

§ 91.5

shall investigate: (a) Instances of alleged excessive or otherwise discriminatory user charges or (b) discriminatory or unfair competitive practices to which U.S. flag air carriers are subjected by a foreign government or other foreign entity. Excessive or otherwise discriminatory charges include, but are not limited to, unreasonable landing fees, unreasonable monopoly ground handling fees and unreasonable air navigation charges. Discriminatory or unfair competitive practices include, but are not limited to, unreasonably differentiated fuel allocations, cargo, charter or currency restrictions and inferior monopoly ground handling services.

§ 91.5 Findings and recommendations.

(a) Upon finding that a foreign government or entity imposes excessive or otherwise discriminatory charges against U.S. flag air carriers or causes such carriers to be subjected to discriminatory or unfair competitive practices, the Assistant Secretary, in coordination with the General Counsel and the Administrator, shall determine the extent of the discrimination or unfair competitive practices.

(b) Where the matter involves excessive or otherwise discriminatory charges, the Assistant Secretary shall prepare a report and recommend that the Secretary promptly submit a report of the case to the Secretary of State and the Civil Aeronautics Board in accordance with section 11 of the International Aviation Facilities Act, 49 U.S.C. 1159a.

(c) Where the matter involves discrimination or unfair competitive practices other than user charges, the Assistant Secretary shall prepare a report and recommend that the Secretary take such other action within the jurisdiction of the Department as is appropriate under the circumstances in accordance with 49 U.S.C. 1159b.

(d) If the Secretary determines, after review of the report and recommendations made under paragraph (b) of this section, that unreasonably excessive or otherwise discriminatory charges exist, the Secretary will submit a report on the matter to the Secretary of State and the Chairman of the Civil Aero-

49 CFR Subtitle A (10–1–23 Edition)

nautics Board in accordance with 49 U.S.C. 1159a.

(e) If the Secretary determines, after review of the report and recommendations made under paragraph (c) of this section, that discriminatory or unfair competitive practices exist, the Secretary will commence all appropriate action within his jurisdiction in accordance with 49 U.S.C. 1159b.

§ 91.7 Determination of compensatory charges.

(a) Upon indication by the Secretary of State that the excessive or otherwise discriminatory user charges have not been reduced or eliminated, the Secretary will direct the Assistant Secretary to compute the appropriate amount of compensatory charges.

(b) Upon approving the amount of compensatory charges computed under paragraph (a) of this section, the Secretary will notify the Secretary of State and the Secretary of the Treasury of his determination.

§ 91.9 Distribution of compensatory funds.

(a) On or after January 1 and July 1 of each year, each U.S. flag air carrier which has been subjected to excessive or otherwise discriminatory charges for which compensatory charges have been collected shall, upon compliance with paragraph (c) of this section, be entitled to pro rata reimbursement for excessive or otherwise discriminatory charges incurred to date, not to exceed the amount of such charges actually paid by that carrier.

(b) The Secretary will publish in the FEDERAL REGISTER, at least 30 days before a U.S. flag air carrier becomes entitled to reimbursement, a notice setting forth the procedures to be followed in making claims for reimbursement. This notice will specify the form in which application shall be made and the specific items of proof, if any, to be submitted.

(c) On or after January 1 and July 1 of each year, each U.S. flag carrier claiming a right to reimbursement shall apply for such reimbursement in accordance with the FEDERAL REGISTER notice referred to in paragraph (b) of this section.

(d) The Assistant Secretary shall, on the basis of the application and such other data as may be available, compute the amount to which such carrier is entitled.

(e) Subject to the provisions of §91.13(b), upon approving the computation made by the Assistant Secretary, the Secretary shall issue such certificate as will entitle each such carrier to payment from the account maintained by the Secretary of the Treasury for this purpose.

§91.11 Standards.

(a) To minimize the burden of implementing this part on the United States, on U.S. flag air carriers and on foreign air carriers, estimates and periodic adjustments will be used to determine the amount of discrimination and compensatory charges therefor.

(b) For the purpose of determining the amount of excessive or otherwise discriminatory charges imposed upon U.S. flag air carriers by an entity:

(1) A service or use of airport or airway property includes, but is not limited to, fueling, food service, ticketing, baggage handling, runways, ramps, parking areas, navigational aids, communications facilities or any other service necessary and incidental to the conduct of a flight.

(2) An excessive or otherwise discriminatory charge includes, but is not limited to, a charge substantially above the cost of providing a service or any charge for a service that is substantially inferior to that which the U.S. flag air carrier could have provided for itself, at the same cost, by contract or otherwise (*see also* §91.3).

(c) In determining the amount of compensatory charge:

(1) The total amount of excessive or otherwise discriminatory charges levied against U.S. flag air carriers will be estimated in dollars.

(2) The total volume of operations to the United States by air carriers of the nation concerned will be estimated for the succeeding six-month period.

(3) The total amount of excessive or otherwise discriminatory charges in paragraph (c)(1) of this section will be divided by the total volume of operations in paragraph (c)(2) of this section, and

(4) The quotient thus computed (which may be adjusted to reflect the type of aircraft) will constitute the compensatory charge to be collected as a condition to acceptance of the general declaration at the time of landing or takeoff of such air carriers of the nation concerned.

§91.13 Refunds.

(a) Where, in his discretion, the Secretary finds that good cause has been shown, the Secretary may authorize a refund of collected compensatory charges. For purposes of this section, good cause includes, but is not limited to, an error of fact, a miscalculation, or a determination that an original conclusion of entitlement was insufficient, invalid, erroneous or invalidated by subsequent events.

(b) Notwithstanding the provisions of §91.9(e) the Secretary may suspend for a reasonable time the issuance of a certificate of entitlement upon a showing by a payor of compensatory charges that there is a substantial likelihood that the payor will make a showing of good cause under §91.13(a).

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, the issuance of a certificate of entitlement under §91.9(e) or the distribution to U.S. flag air carriers of funds collected under this part shall be with prejudice to any claim for refund under this section.

PART 92—RECOVERING DEBTS TO THE UNITED STATES BY SALARY OFFSET

Sec.

92.1 Purpose.

92.3 Scope.

92.5 Definitions.

92.7 Notice, hearing, written response and decision.

92.9 Exceptions to notice, hearing, written response, and final decision.

92.11 Demand for payment.

92.13 Request for hearing.

92.15 Request for hearing after time expires.

92.17 Form of hearings and written decisions.

92.19 Obtaining the services of a hearing official.

92.21 Deduction from pay.

92.23 Collection.

92.25 Source of deductions.

92.27 Duration of deductions.