(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 identity 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 identity 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.
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(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 239.0–1(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
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§ 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

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.