

**OFFICE OF THE UNITED STATES
TRADE REPRESENTATIVE**
**Notice of Meeting of the Industry
Sector Advisory Committee on Small
and Minority Business (ISAC-14)**

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of meeting for an open teleconference.

SUMMARY: The Industry Sector Advisory Committee on Small and Minority Business (ISAC-14) will hold a meeting for an open teleconference on August 21, 2001, from 11:00 a.m. to 12:30 p.m. The meeting will be opened to the public from 11:00 a.m. to 12:30 p.m.

DATES: The meeting is scheduled for August 21, 2001, unless otherwise notified.

ADDRESSES: The meeting will be held in Conference Room 2015B, of the Department of Commerce, located at 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Millie Sjoberg or Pam Wilbur, (principal contacts), at (202) 482-4792, Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230 or myself on (202) 395-6120.

SUPPLEMENTARY INFORMATION: During the meeting the following topics will be addressed.

- Secretary of Commerce Evan's proposal to the OECD for a c-business facilitation initiative and ISAC-14 input into the upcoming WTO meeting in Doha.

Christina Sevilla,

Acting Assistant U.S. Trade Representative for Intergovernmental Affairs and Public Liaison.

[FR Doc. 01-20508 Filed 8-14-01; 8:45 am]

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DEPARTMENT OF TRANSPORTATION
Office of the Secretary
**Aviation Proceedings, Agreements
Filed During Week Ending August 3,
2001**

The following Agreements were filed with the Department of Transportation under provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days after the filing of the applications.

Docket Number: OST-2001-10275
Date Filed: July 30, 2001

Parties: Members of the International Air Transport Association

Subject:

PTC COMP 0841 dated 27 July 2001 Composite Expedited Resolutions 024d, 210 (including USA/US Territories)

Intended effective date: 1 September 2001 Mail Vote

Docket Number: OST-2001-10276

Date Filed: July 30, 2001

Parties: Members of the International Air Transport Association

Subject:

PTC COMP 0842 dated 27 July 2001 Composite Expedited Resolution 015v (excluding USA/US Territories)

Intended effective date: 1 October 2001

Docket Number: OST-2001-10281

Date Filed: July 30, 2001

Parties: Members of the International Air Transport Association

Subject:

PTC123 0147 dated 27 July 2001 Mail Vote 138—Resolution 101] TC123 North/Mid/South Atlantic Special Passenger Amending Resolution from Korea (Rep. of)

Intended effective date: 1 August

Docket Number: OST-2001-10311

Date Filed: July 30, 2001

Parties: Members of the International Air Transport Association

Subject:

PTC12 USA-EUR Fares 0061 dated 20 July 2001

Resolution 015h—USA Add-on Amounts between USA and UK.

Intended effective date: 1 October 2001

Cynthia L. Hatten,

Federal Register Liaison.

[FR Doc. 01-20516 Filed 8-14-01; 8:45 am]

BILLING CODE 4910-62-P

DEPARTMENT OF TRANSPORTATION
Office of the Secretary
Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (formerly Subpart Q) During the Week Ending August 3, 2001

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 et seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period, DOT may process the

application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST-1996-1423.

Date Filed: August 1, 2001.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 22, 2001.

Description: Application of Continental Airlines, Inc., pursuant to 49 U.S.C. Section 41102 and Subpart B, requesting renewal of Segment 13 of its Route 29-F certificate, authorizing Continental to provide scheduled foreign air transportation of persons, property and mail between New York/Newark and Madrid and Barcelona via the Azores and Lisbon and beyond.

Cynthia L. Hatten,

Federal Register Liaison.

[FR Doc. 01-20515 Filed 8-14-01; 8:45 am]

BILLING CODE 4910-62-P

DEPARTMENT OF TRANSPORTATION
Office of the Secretary

[Docket No. OST-01-10380]

**Hazardous Materials: Knowledge
Required for Civil Penalty Enforcement
Proceedings**

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of public meeting and invitation to comment.

SUMMARY: Interested parties are invited to submit comments for consideration by DOT in developing additional guidance as to when a reasonable person offering, accepting or transporting a hazardous material in commerce would be deemed to have knowledge of facts giving rise to a violation of Federal hazardous material transportation law or the Hazardous Materials Regulations.

DATES: *Public meeting.* The public meeting will be held on November 14, 2001, from at 9:00 a.m. to 5:00 p.m. The meeting may end before 5:00 p.m. if all topics have been addressed and all participants heard.

Comments. Written comments must be received by December 14, 2001.

ADDRESSES: *Public meeting.* The public meeting will be held in Room 2300 of the U.S. Department of Transportation headquarters building (Nassif Building), 400 Seventh Street, SW., Washington, DC 20590-0001. Any person desiring to participate in discussions at the public meeting should notify Thomas Sherman by telephone or e-mail (see **FOR FURTHER**

INFORMATION CONTACT below) no later than November 1, 2001. Each person should indicate which of the four topics described at the end of this notice that he or she wishes to discuss.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Mr. Sherman as soon as possible.

Comments. You must address comments to the Dockets Management System, U.S. Department of Transportation, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001. You must identify the docket number (OST-01-10380) and submit two copies of your comments. If you want to confirm that we received your comments, include a self-addressed, stamped postcard.

You may also submit comments by e-mail by accessing the DOT Dockets Management System website at: <http://dms.dot.gov>. Click on "Help," "DMS Web Help," or "DMS Frequently Asked Questions" to obtain instructions for filing a document electronically.

The Dockets Management System is located on the Plaza Level of the Nassif Building at the above address. You may review public dockets there between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, except public holidays. You may also review comments on-line at the DOT Dockets Management System website at: <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT:

Thomas Sherman, Intermodal Hazardous Materials Program, Office of Intermodalism, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20009. Telephone: 202-366-5864; E-mail: Tom.Sherman@ost.dot.gov.

SUPPLEMENTARY INFORMATION: Federal hazardous material transportation law provides that DOT may assess a civil penalty against a person that "knowingly violates" that law or the HMR. 49 U.S.C. 5123(a)(1). The same section of the law also states that:

A person acts knowingly when—

(A) The person has actual knowledge of the facts giving rise to the violation; or

(B) A reasonable person acting in the circumstances and exercising reasonable care would have that knowledge.

This statutory definition of "knowingly" was added in the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA), Pub. L. 101-615, § 12, 104 Stat. 3259 (Nov. 16, 1990), to "cover violations that are committed *negligently*" and to "negate any inference that the term only

encompasses actions based on actual knowledge or reckless actions." H. Report No. 101-444, Part 1, Committee on Energy and Commerce, p. 47 (Apr. 3, 1990) (emphasis in original).¹

In a recent letter to the Secretary of Transportation, Federal Express Corporation asked DOT to develop further guidance on what constitutes "constructive knowledge" that a carrier is deemed to have of the presence of hazardous materials when the carrier accepts a shipment for transportation. Federal Express stated that carriers lack "essential criteria defining constructive knowledge of undeclared hazardous materials, that would allow the carriers to design and implement a viable system for training their employees, and for identifying and reporting discrepancies, without being subjected to second-guessing after a shipment has been transported."

In its letter, Federal Express referred to a formal interpretation published in the **Federal Register** on June 4, 1998, 63 FR 30411. In that interpretation, which was coordinated among all the DOT agencies to which enforcement authority has been delegated,² RSPA's Chief Counsel stated that:

a carrier knowingly violates the HMR when the carrier accepts or transports a hazardous material with actual or constructive knowledge that a package contains a hazardous material which has not been packaged, marked, labeled, and described on a shipping paper as required by the HMR. This means that a carrier may not ignore readily apparent facts that indicate that either (1) a shipment declared to contain a hazardous material is not properly packaged, marked, labeled, placarded, or described on a shipping paper, or (2) a shipment actually contains a hazardous material governed by

¹ In its regulations, the Research and Special Programs Administration, (RSPA) had implemented the "knowingly" standard for assessment of a civil penalty in the original Hazardous Material Transportation Act, Pub. L. 93-633, § 110, 88 Stat. 2160 (Jan. 3, 1975), and defined "knowingly" to mean that a person (1) Has actual knowledge of the facts that give rise to the violation, or (2) should have known of the facts that give rise to the violation. A person knowingly commits an act if the act is done voluntarily and intentionally. Former 49 CFR 107.299, added 48 FR 2653 (Jan. 20, 1983), revised 56 FR 8624 (Feb. 28, 1991), renumbered 61 FR 21094 (May 9, 1996). When RSPA revised § 107.299 in 1991 to define "knowingly" consistent with the language adopted in HMTUSA, it noted that "Congress effectively adopted the Department's historic interpretation of the term 'knowingly.'" 56 FR 8620.

² The Secretary of Transportation has delegated to five agencies within DOT the authority to bring civil penalty enforcement cases and assess civil penalties for violations of Federal Hazardous material transportation law or the HMR: Federal Aviation Administration (FAA), Federal Motor Carrier Safety Administration (FMCSA), Federal Railroad Administration (FRA), United States Coast Guard (USCG), and RSPA. 49 CFR 1.46(u), 1.47(j)(1), (k), 1.49(s)(1), 1.53(b)(1), 1.73(d)(1).

the HMR despite the fact that it is not marked, labeled, placarded, or described on a shipping paper as containing a hazardous material.

* * * * *

In the case of an undeclared or hidden shipment, all relevant facts must be considered to determine whether or not a reasonable person acting in the circumstances and exercising reasonable care would realize the presence of hazardous materials. In an enforcement proceeding, this is always a question of fact, to be determined by the fact-finder. Because innumerable fact patterns may exist, it is not practicable to set forth a list of specific criteria to govern whether or not the carrier has sufficient constructive knowledge of the presence of hazardous materials within an undeclared or hidden shipment to find a knowing violation of the HMR.

Information concerning the contents of suspicious packages must be pursued to determine whether hazardous materials have been improperly offered. A carrier's employees who accept packages for transportation must be trained to recognize a "suspicious package," as part of their function-specific training as specified in 49 CFR 172.704(a)(2), because the legal standard remains the knowledge that a reasonable person acting in the circumstances and exercising reasonable care would have.³

63 FR at 30412. Federal Express has not disputed this interpretation but stated that, "as it has been applied [in enforcement proceedings, this interpretation] fails to provide fair warning to carriers as to when they will be charged with constructive knowledge of having accepted undeclared hazardous materials shipments."

In an interim response to Federal Express's attorney, the Secretary of Transportation advised that DOT's Director, Intermodal Hazardous Materials Program (IHMP), located within the Office of the Assistant Deputy Secretary and Director, Office of Intermodalism,⁴ would be the focal point in developing possible guidance on "constructive knowledge." In conjunction with FAA, FMCSA, FRA,

³ In its June 14, 1996 Advisory Guidance; Offering, Accepting, and Transporting Hazardous Materials, 61 FR 30444, 30446, RSPA urged persons "who engage in day-to-day transportation activities [to] make a concerted effort to ensure their own compliance, as well as that of others from whom they receive shipments" and reminded them to: (1) "Know Your Customer," (2) "Know the Packaging," (3) "Know/Verify the Proper Hazardous Material Description," (4) "Visually Inspect Shipments," (5) "Advise Your Customer of Possible Discrepancies," and (6) "Report Violations."

⁴ The Secretary of Transportation has delegated to the Assistant Deputy Secretary and Director, Office of Intermodalism, the authority under Federal hazardous material transportation law to act as the focal point for review of hazardous materials policies, monitor department hazardous materials activities, and address regulatory and programmatic cross-modal issues related to hazardous materials as warranted. 49 CFR 1.74.

RSPA, and USCG, IHMP invites interested parties to attend a public meeting and to comment at that meeting or separately in writing on the indicia or readily apparent facts that would indicate the potential presence of hazardous materials to a reasonable person and the actions that a reasonable person should take in response to those indicia or readily apparent facts.

Logical topics for discussion at the public meeting and in written comments include:

1. The responsibilities of an offeror of a hazardous material to properly classify the material, package the material, mark and label packagings, outside containers, and overpacks, describe the material on a shipping paper, and provide placards to a carrier.

2. The responsibilities of a carrier when it accepts any shipment to review documentation that accompanies the shipment and inspect the packagings, outside containers, or overpacks to determine (a) whether a hazardous material is present, and (b) when a hazardous material is present, whether it is properly packaged, marked, labeled, placarded, and described on a shipping paper.

3. When a reasonable person should have constructive knowledge of the potential presence of a hazardous material based on information that is readily apparent from: (a) Documentation that accompanies a shipment, (b) markings, labels, or placards on packagings, outside containers, or overpacks, and (c) the condition of the packagings, outside containers, or overpacks themselves.

4. Methods used to train personnel who prepare materials for shipment or accept shipments for transportation to recognize the potential presence of a hazardous material based on information that is readily apparent, including the use of checklists such as those required by Section 7;1.3 of the Technical Instructions for the Transport of Dangerous Goods of the International Civil Aviation Organization.

Oral comments at the public meeting and separate written comments are not limited to the above topics and may include any suggestions for developing additional guidance as to when a reasonable person would be deemed to have constructive knowledge of the potential presence of hazardous material and the manner in which that material is classified, packaged, marked, labeled, placarded, and described on a shipping paper. A facilitator will chair the meeting to ensure that all topics are covered and persons heard. No formal transcript of this meeting is planned, but the meeting will be tape recorded

for later use by DOT in its decision-making process.

Issued in Washington, DC, on August 9, 2001.

Jackie A. Goff,

Director, Intermodal Hazardous Materials Program, Office of Intermodalism.

[FR Doc. 01-20514 Filed 8-14-01; 8:45 am]

BILLING CODE 4910-62-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Metropolitan Oakland International Airport, Oakland, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Metropolitan Oakland International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158). **DATES:** Comments must be received on or before September 14, 2001.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261, or San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010-1303. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Steven J. Grossman, Director of Aviation, Port of Oakland, at the following address: 530 Water Street, Oakland, CA 94604. Air carriers and foreign air carriers may submit copies of written comments previously provided to the Port of Oakland under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Marlys Vandervelde, Airports Program Analyst, San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010-1303, Telephone: (650) 876-2806. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public

comment on the application to impose and use the revenue from a PFC at Metropolitan Oakland International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). On July 27, 2001, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Port of Oakland was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 27, 2001.

The following is a brief overview of the impose and use application.

NO.: 01-10-C-00-OAK.

Level of proposed PFC: \$4.50.

Proposed charge effective date: February 1, 2003.

Proposed charge expiration date: August 1, 2004.

Total estimated PFC revenue approved in this application: \$69,000,000.

Brief description of proposed impose and use projects: Terminal One Ticket Counter Expansion-Phase 1, Overlay Runway 11/29, Terminal One Gate Improvement Project, Terminal One and Two Restroom Improvements, and Multi-User System Equipment in Terminal One.

Brief description of proposed use of PFC revenue project: Construct Remote Overnight Aircraft Parking Apron.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Nonscheduled/On-Demand Air Carriers filing FAA form 1800-31 and Commuters or Small Certificated Air Carriers filing DOT form 298-C T1 or E1.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Division located at: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Port of Oakland.

Dated: Issued in Hawthorne, California, on August 1, 2001.

Ellsworth L. Chan,

Acting Manager, Airports Division, Western-Pacific Region.

[FR Doc. 01-20519 Filed 8-14-01; 8:45 am]

BILLING CODE 4910-13-M