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14 CFR Part 330

Procedures for Compensation of Air Carriers; Final Rule

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 330

[Docket OST–2001–10885]

RIN 2105–AD06

Procedures for Compensation of Air Carriers

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: On September 22, 2001, President Bush signed into law the Air Transportation Safety and System Stabilization Act (''the Act''). The Act makes available to the President funds to compensate air carriers, as defined in the Act, for direct losses suffered as a result of any Federal ground stop order and incremental losses beginning September 11, 2001, and ending December 31, 2001, directly resulting from the September 11 terrorist attacks on the United States. On October 29, 2001, the Department published a rule to carry out this Act, which it amended on January 2, 2002, and April 16, 2002. The Department requested comment on each of these issuances, and the comments received were addressed in the subsequent version of the rule. This document responds to the comments received on the April 2002 amendments.

DATES: This rule is effective August 20, 2002.

FOR FURTHER INFORMATION CONTACT: Steven Hatley, U.S. Department of Transportation, Office of International Aviation, 400 7th Street, SW., Room 6402, Washington, DC 20590. Telephone 202–366–1213.

SUPPLEMENTARY INFORMATION: As a consequence of the terrorist attacks on the United States on September 11, 2001, the U.S. commercial aviation industry suffered severe financial losses. These losses placed the financial survival of many air carriers at risk. Acting rapidly to preserve the continued viability of the U.S. air transportation system, President Bush sought and Congress enacted the Air Transportation Safety and System Stabilization Act (''the Act''), Pub. L. 107–42.

Under section 101(a)(2)(A–B) of the Act, a total of $5 billion in compensation is provided for ''direct losses incurred beginning on September 11, 2001, by air carriers as a result of any Federal ground stop order issued by the Secretary of Transportation or any subsequent order which continues or renews such stoppage; and the incremental losses incurred beginning September 11, 2001 and ending December 31, 2001, by air carriers as a direct result of such attacks.''

On October 29, 2001 (66 FR 54616), the Department published in the **Federal Register** a final rule and request for comments to establish procedures for air carriers regarding compensation under the Act. The rule covered such subjects as eligibility, deadlines for application, information and forms required of applicants, and audit requirements. On January 2, 2002 (67 FR 250), the Department published an amendment to the final rule that responded to comments on the October 29 rule. On the same date (67 FR 263), the Department also requested comments concerning whether a set-aside of a portion of the funds authorized by the Act should be established to ensure adequate compensation for certain classes of air carriers. On April 16, 2002, the Department published further amendments to the final rule that, among other provisions, did establish such a set-aside (67 FR 18468). The Department requested comments on the rule, as amended. We received a number of comments, primarily from air carriers and their organizations, to which this document responds.

With the amendments to the rule and responses to comments we are publishing in this document, the Department has completed the rulemaking process. Part 330, as published today, will govern the ultimate determinations of the amount of compensation for which air carriers are eligible.

Comments and Responses

Air Ambulance Issues

The Association of Air Medical Services (AAMS) disagreed with the Department's decision, in the April 2002 amendments to Part 330, to base compensation for carriers eligible for the set-aside on a cents per available seat-mile (ASM) calculation. This, AAMS said, was contrary to the direction given by Congress in P.L. 107–42 authorizing the Department to establish a set-aside for carriers ''for whom application of a distribution formula containing available seat miles as a factor would inadequately reflect their share of direct and incremental losses.'' AAMS said that, as a result of this decision, air ambulances would still be compensated for a much smaller percentage of their losses than other small carriers flying similar aircraft. This is because air ambulances fly fewer ASMs than other types of carriers, though they incur greater expenses on a full-time basis while waiting for a call.

AAMS also disagreed with the Department's determination that the costs of medical personnel should not be viewed as transportation expenses, saying that these personnel were essential to the specialized functions for which air ambulances are licensed. Ten individual air ambulance companies submitted very similar letters that essentially echoed the AAMS position, adding that they supported AAMS' previous proposal for basing set-aside compensation for air ambulances on the Medicare fee schedule.

DOT Response

As part of the Aviation and Transportation Security Act, Pub. L. 107–71, Congress granted the President the discretion to establish a set-aside to provide compensation for various classes of air carriers, including air ambulances and air tour operators, which would be inadequately compensated under the ASM formula. Section 124(d)(2) of the Security Act further required that any amount so set aside be distributed ''proportionately among such carriers based on an appropriate auditable measure.''

The Department solicited comments through the **Federal Register** on whether such a set-side should be established, which types of carriers it might cover, and what method or methods might be used to allocate any funds so set aside. Many types of carriers offered comments, and although strong cases were made that smaller carriers had been disadvantaged by the ASM formula, the comments reflected a lack of consensus on any single approach that might be used to allocate set-aside funds proportionately among them. Different types of carriers tended to advocate compensation formulas that would address their particular situations, but not be applicable to the situations of other carriers. 67 FR 18468 (April 16, 2002).

Ultimately, the Department established the set-aside and, in its discretion, established eligibility standards that we believed were fair to all types of carriers in the affected classes. Those eligibility standards allowed carriers to participate if they operated fewer than 10 million ASMs in the benchmark month of August 2001. Rather than adopt a different allocation formula for each type of carrier, which would have been difficult to administer and would likely have perpetuated some of the originally perceived inequities, the Department chose to continue to rely on ASMs as the base auditable measure. At the same time,

however, it substantially increased the compensation that would be paid for each ASM flown by carriers in the affected classes. We also established a minimum recovery level of 25 percent of eligible transportation-related losses, as well as a higher ASM formula amount for the smallest air carriers (*i.e.,* fewer than 310,000 ASMs for August 2001). Typically, this approach will allow carriers in the set-aside class to receive significantly more than the amount of compensation that would have been paid under the ASM formula set forth in Pub. L. 107–42.

We understand that some carriers still feel disadvantaged under this approach. However, it largely brings smaller passenger carriers up to an equivalent level of compensation as received by the larger passenger carriers. In some instances, smaller carriers will be receiving up to 20 times more than they would have received under the old formula.

As to arguments that medical costs should be included within the compensation formula as integral to aircraft operations, the Department has interpreted the Stabilization Act as intended to provide short-term assistance for the air transportation industry. Assistance was limited to air carriers, defined in the first instance as providers of ''air transportation'' (49 U.S.C. § 40102(a)). Moreover, Congress established market share formulas based on ASMs and Revenue Ton-Miles (RTMs) as an alternative for establishing compensation. As these are measures of air transportation operations, not measures of ancillary activities, we have construed Congress' intent as limited to providing compensation for the air transportation activities of eligible carriers. Thus, when we have received applications from air carriers whose businesses contained non-air-transportation-related activities, we have sought to extract those activities from our compensation calculations (except if those activities were clearly de minimis).

Typical of the non-air-transportation operations that have been excluded are airfield concessions and ''package tour'' operations. If entities that operate only airfield concessions and ''package tours'' are ineligible in their own right for direct compensation, it follows that air carriers who derive significant revenues from such activities should not be able to obtain significant additional compensation on account of those activities.

This reasoning was extended to pertain as well to the non-air transportation aspects of air ambulance operations. A major portion of the revenues and expenses of air ambulances originate from the medical personnel, equipment, and supplies that are involved, elements that are not air-transportation in nature and which would not be eligible for compensation in their own right. We believe that the more expansive formula for assistance under the set-aside program, rather than broadening direct compensation to include losses attributable to these ancillary functions, constitutes the more appropriate way to provide an increased level of compensation for air ambulances, as well as for other small carriers.

Other Set-Aside Issues

Four carriers asserted that they should be included among the classes of carriers eligible for the set-aside. Sky Quest Charters said that it should be included as an indirect public charter carrier. Sky Quest also complained that using the August ASM-based formula is unfair in its circumstance, since its busiest months are in the fall and winter (e.g., student charter business for spring break). Vacation Travel International, another carrier that focuses on student charter trips, contended that student travel providers should be recognized as a separate class eligible for the set-aside, since there are several carriers in this category and their Spring 2002 losses are now known. Vacation Travel also complained that it is arbitrary to exclude indirect air carriers that cannot provide August 2001 ASM data because August is not when they conduct most of their operations.

Eagle Canyon Airlines/Eagle Jet Charter said that small certificated air carriers in the commuter air carrier classification should be included, suggesting that their omission from the April 2002 amendments to Part 330 was an inadvertent quirk in definition of commuter air carriers used in the rule. GWV International said that public charter indirect air carriers who do not report ASMs should be included. GWV also asked for clarification of how ASMs flown for an indirect air carrier by a foreign, as opposed to domestic, direct air carrier are counted.

Senator Charles Schumer of New York asked the Department to find a way of adjusting the floor for set-aside compensation above 25 percent to accommodate the situation of New York City area carriers (e.g., Liberty Helicopter) whose operations were shut down for a prolonged period after September 11.

The Sierra Club renewed its request that Grand Canyon air tour operators not be eligible for set-aside funds, or compensation generally. These operators, in the Sierra Club's view, are responsible for preventing compliance with the noise reduction provisions of National Park Overflights Act of 1987. The Sierra Club maintains that FAA's rulemaking on the subject of Grand Canyon air tours is very inadequate, and environmental groups are currently in litigation with the FAA. The Sierra Club says that it is inappropriate and counterproductive to compensate the tour operators, which will just result in continued or additional aircraft noise and further noncompliance with the Overflights Act.

DOT Response

The eligibility of each of the four air carriers who commented on this point to receive funds under the set-aside program can only be determined by reviewing the situation of each carrier on a case-by-case basis. The rule provides that certain air carriers (air taxi operators, commuters, and regionals) qualify for set-aside funds if they reported (or performed) fewer than 10 million ASMs for the month of August 2001. Indirect air carriers are also eligible for set-aside funds if they fall within the 10 million ASM limit.

In developing the set-aside program, the Department faced the difficult task of identifying classes of air carriers that would be inadequately compensated by the original statutory formula on the one hand, while on the other hand developing an alternative compensation formula that would more adequately compensate these carriers using an appropriate auditable measure. In addition to considering comments to the docket, the Department also reviewed data gathered by the Department through the application process used during the first two rounds of compensation payments. Here, the Department considered loss claim and ASM data to assist in determining which classes of carriers were inadequately compensated (as a percentage of their claimed losses) under the existing statutory formula.

With respect to Sky Quest's concern about the use of August ASMs, we note that August 2001 ASMs were specified by Congress in the Act as the benchmark for determining market shares. Further, we found that, in general, the use of August 2001 ASMs did not, by itself, result in serious inequities. Rather, we found that the use of a single ASM rate to compensate vastly different sized air carrier operations created inadequacies. In fact, the number of August 2001 ASMs reported by applicants provided the Department with both a method of determining which classes of carriers should receive set-aside funds and an

appropriate auditable measure for distributing those funds. By relying upon the August 2001 ASM data, the Department was able to identify two classes of carriers based on the size of their operations and develop a compensation formula to more adequately address their circumstances.

As noted above in the response to AAMS comments, we understand that some individual carriers may still feel disadvantaged by this approach. However, it largely brings smaller passenger carriers up to an equivalent level of compensation as received by the larger passenger carriers. In any event, we created a safety net that guarantees that all set-aside carriers will be compensated for no less than 25 percent of their eligible transportation-related losses, regardless of how many ASMs they report for the month of August 2001.

With respect to the comments that student travel providers should be treated as separate class of air carriers for set-aside purposes, we again make the point that the statute indicates that the Department should identify broad classes of carriers rather than try to adopt a different allocation formula for each type or subtype of carrier. Doing the latter would have made the program difficult to administer and would likely have perpetuated some of the originally perceived inequities. As discussed with respect to the air ambulance issues, the Department believes that its set-aside formula greatly increases compensation for a wide array of types of carrier and most individual carriers compared to the original statutory formula and makes the compensation system much more equitable.

Small certificated air carriers in the commuter classification are eligible for the set-aside provided they meet all other criteria. Public charter indirect air carriers are likewise eligible if they meet other set-aside criteria. We would point out, in response to GWV's comment, that air carriers that do not report ASMs to the Department on a regular basis are still eligible for set-aside funds. In our final rule published on October 29, 2001 and amended on January 2, 2002, the Department established the process that an air carrier must follow to report ASMs for the purpose of receiving compensation under the Act. These procedures are found at 14 CFR 330.31. A carrier that does not regularly report ASMs to the Department may submit a calculation of August 2001 ASMs to the Department with its application, meeting the requirements of § 330.31(d) (see 67 FR 250, January 2, 2002).

With respect to Senator Schumer's comment concerning the situation of New York City-based carriers such as Liberty Helicopters, we note the discussion of the rationale for the establishment of the set-side formula in the section of this document concerning air ambulance issues. The same rationale applies to a carrier like Liberty Helicopters. We note further that Liberty Helicopters is one of the carriers that would receive, under the set-aside, about 20 times the compensation that it would have received under the statutory formula in the Stabilization Act .

The Department does not have the ability under the statutes involved to tailor compensation to the individual needs or situation of every carrier. In accordance with the statute, the distribution approach is intended to address ''classes of air carriers'' and involve a ''proportional'' allocation based on an ''appropriate auditable measure.'' Moreover, the Department is required to distribute a finite compensation fund to an applicant pool of up to 600 carriers, pursuant to a Congressional mandate to provide compensation on an expeditious basis to ensure the survival of the airline industry—tasks that, taken together, make tailoring compensation decisions to individual applicant situations almost impossible.

We continue to believe that the Sierra Club's comment is an effort to use the airline compensation program rulemaking as a means further advocating its position concerning Grand Canyon air tour operators and the FAA's rulemaking concerning air tours over the Canyon. We understand fully that the Sierra Club and other environmental organizations strongly oppose Grand Canyon air tours, believe that current operations in the Canyon area are inconsistent with the National Parks Overflights Act, and disagree with the FAA's rulemaking on the subject. Those issues are being addressed in other forums. In enacting the Stabilization Act, Congress gave no hint that the resolution of these issues was to have any impact on the provision of compensation to air carriers who suffered losses as the result of the September 11 attacks.

Cargo Carrier Issues

The Cargo Airline Association (CAA) argued that by deleting 330.31(d)((i)(iv) and (d)(2) of the January 2002 version of the rule, the Department eliminated the requirement that indirect air carriers submit documentation that the direct air carrier providing the transportation is either ineligible for compensation or will not claim compensation. This deletion, CAA said, would permit indirect air carriers to count the same RTMs as their direct air carrier partners. This decision was inadequately justified and contrary to statute, in CAA's view. CAA also cited the statements in the Department's January 2002 preamble justifying the deleted provisions. CAA said the Department must better explain the rationale for this change and ensure that the total pool of RTMs, which acts as the denominator of the compensation equation, does not include RTMs not reported to the Secretary in April—June of 2001.

Emery Air Freight, while a member of CAA, disassociated itself from CAA's comment with respect to the ''double counting'' issue described above, saying that under the April 2002 amendments to Part 330, both the direct and indirect air carrier could appropriately claim their separate compensable losses from the same operation. In this connection, Emery suggested that the Department amend § 330.31(c)(3), which prohibits a carrier from including ASMs or RTMs that are ''reported by or are attributable to flights by another carrier.'' This, Emery said, was inconsistent with the deletion of §§ 330.31(d)(i)(iv) and (d)(2).

Emery also suggested that the methodology for calculating relative market share should be modified to equalize the situation of carriers that do both the indirect and direct carriage functions in-house and those that partner with a separate company. Under Emery's suggestion, an integrated carrier would add RTM equivalents representing their indirect carrier function to the numerator of their compensation cap formula and add the same number, here representing their direct carrier functions, to both the numerator and denominator. This would place the integrated carrier in roughly the same position as a pair of separate companies that together provided a comparable service.

Emery agrees that indirect air carriers should be able to claim RTMs flown by foreign direct air carriers, but only in the case where the foreign carrier is an all-cargo carrier (because of a reference in section 103(b)(2)(B) of the Act to all-cargo carriers). Foreign combined passenger-cargo carriers would not be entitled to the same treatment, Emery said. BAX Global disagreed with Emery on this point, saying that indirect air carriers like BAX should be able to count RTMs flown by foreign combination passenger-cargo carriers, lest the indirect carrier lose some compensation for which it was otherwise entitled. The indirect carrier's role is the same regardless of the type

of carrier on which the cargo is transported, BAX said.

DOT Response

The Department notes that, with respect to the inclusion of certain ASMs and RTMs claimed by indirect air carriers as eligible in Round 2, there was a body of such air transportation units (ASMs and RTMs) for which indirect carriers likely sustained losses resulting from the events of September 11 that were, nonetheless, deemed ineligible. Eligible ASMs and RTMs for indirect carriers had been considered those in which the carriers providing the direct flights had not, and would not, file as their own for compensation under this program. Ineligible ASMs and RTMs for indirect carriers were those operated on direct carriers that had filed, or would file, for compensation related to the applicable air transportation units. This distinction was established, even though both indirect and direct carriers might have sustained post-September 11 losses for those same, shared ASMs and RTMs. Furthermore, those September 11-related losses were sustained by indirect air carriers that were otherwise deemed fully eligible by the Department to file for compensation under the Act.

The Act has established a specific mechanism for determining the payment ceiling for eligible air carriers based upon their market shares, with the numerator representing a given carrier's respective ASMs or RTMs and the denominator representing the total number of these air transportation units. This resulting fraction is then multiplied by the level of the appropriation that is applicable based on the nature of the carrier's business, $0.5 billion for all-cargo operations (with market share measured by RTMs for the second quarter of 2001), and $4.5 billion for passenger and mixed passenger/cargo operations (with market share measured by ASMs for the month of August 2001), to determine ceiling payments by carrier. It is anticipated that these amounts are to be paid to eligible carriers unless their demonstrated September 11 related losses were less than that amount.

By regulation, 67 FR 18468, April 16, 2002, the Department has sought to remedy the distinction that prevented some indirect carriers from seeking compensation for their losses associated with the provision of these shared ASMs and RTMs. At the same time, the Department concluded that it was fair and appropriate to maintain the levels of compensation to both direct air carriers and indirect carriers that reported ASMs and RTMs that were not shared between eligible carriers.

The formula for payment of compensation established by the Congress in the Act provides an opportunity for the Department to meet this goal, since a number of air carriers are being compensated for demonstrated September 11-related losses that were less than the amounts they would receive based upon their market share of air transportation units. Given that fact, the authorized $4.5 billion for passenger and combination operations, and $0.5 billion for cargo-only operations, would not, in fact, be fully utilized. The Department believes that the Congressional direction to compensate air carriers—without distinction as to whether they were direct or indirect carriers—can be accomplished within the authorized amounts by allowing compensation for indirect air carriers based upon their shared ASMs and RTMs. However, in order to avoid double-counting those that were actually operated, we will not add those ASMs and RTMs to the denominator of the formula. The result will be to allow full consideration for the ASMs and RTMs of indirect carriers, without diluting the compensation that would be afforded direct carriers for unshared operations. We project that funds will be sufficient to fully compensate all carriers in this manner.

Finally, we agree with Emery that inclusion of section 330.31(c)(3) in the rule is inconsistent with our intent to allow shared ASMs and RTMs to be eligible for compensation-by inclusion in the numerator-and it should be deleted. Further, we concur with Emery that the clear language of the Act precludes us from compensating cargo operations that are performed on mixed passenger/cargo flights. Cargo tonnage associated with such services will not be eligible for inclusion in the RTM pool or in a carrier's computation of market-share payment based upon second quarter 2001 air transportation units.

Time Extensions and Agreed-Upon Procedures (AUP) Issues

Six carriers, the Air Transport Association (ATA), and the National Air Transportation Association (NATA) requested extensions of varying length in the deadline for reporting to the Department on the basis of full AUPs or simplified procedures. NATA also said that some small businesses may have difficulty in generating the data required by the April 2002 amendments to Part 330. NATA suggested that carriers who had filed applications in the previous two rounds, but who were unable to create and submit the newly required data in a timely fashion, could forego additional compensation in the third round without having to pay back compensation provided under the first two rounds. A certification and submission of tax returns would suffice in these cases.

Capital Cargo International Airlines suggested that the determination of whether a carrier would have to submit a full AUP report or comply with simplified procedures should be based on the relative reimbursement requested by carriers, rather than on the carrier's ASMs or RTMs. This would ease administrative burdens on carriers who were requesting relatively little compensation, the carrier said. GWV International asked for a waiver process to allow it to comply with the simplified procedures, rather than full AUPs. GWV said that it was modestly over the 10 million ASM ''breakpoint'' and that the cost of doing a full AUP engagement would exceed the increment in compensation it would get for having 13 million rather than 10 million ASMs.

DOT Response

Former § 330.21 (which has now been removed; see discussion of application deadlines below) provided procedures for granting time extensions to applicants that could demonstrate good cause. We granted time extension requests on an individual basis where appropriate. In some cases, we granted time extensions to groups. For example, we granted the 30-day time extension sought by NATA to NATA air carrier members who may be eligible for the set-aside program. Given the need to complete the compensation process as soon as possible and the prejudice to the program and other carriers that could come from extending deadlines, we did not make any across-the-board change in the application deadline, however.

We are not relaxing our requirement for a third-round application because the second round application lacked actual results for the September 11–December 31, 2001 period, but contained only estimates. Because the Act authorizes the Department to provide compensation only after a determination of air carrier losses, we need to have an accurate calculation of those losses, not merely estimates. Most NATA air carrier members are eligible to use simplified procedures in completing the third round application.

With respect to Capital Cargo's comment, for most carriers the ASM or RTM amount will track the amount that the applicant may receive. The Department required the full agreed-upon procedure report from larger carriers because their finances and loss statements typically involve larger

dollar amounts and greater complexity than the counterpart submissions from smaller carriers.

With respect to GWV's comment, the Department already has a process for applying for an exemption from a regulatory requirement (49 CFR 5.11–5.13). Thus there is no need to establish a separate waiver process for the air carrier compensation program. It should be noted that the Department ordinarily will not grant an exemption where the applicant is really seeking a change in a regulation, e.g., that the cut-off be 13 million ASMs rather than 10 million ASMs, as opposed to presenting a relatively unique situation and rationale for different treatment that is not generally applicable and was not considered in the rulemaking.

Direct and Incremental Losses

Kitty Hawk Aircargo objected to the Department's conclusion that any incremental gains by a carrier after the end of the FAA ground stop through December 31, 2001, offset losses that occurred during the ground stop. Kitty Hawk argues that the Department's position is inconsistent with the Act, which allegedly created two separate categories of losses eligible for compensation: direct and incremental losses. The Department's approach, in Kitty Hawk's view, collapses the two separate categories into one generic category, contrary to the language of the statute. Kitty Hawk also says that this approach is inconsistent with the Department's actions in compensating other carriers based on the conclusion that they were less profitable than they forecast before September 11, since Kitty Hawk's ground stop losses reduced the overall profitability of the company over the entire post-September 11 period.

ATA essentially agreed with Kitty Hawk's position, saying that carriers who suffered direct losses as the result of the ground stop resulting from September 11 attacks should be compensated for those losses, even if they did not suffer incremental losses after the ground stop. ATA views the Act as compensating carriers for these direct losses, plus any additional incremental losses. It does not believe there is a basis in the statute to reduce or offset compensation relating to direct losses on the basis of the carrier's financial performance during the post-ground stop period. This is true, ATA says, even if it is difficult as an accounting matter to separate the two.

DOT Response

The Department has carefully reviewed the language and legislative history of the Act, and we remain convinced that the interpretation underlying the April 2002 amendments to part 330 is consistent with the statute. Title I of the Act directs the President to ''compensate air carriers for losses incurred by the air carriers as a result of the terrorist attacks on the United States that occurred on September 11, 2001.'' Specifically, section 101(a)(2) directs the President to compensate air carriers for:

> (A) direct losses incurred beginning on September 11, 2001, by air carriers as a result of any Federal ground stop order issued by the Secretary of Transportation or any subsequent order which continues or renews such a stoppage; and
>
> (B) the incremental losses incurred beginning September 11, 2001, and ending December 31, 2001, by air carriers as a direct result of [the terrorist] attacks.

The Act does not expressly address the situation in which an air carrier experiences short-term losses due to the Federal ground stop order but subsequently experiences better-than-forecasted profits for the balance of the year. Similarly, the Act does not expressly address the issue of whether an air carrier may exclude consideration of any incremental gains during the period of September 11 to December 31, 2001 or whether these gains must be used to offset order-related losses.

We note, first, that Congress wrote subparagraphs (A) and (B) in the conjunctive, linked by the word ''and.'' By using the term ''and,'' it appears that Congress intended the two categories of losses to be added or taken together, rather then allowing a choice between the two categories, or even the choice of ''either or both.'' This reading of section 101(a)(2) of the Act is buttressed by section 103(a), which provides that ''the amount of compensation payable to an air carrier under section 101(a)(2) may not exceed the amount of losses described in section 101(a)(2) * * * that the air carrier *incurred*'' (emphasis added). In this section, Congress did not separately identify order- and attack-related losses, as Kitty Hawk and ATA suggest, but instead combined the two while establishing a limit on carrier compensation. We interpret the language in Section 103 as indicating that subparagraphs (A) and (B) in Section 101(a)(2) must be taken together when determining the amount of losses that a carrier has incurred.

We also note that the terms ''losses'' and ''incurred'' are not expressly defined in the Act. In common usage the term ''loss'' generally refers to something that is gone and cannot be recovered. The term ''incur'' is generally defined as meaning to become liable or subject to, as in to incur debt. Thus, the common usage of these terms would appear to indicate that Congress intended the Act to compensate carriers for those permanent, un-recovered economic losses that the carrier actually experienced or became liable for during the entire applicable time period.

Further, we observe that the Act does not qualify the terms ''incur'' or ''loss'' by indicating that an air carrier may claim temporary losses, nor does it indicate that a carrier may claim losses incurred in a partial period (i.e., September 11 to September 30, 2001). Instead, the Act establishes two specific and overlapping time periods during which losses must be incurred: (1) The period covered by the Federal ground stop order, and (2) the period from September 11 to December 31, 2001. These specific time periods serve both to limit the government's obligation to compensate carriers for their September 11-related losses and to establish a finite period during which incremental losses will change a carrier's calculation of direct order-related losses. Any losses not recovered as of December 31, 2001, will be considered permanent for the purposes of compensation under the Act.

In the Department's view, Kitty Hawk's approach could result in compensating carriers for losses that were not really incurred. For example, a loss might be claimed because a service could not be provided during the ground stop, yet that same service might have been provided at no loss two days later. Since the order-related losses are limited to only the period of time during which the order was in effect, any recovery of those losses by a carrier immediately after the order was lifted could only be identified by reviewing the carrier's revenues and expenses during the incremental loss period. Thus, the only way to ensure that a carrier is not compensated for temporary direct order-related losses that are later offset by increased gains, is to consider the carrier's incremental gains or losses through the end of 2001 along with its order-related direct losses.

We view the legislative history of the Act as consistent with our interpretation of the meaning of its language. Congress enacted the statute at a time when its members, and many other observers, believed that the air carrier industry as a whole would suffer immediate and prolonged financial losses as a result of the terrorist attacks. Congress was concerned that the effect of both the order and the public's fear of flying would force individual carriers and the industry as a whole over the brink of

collapse, with devastating impacts on the rest of the United States economy.

It is our view that Congress intended the compensation payments to serve as a stabilizing force for individual air carriers and for the industry. The purpose of the payments was to mitigate or prevent losses as a way of preventing bankruptcies, massive service disruptions and additional layoffs. In this context, we are not persuaded by claims that a carrier is entitled to be compensated for temporary losses suffered during the Federal ground stop order, when that same carrier returned to profitability and actually achieved better-than-forecasted profits during the remainder of 2001. Nor are we persuaded that a carrier's ground stop losses necessarily reduced the overall profitability of the company over the entire post-September 11 period; as noted, some and potentially all of those losses were only temporary in nature, and experience suggests that some carriers, especially cargo carriers, did better than expected after September 11 because of such September 11-related factors as increased shipments of military cargo, diversion of cargo to all-cargo aircraft from combi aircraft, etc. Again, we do not believe the Act requires, or Congress intended, to provide compensation to carriers in such situations.

Repayment Issues

Federal Express (FedEx) objects to the provision that a carrier must immediately repay any excess amount of compensation that the Department determines the carrier has received. In FedEx's view, such a demand for immediate repayment is inconsistent with the Act, which would not contemplate such a demand until after the final audit process had been completed. It would be inconsistent with the Act for the Department to make any final conclusions about the propriety of distributions to a carrier in advance of such an audit, in FedEx's opinion.

FedEx adds that if the Department is to attempt to recoup funds it asserts a carrier was overpaid, it must use the procedures of the Federal Claims Collection Act of 1966, which apply to, among other things, overpayments. Therefore, FedEx says, the rule must be revised to conform to the procedures required by the statute.

DOT Response

The Assistant Secretary for Aviation and International Affairs has been delegated the President's authority to determine whether an air carrier has incurred losses that are eligible for compensation under the Act. (See 66 FR 49507 (September 27, 2001); 49 CFR 1.56a(j); 66 FR 55599 (Nov. 2, 2001)). Once she has made a final determination, DOT will either pay that amount or demand a repayment if prior overpayment is found to have occurred. Nothing in the Act requires the Assistant Secretary to wait for a review by the Office of Inspector General, the General Accounting Office, or a private auditor to determine the appropriate compensation amount for a carrier. The Act provides merely that the Secretary or the Comptroller General ''may'' audit a carrier's statements and request any information they deem necessary for such an audit. If we or the Comptroller General choose later to conduct an audit, and that subsequent audit shows that the Assistant Secretary's determination should be modified, the Department retains the ability to make an appropriate adjustment at that time.

If the Assistant Secretary finds that a carrier has been paid an amount in excess of the compensation for which it is eligible, the excess amount becomes an overpayment as that term is defined in the Federal Claims Collection Act and its implementing regulations. The Department will comply with Collection Act requirements in pursuing recovery of overpayments made under the Stabilization Act. We have revised section 330.9(b) to make this point expressly.

Distinguishing Between Attack-Related and Other Items

FedEx disagrees with the substance of the April 2002 amendments to Part 330 with respect to some aspects of the computation of losses. FedEx says that neither economic gains or losses unrelated to the September 11 attacks should be factored into the compensation calculation. It argues that the April 2002 amendments to Part 330 impermissibly permits savings that would have occurred in the absence of the attacks to offset losses that resulted from the attacks. FedEx also says the Department should use certain accounting principles to distinguish between attack-related and unrelated items, so as not to arbitrarily exclude, for example, all cost savings, regardless of source. Generally, FedEx argues for a case-by-case approach that does not make assumptions about the relationship of an item to the September 11 attacks.

ATA expressed concern that DOT would exclude some non-recurring charges that resulted from the September 11 attacks while forcing the inclusion of certain non-recurring credits that do not result from the attacks. Negative variances between forecast and actual that meet the statutory test for compensability should not be automatically excluded; nor should positive variances that do not meet this test be automatically included. In addition, ATA views DOT's approach as too closely tied to profits and losses, rather than to liquidity.

DOT Response

Section 101(a)(2) of the Act provides that the President shall compensate air carriers for direct losses incurred beginning September 11, 2001, as the result of any Federal ground stop orders, and their incremental losses incurred between September 11 and December 31, 2001, ''as a direct result of the terrorist attacks.'' Section 103(a) directs that compensation may not exceed the amount ''that the air carrier demonstrates to the satisfaction of the President, using sworn financial statements or other appropriate data, that the air carrier incurred.'' Section 107(3) of the Stabilization Act further specifies that the term ''incremental loss'' does not include any loss that the President determines would have been incurred if the September 11 terrorist attacks on the United States had not occurred.

In the preamble to DOT's April 2002 amendments to Part 330, we expressed our continued belief that ''in most cases, the comparison between pre-September 11, 2001 forecasts and actual results provides an approximation of the incremental losses that are a direct result of the [terrorist] attacks, and that approximation, without more, gives effect to the language of the statute.'' 67 FR at 18472. However, we have also noted that additional review of the components of an air carrier's loss may reveal that certain items were clearly not the direct or indirect result of the terrorist attacks and should therefore not be included in the basis for compensation.

To facilitate the DOT's review of an applicant's claim, and to assist applicants in preparing their claims, we published guidelines at 14 CFR 330.39, which identify the types of losses for which the DOT would not normally provide compensation. The preamble to our April 2002 amendments also provided a more detailed explanation of these items and how the DOT would treat them. Specifically, we identified ''aircraft impairment charges, charges or expenses attributable to lease buyouts, or other losses that are not actually or fully realized'' during the compensation period to be the types of losses that would not be eligible for compensation under the Act. 14 CFR 330.39(a)(1).

Further, we stated that the DOT ''will consider requests to accept adjustments for extraordinary or non-recurring expenses or revenues on a case-by-case basis.'' 14 CFR 330.39(a)(2).

In our guidance for air carriers identifying the types of losses for which we would not normally provide compensation, we stated that the DOT ''generally does not accept claims by air carriers that cost savings should be excluded from the calculation of incurred losses.'' 14 CFR 330.39(b). The DOT provided a detailed explanation of this provision in the preamble to the April 2002 amendments:

> The Department expects that many applicants have experienced, by their own initiatives, a reduction in actual versus forecast expenses, giving rise to a question of whether any such reductions may be excluded from the calculations of losses on the ground that they are unrelated to the terrorist attacks. As a general rule, for the reasons stated below, the Department will treat such variances for all categories of expenses as being attributable to the terrorist attacks. First, we would expect that cost reduction plans not related to the terrorist attacks would have been reflected in an applicant's pre-September 11 forecasted financials. Second, we believe it highly likely that expense reduction efforts undertaken after September 11 were attributable, implicitly if not explicitly, to changed expectations regarding revenues after the attacks. Third, we note that Congress provided that we compensate air carriers for 'losses incurred.' Cost savings that are achieved in fact reduce an air carrier's losses, and the calculations required under our regulations may not be manipulated to exclude actual reductions in expenses, thereby generating a basis for increased compensation. Moreover, we interpret Congress' language here as indicating an intent that carriers not receive increased compensation for achieving savings in costs, which they have an independent obligation to their managements and shareholders to achieve, and which it is reasonable to expect them to undertake to mitigate the need for compensation under the Act. (67 FR 18473.)

Nonetheless, we also acknowledged that there may be some circumstances in which cost savings could be proven, to our satisfaction, to be unrelated, directly or indirectly, to the terrorist attacks. We directed any air carrier claiming such adjustments to provide pre-existing documentary support for its claims.

We have reviewed the comments of FedEx and ATA on this issue and find no basis to believe that our approach to the issue of cost savings was misguided or incorrect. However, consistent with their comments, the Department intends to review all claimed adjustments on a case-by-case basis. In this regard, carriers are reminded that they have the burden of proving to the Department's satisfaction that the losses they claim are the direct or indirect result of the terrorist attacks, supplying sufficient documentation to demonstrate to the Department that the claimed losses should be compensated under the Act.

ASMs or RTMs Flown by Foreign Direct Carriers

FedEx renews an argument made in ATA comments to the January 2002 rule that in the case of an indirect air carrier applicant, both the indirect and direct carrier involved must be U.S. citizens. FedEx believes that direct air carriers should receive compensation before indirect air carriers are paid. FedEx further asserts that allowing U.S. indirect air carriers to claim compensation for RTMs or ASMs flown by foreign direct air carriers expands the program to compensate foreign air carriers, which it views as beyond the authority of the Act. FedEx also refers to audit problems that could be created by reliance on ASMs or RTMs flown by a foreign direct air carrier.

Unlike FedEx, ATA does not renew its argument that ASMs or RTMs involving U.S. indirect air carriers and foreign direct air carriers be excluded. However, ATA urges the Department to ensure that payments do not end up compensating foreign carriers or dilute the amount of compensation of other eligible carriers. DOT should also ensure that the total RTM universe does not exceed the RTMs reported to the Secretary for April—June 2001.

DOT Response

The process for calculating an indirect air carrier's ASMs or RTMs was established in the Department's final rule on January 2, 2002, and was amended on April 16, 2002. An eligible indirect air carrier (and only U.S. citizens may be eligible indirect air carriers) may count ASMs or RTMs flown by a foreign direct air carrier, even though that direct air carrier is not itself eligible for compensation under the Act. The Department sees nothing in the legislation that would preclude such eligibility for these indirect carriers and discerns little or no difference in the service provided, whether the passengers or cargo were carried on foreign or domestic flights.

We do not agree with the assertion that this approach results in compensation being paid to a foreign air carrier. The losses incurred by a U.S. indirect air carrier do not differ based on the citizenship of its direct air carrier partner. The Department properly implements the Act by compensating the U.S. indirect air carrier's losses. It is clear that the Department is not making any payments to a foreign air carrier based on its participation in an arrangement with a U.S. indirect air carrier, and we have every expectation that the Department's approach will not diminish the compensation available for eligible U.S. air carriers. It is equally clear that a U.S. air carrier like FedEx is not disadvantaged by the Department's decision to compensate indirect air carriers, regardless of the nationality of their direct air carrier partners.

Administrative Law Issues

CAA objected to the Department's decision to issue the April 2002 amendments to part 330 as a final rule with a request for comments, rather than as a notice of proposed rulemaking (NPRM). CAA asserted that the April 2002 amendments to part 330 made significant changes without adequate analysis.

FedEx disagreed with the Department's characterization of the April 2002 amendments to Part 330 as an emergency rule, saying that there was no longer an emergency seven months after September 11. In FedEx's view, the promulgation of the rule as an emergency rule was inconsistent with Administrative Procedure Act (APA) requirements. In addition, FedEx alleges, the rule makes substantive changes in DOT requirements (e.g., with respect to repayment rules) without adequate explanation. FedEx asks the Department to withdraw the April 2002 and issue an NPRM for a new rule that would comport with FedEx's notion of proper implementation of the Act.

DOT Response

Under the APA, agencies are authorized to issue rules without prior opportunity for notice and comment if such an opportunity is unnecessary, impracticable, or contrary to the public interest. Agencies may make final rules effective immediately if there is good cause for doing so. The Department believes that the April 2002 amendments to Part 330 clearly met these criteria. As noted above, the statute directs the Department to compensate carriers as expeditiously as possible. While many large carriers had already been paid significant compensation in the first several months of this program, many smaller carriers had not. These smaller carriers were still suffering the financial impacts of the September 11 attacks without the assistance of compensation, because application procedures covering them and the set-aside provision had not been put into place.

To delay further compensation to these carriers by issuing only a

proposed rule in April would have ignored the dire situation in which many of these carriers may find themselves. It was necessary to put the appropriate provisions in place immediately to address the situation of smaller carriers, rather than to wait for the resolution of disagreements with larger carriers. Doing so is consistent with Congressional direction to provide compensation on an expeditious basis to ensure the survival of the airline industry, a task we view as applying to all the segments of the industry. We also believe that clarifying for all parties the Department's views on compensation issues that had been raised by earlier comments and communications to the Department was a valuable service to the industry.

Even for carriers who commented specifically on this issue, the APA argument is now effectively moot. All carriers have now had the opportunity to comment, and the final version of Part 330 the Department is promulgating today, after considering all comments, establishes the provisions that will govern the final determination of compensation for the commenters and other carriers. All payments under previous versions of the rule were estimated and subject to adjustment. There have been no final payments or final determinations of the amount of compensation for which a carrier is eligible until now, after all the comments have been considered. Between the April 2002 amendments to Part 330 and this final rule, the commenting carriers and others have not lost any of the compensation for which they will be ultimately be eligible.

Finally, we would note that the emergency designation in the discussion on Executive Order 12866 in the preamble to the April 2002 amendments to Part 330 pertains to the timing and nature of Office of Management and Budget (OMB) review of the document, not to the APA justifications for publishing an immediately effective final rule without having previously issued a notice of proposed rulemaking. In light of the continuing threats to the United States from terrorism, and this nation's continuing efforts to recover from the effects of the September 11 attacks and rebuild a secure and financially sound air transportation industry, we cannot agree with assertions that there is no longer an emergency situation justifying expeditious processing of this rule by OMB.

Application Deadlines

Over the course of the Department's implementation of the Act, the Department has set, and on some occasions extended, deadlines for submission of applications for compensation and supporting materials. Initially, applications for carriers other than air taxis had to reach the Department by November 13, 2001. Air taxis were required to apply by November 26, 2001.

Subsequently, the Department permitted certain classes of carriers that had not previously filed an application or wanted to amend their applications to do so by February 8, 2002. Following the adoption of the set-aside for small carriers, we permitted carriers eligible for the set-aside to send in an initial or amended application by May 16, 2002. We applied this same deadline to carriers that did not previously submit an application for compensation because of the provisions of former § 330.31(d)(1)(iv) or (d)(2)(iv) or a carrier that wished to amend its application because of the removal of these provisions. The Department extended the May 16 deadlines for both these groups of carriers to July 29, 2002 for good cause, but no time extensions have been granted beyond July 29, 2002.

In addition, carriers that had already received compensation or submitted an application for compensation before April 16, 2002, were required to submit a ''third round'' application, including the report of the agreed-upon procedures engagement required by § 330.37(c) or the simplified procedures report required by § 330.37(d), as applicable. These carriers were also required to submit copies of monthly profit and loss statements for the months July 2001 through January 2002, each of which must have included the imputed price per gallon average of the fuel used for all aircraft during that month. These statements were required to be certified true and accurate (see § 330.33). These carriers were required to submit this application and all required supporting materials by May 16, 2002. The Department extended this deadline to July 29, 2002 for good cause, but no time extensions have been granted beyond July 29, 2002.

Because all these deadlines have previously been established and have passed, and the Department has not granted any further extensions, we believe that retaining an ''applications deadlines'' section in the regulatory text is unnecessary, since it would have no prospective effect. Consequently, we have removed and reserved § 330.21.

Miscellaneous Issues

ATA asked the Department to clarify that, beyond Form 330 and associated data, no more information would be needed from carriers. ATA also would like timetables for the completion of the compensation process. In addition, ATA requested that the Department publish on its web site the total ASM and RTM denominators used by the Department to calculate the compensation cap for carriers (which ATA believes is likely to be closer to 90 rather than 94 million ASMs) as well as the ASMs and RTMs associated with an eligible carrier's payment. ATA also suggested some minor edits to Form 330 (Final).

In addition, while the Department did not receive any comments specifically on the point, an issue has arisen during the review of carrier applications that merits discussion. This issue relates to the appropriate forecast to be utilized in determining a carrier's losses due to the events of September 11. In some cases, several forecasts might have been prepared, refined, or adjusted at different times, requiring the Department to choose among them for the one that best satisfies the need for an objective and timely forecast of financial expectations for the September 11 to December 31 period.

DOT Response

The Department is interested in Form 330 (Final) and the information and records that bear on the numbers in that form. In reviewing applications, the Department requests additional supporting information and documents where needed for the Department to make a proper determination. With respect to timetable, we have paid out over $4.3 billion of the $5 billion that was appropriated, and we remain committed to making the remaining payments as soon as possible.

With respect to publishing the final denominators, the Department has adjusted the denominators with each round to reflect the latest information and experience. At this time, the final numbers have still not been determined because of late filed data. Any air carrier paid under the formula can readily determine the denominator used in calculating its payment by using its own ASM or RTM total and $4.5 billion and $500 million, respectively. We have not made the minor edits to Form 330 (Final) suggested by ATA because most carriers were able to complete the form without confusion, and where there were inconsistencies the Department was able to readily resolve them.

As to forecast issues, we have required the submission of the most

recent pre-September 11 profit/loss forecast for September 11 to December 31, 2001. Expressions of this requirement appear in various wordings in the regulation, regulatory preambles, and the Model Agreed-Upon Procedures and Simplified Procedures. Our intent has always been to obtain a reliable, objective, and up-to-date forecast that reasonably represented a *pre-September 11* outlook as to expected financial results for the September 11 through December 31 period. In some cases, this may lead to difficult choices between timeliness and approval at the highest corporate levels. For example, the latest forecast adopted by the Chief Executive Officer of a company may rely on months-old analysis, which may be obsolete given events in the fast-changing airline industry. Alternatively, a forecast completed in early September by staff personnel for a limited corporate purpose may be very timely, but lack the reliability that would come from more senior review. In situations in which such choices must be made, the Department will seek in all cases to use that forecast which, under the totality of circumstances, provides the best combination of reliability, objectivity, and proximity to September 11, but that in all situations excludes consideration of the September 11 attacks and subsequent events.

Editorial Amendments

In this final rule, we are making a variety of editorial amendments to the final rule, to correct and update dates, citations, and references to Form 330 and remove some out-of-date references. For example, most of § 330.27(e) and all of § 330.27(f) are being removed as unnecessary and out of date, given changes to Form 330 and the existence of data on actual, rather than estimated, losses. Section 330.31(c)(3) is being deleted as inconsistent with the Department's determination that indirect air carriers may, in appropriate circumstances, include ASMs or RTMs representing operations of direct air carriers. We intended to delete this provision in the April 2002 publication, but through editorial error failed to do so. Because both passenger and all-cargo carriers are applying on the same form, we combined paragraphs (a) and (b) in § 330.27 and made clear that both groups, not just all-cargo carriers, must exclude non-air transportation related expenses. Section 330.13 has been updated to indicate that, if an air carrier previously received compensation, it must submit a Form 330 (Final) and other required documents even if it is not seeking additional compensation. One key reason for this requirement is that ''second round'' applications lacked actual results for the September 11–December 31, 2001 period, but contained only estimates.

Regulatory Analyses and Notices

Executive Order 12866

These amendments do not constitute an economically significant rule under Executive Order 12866, but they are significant under the Executive Order and the Department's Regulatory Policies and Procedures, because they affect important sectors of the air transportation industry and are of general policy interest. As part of a program to compensate air carriers for September 11-related losses, this rule will have a continuing favorable economic impact on the air transportation industry.

The Department concludes, based on the continuing extraordinary situation confronting the nation in the wake of the September 11 attacks and the Congressional imperative to ensure the expeditious completion of the compensation process, that this final rule merits expedited review by OMB, as provided in Section 6(a)(3)(D) of Executive Order 12866. In accordance with Section 6(a)(3)(D), this rule was submitted to the Office of Management and Budget for review. As noted above, treating this rulemaking as one in which the need for expeditious action precludes use of the normal OMB review process does not implicate APA issues with respect to prior opportunity for notice and comment and immediate effective date.

Regulatory Flexibility Act and Federalism

Under 5 U.S.C. 604, we note that this rule may have a significant economic effect on a substantial number of small entities. In analyzing small entity impact of the amendments, we believe that, to the extent that the rule does impact small air carriers, the impact is a highly favorable one, since it will result in carriers subject to the set-aside receiving more compensation than these carriers would have received otherwise. The Department has also concluded that this rule does not have sufficient federalism implications to warrant the consultation requirements of Executive Order 13132.

Paperwork Reduction Act

The Department's analysis of the information collection burdens under the April 2002 amendments to Part 330 applies to this rule as well. Under the Paperwork Reduction Act, the Office of Management and Budget approved this information collection on an emergency basis, with Control Number 2105–0548.

Administrative Procedure Act Findings

The public has had a prior opportunity to comment on the provisions of today's final rule, in the context of the opportunity for comment provided to the April 2002 amendments to part 330. While the Department believes that, because of the need to move quickly to provide compensation to air carriers for the purpose of maintaining a safe, efficient, and viable commercial aviation system in the wake of the events of September 11, 2001, this opportunity would not be mandated under under 5 U.S.C. 553, the Department provided it in the interest of allowing interested parties a fair opportunity to make their views known. The preamble of this rule has responded to the comments we received. For the same reasons cited above, a delay of the effective date under 5 U.S.C. 801, *et seq.*, is not being provided. On the same basis, we have determined that there is good cause to make the rule effective immediately, rather than in 30 days.

List of Subjects in 14 CFR Part 330

Air carriers, Grant programs—transportation, Reporting and recordkeeping requirements.

Issued this 9th day of August 2002, at Washington, DC.

Read C. Van de Water,

Assistant Secretary for Aviation and International Affairs.

For the reasons set forth in the preamble, the Department revises 14 CFR part 330, to read as follows:

PART 330—PROCEDURES FOR COMPENSATION OF AIR CARRIERS

Subpart A—General Provisions

Sec.

330.1 What is the purpose of this part?
330.3 What do the terms used in this part mean?
330.5 What funds will the Department distribute under this part?
330.7 [Reserved]
330.9 What are the limits on compensation to air carriers?
330.11 Which air carriers are eligible to apply for compensation under this part?
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330.17 [Reserved]

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330.21 [Reserved]
330.23 To what address must air carriers send their applications?
330.25 What are the components of an air carrier's application for compensation?

330.27 What information must certificated and commuter air carriers submit?
330.29 What information must air taxi operators submit on Form 330 (Final) and Form 330–C?
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330.33 Must carriers certify the truth and accuracy of data they submit?
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Subpart C—Set-Aside for Certain Carriers

3330.41 What funds is the Department setting aside for eligible classes of air carriers?
330.43 What classes of air carriers are eligible under the set-aside?
330.45 What is the basis on which air carriers will be compensated under the set-aside?
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).

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 [Reserved]

§ 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 310,000 or fewer ASMs to the Department for the month of August 2001 (10,000 ASMs per day).

(b) You are a Class II air carrier if you are an air taxi, regional, commuter, or indirect air carrier and you reported between 310,001 and 10 million ASMs to the Department for the month of August 2001.

§ 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 310,000 ASMs reported; and

(ii) The mean remaining loss per ASM for all Class II carriers applying for compensation for each ASM in excess of 310,000.

(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.

Appendix A to Part 330—Forms for All Carriers

BILLING CODE 4910–62–P

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.

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**

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.

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