentry operator license is valid for a 2-year renewable term.

§ 435.5 Policy and safety approvals.

To obtain a reentry license, an applicant must obtain policy and safety approvals from the FAA. Requirements for obtaining these approvals are contained in subparts B and C of this part. Only a reentry license applicant may apply for the approvals, and may apply for either approval separately and in advance of submitting a complete license application, using the application procedures contained in part 413 of this subchapter.

§ 435.7 Payload reentry determination.

(a) A payload reentry determination is required to transport a payload to Earth on a reentry vehicle unless the proposed payload is exempt from payload review.

(b) A payload reentry determination made under a previous license application under this subchapter may satisfy the requirements of paragraph (a) of this section.

(c) The FAA conducts a review, as described in subpart D of this part, to make a payload reentry determination. Either a reentry license applicant or a payload owner or operator may request a review of the proposed payload using the application procedures contained in part 413 of this subchapter. Upon receipt of an application, the FAA may conduct a payload reentry review independently of a reentry license application.

§ 435.9 Issuance of a reentry license.

(a) The FAA issues a reentry license to an applicant who has obtained all approvals and determinations required under this chapter for a reentry license.

(b) A reentry license authorizes a licensee to reenter a reentry vehicle and payload, if any, in accordance with the representations contained in the reentry licensee's application, subject to the licensee's compliance with terms and conditions contained in license orders accompanying the reentry license, including financial responsibility requirements.

§ 435.11 Additional license terms and conditions.

The FAA may amend a reentry license at any time by modifying or adding license terms and conditions to ensure compliance with 49 U.S.C. Subtitle IX, chapter 701, and applicable regulations.

§ 435.13 Transfer of a reentry license.

(a) Only the FAA may transfer a reentry license.

(b) An applicant for transfer of a reentry license shall submit a reentry license application in accordance with part 413 of this subchapter and satisfy the applicable requirements of this part. The FAA will transfer a reentry license to an applicant who has obtained all of the approvals and determinations required under this chapter for a reentry license. In conducting its reviews and issuing approvals and determinations, the FAA may incorporate any findings made part of the record to support the initial licensing determination. The FAA may modify a reentry license to reflect any changes necessary as a result of a reentry license transfer.

§ 435.15 Rights not conferred by reentry license.

Issuance of a reentry license does not relieve a licensee of its obligation to comply with requirements of law that may apply to its activities.

§§ 435.16–431.20 [Reserved]

Subpart B—Policy Review and Approval for Reentry of a Reentry Vehicle

§ 435.21 General.

The FAA issues a policy approval to a reentry license applicant upon completion of a favorable policy review. A policy approval is part of the licensing record on which the licensing determination is based.

§ 435.23 Policy review requirements and procedures.

Unless otherwise indicated in this subpart, regulations applicable to policy review and approval of the reentry of an RLV contained in part 431, subpart B of this subchapter shall apply to the policy review conducted for a license to reenter a reentry vehicle under this part.

§§ 435.24–435.30 [Reserved]

Subpart C—Safety Review and Approval for Reentry of a Reentry Vehicle

§ 435.31 General.

The FAA conducts a safety review to determine whether an applicant is capable of reentering a reentry vehicle and payload, if any, to a designated reentry site without jeopardizing public health and safety and the safety of property. A safety approval is part of the licensing record on which the licensing determination is based.

§ 435.33 Safety review requirements and procedures.

Unless otherwise stated in this subpart, regulations applicable to safety review and approval of the reentry of an RLV contained in part 431, subpart C of this subchapter shall apply to the safety review conducted for a license to reenter a reentry vehicle under this part.

§ 435.35 Acceptable reentry risk for reentry of a reentry vehicle.

To obtain safety approval for reentry, an applicant must demonstrate that risk for the proposed reentry,

when assessed in combination with launch of the reentry vehicle, does not exceed acceptable risk for the conduct of an RLV mission as defined in paragraphs (a) and (b) of § 431.35 of this subchapter.

§§ 435.36–435.40 [Reserved]

Subpart D—Payload Reentry Review and Determination

§ 435.41 General.

The FAA conducts a payload reentry review to examine the policy and safety issues related to the proposed reentry of a payload, except a U.S. Government payload, to determine whether the FAA will approve the reentry of the payload.

§ 435.43 Payload reentry review requirements and procedures.

Unless otherwise indicated in this subpart, regulations contained in part 431, subpart D of this subchapter applicable to a payload reentry review and determination for reentering a payload using an RLV shall apply to the payload reentry review conducted for a license to reenter a reentry vehicle under this part.

§§ 435.44–435.50 [Reserved]

Subpart E—Post-Licensing Requirements—Reentry License Terms and Conditions

§ 435.51 General.

Unless otherwise indicated in this subpart, post-licensing requirements contained in part 431 subpart E, of this subchapter applicable to a license to reenter an RLV shall apply to a license issued under this part.

§§ 435.52–435.60 [Reserved]

Subpart F—Environmental Review

§ 435.61 General.

Unless otherwise indicated in this subpart, environmental review requirements contained in part 431 subpart F, applicable to a license to reenter an RLV shall apply to an application for a reentry license under this part.

§§ 435.62–435.70 [Reserved]

PARTS 436–439 [RESERVED]

PART 440—FINANCIAL RESPONSIBILITY

Subpart A—Financial Responsibility for Licensed Launch Activities

Sec.

440.1 Scope of part.
440.3 Definitions.
440.5 General.
440.7 Determination of maximum probable loss.
440.9 Insurance requirements for licensed launch activities.
440.11 Duration of coverage; Modifications.
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APPENDIX A TO PART 440—INFORMATION REQUIREMENTS FOR OBTAINING A MAXIMUM PROBABLE LOSS DETERMINATION FOR LICENSED LAUNCH ACTIVITIES
APPENDIX B TO PART 440—AGREEMENT FOR WAIVER OF CLAIMS AND ASSUMPTION OF RESPONSIBILITY

AUTHORITY: 49 U.S.C. 70101–70119; 49 CFR 1.47.

SOURCE: Docket No. 28635, 63 FR 45619, Aug. 26, 1998, unless otherwise noted.

Subpart A—Financial Responsibility for Licensed Launch Activities

§ 440.1 Scope of part.

This part sets forth financial responsibility and allocation of risk requirements applicable to commercial space launch activities that are authorized to be conducted under a launch license issued pursuant to this subchapter.

§ 440.3 Definitions.

(a) For purposes of this part—

(1) *Bodily injury* means physical injury, sickness, disease, disability, shock, mental anguish, or mental injury sustained by any person, including death.

(2) *Contractors and subcontractors* means those entities that are involved

at any tier, directly or indirectly, in licensed launch activities, and includes suppliers of property and services, and the component manufacturers of a launch vehicle or payload.

(3) *Customer* means the person who procures launch services from the licensee, any person to whom the customer has sold, leased, assigned, or otherwise transferred its rights in the payload (or any part thereof) to be launched by the licensee, including a conditional sale, lease, assignment, or transfer of rights, any person who has placed property on board the payload for launch or payload services, and any person to whom the customer has transferred its rights to the launch services.

(4) *Federal range facility* means a Government-owned installation at which launches take place.

(5) *Financial responsibility* means statutorily required financial ability to satisfy liability as required under 49 U.S.C. 70101–70119.

(6) *Government personnel* means employees of the United States, its agencies, and its contractors and subcontractors, involved in launch services for licensed launch activities. Employees of the United States include members of the Armed Forces of the United States.

(7) *Hazardous operations* means activities, processes, and procedures that, because of the nature of the equipment, facilities, personnel, or environment involved or function being performed, may result in bodily injury or property damage.

(8) *Liability* means a legal obligation to pay claims for bodily injury or property damage resulting from licensed launch activities.

(9) *License* means an authorization to conduct licensed launch activities, issued by the Office under this subchapter.

(10) *Licensed launch activities* means the launch of a launch vehicle as defined in a regulation or license issued by the Office and carried out pursuant to a launch license.

(11) *Maximum probable loss (MPL)* means the greatest dollar amount of loss for bodily injury or property damage that is reasonably expected to result from licensed launch activities;

(i) Losses to third parties, excluding Government personnel and other launch participants' employees involved in licensed launch activities, that are reasonably expected to result from licensed launch activities are those having a probability of occurrence on the order of no less than one in ten million.

(ii) Losses to Government property and Government personnel involved in licensed launch activities that are reasonably expected to result from licensed launch activities are those having a probability of occurrence on the order of no less than one in one hundred thousand.

(12) *Office* means the Associate Administrator for Commercial Space Transportation of the Federal Aviation Administration, U.S. Department of Transportation.

(13) *Property damage* means partial or total destruction, impairment, or loss of tangible property, real or personal.

(14) *Regulations* means the Commercial Space Transportation Licensing Regulations, codified at 14 CFR Ch. III.

(15) *Third party* means:

(i) Any person other than:

(A) The United States, its agencies, and its contractors and subcontractors involved in launch services for licensed launch activities;

(B) The licensee and its contractors and subcontractors involved in launch services for licensed launch activities; and

(C) The customer and its contractors and subcontractors involved in launch services for licensed launch activities.

(ii) Government personnel, as defined in this section, are third parties.

(16) *United States* means the United States Government, including its agencies.

(b) Except as otherwise provided in this section, any term used in this part and defined in 49 U.S.C. 70101–70119, or in § 401.5 of this chapter shall have the meaning contained therein.

§ 440.5 General.

(a) No person shall commence or conduct launch activities that require a license unless that person has obtained a license and fully demonstrated compliance with the financial responsibility

and allocation of risk requirements set forth in this part.

(b) The Office shall prescribe the amount of financial responsibility a licensee is required to obtain and any additions to or modifications of the amount in a license order issued concurrent with or subsequent to the issuance of a license.

(c) Demonstration of financial responsibility under this part shall not relieve the licensee of ultimate responsibility for liability, loss, or damage sustained by the United States resulting from licensed launch activities, except to the extent that:

(1) Liability, loss, or damage sustained by the United States results from willful misconduct of the United States or its agents;

(2) Covered claims of third parties for bodily injury or property damage arising out of any particular launch exceed the amount of financial responsibility required under §440.9(c) of this part and do not exceed $1,500,000,000 (as adjusted for inflation occurring after January 1, 1989) above such amount, and are payable pursuant to 49 U.S.C. 70113 and §440.19 of this part. Claims of employees of entities listed in §440.3(a)(15)(i)(B) and (C) of this part for bodily injury or property damage are not covered claims;

(3) Covered claims for property loss or damage exceed the amount of financial responsibility required under §440.9(e) of this part and do not result from willful misconduct of the licensee; or

(4) The licensee has no liability for covered claims by third parties for bodily injury or property damage arising out of any particular launch that exceed $1,500,000,000 (as adjusted for inflation occurring after January 1, 1989) above the amount of financial responsibility required under §440.9(c) of this part.

(d) A licensee's failure to comply with the requirements in this part may result in suspension or revocation of a license, and subjects the licensee to civil penalties as provided in part 405 of this chapter.

§440.7 Determination of maximum probable loss.

(a) The Office shall determine the maximum probable loss (MPL) from covered claims by a third party for bodily injury or property damage, and the United States, its agencies, and its contractors and subcontractors for covered property damage or loss, resulting from licensed launch activities. The maximum probable loss determination forms the basis for financial responsibility requirements issued in a license order.

(b) The Office issues its determination of maximum probable loss no later than ninety days after a licensee or transferee has requested a determination and submitted all information required by the Office to make the determination. The Office shall consult with Federal agencies that are involved in, or whose personnel or property are exposed to risk of damage or loss as a result of, licensed launch activities before issuing a license order prescribing financial responsibility requirements and shall notify the licensee or transferee if interagency consultation may delay issuance of the MPL determination.

(c) Information requirements for obtaining a maximum probable loss determination are set forth in Appendix A of this part. Any person requesting a determination of maximum probable loss must submit information in accordance with Appendix A requirements, unless the Office has waived requirements. In lieu of submitting required information, a person requesting a maximum probable loss determination may designate and certify certain information previously submitted for a prior determination as complete, valid, and equally applicable to its current request. The requester is responsible for the continuing accuracy and completeness of information submitted under this part and shall promptly report any changes in writing.

(d) The Office shall amend a determination of maximum probable loss required under this section at any time prior to completion of licensed launch

activities as warranted by supplementary information provided to or obtained by the Office after the MPL determination is issued. Any change in financial responsibility requirements as a result of an amended MPL determination shall be set forth in a license order.

(e) The Office may make a determination of maximum probable loss at any time other than as set forth in paragraph (b) of this section upon request by any person.

[Doc. No. 28635, 63 FR 45619, Aug. 26, 1998; 63 FR 55175, Oct. 14, 1998]

§ 440.9 Insurance requirements for licensed launch activities.

(a) As a condition of each launch license, the licensee must comply with insurance requirements set forth in this section and in a license order issued by the Office, or otherwise demonstrate the required amount of financial responsibility.

(b) The licensee must obtain and maintain in effect a policy or policies of liability insurance, in an amount determined by the Office under paragraph (c) of this section, that protects the following persons as additional insureds to the extent of their respective potential liabilities against covered claims by a third party for bodily injury or property damage resulting from licensed launch activities:

(1) The licensee, its customer, and their respective contractors and subcontractors, and the employees of each, involved in licensed launch activities;

(2) The United States, its agencies, and its contractors and subcontractors involved in licensed launch activities; and

(3) Government personnel.

(c) The Office shall prescribe for each licensee the amount of insurance required to compensate the total of covered third-party claims for bodily injury or property damage resulting from licensed launch activities in connection with any particular launch. Covered third-party claims include claims by the United States, its agencies, and its contractors and subcontractors for damage or loss to property other than property for which insurance is required under paragraph (d) of this section. The amount of insurance required is based upon the Office's determination of maximum probable loss; however, it will not exceed the lesser of:

(1) $500 million; or

(2) The maximum liability insurance available on the world market at a reasonable cost, as determined by the Office.

(d) The licensee must obtain and maintain in effect a policy or policies of insurance, in an amount determined by the Office under paragraph (e) of this section, that covers claims by the United States, its agencies, and its contractors and subcontractors involved in licensed launch activities for property damage or loss resulting from licensed launch activities. Property covered by this insurance must include all property owned, leased, or occupied by, or within the care, custody, or control of, the United States and its agencies, and its contractors and subcontractors involved in licensed launch activities, at a Federal range facility. Insurance must protect the United States and its agencies, and its contractors and subcontractors involved in licensed launch activities.

(e) The Office shall prescribe for each licensee the amount of insurance required to compensate claims for property damage under paragraph (d) of this section resulting from licensed launch activities in connection with any particular launch. The amount of insurance is based upon a determination of maximum probable loss; however, it will not exceed the lesser of:

(1) $100 million; or

(2) The maximum available on the world market at a reasonable cost, as determined by the Office.

(f) In lieu of a policy of insurance, a licensee may demonstrate financial responsibility in another manner meeting the terms and conditions applicable to insurance as set forth in this part. The licensee must describe in detail the method proposed for demonstrating financial responsibility and how it assures that the licensee is able to cover claims as required under this part.

§ 440.11 Duration of coverage; modifications.

(a) Insurance coverage required under § 440.9, or other form of financial responsibility, shall attach upon commencement of licensed launch activities, and remain in full force and effect as follows:

(1) Until completion of licensed launch activities at the launch site; and

(2) For orbital launches, until the later of—

(i) Thirty days following payload separation, or attempted payload separation in the event of a payload separation anomaly; or

(ii) Thirty days from ignition of the launch vehicle.

(3) For suborbital launches, until the later of—

(i) Motor impact and payload recovery; or

(ii) The Office's determination that risk to third parties and Government property as a result of licensed launch activities is sufficiently small that financial responsibility is no longer necessary, as determined by the Office through the risk analysis conducted before the launch to determine MPL and specified in a license order.

(b) Financial responsibility required under this part may not be replaced, canceled, changed, withdrawn, or in any way modified to reduce the limits of liability or the extent of coverage, nor expire by its own terms, prior to the time specified in a license order, unless the Office is notified at least 30 days in advance and expressly approves the modification.

§ 440.13 Standard conditions of insurance coverage.

(a) Insurance obtained under § 440.9 shall comply with the following terms and conditions of coverage:

(1) Bankruptcy or insolvency of an insured, including any additional insured, shall not relieve the insurer of any of its obligations under any policy.

(2) Policy limits shall apply separately to each occurrence and, for each occurrence to the total of claims arising out of licensed launch activities in connection with any particular launch.

(3) Except as provided herein, each policy must pay claims from the first dollar of loss, without regard to any deductible, to the limits of the policy. A licensee may obtain a policy containing a deductible amount if the amount of the deductible is placed in an escrow account or otherwise demonstrated to be unobligated, unencumbered funds of the licensee, available to compensate claims at any time claims may arise.

(4) Each policy shall not be invalidated by any action or inaction of the licensee or any additional insured, including nonpayment by the licensee of the policy premium, and must insure the licensee and each additional insured regardless of any breach or violation of any warranties, declarations, or conditions contained in the policies by the licensee or any additional insured (other than a breach or violation by the licensee or an additional insured, and then only as against that licensee or additional insured).

(5) Exclusions from coverage must be specified.

(6) Insurance shall be primary without right of contribution from any other insurance that is carried by the licensee or any additional insured.

(7) Each policy must expressly provide that all of its provisions, except the policy limits, operate in the same manner as if there were a separate policy with and covering the licensee and each additional insured.

(8) Each policy must be placed with an insurer of recognized reputation and responsibility that is licensed to do business in any State, territory, possession of the United States, or the District of Columbia.

(9) Except as to claims resulting from the willful misconduct of the United States or its agents, the insurer shall waive any and all rights of subrogation against each of the parties protected by required insurance.

(b) [Reserved]

§ 440.15 Demonstration of compliance.

(a) A licensee must submit evidence of financial responsibility and compliance with allocation of risk requirements under this part, as follows, unless a license order specifies otherwise due to the proximity of the licensee's intended date for commencement of licensed launch activities:

(1) The three-party reciprocal waiver of claims agreement required under § 440.17(c) of this part must be submitted at least 30 days before commencement of licensed launch activities involving the customer that will sign the agreement;

(2) Evidence of insurance must be submitted at least 30 days before commencement of licensed launch activities;

(3) Evidence of financial responsibility in a form other than insurance, as provided under § 440.9(f) of this part, must be submitted at least 60 days before commencement of licensed launch activities; and

(4) Evidence of renewal of insurance or other form of financial responsibility must be submitted at least 30 days in advance of its expiration date.

(b) Upon a complete demonstration of compliance with financial responsibility and allocation of risk requirements under this part, the requirements shall preempt any provisions in agreements between the licensee and an agency of the United States governing access to or use of United States launch property or launch services for licensed launch activities which address financial responsibility, allocation of risk and related matters covered by 49 U.S.C. 70112, 70113.

(c) A licensee must demonstrate compliance as follows:

(1) The licensee must provide proof of insurance required under § 440.9 by:

(i) Certifying to the Office that it has obtained insurance in compliance with the requirements of this part and any applicable license order;

(ii) Filing with the Office one or more certificates of insurance evidencing insurance coverage by one or more insurers under a currently effective and properly endorsed policy or policies of insurance, applicable to licensed launch activities, on terms and conditions and in amounts prescribed under this part, and specifying policy exclusions;

(iii) In the event of any policy exclusions or limitations of coverage that may be considered usual under § 440.19(c) of this part, or for purposes of implementing the Government's waiver of claims for property damage under 49 U.S.C. 70112(b)(2), certifying that insurance covering the excluded risks is not commercially available at reasonable cost; and

(iv) Submitting to the Office, for signature by the Department on behalf of the United States Government, the waiver of claims and assumption of responsibility agreement required by § 440.17(c) of this part, executed by the licensee and its customer.

(2) Certifications required under this section must be signed by a duly authorized officer of the licensee.

(d) Certificate(s) of insurance required under paragraph (c)(1)(ii) of this section must be signed by the insurer issuing the policy and accompanied by an opinion of the insurance broker that the insurance obtained by the licensee complies with the specific requirements for insurance set forth in this part and any applicable license order.

(e) The licensee must maintain, and make available for inspection by the Office upon request, all required policies of insurance and other documents necessary to demonstrate compliance with this part.

(f) In the event the licensee demonstrates financial responsibility using means other than insurance, as provided under § 440.9(f) of this part, the licensee must provide proof that it has met the requirements set forth in this part and in a license order issued by the Office.

§ 440.17 Reciprocal waiver of claims requirements.

(a) As a condition of each launch license, the licensee shall comply with reciprocal waiver of claims requirements as set forth in this section.

(b) The licensee shall implement reciprocal waivers of claims with its contractors and subcontractors, its customer(s) and the customer's contractors and subcontractors, under which each party waives and releases claims against the other parties to the waivers and agrees to assume financial responsibility for property damage it sustains and for bodily injury or property damage sustained by its own employees, and to hold harmless and indemnify each other from bodily injury or property damage sustained by its employees, resulting from licensed launch activities, regardless of fault.

(c) For each licensed launch in which the U.S. Government, its agencies, or its contractors and subcontractors is involved in licensed launch activities or where property insurance is required under §440.9(d) of this part, the Federal Aviation Administration of the Department of Transportation, the licensee, and its customer shall enter into a three-party reciprocal waiver of claims agreement in the form set forth in Appendix II to this part or that satisfies its requirements.

(d) The licensee, its customer, and the Federal Aviation Administration of the Department of Transportation on behalf of the United States and its agencies but only to the extent provided in legislation, must agree in any waiver of claims agreement required under this part to indemnify another party to the agreement from claims by the indemnifying party's contractors and subcontractors arising out of the indemnifying party's failure to implement properly the waiver requirement.

§440.19 United States payment of excess third-party liability claims.

(a) The United States pays successful covered claims (including reasonable expenses of litigation or settlement) of a third party against the licensee, the customer, and the contractors and subcontractors of the licensee and the customer, and the employees of each involved in licensed launch activities, and the contractors and subcontractors of the United States and its agencies, and their employees, involved in licensed launch activities to the extent provided in an appropriation law or other legislative authority providing for payment of claims in accordance with 49 U.S.C. 70113, and to the extent the total amount of such covered claims arising out of any particular launch:

(1) Exceeds the amount of insurance required under §440.9(b); and

(2) Is not more than $1,500,000,000 (as adjusted for inflation occurring after January 1, 1989) above that amount.

(b) Payment by the United States under paragraph (a) of this section shall not be made for any part of such claims for which bodily injury or property damage results from willful misconduct by the party seeking payment.

(c) The United States shall provide for payment of claims by third parties for bodily injury or property damage that are payable under 49 U.S.C. 70113 and not covered by required insurance under §440.9(b), without regard to the limitation under paragraph (a)(1) of this section, because of an insurance policy exclusion that is usual. A policy exclusion is considered usual only if insurance covering the excluded risk is not commercially available at reasonable rates. The licensee must submit a certification in accordance with §440.15(c)(1)(iii) of this part for the United States to cover the claims.

(d) Upon the expiration of the policy period prescribed in accordance with §440.11(a), the United States shall provide for payment of claims that are payable under 49 U.S.C. 70113 from the first dollar of loss up to $1,500,000,000 (as adjusted for inflation occurring after January 1, 1989).

(e) Payment by the United States of excess third-party claims under 49 U.S.C. 70113 shall be subject to:

(1) Prompt notice by the licensee to the Office that the total amount of claims arising out of licensed launch activities exceeds, or is likely to exceed, the required amount of financial responsibility. For each claim, the notice must specify the nature, cause, and amount of the claim or lawsuit associated with the claim, and the party or parties who may otherwise be liable for payment of the claim;

(2) Participation or assistance in the defense of the claim or lawsuit by the United States, at its election;

(3) Approval by the Office of any settlement, or part of a settlement, to be paid by the United States; and

(4) Approval by Congress of a compensation plan prepared by the Office and submitted by the President.

(f) The Office will:

(1) Prepare a compensation plan outlining the total amount of claims and meeting the requirements set forth in 49 U.S.C. 70113;

(2) Recommend sources of funds to pay the claims; and

(3) Propose legislation as required to implement the plan.

(g) The Office may withhold payment of a claim if it finds that the amount is unreasonable, unless it is the final

order of a court that has jurisdiction over the matter.

APPENDIX A TO PART 440—INFORMATION REQUIREMENTS FOR OBTAINING A MAXIMUM PROBABLE LOSS DETERMINATION FOR LICENSED LAUNCH ACTIVITIES

Any person requesting a maximum probable loss determination shall submit the following information to the Office, unless the Office has waived a particular information requirement under 14 CFR 440.7(c):

I. GENERAL INFORMATION

A. Mission description.

1. A description of mission parameters, including:

a. Launch trajectory;

b. Orbital inclination; and

c. Orbit altitudes (apogee and perigee).

2. Flight sequence.

3. Staging events and the time for each event.

4. Impact locations.

5. Identification of the launch range facility, including the launch complex on the range, planned date of launch, and launch windows.

6. If the applicant has previously been issued a license to conduct launch activities using the same launch vehicle from the same launch range facility, a description of any differences planned in the conduct of proposed activities.

B. Launch Vehicle Description.

1. General description of the launch vehicle and its stages, including dimensions.

2. Description of major systems, including safety systems.

3. Description of rocket motors and type of fuel used.

4. Identification of all propellants to be used and their hazard classification under the Hazardous Materials Table, 49 CFR 172.101.

5. Description of hazardous components.

C. Payload.

1. General description of the payload, including type (e.g., telecommunications, remote sensing), propellants, and hazardous components or materials, such as toxic or radioactive substances.

D. Flight Termination System.

1. Identification of any flight termination system (FTS) on the launch vehicle, including a description of operations and component location on the vehicle.

II. PRE-FLIGHT PROCESSING OPERATIONS

A. General description of pre-flight operations including vehicle processing consisting of an operational flow diagram showing the overall sequence and location of operations, commencing with arrival of vehicle components at the launch range facility through final safety checks and countdown sequence, and designation of hazardous operations, as defined in 14 CFR 440.3. For purposes of these information requirements, payload processing, as opposed to integration, is not a hazardous operation.

B. For each hazardous operation, including but not limited to fueling, solid rocket motor build-up, ordnance installation, ordnance checkout, movement of hazardous materials, and payload integration:

1. Identification of location where each operation will be performed, including each building or facility identified by name or number.

2. Identification of facilities adjacent to the location where each operation will be performed and therefore exposed to risk, identified by name or number.

3. Maximum number of Government personnel and individuals not involved in licensed launch activities who may be exposed to risk during each operation. For Government personnel, identification of his or her employer.

4. Identification of launch range facility policies or requirements applicable to the conduct of operations.

III. FLIGHT OPERATIONS

A. Identification of launch range facilities exposed to risk during launch vehicle lift-off and flight.

B. Identification of accident failure scenarios, probability assessments for each, and estimation of risks to Government personnel, individuals not involved in licensed launch activities, and Government property, due to property damage or bodily injury. The estimation of risks for each scenario shall take into account the number of such individuals at risk as a result of lift-off and flight of a launch vehicle (on-range, off-range, and down-range) and specific, unique facilities exposed to risk. Scenarios shall cover the range of launch trajectories, inclinations and orbits for which authorization is sought in the license application.

C. On-orbit risk analysis assessing risks posed by a launch vehicle to operational satellites.

D. Reentry risk analysis assessing risks to Government personnel and individuals not involved in licensed launch activities as a result of reentering debris or reentry of the launch vehicle or its components.

E. Trajectory data as follows: Nominal and 3-sigma lateral trajectory data in x, y, z and x (dot), y (dot), z (dot) coordinates in one-second intervals, data to be pad-centered with x being along the initial launch azimuth and continuing through impact for suborbital flights, and continuing through orbital insertion or the end of powered flight for orbital flights.

F. Tumble-turn data for guided vehicles only, as follows: For vehicles with gimbaled nozzles, tumble turn data with zeta angles and velocity magnitudes stated. A separate table is required for each combination of fail times (every two to four seconds), and significant nozzle angles (two or more small angles, generally between one and five degrees).

G. Identification of debris lethal areas and the projected number and ballistic coefficient of fragments expected to result from flight termination, initiated either by command or self-destruct mechanism, for lift-off, land overflight, and reentry.

IV. POST-FLIGHT PROCESSING OPERATIONS

A. General description of post-flight ground operations including overall sequence and location of operations for removal of vehicle components and processing equipment from the launch range facility and for handling of hazardous materials, and designation of hazardous operations.

B. Identification of all facilities used in conducting post-flight processing operations.

C. For each hazardous operation:

1. Identification of location where each operation is performed, including each building or facility identified by name or number.

2. Identification of facilities adjacent to location where each operation is performed and exposed to risk, identified by name or number.

3. Maximum number of Government personnel and individuals not involved in licensed launch activities who may be exposed to risk during each operation. For Government personnel, identification of his or her employer.

4. Identification of launch range facility policies or requirements applicable to the conduct of operations.

APPENDIX B TO PART 440—AGREEMENT FOR WAIVER OF CLAIMS AND ASSUMPTION OF RESPONSIBILITY

THIS AGREEMENT is entered into this _____ day of _____, by and among [Licensee] (the ''Licensee''), [Customer] (the ''Customer'') and the Federal Aviation Administration of the Department of Transportation, on behalf of the United States Government (collectively, the ''Parties''), to implement the provisions of section 440.17(c) of the Commercial Space Transportation Licensing Regulations, 14 CFR Ch. III (the ''Regulations'').

In consideration of the mutual releases and promises contained herein, the Parties hereby agree as follows:

1. DEFINITIONS

Customer means the above-named Customer on behalf of the Customer, any person to whom the Customer has sold, leased, assigned, or otherwise transferred its rights in the payload (or any part thereof) to be launched by the licensee, including a conditional sale, lease, assignment, or transfer of rights, any person who has placed property on board the payload for launch or payload services, and any person to whom the Customer has transferred its rights to the launch services.

License means License No. _____ issued on _____, by the Associate Administrator for Commercial Space Transportation, Federal Aviation Administration, Department of Transportation, to the Licensee, including all license orders issued in connection with the License.

Licensee means the Licensee and any transferee of the Licensee under 49 U.S.C. Subtitle IX, ch. 701.

United States means the United States and its agencies involved in Licensed Launch Activities.

Except as otherwise defined herein, terms used in this Agreement and defined in 49 U.S.C. Subtitle IX, ch. 701—Commercial Space Launch Activities, or in the Regulations, shall have the same meaning as contained in 49 U.S.C. Subtitle IX, ch. 701, or the Regulations, respectively.

2. WAIVER AND RELEASE OF CLAIMS

(a) Licensee hereby waives and releases claims it may have against Customer and the United States, and against their respective Contractors and Subcontractors, for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Launch Activities, regardless of fault.

(b) Customer hereby waives and releases claims it may have against Licensee and the United States, and against their respective Contractors and Subcontractors, for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Launch Activities, regardless of fault.

(c) The United States hereby waives and releases claims it may have against Licensee and Customer, and against their respective Contractors and Subcontractors, for Property Damage it sustains, and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Launch Activities, regardless of fault, to the extent that claims it would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under sections 440.9(c) and (e), respectively, of the Regulations, 14 CFR 440.9(c) and (e).

3. ASSUMPTION OF RESPONSIBILITY

(a) Licensee and Customer shall each be responsible for Property Damage it sustains

and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Launch Activities, regardless of fault. Licensee and Customer shall each hold harmless and indemnify each other, the United States, and the Contractors and Subcontractors of each Party, for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Launch Activities, regardless of fault.

(b) The United States shall be responsible for Property Damage it sustains, and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Launch Activities, regardless of fault, to the extent that claims it would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under section 440.9(c) and (e), respectively, of the Regulations, 14 CFR 440.9(c) and (e).

4. EXTENSION OF ASSUMPTION OF RESPONSIBILITY AND WAIVER

(a) Licensee shall extend the requirements of the waiver and release of claims, and the assumption of responsibility, hold harmless, and indemnification, as set forth in paragraphs 2(a) and 3(a), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against Customer and the United States, and against the respective Contractors and Subcontractors of each, and to agree to be responsible, for Property Damage they sustain and to be responsible, hold harmless and indemnify Customer and the United States, and the respective Contractors and Subcontractors of each, for Bodily Injury or Property Damage sustained by their own employees, resulting from Licensed Launch Activities, regardless of fault.

(b) Customer shall extend the requirements of the waiver and release of claims, and the assumption of responsibility, hold harmless, and indemnification, as set forth in paragraphs 2(b) and 3(a), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against Licensee and the United States, and against the respective Contractors and Subcontractors of each, and to agree to be responsible, for Property Damage they sustain and to be responsible, hold harmless and indemnify Licensee and the United States, and the respective Contractors and Subcontractors of each, for Bodily Injury or Property Damage sustained by their own employees, resulting from Licensed Launch Activities, regardless of fault.

(c) The United States shall extend the requirements of the waiver and release of claims, and the assumption of responsibility as set forth in paragraphs 2(c) and 3(b), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against Licensee and Customer, and against the respective Contractors and Subcontractors of each, and to agree to be responsible, for any Property Damage they sustain and for any Bodily Injury or Property Damage sustained by their own employees, resulting from Licensed Launch Activities, regardless of fault, to the extent that claims they would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under section 440.9(c) and (e), respectively, of the Regulations, 14 CFR 440.9(c) and (e).

5. INDEMNIFICATION

(a) Licensee shall hold harmless and indemnify Customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any or them, and the United States and its agencies, servants, agents, subsidiaries, employees and assignees, or any or them, from and against liability, loss or damage arising out of claims that Licensee's Contractors and Subcontractors may have for Property Damage sustained by them and for Bodily Injury or Property Damage sustained by their employees, resulting from Licensed Launch Activities.

(b) Customer shall hold harmless and indemnify Licensee and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any or them, and the United States and its agencies, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims that Customer's Contractors and Subcontractors, or any person on whose behalf Customer enters into this Agreement, may have for Property Damage sustained by them and for Bodily Injury or Property Damage sustained by their employees, resulting from Licensed Launch Activities.

(c) To the extent provided in advance in an appropriations law or to the extent there is enacted additional legislative authority providing for the payment of claims, the United States shall hold harmless and indemnify Licensee and Customer and their respective directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims that Contractors and Subcontractors of the United States may have for Property Damage sustained by them, and for Bodily Injury or Property Damage sustained by their employees, resulting from Licensed Launch Activities, to the extent that claims they would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under sections 440.9(c) and (e), respectively, of the Regulations, 14 CFR 440.9(c) and (e).

6. ASSURANCES UNDER 49 U.S.C. 70112(E)

Notwithstanding any provision of this Agreement to the contrary, Licensee shall hold harmless and indemnify the United States and its agencies, servants, agents, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims for Bodily Injury or Property Damage, resulting from Licensed Launch Activities, regardless of fault, except to the extent that: (i) as provided in section 7(b) of this Agreement, claims result from willful misconduct of the United States or its agents; (ii) claims for Property Damage sustained by the United States or its Contractors and Subcontractors exceed the amount of insurance or demonstration of financial responsibility required under section 440.9(e) of the Regulations (14 CFR 440.9(e)); (iii) claims by a Third Party for Bodily Injury or Property Damage exceed the amount of insurance or demonstration of financial responsibility required under section 440.9(c) of the Regulations (14 CFR 440.9(c)), and do not exceed $1,500,000,000 (as adjusted for inflation after January 1, 1989) above such amount, and are payable pursuant to the provisions of 49 U.S.C. 70113 and section 440.19 of the Regulations (14 CFR 440.19); or (iv) Licensee has no liability for claims exceeding $1,500,000,000 (as adjusted for inflation after January 1, 1989) above the amount of insurance or demonstration of financial responsibility required under section 440.9(c) of the Regulations (14 CFR 440.9(c)).

7. MISCELLANEOUS

(a) Nothing contained herein shall be construed as a waiver or release by Licensee, Customer or the United States of any claim by an employee of the Licensee, Customer or the United States, respectively, including a member of the Armed Forces of the United States, for Bodily Injury or Property Damage, resulting from Licensed Launch Activities.

(b) Notwithstanding any provision of this Agreement to the contrary, any waiver, release, assumption of responsibility or agreement to hold harmless and indemnify herein shall not apply to claims for Bodily Injury or Property Damage resulting from willful misconduct of any of the Parties, the Contractors and Subcontractors of any of the Parties, and in the case of Licensee and Customer and the Contractors and Subcontractors of each of them, the directors, officers, agents and employees of any of the foregoing, and in the case of the United States, its agents.

(c) In the event that more than one customer is involved in Licensed Launch Activities, references herein to Customer shall apply to, and be deemed to include, each such customer severally and not jointly.

(d) This Agreement shall be governed by and construed in accordance with United States Federal law.

IN WITNESS WHEREOF, the Parties to this Agreement have caused the Agreement to be duly executed by their respective duly authorized representatives as of the date written above.

LICENSEE

By: _____
Its: _____

CUSTOMER

By: _____
Its: _____

DEPARTMENT OF TRANSPORTATION

By: _____
Its: _____

[Doc. No. 28635, 63 FR 45619, Aug. 26, 1998; 63 FR 55175, Oct. 14, 1998]

PARTS 441–449 [RESERVED]

PART 450—FINANCIAL RESPONSIBILITY

Subpart A—Financial Responsibility for Licensed Reentry Activities

Sec.

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AUTHORITY: 49 U.S.C. 70101–70121; 49 CFR 1.47.

SOURCE: Docket No. FAA–1999–6265, 65 FR 56699, Sept. 19, 2000, unless otherwise noted.

Subpart A—Financial Responsibility for Licensed Reentry Activities

§ 450.1 Scope of part; basis.

This part sets forth financial responsibility and allocation of risk requirements applicable to commercial space reentry activities that are authorized to be conducted under a license issued pursuant to this subchapter.

§ 450.3 Definitions.

(a) For purposes of this part—

Bodily injury means physical injury, sickness, disease, disability, shock, mental anguish, or mental injury sustained by any person, including death.

Contractors and subcontractors means those entities that are involved at any tier, directly or indirectly, in licensed reentry activities, and includes suppliers of property and services, and the component manufacturers of a reentry vehicle or payload. Contractors and subcontractors include those entities as defined in §440.3(a)(2) of this chapter involved in licensed launch activities associated with a particular reentry.

Customer means

(1) A person who procures reentry services from a licensee or launch services associated with a particular reentry;

(2) Any person to whom the customer has sold, leased, assigned or otherwise transferred its rights in the payload (or any part thereof), to be reentered by the licensee, including a conditional sale, lease, assignment, or transfer of rights.

(3) Any person who has placed property on board the payload for reentry or payload services; and

(4) Any person to whom the customer has transferred its rights to reentry services.

Federal range facility means a Government-owned installation at which launches or reentries take place.

Financial responsibility means statutorily required financial ability to satisfy liability as required under 49 U.S.C. 70101–70121.

Government personnel means employees of the United States, its agencies, and its contractors and subcontractors, involved in reentry services for licensed reentry activities or launch services for licensed launch activities associated with a particular reentry. Employees of the United States include members of the Armed Forces of the United States.

Hazardous operations means activities, processes, and procedures that, because of the nature of the equipment, facilities, personnel, or environment involved or function being performed, may result in bodily injury or property damage.

Liability means a legal obligation to pay claims for bodily injury or property damage resulting from licensed reentry activities.

License means an authorization to conduct licensed reentry activities, issued by the Office under this subchapter.

Licensed launch activities means the launch of a launch vehicle as defined in a regulation or license issued by the Office and carried out pursuant to a launch license.

Licensed reentry activities means the reentry of a reentry vehicle, including a reusable launch vehicle (RLV), as defined in a regulation or license issued by the Office and carried out pursuant to a license.

Maximum probable loss (MPL) means the greatest dollar amount of loss for bodily injury or property damage that is reasonably expected to result from licensed reentry activities;

(1) Losses to third parties, excluding Government personnel and other launch or reentry partcipants employees involved in licensed reentry activities, that are reasonably expected to result from licensed reentry activities are those having a probability of occurrence on the order of no less than one in ten million.

(2) Losses to Government property and Government personnel, as defined in this section, that are reasonably expected to result from licensed reentry activities are those having a probability of occurrence on the order of no less than in one hundred thousand.

Office means the Associate Administrator for Commercial Space Transportation of the Federal Aviation Administration, U.S. Department of Transportation.

Property damage means partial or total destruction, impairment, or loss of tangible property, real or personal.

Regulations means the Commercial Space Transportation Licensing Regulations, codified at 14 CFR Ch. III.

Third party means:

(1) Any person other than:

(i) The United States, its agencies, and its contractors and subcontractors involved in reentry services for licensed reentry activities or launch services for licensed launch activities associated with a particular reentry;

(ii) The licensee and its contractors and subcontractors involved in reentry services for licensed reentry activities or launch services for licensed launch activities associated with a particular reentry; and

(iii) The customer and its contractors and subcontractors involved in reentry services for licensed reentry activities or launch services for licensed launch activities associated with a particular reentry.

(2) Government personnel, as defined in this section, are third parties.

United States means the United States Government, including its agencies.

(b) Except as otherwise provided in this section, any term used in this part and defined in 49 U.S.C. 70101–70121 or in §401.5 of this chapter shall have the meaning contained therein.

[Doc. No. FAA–1999–6265, 65 FR 56699, Sept. 19, 2000; 65 FR 80991, Dec. 22, 2000]

§450.5 General.

(a) No person shall commence or conduct reentry activities that require a license unless that person has obtained a license and fully demonstrated compliance with the financial responsibility and allocation of risk requirements set forth in this part.

(b) The Office shall prescribe the amount of financial responsibility a licensee is required to obtain and any additions to or modifications of the amount in a license order issued concurrent with or subsequent to the issuance of a license.

(c) Demonstration of financial responsibility under this part shall not relieve the licensee of ultimate responsibility for liability, loss, or damage sustained by the United States resulting from licensed reentry activities, except to the extent that:

(1) Liability, loss, or damage sustained by the United States results from willful misconduct of the United States or its agents;

(2) Covered claims of third parties for bodily injury or property damage arising out of any particular reentry exceed the amount of financial responsibility required under §450.9(c) of this part and do not exceed $1,500,000,000 (as adjusted for inflation occurring after January 1, 1989), above such amount, and are payable pursuant to 49 U.S.C. 70113 and §450.19 of this part. Claims of employees of entities listed in paragraphs (1)(ii) and (iii) of the definition of ''third party'' in §450.3(a) of this part for bodily injury or property damage are not covered claims;

(3) Covered claims for property loss or damage exceed the amount of financial responsibility required under §450.9(e) of this part and do not result from willful misconduct of the licensee; or

(4) The licensee has no liability for covered claims by third parties for bodily injury or property damage arising out of any particular reentry that exceed $1,500,000,000 (as adjusted for inflation occurring after January 1, 1989) above the amount of financial responsibility required under §450.9(c) of this part.

(d) A licensee's failure to comply with the requirements in this part may result in suspension or revocation of a license, and subjects the licensee to civil penalties as provided in part 405 of this chapter.

§450.7 Determination of maximum probable loss.

(a) The Office shall determine the maximum probable loss (MPL) from covered claims by a third party for bodily injury or property damage, and the United States, its agencies, and its contractors and subcontractors for covered property damage or loss, resulting from licensed reentry activities. The maximum probable loss determination forms the basis for financial responsibility requirements issued in a license order.

(b) The Office issues its determination of maximum probable loss no later

than ninety days after a licensee or transferee has requested a determination and submitted all information required by the Office to make the determination. The Office shall consult with Federal agencies that are involved in, or whose personnel or property are exposed to risk of damage or loss as a result of, licensed reentry activities before issuing a license order prescribing financial responsibility requirements and shall notify the licensee or transferee if interagency consultation may delay issuance of the MPL determination.

(c) Information requirements for obtaining a maximum probable loss determination are set forth in appendix A to this part. Any person requesting a determination of maximum probable loss must submit information in accordance with Appendix A requirements, unless the Office has waived requirements. In lieu of submitting required information, a person requesting a maximum probable loss determination may designate and certify certain information previously submitted for a prior determination as complete, valid, and equally applicable to its current request. The requester is responsible for the continuing accuracy and completeness of information submitted under this part and shall promptly report any changes in writing.

(d) The Office shall amend a determination of maximum probable loss required under this section at any time prior to completion of licensed reentry activities as warranted by supplementary information provided to or obtained by the Office after the MPL determination is issued. Any change in financial responsibility requirements as a result of an amended MPL determination shall be set forth in a license order.

(e) The Office may make a determination of maximum probable loss at any time other than as set forth in paragraph (b) of this section, upon request by any person.

§ 450.9 Insurance requirements for licensed reentry activities.

(a) As a condition of each reentry license, the licensee must comply with insurance requirements set forth in this section and in a license order issued by the Office, or otherwise demonstrate the required amount of financial responsibility.

(b) The licensee must obtain and maintain in effect a policy or policies of liability insurance, in an amount determined by the Office under paragraph (c) of this section, that protects the following persons as additional insureds to the extent of their respective potential liabilities against covered claims by a third party for bodily injury or property damage resulting from licensed reentry activities:

(1) The licensee, its customer, and their respective contractors and subcontractors, and the employees of each, involved in licensed reentry activities or in licensed launch activities associated with a particular reentry;

(2) The United States, its agencies, and its contractors and subcontractors involved in licensed reentry activities or in licensed launch activities associated with a particular reentry; and

(3) Government personnel.

(c) The Office shall prescribe for each licensee the amount of insurance required to compensate the total of covered third-party claims for bodily injury or property damage resulting from licensed reentry activities. Covered third-party claims include claims by the United States, its agencies, and its contractors and subcontractors for damage or loss to property other than property for which insurance is required under paragraph (d) of this section. The amount of insurance required is based upon the Office's determination of maximum probable loss; however, it will not exceed the lesser of:

(1) $500 million; or

(2) The maximum liability insurance available on the world market at a reasonable cost, as determined by the Office.

(d) The licensee must obtain and maintain in effect a policy or policies of insurance, in an amount determined by the Office under paragraph (e) of this section, that covers claims by the United States, its agencies, and its contractors and subcontractors involved in licensed reentry activities resulting from licensed reentry activities. Property covered by this insurance must include all property owned,

leased, or occupied by, or within the care, custody, or control of, the United States and its agencies, and its contractors and subcontractors involved in licensed reentry activities, at a Federal range facility. Insurance must protect the United States and its agencies, and its contractors and subcontractors involved in licensed reentry activities.

(e) The Office shall prescribe for each licensee the amount of insurance required to compensate claims for property damage under paragraph (d) of this section resulting from licensed reentry activities in connection with any particular reentry. The amount of insurance is based upon a determination of maximum probable loss; however, it will not exceed the lesser of:

(1) $100 million; or

(2) The maximum available on the world market at a reasonable cost, as determined by the Office.

(f) In lieu of a policy of insurance, a licensee may demonstrate financial responsibility in another manner meeting the terms and conditions applicable to insurance as set forth in this part. The licensee must describe in detail the method proposed for demonstrating financial responsibility and how it assures that the licensee is able to cover claims as required under this part.

[Doc. No. FAA–1999–6265, 65 FR 56699, Sept. 19, 2000; 65 FR 80991, Dec. 22, 2000]

§450.11 Duration of coverage; modifications.

(a) Insurance coverage required under §450.9, or other form of financial responsibility, shall attach upon commencement of licensed reentry activities, and remain in full force and effect as follows:

(1) For ground operations, until completion of licensed reentry activities at the reentry site; and

(2) For other licensed reentry activities, thirty days from initiation of reentry flight; however, in the event of an abort that results in the reentry vehicle remaining on orbit, insurance shall remain in place until the Office's determination that risk to third parties and Government property as a result of licensed reentry activities is sufficiently small that financial responsibility is no longer necessary, as determined by the Office through the risk analysis conducted to determine MPL and specified in a license order.

(b) Financial responsibility required under this part may not be replaced, canceled, changed, withdrawn, or in any way modified to reduce the limits of liability or the extent of coverage, nor expire by its own terms, prior to the time specified in a license order, unless the Office is notified at least 30 days in advance and expressly approves the modification.

§450.13 Standard conditions of insurance coverage.

(a) Insurance obtained under §450.9 shall comply with the following terms and conditions of coverage:

(1) Bankruptcy or insolvency of an insured, including any additional insured, shall not relieve the insurer of any of its obligations under any policy.

(2) Policy limits shall apply separately to each occurrence and, for each occurrence to the total of claims arising out of licensed reentry activities in connection with any particular reentry.

(3) Except as provided in this paragraph herein, each policy must pay claims from the first dollar of loss, without regard to any deductible, to the limits of the policy. A licensee may obtain a policy containing a deductible amount if the amount of the deductible is placed in an escrow account or otherwise demonstrated to be unobligated, unencumbered funds of the licensee, available to compensate claims at any time claims may arise.

(4) Each policy shall not be invalidated by any action or inaction of the licensee or any additional insured, including nonpayment by the licensee of the policy premium, and must insure the licensee and each additional insured regardless of any breach or violation of any warranties, declarations, or conditions contained in the policies by the licensee or any additional insured (other than a breach or violation by the licensee or an additional insured, and then only as against that licensee or additional insured).

(5) Exclusions from coverage must be specified.

(6) Insurance shall be primary without right of contribution from any

other insurance that is carried by the licensee or any additional insured.

(7) Each policy must expressly provide that all of its provisions, except the policy limits, operate in the same manner as if there were a separate policy with and covering the licensee and each additional insured.

(8) Each policy must be placed with an insurer of recognized reputation and responsibility that either:

(i) Is licensed to do business in any State, territory, possession of the United States, or the District of Columbia; or

(ii) Includes in each of its policies of insurance obtained under this part a contract clause in which the insurer agrees to submit to the jurisdiction of a court of competent jurisdiction within the United States and designates an authorized agent within the United States for service of legal process on the insurer.

(9) Except as to claims resulting from the willful misconduct of the United States or its agents, the insurer shall waive any and all rights of subrogation against each of the parties protected by required insurance.

(b) [Reserved]

[Doc. No. FAA–1999–6265, 65 FR 56699, Sept. 19, 2000; 65 FR 80991, Dec. 22, 2000]

§ 450.15 Demonstration of compliance.

(a) A licensee must submit evidence of financial responsibility and compliance with allocation of risk requirements under this part, as follows, unless a license order specifies otherwise due to the proximity of the licensee's intended date for commencement of licensed activities:

(1) The waiver of claims agreement required under §450.17(c) of this part must be submitted at least 30 days before commencement of licensed launch activities involving the reentry licensee;

(2) Evidence of insurance must be submitted at least 30 days before commencement of licensed launch activities involving the reentry licensee;

(3) Evidence of financial responsibility in a form other than insurance, as provided under §450.9(f) of this part, must be submitted at least 60 days before commencement of licensed launch activities involving the reentry licensee; and

(4) Evidence of renewal of insurance or other form of financial responsibility must be submitted at least 30 days in advance of its expiration date.

(b) Upon a complete demonstration of compliance with financial responsibility and allocation of risk requirements under this part, the requirements shall preempt any provisions in agreements between the licensee and an agency of the United States governing access to or use of United States reentry property or reentry services for licensed reentry activities which address financial responsibility, allocation of risk and related matters covered by 49 U.S.C. 70112, 70113.

(c) A licensee must demonstrate compliance as follows:

(1) The licensee must provide proof of insurance required under §450.9 by:

(i) Certifying to the Office that it has obtained insurance in compliance with the requirements of this part and any applicable license order;

(ii) Filing with the Office one or more certificates of insurance evidencing insurance coverage by one or more insurers under a currently effective and properly endorsed policy or policies of insurance, applicable to licensed reentry activities, on terms and conditions and in amounts prescribed under this part, and specifying policy exclusions;

(iii) In the event of any policy exclusions or limitations of coverage that may be considered usual under §450.19(c) of this part, or for purposes of implementing the Government's waiver of claims for property damage under 49 U.S.C. 70112(b)(2), certifying that insurance covering the excluded risks is not commercially available at reasonable cost; and

(iv) Submitting to the Office, for signature by the Department on behalf of the United States Government, the waiver of claims and assumption of responsibility agreement required by §450.17(c) of this part, executed by the licensee and its customer.

(2) Certifications required under this section must be signed by a duly authorized officer of the licensee.

(d) Certificate(s) of insurance required under paragraph (c)(1)(ii) of this

section must be signed by the insurer issuing the policy and accompanied by an opinion of the insurance broker that the insurance obtained by the licensee complies with the specific requirements for insurance set forth in this part and any applicable license order.

(e) The licensee must maintain, and make available for inspection by the Office upon request, all required policies of insurance and other documents necessary to demonstrate compliance with this part.

(f) In the event the licensee demonstrates financial responsibility using means other than insurance, as provided under § 450.9(f) of this part, the licensee must provide proof that it has met the requirements set forth in this part and in a license order issued by the Office.

[Doc. No. FAA–1999–6265, 65 FR 56699, Sept. 19, 2000; 65 FR 80991, Dec. 22, 2000]

§ 450.17 Reciprocal waiver of claims requirements.

(a) As a condition of each reentry license, the licensee shall comply with reciprocal waiver of claims requirements as set forth in this section.

(b) The licensee shall implement reciprocal waivers of claims with its contractors and subcontractors, its customer(s) and the customer's contractors and subcontractors, and the launch licensee and its contractors and subcontractors and customers, under which each party waives and releases claims against the other parties to the waivers and agrees to assume financial responsibility for property damage it sustains and for bodily injury or property damage sustained by its own employees, and to hold harmless and indemnify each other from bodily injury or property damage sustained by its employees, resulting from reentry activities, including licensed launch activities associated with a particular reentry, regardless of fault.

(c) For each licensed reentry in which the U.S. Government, its agencies, or its contractors and subcontractors is involved in licensed reentry activities or licensed launch activities associated with a particular reentry, or where property insurance is required under § 440.9(d) of this subchapter or § 450.9(d), the Federal Aviation Administration of the Department of Transportation, the licensee, and its customer shall enter into a reciprocal waiver of claims agreement in the form set forth in appendix B to this part or the satisfies its requirements.

(d) The reentry licensee and its customer, the launch licensee and its customer, and the Federal Aviation Administration of the Department of Transportation on behalf of the United States and its agencies but only to the extent provided in legislation, must agree in any waiver of claims agreement required under this part to indemnify another party to the agreement from claims by the indemnifying party's contractors and subcontractors arising out of the indemnifying party's failure to implement properly the waiver requirement.

[Doc. No. FAA–1999–6265, 65 FR 56699, Sept. 19, 2000; 65 FR 80991, Dec. 22, 2000]

§ 450.19 United States payment of excess third-party liability claims.

(a) The United States pays successful covered claims (including reasonable expenses of litigation or settlement) of a third party against the licensee, the customer, and the contractors and subcontractors of the licensee and the customer, and the employees of each involved in licensed reentry activities, the licensee, customer and the contractors and subcontractors of each involved in licensed launch activities associated with a particular reentry, and the contractors and subcontractors of the United States and its agencies, and their employees, involved in licensed reentry activities and licensed launch activities associated with a particular reentry, to the extent provided in an appropriation law or other legislative authority providing for payment of claims in accordance with 49 U.S.C. 70113, and to the extent the total amount of such covered claims arising out of any particular reentry:

(1) Exceeds the amount of insurance required under § 450.9(b); and

(2) Is not more than $1,500,000,000 (as adjusted for inflation occurring after January 1, 1989) above that amount.

(b) Payment by the United States under paragraph (a) of this section shall not be made for any part of such

claims for which bodily injury or property damage results from willful misconduct by the party seeking payment.

(c) The United States shall provide for payment of claims by third parties for bodily injury or property damage that are payable under 49 U.S.C. 70113 and not covered by required insurance under §450.9(b), without regard to the limitation under paragraph (a)(1) of this section, because of an insurance policy exclusion that is usual. A policy exclusion is considered usual only if insurance covering the excluded risk is not commercially available at reasonable rates. The licensee must submit a certification in accordance with §450.15(c)(1)(iii) of this part for the United States to cover the claims.

(d) Upon the expiration of the policy period prescribed in accordance with §450.11(a), the United States shall provide for payment of claims that are payable under 49 U.S.C. 70113 from the first dollar of loss up to $1,500,000,000 (as adjusted for inflation occurring after January 1, 1989).

(e) Payment by the United States of excess third-party claims under 49 U.S.C. 70113 shall be subject to:

(1) Prompt notice by the licensee to the Office that the total amount of claims arising out of licensed reentry activities exceeds, or is likely to exceed, the required amount of financial responsibility. For each claim, the notice must specify the nature, cause, and amount of the claim or lawsuit associated with the claim, and the party or parties who may otherwise be liable for payment of the claim;

(2) Participation or assistance in the defense of the claim or lawsuit by the United States, at its election;

(3) Approval by the Office of any settlement, or part of a settlement, to be paid by the United States; and

(4) Approval by Congress of a compensation plan prepared by the Office and submitted by the President.

(f) The Office will:

(1) Prepare a compensation plan outlining the total amount of claims and meeting the requirements set forth in 49 U.S.C. 70113;

(2) Recommend sources of funds to pay the claims; and

(3) Propose legislation as required to implement the plan.

(g) The Office may withhold payment of a claim if it finds that the amount is unreasonable, unless it is the final order of a court that has jurisdiction over the matter.

APPENDIX A TO PART 450—INFORMATION REQUIREMENTS FOR OBTAINING A MAXIMUM PROBABLE LOSS DETERMINATION FOR LICENSED REENTRY ACTIVITIES

Any person requesting a maximum probable loss determination shall submit the following information to the Office, unless the Office has waived a particular information requirement under 14 CFR 450.7(c):

I. GENERAL INFORMATION

A. Reentry mission description.

1. A description of mission parameters, including:

a. Orbital inclination; and

b. Orbit altitudes (apogee and perigee).

c. Reentry trajectories.

2. Reentry flight sequences.

3. Reentry initiation events and time for each event.

4. Nominal landing location, alternative landing sites and contingency abort sites.

5. Identification of landing facilities, (planned date of reentry), and reentry windows.

6. If the applicant has previously been issued a license to conduct reentry activities using the same reentry vehicle to the same reentry (site) facility, a description of any differences planned in the conduct of proposed activities.

B. Reentry Vehicle Description.

1. General description of the reentry vehicle including dimensions.

2. Description of major systems, including safety systems.

3. Description of propulsion system (reentry initiation system) and type of fuel used.

4. Identification of all propellants to be used and their hazard classification under the Hazardous Materials Table, 49 CFR 172.101.

5. Description of hazardous components.

C. Payload.

1. General description of any payload, including type (e.g., telecommunications, remote sensing), propellants, and hazardous components or materials, such as toxic or radioactive substances.

D. Flight Termination System/Flight Safety System.

1. Identification of any flight termination system (FTS) or Flight Safety System (FSS) on the reentry vehicle, including a description of operations and component location on the vehicle.

II. FLIGHT OPERATIONS

A. Identification of reentry site facilities exposed to risk during vehicle reentry and landing.

B. Identification of accident failure scenarios, probability assessments for each, and estimation of risks to Government personnel, individuals not involved in licensed reentry activities, and Government property, due to property damage or bodily injury. The estimation of risks for each scenario shall take into account the number of such individuals at risk as a result of reentry (flight) and landing of a reentry vehicle (on-range, off-range, and down-range) and specific, unique facilities exposed to risk. Scenarios shall cover the range of reentry trajectories for which authorization is sought in the license application.

C. On-orbit risk analysis assessing risks posed by a reentry vehicle to operational satellites during reentry.

D. Reentry risk analysis assessing risks to Government personnel and individuals not involved in licensed reentry activities as a result of inadvertent or random reentry of the launch vehicle or its components.

E. Nominal and 3-sigma dispersed trajectories in one-second intervals, from reentry initiation through landing or impact. (Coordinate system will be specified on a case by case basis)

F. Three-sigma landing or impact dispersion area in downrange (±) and crossrange (±) measured from the nominal, and contingency landing or impact target. The applicant is responsible for including all significant landing or impact dispersion constituents in the computations of landing or impact dispersion areas. The dispersion constituents should include, but not be limited to: variation in orbital position and velocity at the reentry initiation time; variation in re-entry initiation time offsets, either early or late; variation in the bodies' ballistic coefficient; position and velocity variation due to winds; and variations in re-entry retro-maneuvers.

G. Malfunction turn data (tumble, trim) for guided (controllable) vehicles. The malfunction turn data shall include the total angle turned by the velocity vector versus turn duration time at one second interval; the magnitude of the velocity vector versus turn duration time at one second intervals; and an indication on the data where the reentry body will impact the earth, or breakup due to aerodynamic loads. A malfunction turn data set is required for each malfunction time. Malfunction turn start times shall not exceed four-second intervals along the trajectory.

H. Identification of debris casualty areas and the projected number and ballistic coefficient of fragments expected to result from each failure mode during reentry, including random reentry.

III. POST-FLIGHT PROCESSING OPERATIONS

A. General description of post-flight ground operations including overall sequence and location of operations for removal of vehicle and components and processing equipment from the reentry site facility and for handling of hazardous materials, and designation of hazardous operations.

B. Identification of all facilities used in conducting post-flight processing operations.

C. For each hazardous operation:

1. Identification of location where each operation is performed, including each building or facility identified by name or number.

2. Identification of facilities adjacent to location where each operation is performed and exposed to risk, identified by name or number.

3. Maximum number of Government personnel and individuals not involved in licensed reentry activities who may be exposed to risk during each operation. For Government personnel, identification of his or her employer.

4. Identify and provide reentry site facility policies or requirements applicable to the conduct of operations.

[Doc. No. FAA–1999–6265, 65 FR 56699, Sept. 19, 2000; 65 FR 80991, Dec. 22, 2000]

APPENDIX B TO PART 450—AGREEMENT FOR WAIVER OF CLAIMS AND ASSUMPTION OF RESPONSIBILITY

This Agreement is entered into this ___ day of _____, by and among [Licensee] (the ''Licensee''), [Customer] (the ''Customer''), and the Federal Aviation Administration of the Department of Transportation, on behalf of the United States Government (collectively, the ''Parties''), to implement the provisions of §450.17(c) of the Commercial Space Transportation Licensing Regulations, 14 CFR Ch. III (the ''Regulations'').

In consideration of the mutual releases and promises contained herein, the Parties hereby agree as follows:

1. Definitions

Contractors and Subcontractors means entities described in §450.3 of the Regulations, 14 CFR 450.3.

Customer means the above-named Customer on behalf of the Customer and any person described in §450.3 of the Regulations, 14 CFR 450.3.

License means License No. _____ issued on _____, by the Associate Administrator for Commercial Space Transportation, Federal Aviation Administration, Department of Transportation, to the Licensee, including all license orders issued in connection with the License.

Licensee means the Licensee and any transferee of the Licensee under 49 U.S.C. Subtitle IX, ch. 701.

United States means the United States and its agencies involved in Licensed Activities.

Except as otherwise defined herein, terms used in this Agreement and defined in 49 U.S.C. Subtitle IX, ch. 701—Commercial Space Launch Activities, or in the Regulations, shall have the same meaning as contained in 49 U.S.C. Subtitle IX, ch. 701, or the Regulations, respectively.

2. Waiver and Release of Claims

(a) Licensee hereby waives and releases claims it may have against Customer and the United States, and against their respective Contractors and Subcontractors, for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault.

(b) Customer hereby waives and releases claims it may have against Licensee and the United States, and against their respective Contractors and Subcontractors, for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault.

(c) The United States hereby waives and releases claims it may have against Licensee and Customer, and against their respective Contractors and Subcontractors, for Property Damage it sustains, and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault, to the extent that claims it would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under sections 440.9(c) and (e) or sections 450.9(c) and (e), respectively, of the Regulations, 14 CFR 440.9(c) and (e) or 14 CFR 450.9(c) and (e).

3. Assumption of Responsibility

(a) Licensee and Customer shall each be responsible for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault. Licensee and Customer shall each hold harmless and indemnify each other, the United States, and the Contractors and Subcontractors of each Party, for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault.

(b) The United States shall be responsible for Property Damage it sustains, and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault, to the extent that claims it would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under §§440.9(c) and (e) or §§450.9(c) and (e), respectively, of the Regulations, 14 CFR 440.9(c) and (e) or 14 CFR 450.9(c) and (e).

4. Extension of Assumption of Responsibility and Waiver

(a) Licensee shall extend the requirements of the waiver and release of claims, and the assumption of responsibility, hold harmless, and indemnification, as set forth in paragraphs 2(a) and 3(a), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against Customer and the United States, and against the respective Contractors and Subcontractors of each, and to agree to be responsible, for Property Damage they sustain and to be responsible, hold harmless and indemnify Customer and the United States, and the respective Contractors and Subcontractors of each, for Bodily Injury or Property Damage sustained by their own employees, resulting from Licensed Activities, regardless of fault.

(b) Customer shall extend the requirements of the waiver and release of claims, and the assumption of responsibility, hold harmless,and indemnification, as set forth in paragraphs 2(b) and 3(a), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against Licensee and the United States, and against the respective Contractors and Subcontractors of each, and to agree to be responsible, for Property Damage they sustain and to be responsible, hold harmless and indemnify Licensee and the United States, and the respective Contractors and Subcontractors of each, for Bodily Injury or Property Damage sustained by their own employees, resulting from Licensed Activities, regardless of fault.

(c) The United States shall extend the requirements of the waiver and release of claims, and the assumption of responsibility as set forth in paragraphs 2(c) and 3(b), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against Licensee and Customer, and against the respective Contractors and Subcontractors of each, and to agree to be responsible, for any Property Damage they sustain and for any Bodily Injury of Property Damage sustained by their own employees, resulting from Licensed Activities, regardless of fault, to the extent that claims they would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under §§440.9(c) and (e) or §§450.9(c) and (e), respectively, of the Regulations, 14 CFR 440.9(c) and (e) or 14 CFR 450.9(c) and (e).

5. Indemnification

(a) Licensee shall hold harmless and indemnify Customer and its directors, officers,

servants, agents, subsidiaries, employees and assignees, or any or them, and the United States and its agencies, servants, agents, subsidiaries, employees and assignees, or any or them, from and against liability, loss or damage arising out of claims that Licensee's Contractors and Subcontractors may have for Property Damage sustained by them and for Bodily Injury or Property Damage sustained by their employees, resulting from Licensed Activities.

(b) Customer shall hold harmless and indemnify Licensee and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them, and the United States and its agencies, servants, agents, subsidiaries, employees assignees, or any of them, from and against liability, loss or damage arising out of claims that Customer's Contractors and Subcontractors, or any person on whose behalf Customer enters into this Agreement, may have for Property Damage sustained by them and for Bodily Injury or Property Damage sustained by their employees, resulting from Licensed Activities.

(c) To the extent provided in advance in an appropriations law or to the extent there is enacted additional legislative authority providing for the payment of claims, the United States shall hold harmless and indemnify Licensee and Customer and their respective directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims that Contractors and Subcontractors of the United States may have for Property Damage sustained by them, and for Bodily Injury or Property Damage sustained by their employees, resulting from Licensed Activities, to the extent that claims they would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under §440.9(c) and (e) or §450.9(c) and (e), respectively, of the Regulations, 14 CFR 440.9(c) and (e) or 14 CFR 450.9(c) and (e).

6. Assurances Under 49 U.S.C. 70112(e)

Nothwithstanding any provision of this Agreement to the contrary, Licensee shall hold harmless and indemnify the United States and its agencies, servants, agents, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims for Bodily Injury or Property Damage, resulting from Licensed Launch Activities, regardless of fault, except to the extent that: (i) As provided in section 7(b) of this Agreement, claims result from willful misconduct of the United States or its agents; (ii) claims for Property Damage sustained by the United States or its Contractors and Subcontractors exceed the amount of insurance or demonstration of financial responsibility required under §440.9(e) or §450.9(e) of the Regulations (14 CFR 440.9(e) or 450.9(e)); (iii) claims by a Third Party for Bodily Injury or Property Damage exceed the amount of insurance or demonstration of financial responsibility required under §440.9(c) or §450.9(c) of the Regulations (14 CFR 440.9(c) or 450.9(c)), and do not exceed $1,500,000,000 (as adjusted for inflation after January 1, 1989) above such amount, and are payable pursuant to the provisions of 49 U.S.C. 70113 and §440.19 or §450.19 of the Regulations (14 CFR 440.19 or 450.19); or (iv) Licensee has no liability for claims exceeding $1,500,000,000 (as adjusted for inflation after January 1, 1989) above the amount of insurance or demonstration of financial responsibility required under §440.9(c) or §450.9(c) of the Regulations (14 CFR 440.9(c) or 450.9(c)).

7. Miscellaneous

(a) Nothing contained herein shall be construed as a waiver or release by Licensee, Customer or the United States of any claim by an employee of the Licensee, Customer or the United States, respectively, including a member of the Armed Forces of the United States, for Bodily Injury or Property Damage, resulting form Licensed Activities.

(b) Notwithstanding any provision of this Agreement to the contrary, any waiver, release, assumption of responsibility or agreement to hold harmless and indemnify herein shall not apply to claims for Bodily Injury or Property Damage resulting from willful misconduct of any of the Parties, the Contractors and Subcontractors of any of the Parties, and in the case of Licensee and Customer and the Contractors and Subcontractors of each of them, the directors, officers, agents and employees of any of the foregoing, and in the case of the United States, its agents.

(c) In the event that more than one customer is involved in Licensed Activities, references herein to Customer shall apply to, and be deemed to include, each such customer severally and not jointly.

(d) This Agreement shall be governed by and construed in accordance with United States Federal law.

In Witness Whereof, the Parties to this Agreement have caused the Agreement to be duly executed by their respective duly authorized representatives as of the date written above.

Licensee

By: _____.
Its: _____.

Customer

By: _____.
Its: _____.

Department of Transportation

By: _____.
Its: _____.

[Doc. No. FAA–1999–6265, 65 FR 56699, Sept. 19, 2000; 65 FR 80991, Dec. 22, 2000]

PARTS 451–1199 [RESERVED]

FINDING AIDS

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382.40a Added 22115
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406 Revised 2180
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