

Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME, or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

Effective 18 June, 1998

Birmingham, AL, Birmingham Intl, RADAR-1, Amdt 19
Crestview, FL, Bob Sikes, LOC RWY 17, Amdt 2, CANCELLED
Crestview, FL, Bob Sikes, ILS RWY 17, Orig
Louisville, KY, Louisville Intl-Standiford Field, NDB OR GPS RWY 1, Amdt 8A, CANCELLED
Louisville, KY, Louisville Intl-Standiford Field, ILS RWY 1, Amdt 11B, CANCELLED
Louisville, KY, Louisville Intl-Standiford Field, ILS RWY 19, Amdt 9B, CANCELLED
Louisville, KY, Louisville Intl-Standiford Field, ILS RWY 35L, Orig
Louisville, KY, Louisville Intl-Standiford Field, GPS RWY 17L, Orig
Louisville, KY, Louisville Intl-Standiford Field, GPS RWY 35R, Orig
Louisville, KY, Louisville Intl-Standiford Field, GPS RWY 29, Orig

Effective 16 July, 1998

Fernandina Beach, FL, Fernandina Beach Muni, GPS RWY 13, Orig
Marshall, MN, Marshall Muni-Ryan Field, VOR RWY 12, Amdt 7
Marshall, MN, Marshall Muni-Ryan Field, ILS RWY 12, Amdt 1
Cleveland, OH, Cuyahoga County, ILS RWY 23, Amdt 13
Dayton, OH, Dayton-Wright Brothers, LOC RWY 20, Amdt 5
Dayton, OH, Dayton-Wright Brothers, NDB OR GPS-A, Amdt 1
Okmulgee, OK, Okmulgee Muni, VOR OR GPS-A, Orig

Okmulgee, OK, Okmulgee Muni, VOR OR GPS RWY 22, Amdt 1, CANCELLED

Pawtucket, RI, North Central State, VOR/DME RNAV RWY 5, Amdt 6, CANCELLED

Pawtucket, RI, North Central State, VOR/DME RNAV RWY 23, Amdt 5, CANCELLED

Nashville, TN, Nashville Intl, ILS RWY 2R, Amdt 5

Salt Lake City, UT, Salt Lake City Intl, RADAR-1, Amdt 15, CANCELLED

Salt Lake City, UT, Salt Lake City Muni 2, RADAR-2, Amdt 1, CANCELLED

Land O'Lakes, WI, Kings Land O'Lakes, NDB OR GPS RWY 14, Amdt 9

Land O'Lakes, WI, Kings Land O' Lakes, NDB RWY 32, Orig

Effective August 13, 1998

Galena, AK, Edward G. Pitka, Sr., GPS RWY 7, Orig

Galena, AK, Edward G. Pitka, Sr., GPS RWY 25, Orig

Nome, AK, Nome, GPS RWY 2, Orig

Nome, AK, Nome, GPS RWY 9, Orig

Nome, AK, Nome, GPS RWY 27, Orig

Yakutat, AK, Yakutat, GPS RWY 11, Orig

Yakutat, AK, Yakutat, GPS RWY 29, Orig

Tuscaloosa, AL, Tuscaloosa Muni, VOR OR TACAN OR GPS RWY 22, Amdt 14

Camarillo, CA, Camarillo, GPS RWY 8, Orig

Camarillo, CA, Camarillo, GPS RWY 26, Orig

Redlands, CA, Redlands Muni, GPS-A, Orig

Gainesville, FL, Gainesville Regional, GPS RWY 10, Orig

Gainesville, FL, Gainesville Regional, GPS RWY 28, Orig

Tallahassee, FL, Tallahassee Regional, ILS RWY 27, Amdt 5

Boone, IA, Boone Muni, GPS RWY 14, Amdt 1

Boone, IA, Boone Muni, GPS RWY 32, Orig

Baltimore, MD, Baltimore-Washington Intl, ILS RWY 28, Amdt 12

Baltimore, MD, Baltimore-Washington Intl, ILS RWY 33L, Amdt 8

Ord, NE, Evelyn Sharp Field, NDB OR GPS RWY 13, Amdt 4

Ord, NE, Evelyn Sharp Field, GPS RWY 31, Orig

Lawton, OK, Lawton-Ft Sill Regional, VOR RWY 35, Amdt 20

Lawton, OK, Lawton-Ft Sill Regional, ILS RWY 35, Amdt 7

Lawton, OK, Lawton-Ft Sill Regional, RADAR-1, Amdt 4

New Lisbon, WI, Mauston-New Lisbon Union, GPS RWY 32, Amdt 1

Cody, WI, Yellowstone Regional, GPS-B, Orig

Note: The FAA published an Amendment in Docket No. 29199, Amdt No. 1865 to Part 97 of the Federal Aviation Regulations (VOL 63, No. 81, Page 23209; dated April 28, 1998) under Section 97.33 effective June 18, 1998, which is hereby amended to read:

* * * *Effective August 13, 1998*

Delano, CA, Delano Muni, VOR RWY 32, Amdt 7

Delano, CA, Delano Muni, GPS RWY 32, Orig

Porterville, CA, Porterville, Muni, GPS RWY 12, Orig

Porterville, CA, Porterville Muni, GPS RWY 30, Orig

The following procedures are rescinded:

Tracy, CA, Tracy Muni, GPS RWY 25, Orig

Tracy, CA, Tracy Muni, GPS RWY 29, Orig

[FR Doc. 98-13746 Filed 5-21-98; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Parts 207, 208, 212, and 380

[Docket OST-97-2356]

RIN 2105-AB91

Aviation Charter Rules

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: DOT is amending its charter air transportation regulations to update the rules, make changes reflecting current operating procedures and include the following specific modifications:

Eliminate the 10-day waiting period after the filing of a prospectus or an amendment before Public Charters may be advertised or sold;

Allow charter operators to accept payment by credit cards for Public Charter flights;

Delete the minimum contract size of 20 seats for passenger charters;

Permit direct air carriers to sell charter flights within 7 days of departure;

Codify the Department's practice allowing a "sub-operator" to buy into another Public Charter operator's prospectus as a principal;

Eliminate the requirement for brief or "mini" prospectus to be filed by direct air carriers conducting foreign-originating flights for foreign charter operators;

Consolidate the rules applicable to U.S. and foreign direct air carriers into a single part; and

Broaden the definitions of "immediate family" in parts 212 and 380 to include the member's (or student participant's) spouse, children, and parents, whether or not they share a household with the member. This action is taken at the Department's initiative and responds to President Clinton's Regulatory Reinvention Initiative.

EFFECTIVE DATE: The rule shall become effective on June 22, 1998.

FOR FURTHER INFORMATION CONTACT: Charles W. McGuire, Chief, Special Authorities Division (X-57), Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 (202) 366-1037.

SUPPLEMENTARY INFORMATION:

Background

On September 16, 1992, the Department of Transportation issued a notice of proposed rulemaking (NPRM) [57 FR 42864, September 16, 1992] which proposed to (1) replace the filing of prospectus for Public Charters with an annual registration by charter operators; (2) eliminate the regulation of "major changes" in charter itineraries and the specific terms of Public Charter operator-participant contracts, but require that consumers receive actual notice of important terms affecting the charter; (3) simplify the financial security arrangements applicable to charter operators; (4) eliminate the financial security arrangements applicable to direct air carriers; (5) permit consumers to make credit card payments to charter operators for Public Charters; (6) remove the prohibition against charter sales within 7 days of departure by direct air carriers or charter operators affiliated with direct air carriers; (7) simplify and eliminate unnecessary requirements applicable to non-public charters (i.e., single entity, affinity, and mixed charters), and add provisions for the operation of gambling, junkets; and (8) consolidate the rules applicable to direct air carriers into a single part, removing obsolete and repetitive references and requirements.

Comments and reply comments on the Department's proposals were filed by 17 direct air carriers, 20 charter operators, 6 trade associations, 3 banks that serve (or served) as depository banks for charters, 1 state department of transportation, and 15 private citizens.¹

¹ Specifically, comments in this proceeding were filed by Aeronautica de Cancun, Air 2000 Limited, Air Canada, Air Espana S.A., Air Transport Association of America (on behalf of Alaska Airlines, American Airlines, Continental Airlines, Delta Air Lines, Trans World Airlines, United Air Lines, and USAir), Airline Brokers Company, Association of Retail Travel Agents, American Society of Travel Agents, American Trans Air,

While many of those responding supported the basic goals of reducing the burden of paperwork, simplifying the regulatory process, eliminating obsolete requirements, and liberalizing relationships in the marketplace, when it came to the proposed changes to the basic consumer protection provisions of the regulations, the majority urged the Department to retain the existing requirements. Except as discussed below we have decided not to adopt many of the rule changes proposed in the NPRM.

Discussion of Comments

The issues specifically addressed by commenters agreeing or disagreeing with proposals in the NPRM or offering alternative approaches fall primarily into the following categories: (1) Filing Requirements; (2) Protection of the Charter Participants' Expectations; (3) Protection of the Charter Participants' Funds; (4) Financial/Security Rules Applicable to Direct Air Carriers; (5) Direct Air Carrier Responsibilities; (6) Use of Credit Cards for Payments to Charter Operators; and (7) Other Matters.

(1) Filing Requirements

The NPRM proposed to substitute an annual registration requirement for U.S. charter operators in place of the present prospectus filings for each series of flights. This form would identify the applicant and its ownership, and would certify the existence of a contract with the carrier and the existence of a valid security agreement and that both complied with the requirements of Part 380. The applicant would be required to notify the Department within 10 days of any change in the required information. Once the proper registration was filed, the charter operator could begin sales immediately without filing a flight program and without waiting the 10

Apple Vacations, Av Atlantic, Azores Express, Balair, Bruce Hall Sports, Condor Flugdienst, First of America Bank, Funway Holidays, Funjet, Great American Airways, GMV International, Hapag-Lloyd Fluggesellschaft, Harrah's Casino Hotel Atlantic City, Jamaica Express, Marazul Charters, Military Travel Corporation, Minnesota Department of Transportation, MLT Vacations, National Air Carrier Association (on behalf of American Trans Air, Evergreen International Airlines, Miami Air, Tower Air, and World Airways), National Bank of Royal Oak, North American Airlines, NW Tours, Northwest Airlines, Private Jet Expeditions, Regional Airline Association, Relvas Tours, Rich International Airways, Ryan International Airlines, Santo Tours, Schwaben International, Security Pacific National Trust Company (New York), Sunbird Vacations, Sunburst Holidays, The Surety Association of America, Trans Global Tours, Trans National Travel, Trans World Airlines, Travel Impressions, United States Tour Operator Association, Worldwide Airline Services d/b/a Leisure Air, and a number of individuals.

days for approval. The proposed treatment of foreign charter operators was slightly different in that they would still be required to seek authority in the U.S. as they do now.

While commenters generally approved of the proposal to require only an annual registration by charter operators, three of the industry associations (Association of Retail Travel Agents, American Society of Travel Agents and National Air Carriers Association) commented about several essential requirements of the registration process which permit the Department to regulate or discipline charter operators. The commenters referred specifically to the filing of schedules and changes thereto as well as to the certification that required security agreements to be in place. One of the associations also stated that if one believes the existing bond/escrow rules should be retained, then "specific identifying information for the operator's escrow accounts should also be provided and kept current." The purpose of the proposed relaxation of prospectus filing rules in the NPRM was to make the process less burdensome and possibly less expensive for the charter operator and to reduce the Department's regulatory workload. We are sympathetic to these comments and our further review of the mechanism of this proposed change leads us to conclude that the removal of the current system of prospectuses and amendments would compromise charter participants' ability to be assured of the legitimacy of charter programs and our ability to maintain useful records necessary to monitor Public Charter programs. The Department will not adopt the change proposed in the NPRM to replace the prospectus filing with an annual registration.

(2) Protection of Public Charter Participants' Expectations

Current charter rules contain provisions designed to protect the expectations of members of the public flying on Public Charters (14 CFR 380.30-380.33a). These rules prescribe the essential elements of contracts between charter operators and charter participants, and provide that certain major changes (hotels, flight dates, origin and destination cities, price) would entitle charter participants to cancel and receive a refund. The rules included precise requirements regarding the time for notifying charter participants of such changes and providing refunds where applicable.

In the NPRM, we proposed to eliminate the current provisions in the Public Charter rules that (1) specify the

contents of the contract between the charter operator and the charter participant; (2) regulate certain "major changes" in the price or itinerary that would entitle charter participants to cancel and receive a refund; and (3) prohibit charter operators from accepting charter participants' payments without first obtaining a signed operator-participant contract (§§ 380.31–380.33 and 380.12). In place of these provisions, we proposed to require charter operators to provide prospective participants with notice of, and access to, any conditions imposed by the operator (proposed § 380.7). The notice was to include, among other things, the terms under which the operator reserves the right to change the itinerary or price of the charter, and the charter participant's rights to cancel and receive funds under various circumstances. The notice, which would have been provided to the participant at the time of sale, could have been part of the charter operator's brochures or other solicitation materials. Just as with scheduled service (See 14 CFR Part 253), if a participant did not receive such notice, he or she would not have been bound by any term restricting refunds, imposing monetary penalties, or allowing the operator to change the itinerary or raise prices. The proposed rule also provided that, if a person purchased a charter and requested a copy of the full operator-participant contract within 5 days of the purchase, that person's payment would have been fully refundable if she or she canceled within 5 days after receiving the full contract, or by the day of the flight, whichever was earlier.

While some commenters supported our proposed elimination of the government-imposed contract provisions and the requirement that signed operator-participant contracts be received with or before receipt of payment for a charter flight, all who commented opposed some part of the notice of conditions offered as a substitute. The National Air Carriers Association and several charter operators opposed that portion of the proposed rule that would allow a customer up to 5 days after purchasing a charter trip to request a copy of the full contract and an additional 5 days after receiving the contract to cancel and receive a full refund. One of the commenters stated that such a provision would present serious practical difficulties, leaving charter operators with no viable opportunity to resell a late-canceling participant's seat and very likely incurring substantial cancellation fees for accommodations

reserved for that charter participant. An adverse side effect of this situation described by the commenter would be that on heavily booked flights potential charter participants desiring to travel would be turned away and denied travel due to someone else's tardiness in deciding to cancel. It was suggested that a full charter operator-participant agreement be provided to the charter participant at or before the time of purchase. Then, when the charter participant had made the purchase, there should be no right to cancel and receive a full refund on the basis of dissatisfaction with the terms and conditions. Referring to the practice in the scheduled air carrier industry where the passenger is required to purchase a ticket within 24 hours after making a reservation, a commenter proposed that the section could be revised to provide that, in cases where the full agreement is furnished to the charter participant at time of purchase, the contract review period is limited to one day during which the customer may cancel and receive a full refund. The commenter also noted that the charter participant always has the right to obtain and study the contract and take any time necessary to fully consider the terms and conditions prior to paying.² We believe that the commenters have raised valid concerns over the details of the proposed notice of conditions and how it would work in practice.

We also received comments urging us to retain some or all of the "major change" provisions of our current rules, particularly those dealing with material changes in the origin or destination of the flights, the departure/return dates, the hotels provided, and the price of the trip. The current rules require that charter participants be informed of any such changes and in many situations be given the opportunity to cancel and be given a full refund if they find the changes unacceptable.

The existing rule states that beginning 10 days before departure, operators and carriers may not cancel a charter (unless it is physically impossible to operate) or raise the price. If at any time the operator changes a date or city, or raises the price by more than 10 percent, affected participants have the right to cancel and receive a full refund. Participants must be notified of such "major changes" within 10 days. Overbooking on charters is banned.

² In order to satisfy the requirements of this section, the notice would have to be in writing and in a form that allows the participant to review it. Thus, reciting the notice in a radio commercial or flashing a graphic in a TV commercial would not suffice.

The NPRM proposed to abolish all of those protections. For example, the operator would simply be required to provide notice of the existence of any contract conditions that permit him to make such changes. Under the proposed rule, operators could wait until the day of departure to cancel a flight due simply to lagging sales. They could change the destination of the charter, or move the departure date by a week, or raise the price by \$200 two days before the flight; if anyone wanted to cancel as a result, the operator could impose a 100 percent cancellation penalty—and then resell the seat.

The regulatory reform rationale driving the NPRM was an attempt to redefine a part of the industry that appeared to be heavily restricted by artificial distinctions among the various kinds of air transportation available to the public. To accomplish this, the Department proposed to remove administrative burdens on airlines and charter operators, simplify financial security requirements, and liberalize sales of charters by eliminating time constraints, operator-participant contracts, major change rules, and requirements for non-public charters. It was noted that current charter rules still impose limitations on direct air carriers flying charters that are relatively stringent compared with those relating to the operation of scheduled air service. Similarly detailed requirements apply to charter operators who sell charter reservations to the general public. A significant part of the consumer protection features of the current rule concerns price changes, cancellations, itinerary changes and the contents of operator-participant contracts designed to ensure participants' expectations.

The notice requirement proposed in the NPRM was modeled on the contract disclosure rule for scheduled service, 14 CFR Part 253. However, charters work differently from scheduled service; all the market forces that might modify the behavior of a scheduled carrier are not in play in charter service. By the nature of the scheduled system, carriers operate flights even where the revenues on a particular operation don't cover their costs (i.e., the load factor is low). However, flight cancellations due to lack of participation and other changes are more likely to occur on charters, and when they do occur are likely to be at the last possible moment allowable under the rules, currently 10 days before departure of the outbound flight. Absent the current rule banning cancellations within the last 10 days before departure, a charter operator could wait to cancel or make another major change until two

or three days before planned departure in hopes of getting sizable bookings through wholesalers shortly before departure. Allowing charter operators unfettered discretion to fail to keep their end of the bargain with consumers would be unfair.

Also, when scheduled-service flights experience irregularities, passengers have more options than charter passengers because:

- Scheduled carriers operate more frequent flights than do charter operators. For example, if an 8 a.m. scheduled flight to Denver is canceled, the same carrier can usually rebook a passenger on another of its, or another airline's, Denver flights no more than a few hours later.
- Many scheduled airlines have agreements with each other so that one scheduled carrier can put passengers from its canceled or delayed flight on another airline's flight, at no additional cost to a passenger.
- Scheduled carriers operate many different routes; they may serve more than one airport in the same city. If they cancel a flight they might be able to reroute the passengers via another city or to another airport at the same destination city with limited inconvenience to the passengers.

We conclude that while the notice regime of Part 253 (Notice of Terms of Contract and Carriage) has worked well to protect schedule passengers, our proposal to apply a similar approach in the charter area would likely result in an unacceptable risk to charter participants. The American Society of Travel Agents (ASTA) commenting on the proposed annual registration thought it might be worth trying but "charter operators should still be required to file copies of promotional material containing the proposed flight schedules at least 10 days before a flight." ASTA went on to say that the requirement would be "to discourage the publication of fictitious flight schedules which are then changed at the last minute to convenience the tour operator or the airline." This theme was also expressed by the Association of Retail Travel Agents (ARTA) which said that "we realize from experience the need for updated promotional materials containing proposed flight schedules at least 10 days before flight." ARTA continued this discussion stating that "Agents need to see the exact product available to enable them to fully inform their customers so that prices and scheduling can be compared for customer benefits." Comments from the University of Minnesota touched the broader scope of the issue stating that the present process for regulating Public

Charters, including the filing process, had proved to be beneficial and necessary. We will retain these provisions along with the other parts of the customer protection package in the final rule.

(3) Protection of the Charter Participants Funds

We tentatively concluded in the NPRM that the present financial security requirements applicable to Public Charters should be revised. Under the current rules, Public Charter operators must obtain either (1) an acceptable security arrangement in an amount equal to the charter price for the air transportation if air-only or, if land arrangements are involved, in an amount equal to one, two, or three times the price of the air transportation depending on the duration of the charter trip; or (2) an acceptable security arrangement in the amount of \$10,000 per flight up to a maximum of \$200,000 for 20 or more flights plus a depository (escrow) account at a bank, into which all payments by or on behalf of charter participants must be deposited and from which they may not be removed except under specified conditions (§§ 380.34, 380.34a, 380.35).

We postulated that existing financial security requirements may be unduly burdensome on or costly to Public Charter operators, and proposed to substitute one or more of the various options set forth in the NPRM for the existing surety/escrow combination. The options proposed in the NPRM were: (1) A security agreement³ in an amount of at least \$30,000 times the number of flights up to a maximum of \$600,000; (2) a security agreement sufficient to cover the cost of air transportation sold but not yet provided to consumers (i.e., a "rolling bond" under which the amount of the security could increase or decrease over time as the number of charter participants who have paid but have not completed their travel changes); (3) a requirement that U.S. or foreign direct air carriers participating in Public Charter programs bear financial responsibility for charter participant funds paid for charter air transportation (i.e., by either refunding moneys paid or providing the transportation for which it was paid) in

³Term security agreement would be defined as it is today to include either a surety bond, or a surety trust agreement or letter-of-credit that provides protection equal to or greater than that provided by a bond (See new § 380.2). The agreement would have to be for an amount that would cover all one-way or round-trip flights that the Public Charter operator will actively advertise, sell, or operate at any one time, including any flights that may be completed but are within the 60-day period for the filing of claims.

the event of insolvency or other failure to perform by the charter operator; (4) a security agreement in an amount not less than the charter price for the air transportation (whether or not the charter flights being sold include land arrangements); or (5) a security agreement in an amount not less than the cost of the charter trip paid by the participant, including air transportation and land arrangements, if applicable.

None of these options included retention of the existing surety/escrow system of protecting charter participant funds; however, in view of comments in earlier rulemakings in support of the present escrow system, we specifically asked for comments on whether we should retain that system.

Virtually all of the parties and individuals that commented on the NPRM discussed the financial security options, with a large majority in favor of retaining the surety/escrow option for charter operators permitted under the present rules. Those who commented on the specific alternative financial security measures generally noted that each would provide a measure of financial protection, but the comments were varied as to which, if any, should be adopted. Several commenters felt the escrow requirement should be done away with, but that the amount of any required security agreement should be less than the \$30,000 per flight/\$600,000 maximum amount proposed.

Of those opposed to the current surety/escrow option, several charter operators cited administrative burdens and large fees imposed by banks. One charter operator complained in particular of fees of between \$175 and \$260 per departure, which it asserts are not offset by interest earned on an escrow account, and of being assessed other expenses related to maintaining the account, such as for wire transfer fees, cancellation fees, and other charges incurred by the bank to pay hotels, land operators, and air carriers. Others submitted comments against retention of the current surety/escrow option, primarily on the basis that such arrangements have not always sufficiently protected consumers' funds, particularly when operators have filed for protection under bankruptcy laws.

In support of retaining the present surety/escrow option, many individual charter operators and an association representing charter operators asserted that the present system provides a necessary discipline on the industry and that financially stable and responsible charter operators are not burdened by the escrow system. One of these commenters pointed out that the escrow account system has worked well, when

properly administered, to provide consumer protection at little or no cost, and it should continue as an option. It suggested, however, that there is no need to require a security agreement, such as the \$10,000 per flight/\$200,000 maximum required under present rules, in addition to the depository account.

The members of the banking industry that commented on the NPRM, as well as the private citizens who commented, were unanimously in favor of retaining some form of protection requiring a depository account. One bank that handles charter operator escrow accounts stated that the depository method is the safest and most economical manner in which to provide protection of consumer funds, in particular because of the high risk to banks of surety bonds and trusts, the costs of which must be passed on to charter operators and, ultimately, consumers. Another bank asserted that the interest earned on escrow accounts more than makes up for any charges assessed by the banks for maintenance of the accounts.

Many of the direct air carriers and associations filing comments on behalf of direct air carriers recognized that the present surety/escrow system carries with it certain costs and burdens. Most, however, suggested that it be kept in place because it has proven to be an effective means of protecting charter participant payments. One of these commenters suggested retention of the present escrow system, at least until the Department has had an opportunity to examine the effects on the charter industry of other changes to the Public Charter rules that may result from this proceeding. Another suggested that if there is to be a change, we retain the present surety/escrow system, and, in the interest of allowing the industry to respond to market requirements, also allow any of the other proposed systems as optional requirements.

The \$30,000-per-flight, \$600,000 maximum alternative received some support from several direct air carriers and from well-established charter operators. Many other direct air carriers and charter operators, as well as financial institutions, argued against such a security agreement requirement as being too expensive for many charter operators to obtain and maintain. Other commenters noted the requirement, which would triple currently required security amounts, would be unnecessarily broad for the many small-aircraft, domestic charter operations, so that the security required per flight could far exceed the cost of the air transportation. On the other hand, one commenter noted that the \$30,000-per-

flight figure could be insufficient to cover certain wide-body aircraft operations, while another felt that the \$600,000 maximum would be insufficient to cover many large charter operator programs.

We see merit in each of the comments. We recognize that the proposed \$30,000-per-flight, \$600,000 maximum amount might not fully cover the operations of all charter operators. However, we are also concerned that adoption of the proposal could result in a situation where charter operators, particularly small businesses, would be required to obtain security in an amount far exceeding the cost of the flight, if it could be afforded at all. We conclude that we should not adopt this proposed alternative for protecting participant payments.

Another method of financial security discussed by the NPRM is a security agreement sufficient to cover the cost of air transportation sold but not yet provided to consumers. This "rolling bond" alternative would allow the amount of the security to increase or decrease over time as the number of charter participants who have paid but have not completed their travel changes.⁴ This option was addressed by one charter operator and two of the banks. The charter operator was in favor of the option but one of the banks declared it "unworkably difficult" to administer since it could involve maintaining records and accounts involving dozens of charter flights and thousands of charter participants each day. We have determined not to adopt this option at this time since, under the rolling bond concept, the amount of coverage with respect to the protection of funds is determined solely by the charter operator and we are not convinced such a program could be administered to afford effective consumer protection. We will not adopt the rolling bond as an alternative security measure.

Another option that we have concluded should not be afforded to charter operators is to permit a direct carrier to agree to bear financial responsibility for charter participant funds paid to the charter operators, either by refunding moneys paid or providing the transportation paid for by the consumer. Most of the direct air carriers and their associations commenting on specific alternative proposals strongly urged the

Department not to adopt this option. The many objections to adopting this financial security measure centered on a concern that holding a direct air carrier to be the guarantor of a charter operator's obligations would change the fundamental relationship of the two entities where direct air carriers have historically been merely contractors supplying services, without any effective means to assess or control the financial risks associated with such responsibility. It was argued that the direct air carrier and a non-affiliated charter operator have at best an arm's-length relationship and that the airline has no realistic opportunity or capability to effectively investigate the charter operator's financial status, managerial competence, or compliance disposition. It was also pointed out that the airline is not a party to any agreement between the charter operator and the participants and should not be placed in the middle of any disputes arising out of the participants' dissatisfaction with the arrangements.

Relating to the discussion above, one major direct air carrier and its affiliated charter operator, in a joint comment, suggested that the Department should adopt the option, expanded to allow a direct air carrier to assume financial responsibility for all of the obligations of an affiliated charter operator, including the affiliate's obligations for those flights for which it is not the direct air carrier. Permitting the direct air carrier to stand behind the obligations of its affiliate would, according to this commenter, afford a greater incentive to monitor the charter operator's business and provide a superior level of protection for consumers in those cases in which the direct air carrier is a scheduled carrier with wide operations. Several other commenters suggested that no affiliation should be required between the direct air carrier performing the flights and the charter operator whose programs would be backed.

Although we are somewhat receptive to this proposal, particularly where there is a true affiliation between the charter operator and direct air carrier (e.g., where one controls, is controlled by, or is under common control with the other), we are concerned that a blanket approval of this type of arrangement could lead to abuses, either where the direct air carrier overextends itself and guarantees a large charter program for which it has insufficient capacity available to operate in the event it becomes necessary to do so, or where financially weak direct air carriers "rent" their backing to charter operators seeking to avoid the financial security

⁴ As with the air-only security agreement discussed above, under this option charter operators would be required to retain records sufficient to enable us to ascertain the separate cost to the consumer of the air and land portions of a charter package.

rules. We have decided, therefore, not to expand the rule as requested, but to review any such proposed arrangements on a case-by-case under the waiver provisions of § 380.9. Any direct air carrier seeking to provide such guarantees to operators must be prepared to demonstrate to our satisfaction that it has the wherewithal to undertake such an arrangement, particularly if it involves a substantial charter program.

One financial security option proposed in the NPRM is a security agreement in an amount not less than the charter price for the air transportation, whether or not the charter flight being sold includes land arrangements. Some of those that commented on this option were concerned about the lack of protection it entails for the land portion of a charter participant's payments and pointed out that it may provide less protection than is available today. As has been the case for years, today any consumer can purchase as a "package" from a retail travel agent or other entity a tour that includes travel on scheduled service and land arrangements that are independent of the air service. While the air portion of the price of the tour is "protected" after the ticket is issued, in the sense that the direct air carrier is obligated to honor the ticket for transportation or provide a refund, there is no Department-mandated protection for the land portion of the tour price. We reasoned that, to the extent present requirements place charter operators at a competitive disadvantage in providing services to consumers at the lowest possible price, it may be in the public interest to modify those requirements. Under this financial security option, we could do so without providing any less protection than that afforded purchasers of tours using scheduled service.⁵

In the NPRM, we also expressed our concern that the availability of this option, under which only the air transportation portion would be protected by a security agreement, could be subject to abuse if a charter operator would attempt to allocate only a small portion of the total tour package cost to the air transportation to be provided. We presented several possibilities for dealing with this problem, including a requirement that charter operators state separately their prices for the air and land portions of a package or a

requirement that charter operators retain records sufficient to enable the Department to ascertain the separate cost to consumers of the air and land portions.

We have concluded however that we should not adopt this proposal. Charter air tours involving land accommodations are distinguishable from tour packages using scheduled service. As discussed earlier, in the event of a flight cancellation or change, passengers using scheduled service have more options than do charter passengers and they are more likely to reach their destination in a timely fashion without serious inconvenience or monetary loss. Passengers using scheduled service are therefore less likely to forfeit any portion of their land arrangements as a result of a flight irregularity or other problem. We thus remain concerned about a system that would fail to protect the land as well as the air portions of a charter participant's trip. The present rule in this regard appears reasonable and to have worked well and, on balance, we see no reason to change it at this time. The Department has authority to handle potential abuses in this area through its general authority to investigate and prohibit unfair and deceptive practices or unfair methods of competition (e.g., 49 U.S.C. 41712).⁶

The comments on the alternative of requiring a security agreement that would cover the cost of both the air and land portion of a charter trip received little direct support. Those opposed to the proposal cited the expense, in general, of obtaining such security. The opposition, however, was based on supposition that the Department would require such a large security agreement. In recognition of the fact that the expense of obtaining and maintaining financial security in an amount sufficient to cover the charter operator's cost of air and land may be unattractive to, or unattainable for, some charter operators, we will not adopt this financial security alternative as a requirement.

We continue to believe that there is a need for protection of charter participants' funds and for their right to receive refunds for services paid for but not received. As we pointed out in the NPRM, there is a unique financial risk inherent in the sale of charter

transportation by charter operators that have not been required to meet our fitness requirements, and we conclude that the public benefits of retaining financial protections for charter participant funds significantly outweigh the cost of compliance.

After careful consideration of all of the comments in this proceeding, we have determined that we should retain the existing financial security rules as the means by which charter operators provide financial protection for consumer funds. A number of commenters stressed the view that significant benefits of the present system outweigh any administrative burdens and costs of compliance. Such comments from those intimately involved in the charter industry, particularly those parties upon whom the costs and burdens of the escrow requirements most heavily fall, together with the demonstrated benefits of the existing surety/escrow system, convince us that we should retain the existing system.

As a final point on the protection of consumer funds, we note elsewhere in this rule that we are allowing the use of credit cards as a means by which charter participants may pay for charter flights. If charter customers follow the trend of scheduled air transportation passengers, upwards of 70 percent of charter participants will be paying for their trips by credit card and not by cash or check. Those paying by credit cards will also be afforded the protections of Federal credit card laws.

(4) Financial Security Rules Applicable to Direct Air Carriers

Under the current rules, direct air carriers conducting charter flights are required to establish either (1) a surety bond in an unlimited amount, or (2) an escrow account into which all charter payments are to be deposited until after the flight is operated (14 CFR 207.17, 208.40, 212.12). These requirements apply to all U.S.-originating passenger charters, including Public and "non-public" type charters, as well as Overseas Military Personnel Charters originating outside of the United States. Direct air carriers using escrow accounts that engage in direct sales of Public Charters (i.e., without using an independent Public Charter operator) are also required to meet the bonding requirements of Part 380 applicable to Public Charter operators in addition to their flight escrow account.

We indicated in the NPRM that we were tentatively of the view that the present financial security requirements applicable to direct air carriers conducting charters, including direct

⁵ Indeed, adoption of this option may enhance competition in other ways, as is apparent from the comments of one party that arranges both charter and scheduled service tour packages, and, as an enhancement to consumers and retail agents, elects to advertise the fact that it places in escrow the land portion of the scheduled service tours.

⁶ Moreover, as part of their continuing obligation under new § 380.10 to ensure that any Public Charters they conduct are in compliance with the rules, we also expect that the direct air carriers performing the charters will ensure that the security agreement is at least in an amount sufficient to cover the cost of the air transportation to be provided as set forth in the direct air carrier charters operator contract.

sale Public Charters, were unnecessary, and we proposed to eliminate those requirements.⁷

Comments on this proposal were filed by several air carriers, charter operators, travel agent associations, and banks. Most of the direct air carriers agreed with the proposal that financial security arrangements should no longer be imposed on direct air carriers since airlines conducting charters are subject to the same fitness requirements as those operating scheduled flights; indeed, many carriers that operate charters also provide scheduled service. Moreover, scheduled flights are not subject to any such financial security requirements. These carriers also stated that the current security requirements are costly restrictions that produce little, if any, benefit while placing charter operations at a competitive disadvantage to scheduled service.

The proposed rule change was opposed by one air carrier, several charter operations, two travel agent associations, the banks, and most of the individuals filing comments, citing airline liquidations and bankruptcies in recent years and the apprehension they assert will be felt by charter operators who will be hesitant to take a chance on new entrants in the industry without the financial controls that are now in place. One commenter stated that more and more charter flights are being provided by new entrant U.S. and foreign carriers and that, since these carriers are the leading edge of competition in charter markets, it would be counterproductive to adopt a charter rule that has the effect of reducing their access to charter traffic. Another commenter stated that charter deposits transferred to direct air carriers represent relatively large sums of money in a single transaction with transfers made shortly before the flight operates, and it is not unreasonable, in these circumstances, for the direct air carrier to continue to provide depository protection for these sums, which have been afforded such protection while in the hands of the charter operator. Another commenter cited its concern that participants could claim against a charter operator's security agreement if they do not receive the charter trips they have purchased even though the charter operator had paid the direct air carrier.

We will continue to require direct air carriers to maintain a surety or escrow account for the protection of customer payments for charter flights that they

operate. Our decision to retain this requirement is premised, in part, on our view that even though such carriers have been subjected to a "fitness" evaluation by the Department, the charter participants' funds should continue to be protected after leaving the security of the charter operator's escrow account and until the charter participant has received the service that was promised. Moreover, in the event of a stranding, charter participants are less likely than scheduled passengers to be carried by other airlines or to benefit from ticketing procedures common among scheduled carriers (e.g., where travel on a defaulting airline is via a ticket issued by another carrier, or vice-versa).

(5) Direct Air Carrier Responsibilities

Under the proposed rules, direct air carriers would be responsible, as they currently are, for ensuring that any charter they conduct meets the requirements of the charter rules—that is, they would have to take reasonable steps to verify that the Public Charter operators with which they contract meet the registration and financial security requirements of Part 380, and single entity or affinity charters meet the definitional requirements for those charter types (proposed §§ 212.30(d) and 212.5(f)). Direct air carriers would be free to establish whatever contractual requirements they deemed necessary in order to ensure compliance with the rules. Direct air carriers would also be responsible, as they have been in the past, for providing return transportation to any charter participant who has purchased round-trip transportation and whom they transported on an outbound flight, unless that charter participant's return flight is covered by a contract with another direct air carrier (proposed § 212.3(e)). We also proposed to add a provision to Part 380 (proposed § 380.10) to state that, should the direct air carrier fail to make a "reasonable effort" to verify that the Public Charter operator had met the Department's financial security requirements, that air carrier would bear the responsibility to provide the charter transportation or refund the air transportation portion of the charter participant payments in the event of the charter operator's failure to do so.

The inclusion of the requirement to provide return transportation was opposed by several direct air carriers and charter operators, principally because the NPRM had proposed to eliminate prepayment requirements that are a part of current regulations (§§ 207.13(b), 208.32(e), 212.8(a), 380.11) for both the outbound and

return leg of charter round trips. The commenters stated that these prepayment rules worked as a mechanism to ensure that the direct air carrier would have the funds to either compensate the charter participants or cover the cost of transportation and that, without payments from the charter operator to cover the flights, the direct air carrier would have to endure a significant financial burden for which it was not responsible. One commenter proposed that the rule be revised to limit the direct air carrier's responsibility to the funds it had received from the charter operator to pay for the return leg. While the air carrier can always require the charter operator to pay the full price of the flight up front as a contractual matter, we agree that the rules should retain the prepayment requirements and the carrier will be responsible for the return air transportation of all round-trip Public Charter participants that it carries outbound, as in the current rule. This rule was written to protect the charter participants by ensuring that the charter operator had not only engaged the services of an air carrier but had also paid for the flight. We will retain the prepayment requirements of Parts 207, 208, 212, and § 380.11.

Comments were also received from a number of direct air carriers arguing that the refund-or-provision-of-transportation requirement proposed in new § 380.10 is an unfair and unworkable expansion of the "reasonable effort" concept of the current rules (§ 380.40). One carrier stated that this requirement would make the direct air carrier both the regulator and the guarantor of a charter operator and would "reformulate the nature of charter transportation. Recasting the carrier as the overseer of the charter operator would fundamentally change what has been understood to be a supplier-purchaser relationship." Several commenters view the NPRM language as a wholesale shift of responsibilities away from the charter operator, and argue that such shifting of the risk for charter operator performance to the direct air carrier will place greater financial pressure on the direct air carrier which, in turn, will make charter activities less attractive. The Department's rationale that such a rule would minimize government oversight of the charter industry and help protect charter participants is a worthy goal, say the commenters, but the way to achieve it is not by handing the enforcement role over to the airlines. Several commenters stated that they should be given an explanation of what constitutes

⁷ U.S. and Canadian air taxi operators that perform Public Charters are also subject to the financial security requirements applicable to direct air carriers. Under the proposed rule, those requirements, contained in §§ 298.38 and 294.32, would also have been eliminated.

“reasonable effort” so they will be on notice as to what is expected of them. Others suggested that charter operators should be required to give the direct air carriers a certification of compliance with Department regulations, and that should be sufficient to satisfy this requirement.

We appreciate the concern of those many commenters who feel that § 380.10 as proposed might be an expansion of direct carrier responsibility. Direct air carriers have long been responsible under present § 380.40 for ensuring that charter operators comply with all the requirements of our Public Charter rules. Indeed, our Office of Aviation Enforcement and Proceedings has not hesitated to pursue direct carriers for violating this provision.⁸ Nevertheless, we recognize that each situation involving a charter problem presents a different set of circumstances, and the fact that a problem occurs may not be causally related to a failure by a direct air carrier to have ensured compliance with Part 380. It was not our intent in proposing the language in the NPRM to make direct air carriers the guarantors of charter operations. Our intent was merely to clarify a significant obligation of direct air carriers that has for years been impressed upon them as a part of our charter enforcement policy. Upon reflection, we recognize that the present language under § 380.40 is understood and appropriate and we will make no changes. Accordingly, we are omitting this proposed section 380.10 from the final rule and will retain the language of § 380.40 in its present form. We emphasize to direct air carriers, however, that in doing so we are not diluting to any degree their longstanding obligation to ensure that charter operators comply with Part 380. Nor are we indicating any lessened resolve on our part to enforce this requirement to the extent necessary to ensure that consumers are not harmed.

Based on the number of comments received on this point, we recognize that the term “reasonable effort” may require further clarification. At a minimum, we would expect direct air carriers to verify that the Public Charter operators with whom they contract have filed with the Department a prospectus (that has been accepted)—they can accomplish this by contacting the Department’s Special Authorities Division directly—and that they have, in fact, entered into a security arrangement in an amount

sufficient to meet the requirements of our rules—they can accomplish this by contacting the named securer/escrow bank.⁹

(6) Use of Credit Cards for Payments to Charter Operators

The Public Charter (Part 380) was developed to protect the public by assuring that the individual participant receives the air flight and accommodations contracted for and that all payments to the charter operator are securely held and properly used. Among other provisions, Part 380 requires that each operator provide a security arrangement based on its total cost of the flights in its charter program or both a bank depository account (escrow account) and a \$10,000 per flight security arrangement. Most operators choose the escrow account/security arrangement combination. When the depository/security combination is used, payments to the charter operator from or on behalf of charter participants must be in the form of a check or money order made payable to the bank in which the escrow account is located. In practice, checks not so payable are endorsed over and deposited into the escrow account. The bank then disburses the money to the direct air carrier and, thereafter in some circumstances, to providers of non-air arrangements that are part of the Public Charter package. This check or money order payment required was put in place long before credit cards became a preferred form of payment for charter service. The NPRM pointed out that the restriction in the rule against credit card payments is inconsistent with the reality of today’s marketplace and denies consumers additional protections that may be gained when they use credit cards to pay for goods and services. For example, if services are not received or there is a problem, the consumer may not be required to pay a remaining amount and may even get a refund. The NPRM supported the view that many consumers prefer to use credit cards and charter operators can also benefit by offering the additional flexibility to the customer. The NPRM also noted that for years the Enforcement Office has as a matter of enforcement policy permitted charter operators to accept payment by credit card so long as certain consumer protection conditions are met.

Virtually all the commenters supported the rule change to allow direct credit card sales for Public Charters. Based on the comments and recent experience, the Department has decided to allow charter operators with

depository accounts¹⁰ to accept payment by credit card from charter participants into those accounts. If the credit card merchant account is separate from the depository account, it must be used solely as a conduit with all credit card payments toward Public Charter trips immediately remitted to the depository account in full, without holdback. If a separate bank is to be used as a conduit for the receipt of credit card payments, the Department must be satisfied that there are adequate procedural safeguards. For example, the Department may require the charter operator to furnish a copy of or certify that there is in place, an agreement between the charter operator and the credit card merchant bank sufficient to preclude participant funds from being held back.

In situations involving direct bookings by telephone, the Department will allow the Public Charter operator to accept credit card payments for its trips provided that the charter operator advises the customers: (1) That he or she has the right to receive the operator-participant contract before making a booking; (2) that the operator-participant contract will be mailed to the participant within 24 hours of accepting payment by credit card; and (3) that the operator-participant contract must be signed, and the signed portion returned to the operator, before travel. While the operator is free to establish a deadline for participants who pay by credit card to sign and return the contract, a full refund must be made of any amounts charged to a credit card for any participant who cancels before the operator-participant contract is signed.

(7) Other Matters

Minimum contract size and advance purchase requirements. Many commenters expressly supported our proposal to eliminate the 20-seat minimum contract size for less-than-paneload charters, and the 7-day advance purchase requirement for Public Charters sold directly to the public by direct air carriers or affiliated charterers. Several, however, expressed concern that the absence of these provisions could lead to abuse, especially in some international markets. One stated that, in cases where the United States has a restrictive scheduled and a liberal charter relationship with a foreign government, carriers could, absent the current minimum contract size and advance

⁸ See Order 92-2-1, January 2, 1992 (America West); Order 92-4-50, April 28, 1992 (Mark Air); Order 92-6-17, June 11, 1992 (Faucett); and Order 94-3-34, March 21, 1994 (Express One).

⁹ See also n.3, *supra*.

¹⁰ Public Charter operators with bonds equaling their total flight costs (or multiples thereof for trips exceeding 14 days) have always been permitted to accept payment in any form.

purchase rules, set up basically unrestricted direct sale charters to circumvent scheduled route or capacity limitations. This commenter and one other felt that retention of these kinds of restrictions on charters would help prevent the undermining of bilateral scheduled service regimes by charter operations. Another commenter expressed concern that carriers might sell individual seats on charters without complying with the requirements of our Public Charter rules.

We have decided to eliminate the minimum contract size and advance purchase rules, as we proposed to do. We recognize the concerns raised by the commenters over the possible implications of this change in some international markets, but we find that these concerns do not warrant our retention of these restrictive provisions. Significantly, as we noted in the NPRM, the final rule will allow the Department to limit or prohibit the operation of direct sale Public Charters by a foreign air carrier if we find that such action is necessary in the public interest. Thus, we have ample ability to redress problems that might arise, should such action prove necessary. Furthermore, we believe that the rule as adopted makes it clear that any sale by a direct air carrier of an individual charter seat to the public must be done under the direct sale provisions of Part 380.

Additional information with charter operator registrations. Several commenters proposed that we require additional information from Public Charter operators at the time of their registration under the proposed filing system. Three commenters suggested that operators be required to file a copy of their promotional material showing flight schedules to be operated. Another suggested that operators be required to provide a copy of the contract of carriage they would enter into with their charter participants. A third suggested that operators be required to file a certification of any complaints made against them by state or local consumer agencies.

We will not adopt these suggestions. With respect to the filing of promotional material with flight schedules, the current prospectus filing requirement includes flight schedules, and, as is now the case, we will request copies of advertisements when appropriate. The other two suggestions, for charter operators to file copies of their operator-participant contracts, and certifications of complaints, are not required under our current rules, and we see no public interest reason to impose these burdens as a part of this proceeding.

We will, however, amend the rule with respect to the information required to be filed on the ownership of the charter operator (Part 380, Subpart E—Registration of Foreign Charter Operators) to replace the reference in the proposed rule to “stockholders” holding 10 percent or more of the company’s stock with “persons” owning 10 percent or more of the company, since the proposed rule did not take into account the fact that many charter operators may be sole proprietorships or partnerships that do not have stockholders. Moreover, in order to accurately determine the citizenship of the charter operator, we will require that, if any such persons are themselves organizations or corporations, the 10 percent owners of those companies must also be identified back through the company’s structure to individual persons who own stock in the ultimate “parent” company of the charter operator. Requiring such information is also consistent with our procedures in reviewing the ownership structure of direct air carriers.

Filing of claims against Public Charter operators and securers, and payment of claims. Three commenters suggested shortening the provision in proposed § 380.6(d) that allows Public Charter participants 60 days after the termination of a flight to make a claim against the Public Charter operator (this requirement is contained in current § 380.34(d)). The commenters argued that retaining the 60-day claim period requires operators to maintain expensive security instruments for this period, and that there is no need for such a long period since charter participants will know no later than upon returning from their Public Charter whether their payments were lost in progress to the providers of services—most commonly airlines and hotel operators—or that refunds are due under the operator-participant contract, e.g., for a flight cancellation or other major change requiring a partial or full refund.

Another commenter urged a requirement that claims against a security instrument be paid within 45 days of their submission.

We will not adopt these suggestions. With respect to the 60-day claim period, we note that while in some cases a Public Charter participant will immediately know of the need to submit a written claim, there are other instances, such as a delay in obtaining a promised refund from a charter operator, where the charter participant may not realize this need until well into the claim period. The 60-day claim period has been a part of our charter

regulations for many years, and has, we believe, worked well in providing charter participants sufficient time to seek redress of problems they have encountered on Public Charters. We find no public interest reason to modify this provision at this time.

With respect to requiring the payment of claims within 45 days, we do not believe that such a condition is warranted. The resolution of claims can, in some cases, be a complex, time-consuming process, involving negotiations between and among the charter participant, the charter operator, and the securer, and at times the use of the courts. Mandating a 45-day period for claim resolution could be disruptive to this process, to the detriment of all parties. In any event, should a charter operator unreasonably delay the resolution of a claim, such that its action represented an unfair or deceptive practice within the meaning of 49 U.S.C. 41712, it would be subject to enforcement action by the Department.

Payment of claims under security agreement. One commenter objected to proposed § 380.6(a)(1), which pertains to payments by a securer to charter participants with claims against the charter operator’s security agreement, because it would permit the entity providing the security to make payment to claimants without the charter operator’s agreement or a judgment from an appropriate court of law. The portion of the rule of concern to the commenter states that the securer shall pay a claimant where it “is determined by the person providing the security or adjudged by a court of competent jurisdiction” that payment is due to a claimant. The basis for the objection is the commenter’s concern that the securer will have no incentive to deny even the most frivolous of claims filed against the security agreement, since any amounts it pays out to claimants will be recoverable from the charter operator’s collateral that secures the agreement.

The security agreement is intended to compensate consumers for claims incurred under the operator-participant contract, as a result of flight cancellations, and/or for major changes not accepted by the participant, in all cases in which the participant has not received an appropriate refund. That compensation should be provided as soon as practicable. To require in all cases the approval of the charter operator or a court judgment prior to payment could unnecessarily delay compensation from being made for legitimate claims. We do not share the commenter’s concern that a securer

could feel free to make payments to claimants without concern for the actual legitimacy of their claims, since in doing so it would, at a minimum, risk losing future business and open itself to potential liability to the charter operator. It is our intent that securers approach such matters using a "reasonableness" standard, and give consideration to all facts surrounding the flight cancellation or other problem that gave rise to the claim. So long as the charter operator is available, we would expect the charter operator to be given a reasonable opportunity to comment before the securer makes payments. We will adopt the rule as proposed, since it will benefit consumers who experience problems for which the charter operator has failed to provide timely compensation.

Flight delays and substitute air transportation. One commenter urged that we retain the current requirements in §§ 208.32a and 208.33 that require charter air carriers to take certain action in the event of flight delays of specific periods. Under these regulations, charter air carriers in some instances provide substitute air transportation for the charter passengers involved, and in some instances provide payment for incidental expenses including food and lodging to the passengers affected. The commenter stated that, absent this requirement, the charter operator would bear the costs involved in these situations, and those costs would be especially burdensome on small charter operators. We will not retain this requirement. The flight delay requirements at issue here currently apply only to U.S. charter-only direct air carriers; they do not apply to the charter operations of U.S. scheduled carriers or foreign air carriers. We see no reason to continue these 30-year old requirements solely for one class of air carrier, when the majority of carriers are not subject to the rules. As we stated in the NPRM, both direct air carriers and charter operators have a commercial interest in providing amenities and/or alternate transportation for passengers when charter flights are delayed. To the extent that a charter operator is concerned about the costs it may incur in dealing with a possible flight delay, its proper forum for dealing with that concern is in negotiating the terms of its contract with the direct air carrier.

Subcontracting. One commenter urged the Department to amend its rules to permit a "primary" charter operator to contract with and be responsible to the direct carrier for payment for a charter flight and to subcontract seats on the flight to other operators without the need for the latter operators' having

contracts with the direct air carrier. Under this proposal, both the "primary" and subcontracting charter operators would be registered with the Department. Another commenter urged that we also allow single entity charterers to subcontract seats to other single entity charterers, stating that such a provision would be useful in cases where a direct air carrier preferred to contract with only one charterer.

The Public Charter operator/sub-operator separate filing arrangement has existed informally for many years¹¹ and we will codify it here. However, we will not adopt the proposal to allow single entity charterers to subcontract seats. The operator/sub-operator concept entails a contract between a Public Charter operator that sells charter flights in its own right (either directly to the public, through its agents, or a combination of both) and a second Public Charter operator that piggy-backs its program onto the program of the primary operator with the primary operator retaining at least as many seats for itself as it has subcontracted to one or more sub-operators.¹² Once the Department has accepted the prospectus, the second Public Charter operator—the sub-operator—may advertise in its own right using its own securer and depository bank. However, subcontracting of single entity charters has never been permitted. Under the single entity concept, passengers may not directly or indirectly pay toward their trips. Although Public Charter operators are themselves indirect air

¹¹ Under 14 CFR 380.30(a), solicitation materials for Public Charters must identify the charter operator and the direct air carrier. Under 14 CFR 380.32(a), operator-participant contracts must state the name and complete mailing address of the charter operator. A sub-operator has its binding commitment for a specific number of seats on Public Charter flights shown in another Public Charter prospectus already filed with (and accepted by) the Department, but also must file its own prospectus and is bound independently by our charter rules. Unlike an agent, for example, a sub-operator advertises and sells as a Public Charter operator using its own escrow bank and security agreement. (Order 87-7-10, July 2, 1987, n. 2 at 3.)

¹² The sub-operator concept was devised as a way for direct air carriers to avoid the downsides of split charters and at the same time to permit multiple Public Charter operators to share a planeload charter contracted by a Public Charter operator. Heretofore, there has been a 20-seat minimum contract size. It has never been intended for use by middlemen brokers selling off most or all of the aircraft to Public Charter operators. Unless the direct air carrier is fully bonded, payments should go from the sub-operator's escrow account to the direct air carrier's escrow account with the primary Public Charter operator responsible for payment of the difference between the amount paid by one or more sub-operators and the amount it has agreed to pay the direct air carrier for the flight. Without a waiver granted upon a showing that it is in the public interest, sub-operator contracts may not exceed half of a planeload charter.

carriers, single entity charterers are not. Alternatives for prospective single entity charterers include using smaller aircraft, special fares of part charters on schedule flights, and split charters—multiple charters on a single charter flight.

Small aircraft operations. One commenter asserted that a clarification is needed in our rules concerning Public Charter operations by operators of small aircraft. It noted that proposed § 380.1 states that the Part applies to air transportation furnished by certificated air carriers or foreign air carriers, but makes no mention of operations by non-certificated air taxi operators or commuter air carriers conducting operations under 14 CFR Part 298. It states that §§ 380.1 and 380.2 of the current rule provide for such operations, and that the definition of "direct air carrier" in proposed § 380.2 does include carriers operating under Part 298. The commenter suggests that we amend proposed § 380.1 to provide that the Part applies to air transportation furnished by "direct air carriers" which it states will resolve any ambiguity.

We will adopt this suggestion. It was not our intent in issuing the NPRM to remove the current ability of air taxi operators or commuter air carriers to conduct Public Charters under Part 380, and we will make the change in § 380.1 recommended by the commenter.

OMPC's and educational institutions. In the NPRM, we proposed to retain rules providing for the operation of two specialized charter types: Overseas Military Personnel Charters (OMPC's), now contained in 14 CFR Part 372, and charters conducted by educational institutions, now contained in 14 CFR 380.17. However, we specifically requested comments on whether these rules are still needed. We received one comment on each question. An OMPC operator supported continuation of the OMPC rules, stating that Germany, the major market for OMPC's, grants special relief for OMPC operations, in light of their role of providing low-cost transportation for U.S. military and civilian personnel and their families on furlough or authorized leave from an official station in a foreign country. We will retain Part 372 for air carriers to continue to provide this necessary and humanitarian service. A direct air carrier supported continuation of the special provisions in Part 380 for educational institutions, stating that the rules have provided a benefit that should remain available. The occasional use of these special provisions by air carriers assures us that there is a need and we will adopt the proposed

language in new § 380.3(d) concerning charters for educational institutions.

Affinity charter certifications. One commenter expressed concern with the provision in proposed § 212.5(f) that would require direct air carriers conducting affinity (pro rata) charters to obtain, and retain for two years, a certification by the chartering organization that all passengers are eligible for transportation under the rule. The commenter argued that the direct air carrier should not bear the responsibility and burden of obtaining and holding these certifications, but that the charterer should have this responsibility.

We will, however, adopt the provision as proposed. We continue to believe that the responsibility for obtaining and retaining the necessary certification of eligibility for an affinity charter property rests with the direct air carrier involved. Moreover, our proposal represents a significant reduction in the burden on direct air carriers and affinity organizations, since the certification would replace the detailed "Statement of Supporting Information" now required. Finally, should a problem arise with an affinity charter, having the certification in the hands of the direct air carrier, rather than with an organization whose identity and location would likely be unknown to us, would assure that we can promptly obtain information on the charter from that carrier.

Long-term wet leases. One commenter recommended that we modify proposed §§ 212.2 and 212.8(a), which would continue the current requirement in §§ 207.1, 207.10, 208.3, and 208.5, that U.S. air carriers conducting wet lease operations (that is, charters involving the lease of aircraft and crew) on behalf of foreign air carriers obtain prior Department approval, in the form of a statement of authorization, for all "long-term" wet leases of 60 days' duration or longer. The commenter proposed that the prior approval requirement apply only to wet leases by U.S. air carriers of 120 days or longer, stating that the change would relieve a burden and "better reflect the realities of the marketplace."

We will not adopt this suggestion. The purpose of the prior-approval requirement for U.S. air carrier long-term wet leases to foreign air carriers is to enable us to assure that these operations, which, because of their extended duration, may represent a significant benefit to the foreign carrier lessee, are in the public interest. The fact that a U.S. carrier is proposing to conduct the wet lease is a significant consideration, but it is not itself

sufficient to meet the public interest test. Other public interest criteria as listed in the rule may figure in our decision. We believe that we need to continue the level of scrutiny of these types of wet lease operations that we have been exercising, and, in the absence of any compelling argument for changing the current provision, we will retain the 60-day threshold in the final rule. We do not believe that retention of this provision will pose a significant burden on U.S. air carriers, as the application process for a statement of authorization is uncomplicated, involving the filing of a minimal amount of information with the Department.

Direct Sales. The NPRM proposed that certificated and foreign air carriers could offer for sale and operate Public Charter flights under Part 380 directly to the public and need not comply with registration requirements or the requirements concerning financial security arrangements. While no comments were received on the proposed elimination of filing requirements for direct sales, the overall tenor of comments submitted was to retain the consumer protection provisions of the rule. We have responded to these public comments by retaining other participant protection elements and will do so for direct sale customers as well. We will, therefore, not adopt the wording of the NPRM but will take this opportunity to rewrite the section to eliminate confusing directions in the old rule.

Miscellaneous. Several commenters proposed other changes to the proposed rule, from Federal licensing of Public Charter operators to the enactment of a single charter type to replace affinity, single entity, mixed, and Public Charters. Since these matters are well beyond the scope of this proceeding and have not been adequately justified, we will not address them here.

Effectiveness of the rule. The provisions of this rule will become effective 30 days after publication in the **Federal Register**.

Conclusion

After carefully weighing the comments provided in response to the NPRM, we have decided to adopt the revisions as discussed above.

Regulatory Impact

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule has been evaluated in accordance with existing policies and procedures. Because the requirements contained in this final rule clarify the

applicability of the multiple Air Charter regulations to a specific segment of the industry and reduce selected portions of the regulatory burden on these operators, the Department has concluded that this final rule does not constitute a significant rule under either Executive Order 12866 or DOT's policies and procedures.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of rules to assess their impact on small entities. The Department certifies that this final rule does not have a significant economic impact on a substantial number of small entities. The Public Charter industry is composed of approximately 250 charter operators half of which are small commercial enterprises that file for a single flight. The only change these operators will notice in filing a prospectus under the new rule will be the saving of \$39 in not having to request a waiver of the 10-day waiting period. The Department has concluded that there are no substantial economic impacts for small units of government, business, or other organizations.

Paperwork Reduction Act

This rule contains information collection requirements that have been submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act (44 U.S.C. 2507 *et seq.*). Collection-of-information requirements include reporting, recordkeeping, notification, and other similar requirements. Persons are not required to respond to a collection of information unless it displays a currently valid OMB control number. We will publish a notice in the **Federal Register** prior to the effective date of this final rule of OMB's decision to approve, modify, or disapprove the information collection requirements. The paperwork burden for the filing of Public Charter prospectuses will not change as a result of this Final Rule because the applications and amendments must still be prepared and submitted to the Department.

Environmental Impact

The Department has evaluated this final rule in accordance with its procedures for ensuring full consideration of the potential environmental impacts of its actions as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and DOT Order 5610.1c. It has

been determined that this final rule does not have any effect on the quality of the environment.

Federalism Implications

The Department has analyzed this rule under the principles and criteria contained in Executive Order 12612 ("Federalism") and has determined that the rule does not have a substantial effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, the rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Unfunded Mandates Reform Act

This rule does not impose any unfunded mandates on State, local, or tribal governments as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532-1538).

Summary of Cost/Benefits

Our analysis of the impact of changes made in the Public Charter rule clearly indicates that the changes are beneficial. Elimination of the 10-day waiting period after filing a prospectus will save the cost of a waiver request. We are also deleting the requirement to file a brief (mini) prospectus by direct air carriers conducting foreign-originating flights for foreign charter operators. And finally, we are consolidating three largely repetitive rules applicable to direct air carriers conducting charter flights.

In order to estimate the cost savings to industry from not requesting a waiver of the 10-day waiting period, we reviewed our 1996 record of filings. We approved nearly 800 prospectus filings during the year, most of which included a filing fee of \$39 and an additional \$39 for a waiver request. Of the total fees received, \$62,400, nearly half would be saved under the new rule. In addition, we received between 700 and 800 waiver requests for amendments to Public Charter prospectuses, changing or eliminating flights. Eliminating filing fees for such amendments should provide an additional cost saving to charter operators of approximately \$50,000. Cost savings in time and effort for those filing prospectuses under the new rule will be minimal since the filings and the amendments must still be provided.

In considering the cost savings to airlines conducting foreign originating flights for foreign tour operators we note that many foreign air carriers retain the services of U.S. law firms to provide

these documents. Since most foreign air carriers are exempt from out filing fees because of reciprocity agreements with the U.S., the cost savings to the air carriers will be the expense of retaining a law firm to produce and file information heretofore required by Public Charter regulations.

Finally, rewrite of the four principal parts of the Code of Federal Regulations that address passenger air charter operations provides a more condensed and useable reference for the charter industry and for those desiring to engage in Public Charters. Consolidating Parts 207 and 208 into a revised Part 212 has eliminated duplicative wording while retaining these two parts with only an applicability statement to avoid confusion since a number of Department orders now in effect require adherence to the requirements. These and other benefits of this Final Rule which can not be quantified such as eliminating certain waiver requirements, allowing charter operators to accept credit card payments and including current practices concerning amendments to filings, simplifies the process for applications and does so without compromising consumer protection.

List of Subjects in 14 CFR Parts 207, 208, 212, 380

Air Carriers, Air Transportation, Charter Flights, Reporting and recordkeeping requirements, Surety bonds.

1. Part 207 is revised to read as follows:

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

Sec.

- 207.1 Applicability.
- 207.2 Terms of service.

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

§ 207.1 Applicability.

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

§ 207.2 Terms of service.

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

2. Part 208 revised to read as follows:

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

Sec.

- 208.1 Applicability.
- 208.2 Terms of service.

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

§ 208.1 Applicability.

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

§ 208.2 Terms of service.

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

3. Part 212 is revised to read as follows:

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

Sec.

- 212.1 Scope.
- 212.2 Definitions.
- 212.3 General provisions.
- 212.4 Authorized charter types.
- 212.5 Operation of affinity (pro rata) charters.
- 212.6 Operation of gambling junket charters.
- 212.7 Direct sales.
- 212.8 Protection of customers' payments.
- 212.9 Prior authorization requirements.
- 212.10 Application for statement of authorization.
- 212.11 Issuance of statement of authorization.
- 212.12 Waiver.

Appendix A—Certificated or Foreign Air Carrier's Surety Bond Under part 212 of the Regulations of the Department of Transportation (14 CFR Part 212)

Appendix B—Certification of Compliance

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

§ 212.1 Scope.

This part applies to all charter flights, and all other flights carrying charter passengers or cargo, in interstate and/or foreign air transportation by U.S. certificated air carriers or in foreign air transportation by foreign air carriers. It does not apply to any flights performed by a commuter air carrier, air taxi operator, or certificated air carrier operating "small aircraft" under part 298 of this chapter. Nothing in this part gives authority to operate a type or level of service not authorized by certificate, foreign air carrier permit, or exemption, except that a certificated air carrier

authorized to conduct scheduled operations may conduct charter flights, in interstate and/or foreign air transportation, without limitation as to the points served.

§ 212.2 Definitions.

For the purposes of this part:

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

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

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

Charter operator means:

- (1) A "Public Charter operator" as defined in § 380.2 of this chapter, or
- (2) An "Overseas Military Personnel Charter operator" as defined in § 372.2 of this chapter.

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

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

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

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

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

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

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

Mixed charter means a charter, the cost of which is borne partly by the

charter participants and partly by the charterer, where all the passengers meet the eligibility requirements for "affinity (pro rata)" charters of § 212.5.

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

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

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

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

§ 212.3 General provisions.

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

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

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

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

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

(d) A certificated or foreign air carrier must make a reasonable effort to verify that any charterer with which it contracts, and any charter it conducts,

meets the applicable requirements of this chapter.

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

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

(g) A certificated or foreign air carrier may not perform any charter flight for which a statement of authorization is required under § 212.9 until one has been granted by the Department. In addition, if a foreign air carrier is required to obtain a statement of authorization under paragraph (e) of that section, neither it, nor any charter operator, or any other person shall advertise or sell any passenger charter services except those that have been specifically authorized by the Department.

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

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

(j) A certificated air carrier may not, except as set forth in part 121 of the Federal Aviation Regulations (14 CFR part 121), limit the availability, upon reasonable request, of air transportation and related services to a person who

may require help from another person in expeditiously moving to an emergency exit for evacuation of an aircraft.

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

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

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

§ 212.4 Authorized charter types.

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

(a) Affinity (pro rata) charters.

(b) Single entity charters, including:

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

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

(c) Mixed charters.

(d) Gambling junket charters.

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

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

(g) Cargo charters.

§ 212.5 Operation of affinity (pro rata) charters.

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

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

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

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

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

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

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

(2) Students and employees of a single school.

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

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

§ 212.6 Operation of gambling junket charters.

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

(a) The aircraft must be chartered by

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

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

(b) The casino, hotel, or cruise line or its agents, may not require a passenger to incur any expense in taking the trip, *provided*, that this provision shall not preclude the casino, hotel, or cruise line or its agents, from requiring prospective passengers to pay nominal reservation fees that are duly refundable by the casino, hotel, or cruise line before the flight, establish a minimum line-of-credit at the casino, hotel, or cruise line,

bring (but not necessarily spend) a specified minimum amount of money, or meet other requirements that do not place them in financial jeopardy; nor does it preclude the casino, hotel, or cruise line, or its agents, from offering operational land packages for a fee.

§ 212.7 Direct sales.

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

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

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

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

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

(i) If no depository agreement is used, protect charter participant payments (including those for ground accommodations and services) and assure the certificated or foreign air carrier's contractual and regulatory responsibilities to charter participants in an unlimited amount (except that the liability of the securer with respect to any charter participant may be limited to the charter price paid by or on behalf of such participant);

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

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

§ 212.8 Protection of customers' payments.

(a) Except as provided in paragraph (c) of this section, no certificated air carrier or foreign air carrier shall perform any charter trip (other than a cargo charter trip) originating in the United States or any Overseas Military

Personnel Charter trip, as defined in part 372 of this chapter, nor shall such carrier accept any advance payment in connection with any such charter trip, unless there is on file with the Department a copy of a currently effective agreement made between said carrier and a designated bank, by the terms of which all sums payable in advance to the carrier by charterers, in connection with any such trip to be performed by said carrier, shall be deposited with and maintained by the bank, as escrow holder, the agreement to be subject to the following conditions:

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

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

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

the charterer, that the carrier has accepted a substitute charterer.

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

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

(b) The escrow agreement required under paragraph (a) of this section shall not be effective until approved by the Department. Claims against the escrow may be made only with respect to the non-performance of air transportation.

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

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

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

(2) Which is listed in the U.S. Department of Treasury's notice listing companies holding Certificates of Authority as acceptable sureties on Federal bonds and as acceptable reinsuring companies, published in the **Federal Register** on or about July 1. The bonding or surety company shall be one legally authorized to issue bonds of that type in the State in which there is located the office or usual residence of the agency designated by the carrier under 49 U.S.C. 46103 to receive service of notices, process and other documents issued by or filed with the Department of Transportation. For the purposes of this section the term "State" includes any territory or possession of the United States, or the District of Columbia. If the bond does not comply with the requirements of this section, or for any reason fails to provide satisfactory or adequate protection for the public, the Department will notify the certificated

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

or foreign air carrier by registered or certified mail, stating the deficiencies of the bond. Unless such deficiencies are corrected within the time limit set forth in the notification, no amounts payable in advance by customers for the subject charter trips shall be accepted by the carrier.

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

§ 212.9 Prior authorization requirements.

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

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

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

(2) Long-term wet lease;

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

(4) Part charter.

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

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

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

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

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

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

§ 212.10 Application for statement of authorization.

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

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

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

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

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

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

(2) Applications filed by certificated or foreign air carriers to conduct long-term wet leases shall include, for the country of the lessee's nationality, the

documentation specified in paragraph (c)(1) of this section.

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

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

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

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

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

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

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

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

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

(f)(1) Unless otherwise ordered by the Department, each application and memorandum filed in response will be available for public inspection at the Office of International Aviation immediately upon filing. Notice of the filing of all applications shall be published in the Department's Weekly List of Applications Filed.

(2) Any person objecting to public disclosure of any information in an application or memorandum must state the grounds for the objection in writing. If the Department finds that disclosure of all or part of the information would

adversely affect the objecting person, and that the public interest does not require disclosure, it will order that the injurious information be withheld.

§ 212.11 Issuance of statement of authorization.

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

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

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

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

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

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

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

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

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

(c) The Department will submit any denial of an authorization specifically required of a foreign air carrier under § 212.9(d) to the President of the United States at least 10 days before the proposed departure. The denial will be subject to stay or disapproval by the President within 10 days after it is submitted. A shorter period for Presidential review may be specified by the Department where the application for authorization is not timely or properly filed. Denial of a late-filed application need not be submitted to the President. For the purposes of this paragraph, an application filed by a foreign air carrier under § 212.9(d) to conduct a cargo charter will be considered as timely filed only if it is filed at least 30 calendar days before the proposed flight, notwithstanding the 10-day filing requirement for cargo charters in § 212.10(d)(3).

(d) The Department will publish notice of its actions on applications for

statements of authorization in its Weekly List of Applications Filed. Interested persons may upon request obtain copies of letters of endorsed forms advising applicants of action taken on their applications.

§ 212.12 Waiver.

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

Appendix A—Certificated or Foreign Air Carrier's Surety Bond Under Part 212 of the Regulations of the Department of Transportation (14 CFR Part 212)

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

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

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

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

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

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

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

Principal
Name _____

By: Signature and title _____

Witness _____

Surety
Name _____

By: Signature and title _____

Witness _____

Bonding or surety company must be listed in Best's Insurance Reports (Fire and Casualty) with a general policyholders' rating of "A" or better or in the Department of the Treasury listing of companies holding certificates of authority as acceptable sureties on Federal

bonds. In addition, the bonding or surety company shall be one legally authorized to issue bonds of that type in the State(s) in which the charter flight(s) originate. Agents must provide satisfactory proof that they have the requisite authority to issue this bond.

Appendix B—Certification of Compliance

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

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

4. Part 380 is revised to read as follows:

PART 380—PUBLIC CHARTERS

Subpart A—General Provisions

- Sec.
380.1 Applicability.
380.2 Definitions.
380.3 General provisions.
380.4 Enforcement.

Subpart B—Conditions and Limitations

- 380.10 Public Charter requirements.
380.11 Payment to direct air carrier(s).
380.12 Cancellation by charter operator and notice to participants.
380.13 Prohibition on sale of round trips with open returns.
380.14 Unused space.
380.15 Substitution for charter participants.
380.17 Charters conducted by educational institutions.

Subpart C—Requirements Applicable to Charter Operators

- 380.20 Relief from the Statute.
380.21 380.23 [Reserved]
380.24 Suspension of exemption authority.
380.25 Prospectus filing and related requirements.
380.26 Discrimination.
380.27 Methods of competition.
380.28 Charter prospectus.
380.29 Charter contract.
380.30 Solicitation materials.
380.31 General requirements for operator-participant contracts.
380.32 Specific requirements for operator-participant contracts.
380.33 Major changes in itinerary or price; refunds.
380.33a Operator's option plan.
380.34 Security and depository agreements.
380.34a Substitution of direct air carrier's security or depository agreement.
380.35 Disbursements from depository account.
380.36 Record retention.

Subpart D—Requirements Applicable to Direct Air Carriers

- 380.40 Charter not to be performed unless in compliance with this part 380.
380.41 380.42 [Reserved]
380.43 Cancellations by direct air carriers.

- 380.45 Suspension of exemption authority.
380.46 Charter trip reporting.

Subpart E—Registration of Foreign Charter Operators

- 380.60 Purpose.
380.61 Operations by foreign charter operators.
380.62 Registration applications.
380.63 Objections to registration applications.
380.64 Department action on a registration application.
380.65 Notification of change of operations or ownership.
380.66 Cancellation or conditioning of the registration.
380.67 Waiver of sovereign immunity.
Appendix A—Public Charter Operator's Surety Bond Under Part 380 of the Special Regulations of the Department of Transportation (14 CFR Part 380)
Appendix B Public Charter Surety Trust Agreement

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

Subpart A—General Provisions

§ 380.1 Applicability.

This part applies to Public Charter air transportation of passengers in interstate or foreign air transportation, whether furnished by direct air carriers or Public Charter operators. This part also relieves such charter operators from various provisions of subtitle VII of Title 49 of the United States Code (statute), formerly Title IV of the Federal Aviation Act of 1958, as amended, for the purpose of enabling them to provide Public Charters utilizing aircraft chartered from such direct air carriers. It also declines jurisdiction over foreign Public Charter operators operating foreign-originating Public Charters.

§ 380.2 Definitions.

For the purposes of this part:

Certificated air carrier means a U.S. direct air carrier holding a certificate issued under the statute.

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

Direct air carrier means a certificated or foreign air carrier, or an air taxi operator or commuter air carrier registered under part 298 of this chapter, or a Canadian charter air taxi operator registered under part 294 of this chapter, that directly engages in the operation of aircraft under a certificate, permit or exemption issued by the Department.

Educational institution means a school that is operated as such on a year-round basis and is empowered to grant academic degrees or secondary school diplomas by any government in the United States or by a foreign government.

Foreign air carrier means a direct air carrier that holds a foreign air carrier permit issued under the statute or an exemption issued under the statute authorizing direct foreign air transportation.

Foreign Public Charter operator means an indirect air carrier which is not a citizen of the United States as defined in the statute, that is authorized to engage in the formation of groups for transportation on Public Charters in accordance with this part.

Indirect air carrier means any person who undertakes to engage indirectly in air transportation operations and who uses for such transportation the services of a direct air carrier.

Public Charter means a one-way or round-trip charter flight to be performed by one or more direct air carriers that is arranged and sponsored by a charter operator.

Public Charter operator means a U.S. or foreign Public Charter operator.

Security agreement means:

(1) A surety bond issued by a company—

(i) That is listed in the Best's Insurance Reports (Fire and Casualty) with a general policyholders' rating of "A" or better, or

(ii) That is listed in the U.S. Department of Treasury's notice listing companies holding Certificates of Authority as acceptable sureties on Federal bonds and as acceptable reinsuring companies, published in the **Federal Register** in the first week in July; or

(2) A Surety trust agreement or a letter-of-credit, issued by a Federal Deposit Insurance Corporation-insured financial institution, which provides substantially equivalent protection.

Statute means Subtitle VII of Title 49 of the United States Code (Transportation).

Sub-operator means a Public Charter operator that has contracted for its charter seats from a Public Charter operator that has contracted from one or more direct air carriers. A sub-operator is itself an indirect air carrier, not an agent of the Public Charter operator from which it has obtained its seat.

U.S. Public Charter operator means an indirect air carrier that is a citizen of the United States as defined in 49 U.S.C. 40102(a) and that is authorized to engage in the formation of groups for

transportation on Public Charters in accordance with this part.

§ 380.3 General provisions.

(a) Public Charters may be operated on a one-way or round-trip basis, with no minimum group or contract size. Public Charters may be sold on an air-only basis, or with mandatory or optional land arrangements.

(b) A U.S. Public Charter operator operating a Public Charter which originates in a foreign country shall not be subject to the requirements of §§ 380.25, 380.28, 380.30 and 380.35.

(c) The Department declines to exercise jurisdiction over a foreign Public Charter operator which operates a Public Charter originating in a foreign country, but reserves the right to exercise its jurisdiction over any foreign Public Charter operator at any time its finds that such action is in the public interest.

(d)(1) An educational institution operating a Public Charter need not comply with the financial security requirements of § 380.34 if each student participant in the charter is enrolled in a formal academic course of study outside the United States, sponsored by or in conjunction with that institution, that is of at least four weeks' duration.

(2) The spouse, children, and parents of a student participant may accompany the participant on a charter operated under this section.

(e) The Department, upon application or on its own initiative, may waive any of the provision of this part if it finds such action to be in the public interest.

§ 380.4 Enforcement.

In the case of any violation of the provision of the Statute or of this part, or any other rule, regulations, or order issued under the Statute, the violator may be subject to a proceeding pursuant to the Statute before the Department or a U.S. district court, as the case may be, to compel compliance therewith; to civil penalties pursuant to the provisions of the Statute, or to criminal penalties pursuant to the provisions of the Statute, or other lawful sanctions.

Subpart B—Conditions and Limitations

§ 380.10 Public Charter requirements.

Public Charters under this part shall meet the following requirements:

(a)–(b) [Reserved]

(c) If the charter is on a round-trip basis, the departing flight and returning need not be performed by the same direct air carrier.

(d) The air transportation portion of the charter must be performed by direct air carriers that hold authority under

Chapter 411 and 413 of the Statute, or are operating under 14 CFR part 298, except that only U.S. citizen direct air carriers may provide air transportation for operations in interstate air transportation.

§ 380.11 Payment to direct air carrier(s).

Except for air taxi operators and commuter air carriers (which are governed by 14 CFR 298.38) and Canadian charter air taxi operators (which are governed by 14 CFR 294.32), the direct air carrier(s) shall be paid in full for the cost of the charter transportation (for both legs, if a round-trip charter) prior to the scheduled date of flight departure, as provided for in the basic charter regulations applicable to the direct air carrier(s) under part 212 of this chapter.

§ 380.12 Cancellation by charter operator and notice to participants.

(a) The charter operator may not cancel a charter for any reason (including insufficient participation), except for circumstances that make it physically impossible to perform the charter trip, less than 10 days before the scheduled date of departure of the outbound trip.

(b) If the charter operator cancels 10 or more days before the scheduled date of departure, the operator must so notify each participant in writing within 7 days after the cancellation but in any event not less than 10 days before the scheduled departure date of the outbound trip. If a charter is canceled less than 10 days before scheduled departure (i.e., for circumstances that make it physically impossible to perform the charter trip), the operator must get the message to each participant as soon as possible.

§ 380.13 Prohibition on sale of round trips with open returns.

The charter operator shall not accept any participant's payment for return transportation unless the participant has specified a particular return flight.

§ 380.14 Unused space.

Noting contained in this part shall preclude a charter operator from utilizing any unused space on an aircraft by it for a Public Charter for the transportation, on a free or reduced basis, of such charter operator's employees, directors, and officers, and parents and immediate families of such persons.

§ 380.15 Substitution for charter participants.

Substitutes may be arranged for charter participants at any time preceding departure. Participants who

provide the charter operator or its sales agent with a substitute participant, or who are substituted for by a participant found by the operator, shall receive a refund of all moneys paid to the operator, except that the operator may reserve the right to retain an administrative fee not to exceed \$25 for effecting the substitution.

§ 380.17 Charters conducted by educational institutions.

(a) This section shall apply only to charters conducted by educational institutions for charter groups comprised of bona fide participants in a formal academic course of study abroad which is of at least 4 weeks duration. The charter group may also include a student participant's immediate family (spouse, children, and parents). Except as modified in this section, all terms and conditions of this part applicable to the operation of Public Charters shall apply to charters conducted by educational institutions.

(b) An educational institution conducting such a charter shall submit to the Office of Aviation Analysis, Special Authorities Division, a statement, signed by its president, certifying that it meets the definition of "educational institution" set forth in § 380.2.

(c) An educational institution conducting such a charter need not comply with the requirements of §§ 380.25, 380.28, 380.34, and 380.35.

Subpart C—Requirements Applicable to Charter Operators

§ 380.20 Relief from the Statute.

(a) To the extent necessary to permit them to organize and arrange public charters, charter operators and foreign charter operators are hereby relieved from the following provisions of Subtitle VII of Title 49 of the U.S. Code, only if and so long as they comply with the provisions and the conditions imposed by this part:

- (1) Chapter 411.
- (2) Chapter 413.
- (3) Chapter 415.
- (4) Chapter 419.

(5) If foreign charter operators receive interstate air transportation rights, any other provision of the statute that would otherwise prohibit them from organizing and arranging Public Charters in interstate air transportation.

(b) A charter operator who is a citizen of the United States shall not be subject to the following requirements with respect to Public Charters that originate in a foreign country: §§ 380.25, 380.28, and 380.30 through 380.35.

§§ 380.21–380.23 [Reserved]

§ 380.24 Suspension of exemption authority.

The Department reserves the power to deny the exemption authority of any charter operator, without hearing, if it finds that such action is necessary in the public interest or is otherwise necessary in order to protect the rights of the traveling public.

§ 380.25 Prospectus filing and related requirements.

A charter operator may organize and operate a Public Charter only in accordance with this part, and subject to the following conditions:

(a) No charter operator shall operate, sell, receive money from any prospective participant for, or offer to sell or otherwise advertise a charter or series of charters until the Office of Aviation Analysis, Special Authorities Division, has accepted a Public Charter prospectus as described in § 380.28.

(b) If within 10 days after the filing the Department notifies the charter operator that it has rejected the prospectus for noncompliance with this part, the prohibitions set forth in paragraph (a) of this section shall continue until the Department advises that it has accepted the prospectus.

(c) The following amendments to a filed prospectus may be made:

- (1) The addition or cancellation of any flight;
- (2) A change in any flight, date, origin city or destination city; and
- (3) A change in or addition of any direct air carrier, securer, or depository bank.

(d) The charter operator shall amend the prospectus to reflect any change described in paragraph (c) of this section. The amendment shall be filed in the manner and form used for the original prospectus. It shall become effective upon filing unless the operator is otherwise notified.

(e) The charter operator shall notify the depository bank (if any) and the securer of any change described in paragraph (c) of this section not later than when filing a prospectus amendment to reflect the change. If the securer is unable to adjust the security agreement as required by the change, the Office of Aviation Analysis, Special Authorities Division shall be advised of this fact within 2 business days.

(Approved by the Office of Management and Budget under Control Number 2106-0005).

§ 380.26 Discrimination.

No charter operator shall make, give, or cause any undue or unreasonable preference or advantage to any

particular person, port, locality, or description of traffic in air transportation in any respect whatsoever, or subject any particular person, port, locality, or description of traffic in air transportation to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

§ 380.27 Methods of competition.

No charter operator shall engage in unfair or deceptive practices or unfair methods of competition in air transportation or the sale thereof.

§ 380.28 Charter prospectus.

(a) The charter prospectus shall include an original and two copies of the following:

(1) From the charter operator and the direct air carrier:

(i) The proposed flight schedule, listing the origin and destination cities, dates, type of aircraft, number of seats, and charter price for each flight;

(ii) The tour itinerary (if any) including hotels (name and length of stay at each), and other ground accommodations and services; and

(iii) A statement that they have entered into a charter contract that covers the proposed flight schedule, that the contract complies with all applicable Department regulations, and that a copy of the schedule has been sent to the depository bank (if any) and the operator's securer. The schedule shall be identified with a number assigned by the charter operator that does not duplicate any schedule numbers assigned by the operator to other proposed flight schedules. The proposed flight schedule, tour itinerary (if any), and statement shall be filed on OST Form 4532.

(2)(i) From the charter operator and the securer, a statement:

(A) That they have entered into a security agreement covering the proposed flight schedule that complies with § 380.34, including the amount of the coverage, the number assigned to it by the securer, and the amount of any outstanding claims against it, and

(B) That the securer has received a copy of the proposed flight schedule. The statement shall identify the proposed flight schedule by the schedule number assigned by the charter operator in accordance with paragraph (a) of this section. If there are any outstanding claims against the agreement, the charter operator and securer shall also state that they have executed a rider or amendment increasing the coverage by the amount of the claims, or that the securer will separately pay any claims for which it

may be liable without impairing the agreement or reducing the amount of its coverage.

(ii) These statements shall be filed an OST Form 4533.

(3) If a depository agreement is used, a statement from the charter operator, the direct air carrier, and the depository bank:

(i) That they have entered into a depository agreement covering the proposed flight schedule that complies with § 380.34, and

(ii) That the bank has received a copy of the proposed flight schedule by the schedule number assigned by the charter operator in accordance with paragraph (a)(1) of this section. This statement shall be filed on OST Form 4534.

(b) Each of the statements described in paragraph (a) of this section shall also include the names and addresses of the parties to it, and the originals shall be signed by those parties.

(c) The prospectus may cover a series of charters performed by one charter operator if the departure of the last charter is not more than one year after the departure of the first.

(d) If the prospectus covers a series of charters and the air transportation will be performed by more than one direct air carrier, the prospectus shall include separate statements in accordance with paragraphs (a)(1) and (a)(3) of this section to cover the flights that will be performed by each direct carrier.

(Approved by the Office of Management and Budget under Control Number 2106-0005).

§ 380.29 Charter contract.

The charter contract between the charter operator or foreign charter operator and the direct air carrier shall evidence a binding commitment on the part of the carrier to furnish the air transportation required for the trip or trips covered by the contract.

§ 380.30 Solicitation materials.

(a) All solicitation materials for a Public Charter shall include the name of the charter operator and the name of the direct air carrier.

(b) Any solicitation material that states a price per passenger shall also include one of the following:

(1) A statement referring to the operator-participant contract for further information about conditions applicable to the charter; or

(2) The full text of the operator-participant contract.

(c) Except as set forth in § 380.33a for operator's option plan contracts, if the charter prospectus names alternative dates or cities, any solicitation material that states a price per passenger shall

also state that the actual dates or cities have not yet been selected, if that is the case.

(d) Any solicitation material that names a hotel but does not name every hotel named in the operator-participant contract shall also state that substitutions may be made.

(e) In any solicitation material from a direct air carrier, indirect air carrier, or an agent of either, for a charter, charter tour (*i.e.*, a combination of air transportation and ground accommodations), or a charter tour component (*e.g.*, a hotel stay), any price stated for such charter, tour, or component shall be the entire price to be paid by the participants to the air carrier, or agent, for such charter, tour, or component.

§ 380.31 General requirements for operator-participant contracts.

(a) Except for telephone sales for which payment is made by credit card as described in paragraph (b) of this section, the charter operator shall not accept payment from or on behalf of a prospective participant unless the participant has agreed to the conditions of the charter by signing an operator-participant contract as described in § 380.32. If a member of a group that will travel together pays for the group, that member may sign the contract on behalf of the group.

(b) For telephone sales only, the charter operator may accept payment by credit card without the participant having first signed an operator-participant contract provided that the charter operator first advises the customer:

(1) That he or she has the right to receive the operator-participant contract before making a booking;

(2) That the operator-participant contract will be mailed to the participant within 24 hours of accepting payment by credit card; and

(3) That the operator-participant contract must be signed, and the signed portion returned to the operator, before travel.

(4) A full refund must be made of any amounts charged to a credit card for any participant who cancels before the operator-participant contract is signed.

(c) The contract form may include a space that participants may check to authorize the charter operator to retain their money while attempting to make other arrangements for them if there is no space available on the flight or on specific alternative flights they have requested.

(d) If there is no space available on the flight or specific alternative flights requested by the participant the

operator shall return all the participant's money within 7 days after receiving it unless the participant, in accordance with paragraph (c) of this section, has authorized the operator to retain the payments while the operator attempts to make other arrangements for the participant. If the operator retains the payments while attempting to make other arrangements for the participant, it shall notify the participant of the fact within 7 days after receiving the payments, but in no event later than the departure. For the purpose of the time periods in this paragraph, receipt of money by a travel agent on behalf of a charter operator will not be considered as receipt by the operator.

(e) Except as set forth in § 380.33a for operator's option plan contracts, the operator-participant contract shall not specify alternative dates for the outbound or return flights, or alternative origin or destination cities for any flight leg.

(f) The contract form shall be printed in 7-point or larger type. The statements required by paragraph (a), (f), (h), (l), (r), (s), and (x) of § 380.32 shall be printed so as to contrast with the rest of the contract by the use of bold-faced type, capital letters, or a type size that is at least 50 percent larger than that used for the rest of the contract.

(g) The contract form shall include a space that participants may check to indicate that they wish to be furnished details of trip cancellation, health, and accident insurance.

(h) The contract form shall be designed so as to enable participants to retain a copy of the general terms and conditions after signing it. The specific information supplied by participants (such as choices of dates, cities, or other options) need not be retainable.

§ 380.32 Specific requirements for operator-participant contracts.

Contracts between charter operators and charter participants shall state:

(a) The name and complete mailing address of the charter operator;

(b) The name of the direct air carrier, the dollar amounts of that carrier's liability limitations for participant's baggage, the type and capacity of the aircraft to be used for the flight, and the conditions governing aircraft-equipment substitutions;

(c) The dates of the outbound and return flights;

(d) The origin and destination cities of each flight leg;

(e) The amount and schedule of payments;

(f) If a depository agreement as provided in § 380.34(b) is used: That all checks, money orders, and credit card

drafts must be made payable to the escrow account at the depository bank (identifying bank)¹ or, when the charter is sold to the participant by a retail travel agent, checks and money orders may be made payable to the agent, who must in turn make his check payable to the escrow account at the depository bank;

(g) The tour itinerary, if any, including the name and location of the hotels, length of stay at each, and other ground accommodations and services that are part of the tour;

(h) That the charter operator may not cancel the charter less than 10 days before the scheduled departure date, except for circumstances that make it physically impossible to perform the charter trip;

(i) That if a charter is canceled 10 or more days before the scheduled departure date, the operator will notify the participant in writing within 7 days after the cancellation, but in any event at least 10 days before the scheduled departure;

(j) That if a charter is canceled less than 10 days before departure (*i.e.*, for circumstances that make it physically impossible to perform the charter trip), the operator will get the message to the participant as soon as possible;

(k) That if the charter is canceled, a refund will be made to the participant within 14 days after the cancellation;

(l) The right to refunds if the participant changes plans is limited;

(m) The right to refunds if the participant changes plans, including

(1) The right to a full refund, for sales made by credit card, until an operator-participant contract is signed; and

(2) That any participant who wishes to cancel will receive a full refund (less any applicable administrative fee, not to exceed \$25) upon providing a substitute participant to the charter operator or its sales agent, or upon being substituted for by a participant found by the charter operator;

(n) The procedure for obtaining the refunds described in paragraph (m) of this section, including that they will be made within 14 days after the cancellation or substitution;

(o) The meaning of "major change", as set forth in § 380.33(a);

¹ If the credit card merchant account is separate from the depository account, it must be used solely as a conduit, *i.e.*, all credit card payments toward Public Charter trips must be immediately remitted to the depository account in full, without holdback, or retention of any portion of the participant's payment. If the depository bank is not the credit card merchant bank, the Department must be satisfied that there are adequate procedural safeguards for the protection of participants' payments.

(p) That if the charter operator knows of a major change 10 or more days before scheduled departure, the operator will notify the participant of the change within 7 days after first knowing of it, but in any event at least 10 days before scheduled departure;

(q) That if the operator first knows of a major change less than 10 days before scheduled departure, the operator will get the message to the participant as soon as possible;

(r) That within 7 days after receiving a pre-departure notification of a major change but in no event later than departure, the participant may cancel, and that a full refund will be made to the participant within 14 days after canceling;

(s) That upon a post-departure notification of a major change, the participant may reject the substituted hotel or the changed date, origin, or destination of a flight leg and be sent, within 14 days after the return date named in the contract, a refund of the portion of his payment allocable to the hotel accommodations or air transportation not provided;

(t) That the participants rights and remedies set forth in the contract, including the procedures for major changes, shall be in addition to any other rights or remedies available under applicable law, although the operator may condition a refund on the participant's waiver of additional remedies;

(u) That trip cancellation, health, and accident insurance is available and that the operator will furnish details of the insurance to participants who check the space provided for this purpose on the contract form;

(v) The name and address of the surety company or bank issuing the security agreement; and that unless the charter participant files a claim with the charter operator or, if he is unavailable, with the securer, within 60 days after termination of the charter, the securer shall be released from all liability under the security agreement to that participant. Termination means the date of arrival (or in the case of a canceled charter, the intended date or arrival) of the return flight. If there is no return flight in a participant's itinerary, termination means the date or intended date of departure of the last flight in the participant's itinerary;

(w) For international flights only: That additional restrictions may be imposed on the flight by the foreign government involved, and that if landing rights are denied by a foreign government the flight will be canceled with a full refund to the participant.

This statement need not be included in the contract if—

(1) The prospectus includes a certification by the charter operator and the direct air carrier that landing rights have been obtained from all the foreign governments involved, and

(2) All the foreign governments involved have adopted country-of-origin rules for charterworthiness;

(x) That the charter operator is the principal and is responsible to the participants for all services and accommodations offered in connection with the charter. However, the contract may expressly provide that the charter operator, unless negligent, is not responsible for personal injury or property damage caused by any direct air carrier, hotel or other supplier of services in connection with the charter.

§ 380.33 Major changes in itinerary or price; refunds.

(a) For the purposes of this section, "major change" means any of the following:

(1) A change in the departure or return date shown in the operator-participant contract, (or, if the contract states alternative dates, the date designated to the participant by the charter operator in accordance with § 380.33a(b)), unless the change results from a flight delay. In any event, however, a date change that the operator knows of more than 2 days before the scheduled flight date, and any delay of more than 48 hours, will be considered a major change.

(2) A change in the origin or destination city shown in the operator-participant contract for any flight leg (or, if the contract states alternative cities, the city designated to the participant by the operator in accordance with § 380.33a(b)), unless the change affects only the order in which cities named in a tour package are visited.

(3) A substitution of any hotel that is not named in the operator-participant contract; and

(4) A price increase to the participant that occurs 10 or more days before departure and results in an aggregate price increase of more than 10 percent.

(b) The charter operator shall not increase the price to any participant less than 10 days before departure.

(c) The charter operator shall notify all participants of major changes, as required by the operator-participant contracts. This notification shall include the participants' rights to refunds required to be described in the operator-participant contract. The operator shall, if applicable, also notify the participants

that the acceptance of a refund constitutes a waiver of their legal rights.

(d) Except as otherwise specified, notifications and refunds required by this part are considered made at the time they are mailed or sent by an equivalent method.

(e) The charter operator shall make all refunds required to be described in the operator-participant contract within the time limits set forth in paragraphs (k), (n), (r), and (s) of § 380.32, as applicable.

§ 380.33a Operator's option plan.

(a) For the purposes of this part, an operator's option plan contract that states alternative dates for the outbound or return flights, or alternative origin or destination cities for any flight leg.

(b) Operator's option plan contracts shall state, in addition to the information required by § 380.32, that the selection of the actual dates or cities, as applicable, is at the charter operator's option and will not entitle the participant to a refund, and that the operator will notify the participant of the actual dates or cities at least 10 days before the earliest of any alternative dates for the outbound flight.

(c) Contract forms for all operator's option plan contracts shall be labeled "OPERATOR'S OPTION PLAN" in bold-faced capital letters at least 1/4 inch high. The statement required by paragraph (b) of this section and the statement of alternative dates (§ 380.32(c)) or alternative cities (§ 380.32(d)), as applicable, shall be printed so as to contrast with the rest of the contract, as set forth in § 380.31(f).

(d) Any solicitation material that states a price per passenger for an operator's option plan contract shall clearly and conspicuously—

(1) Identify that price as being for the operator's option plan,

(2) Name all the possible dates or cities, as applicable, and

(3) State that the selection of the actual dates or cities is at the charter operator's option.

(e) Charter operators and their agents shall not misrepresent to prospective participants, orally, in solicitation materials, or otherwise, the probability that any particular city or date will be selected from among the alternatives named in an operator's option plan contract.

(f) The charter operator shall notify all participants with operator's option plan contracts of the actual dates or cities, as applicable, as required by contracts.

§ 380.34 Security and depository agreements.

(a) Except as provided in paragraph (b) of this section, the charter operator

or foreign charter operator shall furnish a security agreement in an amount for not less than the charter price for the air transportation, if only air transportation is involved, or, if the charter involves land accommodations in addition to air transportation, a security agreement in one of the following amounts dependent upon the length of the charter or series of charters:

(1) For a charter or series of charters of 14 days or less, security in an amount of not less than the charter price for the air transportation to be furnished in connection with such charter or series of charters;

(2) For a charter or series of charters of more than 14 days but less than 28 days security in an amount of not less than twice the charter price; and

(3) For a charter or series of charters of 28 days or more, security in an amount of not less than three times the charter price: Provided, however, That the liability of the securer to any charter participant shall not exceed amounts paid by that participant to the charter operator with respect to the charter.

(b) The direct air carrier and the charter operator or foreign charter operator may elect, in lieu of furnishing a security agreement as provided under paragraph (a) of this section, to comply with the requirements of paragraphs (b)(1) and (b)(2) of this section, as follows:

(1) The charter operator shall furnish a security agreement in an amount of at least \$10,000 times the number of flights, except that the amount need not be more than \$200,000. The liability of the securer to any charter participant shall not exceed the amount paid by the participant to the charter operator for that charter.

(2) The direct air carrier and charter operator or foreign charter operator shall enter into an agreement with a designated bank, the terms of which shall provide that all payments by charter participants paid to charter operators or foreign charter operators and their retail travel agents shall be deposited with and maintained by the bank subject to the following conditions:

(i) On sales made to charter participants by charter operators or foreign charter operators the participant shall pay by check, money order, or credit card draft payable to the bank;² on sales made to charter participants by retail travel agents, the retail travel agent may deduct his commission and remit the balance to the designated bank by check, money order, or electronic transfer: Provided, That the travel agent

² See also n.1, *supra*.

agrees in writing with the charter operator or foreign charter operator that if the charter is canceled the travel agent shall remit to the bank the full amount of the commission previously deducted or received within 10 days after receipt of notification of cancellation of the charter; except for the credit card company's usual commission (not to exceed 3 percent), the charter operator shall not permit any portion of a charter participant's payments by credit card to be "held back" by the credit card merchant bank;³

(ii) The bank shall pay the direct air carrier the charter price for the transportation not earlier than 60 days (including day of departure) prior to the scheduled day of departure of the originating or returning flight, upon certification of the departure date by the air carrier: Provided, That, in the case of a round trip charter contract to be performed by one carrier, the total round trip charter price shall be paid to the carrier not earlier than 60 days prior to the scheduled day of departure of the originating flight;

(iii) The bank shall reimburse the charter operator or foreign charter operator for refunds made by the latter to the charter participant upon written notification from the charter operator or foreign charter operator;

(iv) If the charter operator, foreign charter operator or the direct air carrier notifies the bank that a charter has been canceled, the bank shall make applicable refunds directly to the charter participants;

(v) After the charter price has been paid in full to the direct air carrier, the bank shall pay funds from the account directly to the hotels, sightseeing enterprises, or other persons or companies furnishing ground accommodations and services, if any, in connection with the charter or series of charters upon presentation to the bank of vendors' bills and upon certification by the charter operator or foreign charter operator of the amounts payable for such ground accommodations and services and the person or companies to whom payment is to be made: Provided, however, That the total amounts paid by the bank pursuant to paragraphs (b)(2)(ii) and (v) of this section shall not exceed either the total cost of the air transportation, or 80 percent of the total deposits received by the bank less any refunds made to charter participants pursuant to paragraphs (b)(2)(ii) and (iv) of this section, whichever is greater;

(vi) As used in this section, the term "bank" means a bank insured by the Federal Deposit Insurance Corporation;

(vii) The bank shall maintain a separate accounting for each charter group;

(viii) Notwithstanding any other provisions of this section, the amount of total cash deposits required to be maintained in the depository account of the bank may be reduced by one or both of the following: The amount of the security agreement in the form prescribed in this section in excess of the minimum coverage required by paragraph (b)(1) of this section; an escrow with the designated bank of Federal, State, or municipal bonds or other securities, consisting of certificates of deposit issued by banks having a stated policy of redeeming such certificates before maturity at the request of the holder (subject only to such interest penalties or other conditions as may be required by law), or negotiable securities which are publicly traded on a securities exchange, all such securities to be made payable to the escrow account:

Provided, That such other securities shall be substituted in an amount no greater than 80 percent of the total market value of the escrow account at the time of such substitution: And provided, further, That should the market value of such other securities subsequently decrease, from time to time, then additional cash or securities qualified for investment hereunder shall promptly be added to the escrow account, in an amount equal to the amount of such decreased value; and

(ix) Except as provided in paragraph (b)(2)(i), (iii), (iv), (v), and (viii) of this section, the bank shall not pay out any funds from the account prior to 2 banking days after completion of each charter, when the balance in the account shall be paid the charter operator or foreign charter operator, upon certification of the completion date by the direct air carrier: Provided, however, That if the Charter involves air transportation only and the bank has paid the direct air carrier(s) the charter price for the originating flight, and the returning flight if any, and has paid all refunds due to participants, as provided in paragraph (b)(2)(ii) and (iii), respectively, of this section, then the bank may pay the balance in the account to the charter operator upon certification by the direct air carrier performing the originating flight that such flight has in fact departed.

(c)(1) The security agreement required under paragraphs (a) and (b) of this section shall insure the financial responsibility of the charter operator or

foreign charter operator and the supplying of the transportation and all other accommodations, services, and facilities in accordance with the contract between the charter operator or foreign charter operator and the charter participants.

(2) The security agreement may be either:

(i) A surety bond in the form set forth as appendix A to this part;

(ii) A surety trust agreement in the form set forth as appendix B to this part; or

(iii) An arrangement with a bank (for instance, a standby letter of credit) that provides protection of charter participants' funds equivalent to or greater than that provided by the Bond in appendix A. An arrangement that furnishes a lesser degree of protection than would be provided under the bond shall be invalid to that extent, and instead the bank, the charter operator or foreign charter operator, and the charter participants shall have the same rights and liabilities as provided under a bond in the form of appendix A. If the arrangement does not give as much protection as a bond against the risk of the charter operator's bankruptcy, the bank shall be liable in the event of bankruptcy to the same extent as if it had entered into a bond.

(3) Any agreement under paragraph (c)(2)(iii) of this section shall include a statement that, in the event that the other provisions of the agreement do not provide protection to charter participants comparable to that provided under a bond in the form of appendix A, the bank shall assume, for the benefit of the charter participants, all the liabilities it would have if it entered into the bond.

(4) The security agreement shall be effective on or before the date the charter prospectus is filed with the Department.

(5) The security agreement shall be specifically identified by the issuing securer with a numbering system so that the Department can identify the security agreement with the specific charter or charters to which it relates. These data may be set forth in an addendum attached to the security agreement, which addendum must be signed by the charter operator or foreign charter operator and the securer.

(6) When security is provided by a surety bond, such bond shall be issued by a bonding or surety company that is listed in Best's Insurance Reports (Fire and Casualty) with a general policyholders' rating of "A" or better. The bonding or surety company shall be one legally authorized to issue bonds of that type in the State in which the

³ "Holdback" is an amount in excess of usual commissions that a credit card merchant bank sometimes retains to cover potential charge-backs or other charges.

charter originates. For purposes of this section the term "State" includes any territory or possession of the United States, or the District of Columbia.

(7) When security is provided by a security agreement other than a bond, the agreement shall be issued by a national bank complying with the provisions of 12 CFR 7.7010(a), or by a State bank complying with applicable State laws that give authority to issue such agreements, and all such banks must be insured by the Federal Deposit Insurance Corporation.

(d) The security agreement required by this section shall provide that unless the charter participant files a claim with the charter operator or foreign charter operator, or, if it is unavailable, with the securer, within 60 days after termination of the charter, the securer shall be released from all liability under the security agreement to such charter participant. Terminations means the date of arrival (or in the case of a canceled charter, the intended date of arrival) of the return flight. If there is no return flight in a participant's itinerary, termination means the date or intended date of departure of the last flight in the participant's itinerary.

§ 380.34a Substitution of direct air carrier's security or depository agreement.

(a) A direct air carrier may substitute its own security agreement and/or depository arrangements, as specified in this section, for those required of the charter operator under § 380.34, but only for charter trips in which all the air transportation is provided by one direct air carrier. Charter operators are relieved from § 380.34 to the extent that the direct carrier substitutes its own arrangements.

(b) The direct air carrier may substitute its security agreement for all of the arrangements required of the charter operator under § 380.34 (a) or (b). Alternatively, it may substitute its depository agreement for the depository agreement required of the charter operator under § 380.34(b)(2). If the direct carrier substitutes its depository agreement, it may also obtain and substitute a security agreement for the one otherwise required of the charter operator under § 380.34(b)(1). If the direct carrier substitutes its depository agreement only, the charter operator must supply the security agreement required under § 380.34(b)(1).

(c) If the direct carrier substitutes a security agreement for all the charter operator's requirements under § 380.34, the charter operator shall include in the charter prospectus, in place of the information in § 380.28(a)(2) regarding

the charter operator's security agreement:

(1) A statement by the direct air carrier on OST Form 4535 that it will take responsibility for all charter participant payments (including those for ground accommodations and services) and for the fulfillment of all the charter operator's contractual and regulatory obligations to the charter participants.

(2) A statement from the direct air carrier and its securer (under § 212.12 of this chapter), OST Form 4533, that they have entered into a security agreement assuring the direct air carrier's responsibilities to charter participants under this section in an unlimited amount (except that the liability of the securer with respect to any charter participant may be limited to the charter price paid by or on behalf of such participant), and that the securer has received a copy of the proposed flight schedule identified by the schedule number assigned by the charter operator under this part.

(d) A substitute depository agreement under this section shall be signed by the direct air carrier, the charter operator, and the depository bank, and shall provide, in addition to existing requirements under § 212.8 of this chapter, that:

(1) Payments by or on behalf of charter participants shall be allocated to the flight accounts matching the participant's itinerary in the following way: Each account shall have allocated to it the charter cost of the participant's air transportation on that flight. The portion of each payment not intended for air transportation services shall be allocated to the account for the return flight in the participant's itinerary. If there is only one flight in the itinerary, the entire payment shall be allocated to that account.

(2) The bank shall pay funds from a flight account directly to the hotels, sightseeing enterprises, or other persons or companies furnishing ground accommodations and services, if any, in connection with the charter flight, upon presentation to the bank of vendor's bills and upon certification by the person who contracted for the ground accommodations or services of the amounts payable and the persons or companies to whom payment is to be made, except that no disbursement shall be made that would reduce the balance in the account below the charter cost of the flight.

(3) On sales made to participants by a person other than a retail travel agent, the participant shall pay by check, money order, or credit card draft payable to the bank. On sales made to

participants by a retail travel agent, payments shall be made in the same manner unless the agent deducts its commission and remits the balance to the bank by check, money order, or electronic transfer. The agent may deduct its commission only if it agrees in writing with its principal (the charter operator or direct air carrier, as applicable) that, if the charter is canceled, the agent shall remit to the bank the full amount of the commission previously deducted or received within 10 days after receipt of notification of the cancellation. The depository bank shall pay refunds directly to participants according to the terms of the operator-participant contract and the terms of this part.

(e) If the direct carrier substitutes a security agreement in addition to substituting a depository agreement, the charter prospectus information must include all the information required by paragraphs (c) and (d) of this section, except for the amount of the security agreement. That agreement shall be in an amount of at least \$10,000 times the number of flights, except that the amount need not be more than \$200,000.

(f) A copy of the depository agreement under paragraph (d) of this section shall be filed with the Department, and it shall not be effective until approved by the Department.

(g) A copy of the security agreement under paragraph (c) or paragraph (e) of this section shall be filed with the Department. It shall insure the financial responsibility of the direct air carrier for supplying the transportation and all other accommodations, services, and facilities in accordance with the contracts between the charter operator and the charter participants. Such security agreement shall meet all the other requirements of § 380.34 (c) and (d).

§ 380.35 Disbursements from depository account.

No charter operator or direct air carrier shall cause its agents or the depository bank to make disbursements or payments from deposits except in accordance with the provisions of this part.

§ 380.36 Record retention.

Every charter operator conducting a charter pursuant to this part shall comply with the applicable record-retention provisions of part 249 of this chapter.

Subpart D—Requirements Applicable to Direct Air Carriers**§ 380.40 Charter not to be performed unless in compliance with this part 380.**

(a) For all Public Charters other than foreign-originating charters organized by foreign charter operators: A direct air carrier shall not perform air transportation in connection with such a charter unless it has made a reasonable effort to verify that all provisions of this part have been complied with and that the charter operator's authority under this part has not been suspended by the Department.

(b) For foreign-originating Public Charters organized by foreign charter operators: A direct air carrier shall not perform air transportation in connection with such a charter unless—

(1) The charter is conducted in accordance with subpart B of this part and

(2) The charter operator conforms to all requirements of this part that are applicable to charter operators within the Department's jurisdiction, other than §§ 380.25, 380.28, 380.30 through 380.36, and 380.50.

§§ 380.41–380.42 [Reserved]**§ 380.43 Cancellations by direct air carriers.**

The direct air carrier shall not cancel any charter under this part less than 10 days before the scheduled departure date, except for circumstances that make it physically impossible to perform the charter trip.

§ 380.45 Suspension of exemption authority.

The Department reserves the power to suspend the exemption authority of any air carrier, without hearing, if it finds that such action is necessary in order to protect the rights of the traveling public.

§ 380.46 Charter trip reporting.

The direct air carrier shall promptly notify the Office of Aviation Analysis, Special Authorities Division, regarding any charters covered by a prospectus filed under § 380.28 that are later canceled.

Subpart E—Registration of Foreign Charter Operators**§ 380.60 Purpose.**

This subpart establishes registration procedures for foreign charter operators intending to engage in the formation of groups for transportation on Public Charters that originate in the United States.

§ 380.61 Operation by foreign charter operators.

(a) Each foreign charter operator shall be registered under this subpart and file a prospectus under § 380.25 before organizing groups for transportation on Public Charters that originate in the United States.

(b) Each foreign charter registered under this subpart shall comply with the other provisions of this part directed to charter operators.

§ 380.62 Registration applications.

(a) To be registered under this subpart, a foreign charter operator shall file two copies of an application for registration with the Office of Aviation Analysis, Special Authorities Division. The Department will list the names and nationalities of all persons applying for registration in its Weekly Summary of Filings.

(b) The application shall be made on OST Form 4530, which can be obtained from the Office of Aviation Analysis, Special Authorities Division.

(c) The applicant shall clearly indicate in its application for registration whether it requests authority to engage in foreign and/or interstate air transportation.

§ 380.63 Objections to registration applications.

Any person objecting to the registration application of a foreign charter operator or to a proposed change in the name or ownership of that operator shall file an objection with the Office of Aviation Analysis, Special Authorities Division, within 28 days after the Department receives the properly completed registration application.

§ 380.64 Department action on a registration application.

(a) After a registration is received, one of the following actions will be taken.

(1) The application will be approved by the stamping of the effective date of registration on OST Form 4530 and returning the duplicate copy of the form to the operator;

(2) Additional information will be requested for the applicant;

(3) The applicant will be notified that its application will require further analysis or procedures, or is being referred to the Department for formal action;

(4) The registration application will be rejected if it does not comply with the filing requirements of this subpart;

(5) The application will be approved subject to such terms, conditions, or limitations as may be required by the public interest; or

(6) The registration application will be rejected for reasons relating to the failure of effective reciprocity or if the Department finds that it would be in the public interest to do so.

(b) One of the actions described in paragraph (a) of this section will normally be taken within 60 days after the registration application is received. The Department will also consider requests for faster action that include a full explanation of the need for expedited action.

§ 380.65 Notification of change of operations or ownership.

(a) Not later than 30 days before any change in its name or address or before a temporary or permanent cessation of operations, each foreign charter operator registered under this subpart shall notify the Office of Aviation Analysis, Special Authorities Division, of the change by resubmitting OST Form 4530.

(b) A foreign charter operator registered under this subpart shall apply for an amendment to that registration not later than 30 days after either of the following events:

(1) A person listed on its existing registration as owning or holding beneficial interest in at least 10 percent of the operator or of the operator's stock reduces its holding to below 10 percent;

(2) A person not listed on the existing registration as owning or holding beneficial interest in at least 10 percent of the operator or of the operator's stock becomes an owner or holder of 10 percent or more of the company or of its stock.

(c) An application for an amendment shall be made by resubmitting OST Form 4530. The existing registration shall remain valid pending Department action on the amendment.

§ 380.66 Cancellation or conditioning of the registration.

The registration of a foreign charter operator may be canceled or subjected to additional terms, conditions, or limitations if any of the following occur:

(a) The operator files a written notice with the Department that it is discontinuing its charter operations;

(b) A substantial ownership interest is acquired by persons who are not citizens of the same country as the registrant; or

(c) The Department finds, after notice and an opportunity for responses, that it is in the public interest to do so. In making this finding, the Department will consider whether effective reciprocity exists between the United States and the government of the foreign charter operator.

§ 380.67 Waiver of sovereign immunity.

By accepting an approved registration form under this subpart, an operator waives any right it may have to assert any defense of sovereign immunity from suit in any proceeding against it, in any court or other tribunal of the United States, that is based upon a claim arising out of operations by the operator under this part.

Appendix A—Public Charter Operator’s Surety Bond Under Part 380 of the Special Regulations of the Department of Transportation (14 CFR Part 380)

Know all men by these presents, that we _____ (name of charter operator) of _____ (city) _____ (state or country) as Principal (hereinafter called Principal), and _____ (name of surety) a corporation created and existing under the laws of the State of _____ (State) as Surety (hereinafter called Surety) are held and firmly bound unto the United States of America in the sum of \$ _____ (see § 380.34(f) of Part 380) for which payment, well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Whereas Principal intends to become a Public Charter operator pursuant to the provisions of part 380 of the Department’s Special Regulations and other rules and regulations of the Department relating to insurance or other security for the protection of charter participants, and has elected to file with the Department of Transportation such a bond as will insure financial responsibility with respect to all moneys received from charter participants for services in connection with a Public Charter to be operated subject to Part 380 of the Department’s Special Regulations in accordance with contracts, agreements, or arrangements therefor, and

Whereas this bond is written to assure compliance by Principal as an authorized charter operator with Part 380 of the Department’s Special Regulations, and other rules and regulations of the Department relating to insurance and other security for the protection of charter participants, and shall inure to the benefit of any and all charter participants to whom Principal may be held legally liable for any damages herein described.

Now, therefore, the condition of this obligation is such that if Principal shall pay or cause to be paid to charter participants any sum or sums for which Principal may be held legally liable by reason of Principal’s failure faithfully to perform, fulfill and carry out all contracts, agreements, and arrangements made by Principal while this bond is in effect with respect to the receipt of moneys from charter participants, and proper disbursement thereof pursuant to and in accordance with the provisions of Part 380 of the Department’s Special Regulations, then this obligation shall be void, otherwise to remain in full force and effect.

The liability of Surety with respect to any charter participant shall not exceed the charter price paid by or on behalf of such participant.

The liability of Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penalty of the bond, but in no event shall Surety’s obligation hereunder exceed the amount of said penalty.

Surety agrees to furnish written notice to the Office of Aviation Analysis, Department of Transportation, forthwith of all suits or claims filed and judgments rendered, and payments made by Surety under this bond.

The bond shall cover the following charters:¹

Surety company’s bond No. _____
Date of flight departure _____
Place of flight departure _____

This bond is effective on the _____ day of _____, 12:01 a.m., standard time at the address of Principal as stated herein and as hereinafter provided. Principal or Surety may at any time terminate this bond by written notice to: “Special Authorities Division (P-57), Office of Aviation Analysis, U.S. Department of Transportation, Washington, DC 20590.” such termination to become effective thirty (30) days after the actual receipt of said notice by the Department. Surety shall not be liable hereunder for the payment of any damages hereinbefore described which arise as a result of any contracts, agreements, undertakings, or arrangements for the supplying of transportation and other services made by Principal after the termination of this bond as herein provided, but such termination shall not affect the liability of the bond hereunder for the payment of any damages arising as a result of contracts, agreements, or arrangements for the supplying of transportation and other services made by Principal prior to the date that such termination becomes effective. Liability of Surety under this bond shall in all events be limited only to a charter participant or charter participants who shall within sixty (60) days after the termination of the particular charter described herein give written notice of claim to the charter operator or, if it is unavailable, to Surety, and all liability on this bond shall automatically terminate sixty (60) days after the termination date of each particular charter covered by this bond except for claims made in the time provided herein.

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

Principal
Name _____
By: Signature and title _____
Surety
Name _____
By: Signature and title _____

Only corporations may qualify to act as surety and they must meet the requirements set forth in § 380.34(c)(6) of Part 380.

¹ These data may be supplied in addendum attached to the bond.

Appendix B—Public Charter Surety Trust Agreement

This Trust Agreement is entered into between _____ (charter operator) incorporated under the law of _____ with the principal place of business being _____ (hereinafter referred to as the Operator), and _____ (Bank) with its principal place of business being _____ (hereinafter referred to as the “Trustee”), for the purpose of creating a trust to become effective as of the _____ day of _____, _____, which trust shall continue until terminated as hereinafter provided.

The Operator intends to become a Public Charter operator pursuant to the provisions of Part 380 of the Department’s Special Regulations and other rules and regulations of the Department relating to insurance or other security for the protection of charter participants, and has elected to file with the Department of Transportation such a Surety Trust Agreements as will insure financial responsibility with respect to all moneys received from charter participants for services in connection with a Public Charter to be operated subject to Part 380 of the Department’s Special Regulations in accordance with contracts, agreements, or arrangements therefor.

This Surety Trust Agreement is written to assure compliance by the Operator with the provisions of Part 380 of the Department’s Special Regulations and other rules and regulations of the Department relating to insurance or other security for the protection of charter participants.

It shall inure to the benefit of any and all charter participants to whom the Operator may be held legally liable for any of the damages herein described.

It is mutually agreed by and between the operator and Trustee that the Trustee shall manage the corpus of the trust and carry out the purposes of the trust as hereinafter set forth during the term of the trust for the benefit of charter participants (who are hereinafter referred to as “Beneficiaries.”)

Beneficiaries of the trust created by this Agreement shall be limited to those charter participants who meet the following requirements:

- 1. Those for whom Operator or Operator’s agent has received payment toward participation in one or more charters operated by or proposed to be operated by Operator.
- 2. Who have legal claim or claims for money damages against the Operator by reason of the Operators’ failure faithfully to perform, fulfill, and carry out all contracts, agreements, and arrangements made by the Operator while this trust is in respect to the receipt of moneys and proper disbursement thereof pursuant to Part 380 of the Department’s Special Regulations; and
- 3. Who have given notice of such claim or claims in accordance with this Trust Agreement, but who have not been paid by the Operator.

The Operator shall convey to the Trustee legal title to the trust corpus, which has a value of \$ _____ by the time of the execution of this Agreement.

Trustee shall assume the responsibilities of the Trustee over the said trust corpus and shall distribute from the trust corpus to any and all Beneficiaries to whom the Operator, in its capacity as a Public Charter operator, may be held legally liable by reason of the Operator's failure faithfully to perform, fulfill, and carry out all contracts, agreements, and arrangements made by the Operator, while this trust is in effect with respect to the receipt of moneys and proper disbursement thereof pursuant to Part 380 of the Department's Special Regulations in connection with said charters, such damages as will discharge such liability while this trust is in effect; Provided, however, That the liability of the trust to any Beneficiary shall not exceed the charter price (as defined in Part 380 of the Department's Special Regulations) paid by or on behalf on any such Beneficiary; Provided, further, That there shall be no obligation of the trust to any Beneficiary if the Operator shall pay or cause to be paid to any Beneficiary any sum or sums for which the Operator may be held legally liable by reasons of its failure faithfully to perform, fulfill, and carry out all contracts, agreements, and arrangements made by the Operator in its capacity as charter operator while this trust is in effect with respect to the receipt of moneys and proper disbursement thereof pursuant to Part 380 of the Department's Special Regulations; And provided still further, That the liability of the trust as administered by the Trustee shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments, shall amount in the aggregate to \$_____. Notwithstanding anything herein to the contrary, in no event shall the obligation of the trust or the Trustee hereunder exceed the aggregate amount of \$_____.

The Trustee agrees to furnish written notice to the Office of Aviation Analysis, Department of Transportation, forthwith of all suits of claims filed and judgments rendered (of which it has knowledge), and of payments made by the Trustee under the terms of this trust.

The Trust shall not be liable hereunder for the payment of any damages hereinbefore described which arise as a result of any contracts, agreements, undertakings, or arrangements for the supplying of transportation and other services made by the Operator after the termination of this trust as herein provided, but such termination shall not affect the liability of the trust hereunder for the payment of any damages arising as a result of contracts, agreements, or arrangements for the supplying of transportation and other services made by the Operator prior to the date that such termination becomes effective.

Liability of the trust shall in all events be limited only to a Beneficiary or Beneficiaries who shall within sixty days after the termination of the particular charter give written notice of claim to the Operator or, if it is unavailable, to the Trustee, and all liability of the trust with respect to participants in a charter shall automatically terminate sixty days after the termination date of each particular charter covered by

this trust except for claims filed in the time provided herein. Sixty-one days after the completion of the last charter covered by this Trust Agreement, the trust shall automatically terminate except for claims of any Beneficiary or Beneficiaries previously made in accordance with this Agreement still pending on and after said sixty-first day. To the extent of such claims, the trust shall continue until those claims are discharged, dismissed, dropped, or otherwise terminated; the remainder of the trust corpus shall be conveyed forthwith to the Operator. After all remaining claims which are covered by this Trust Agreement pending on and after the said sixty-first day have been discharged, dismissed, dropped, or otherwise terminated, the Trustee shall convey forthwith the remainder of the trust corpus, if any, to the Operator.

Either the Operator or Trustee may at any time terminate this trust by written notice to: "Special Authorities Division (P-57), Office of Aviation Analysis, U.S. Department of Transportation, Washington, DC 20590," such termination to become effective thirty days after the actual receipt of said notice by the Department.

In the event of any controversy or claim arising hereunder, the Trustee shall not be required to determine same or take any other action with respect thereto, but may await the settlement of such controversy or claim by final appropriate legal proceedings, and in such event shall not be liable for interest or damages of any kind.

Any Successor to the Trustee by merger, consolidation, or otherwise, shall succeed to this trusteeship and shall have the powers and obligations set forth in this Agreement.

The trust created under this Agreement shall be operated and administered under the laws of the State of _____.

IN WITNESS WHEREOF, the Operator and Trustee have executed this instrument on the _____ day of _____, _____.

Trustee

Name _____

By: Signature and title

Charter Operator

Name _____

By: Signature and title

Issued in Washington, DC, on May 8, 1998.

Charles A. Hunnicutt,

Assistant Secretary For Aviation and International Affairs.

[FR Doc. 98-12980 Filed 5-21-98; 8:45 am]

BILLING CODE 4910-62-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL-6015-3]

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency.

ACTION: Notice of acceptability.

SUMMARY: This document expands the list of acceptable substitutes for ozone-depleting substances (ODS) under the U.S. Environmental Protection Agency's (EPA) Significant New Alternatives Policy (SNAP) program.

EFFECTIVE DATE: May 22, 1998.

ADDRESSES: Information relevant to this document is contained in Air Docket A-91-42, U.S. Environmental Agency, Office of Air and Radiation Docket and Information Center, Room M-1500, 401 M Street, SW, Washington, DC 20460. Telephone: (202) 260-7548. The docket may be inspected between 8:00 a.m. and 5:30 p.m. weekdays. As provided in 40 CFR Part 2, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: William Monroe at (202) 564-9161 or fax (202) 565-2093, U.S. EPA, Stratospheric Protection Division, 401 M Street, S.W., Mail Code 6205J, Washington, D.C. 20460; EPA Stratospheric Ozone Protection Hotline at (800) 296-1996; EPA World Wide Web Site (<http://www.epa.gov/ozone/title6/snap>).

SUPPLEMENTARY INFORMATION:

- I. Section 612 Program
 - A. Statutory Requirements
 - B. Regulatory History
- II. Listing of Acceptable Substitutes
 - A. Aerosols
- III. Additional Information
 - Appendix A—Summary of Acceptable Decisions

I. Section 612 Program

A. Statutory Requirements
Section 612 of the Clean Air Act authorizes EPA to develop a program for evaluating alternatives to ozone-depleting substances. EPA refers to this program as the Significant New Alternatives Policy (SNAP) program. The major provisions of section 612 are:

- **Rulemaking**—Section 612(c) requires EPA to promulgate rules making it unlawful to replace any class I (chlorofluorocarbon, halon, carbon tetrachloride, methyl chloroform, methyl bromide, and hydrobromofluorocarbon) or class II (hydrochlorofluorocarbon) substance with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) reduces the overall risk to human health and the environment, and (2) is currently or potentially available.

- **Listing of Unacceptable/Acceptable Substitutes**—Section 612(c) also requires EPA to publish a list of the substitutes unacceptable for specific uses. EPA must publish a corresponding