Aeronautics and Space

PARTS 200 TO 1199
Revised as of January 1, 1999

CONTAINING
A CODIFICATION OF DOCUMENTS
OF GENERAL APPLICABILITY
AND FUTURE EFFECT
AS OF JANUARY 1, 1999

With Ancillaries

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the Federal Register
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Cite this Code: CFR

To cite the regulations in this volume use title, part and section number. Thus, 14 CFR 200.1 refers to title 14, part 200, section 1.
Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

- Title 1 through Title 16 as of January 1
- Title 17 through Title 27 as of April 1
- Title 28 through Title 41 as of July 1
- Title 42 through Title 50 as of October 1

The appropriate revision date is printed on the cover of each volume.

LEGAL STATUS

The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

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An index to the text of “Title 3—The President” is carried within that volume.

The Federal Register Index is issued monthly in cumulative form. This index is based on a consolidation of the “Contents” entries in the daily Federal Register.

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RAYMOND A. MOSLEY,
Director,
Office of the Federal Register.

January 1, 1999.
Title 14—Aeronautics and Space is composed of five volumes. The parts in these volumes are arranged in the following order: parts 1-59, 60-139, 140-199, 200-1199, and part 1200-End. The first three volumes containing parts 1-199 are comprised of chapter I—Federal Aviation Administration, Department of Transportation (DOT). The fourth volume containing parts 200-1199 is comprised of chapter II—Office of the Secretary, DOT (Aviation Proceedings) and chapter III—Commercial Space Transportation, Federal Aviation Administration, DOT. The fifth volume containing part 1200-End is comprised of chapter V—National Aeronautics and Space Administration. The contents of these volumes represent all current regulations codified under this title of the CFR as of January 1, 1999.

Redesignation tables appear in the Finding Aids section of the volume containing parts 60-139.

For this volume, Melanie L. Marcec was Chief Editor. The Code of Federal Regulations publication program is under the direction of Frances D. McDonald, assisted by Alomha S. Morris.
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CHAPTER II—OFFICE OF THE SECRETARY,
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EDITORIAL NOTE: Chapter II was transferred from the Civil Aeronautics Board to the Department of Transportation on January 1, 1985. For a document giving the disposition of CAB regulations once the Agency ceased to exist, see 50 FR 452, Jan. 4, 1985.

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§ 200.1 Terms and definitions.

Unless otherwise specifically stated, words and phrases other than those listed in this section have the meaning defined in the Statute.

(a) Board or CAB means the Civil Aeronautics Board.

(b) Department or DOT means the Department of Transportation.

(c) Act means the Federal Aviation Act of 1958, as amended.

(d) Section refers to a section of the Statute or a section of the regulations in this chapter, as indicated by the context. The terms this section, pursuant to this section, in accordance with the provisions of this section, and words of similar import when used in this chapter refer to the section of this subchapter in which such terms appear.

(e) Rule, regulation, and order refer to the rules, regulations, and orders prescribed by the Board or the Department pursuant to the Statute.

(f) Statute when used in this chapter means Subtitle VII of Title 49 of the United States Code (Transportation).

(g) FAA means the Federal Aviation Administration, U.S. Department of Transportation.

(h) BTS means the Bureau of Transportation Statistics, U.S. Department of Transportation.


§ 200.2 Instructions.

The regulations of the Department may be cited by section numbers. For example, this regulation may be cited as “§ 200.2 of the Aviation Economic Regulations.” The sections contained in the Rules of Practice may also be cited by appropriate rule numbers. (See § 302.2 of this chapter.) For example, 14 CFR 302.10 may be cited as “rule 10 of the Rules of Practice.”

[Doc. No. 47939, 57 FR 40100, Sept. 2, 1992]
§ 201.2

filed with the Chief, Air Carrier Fitness Division.

(Approved by the Office of Management and Budget under control number 2106-0023)

[Docket No. 47582, 57 FR 38765, Aug. 27, 1992, as amended at 60 FR 43523, Aug. 22, 1995]

§ 201.2 Amendments.

If, after receipt of any application, the Department asks the applicant to supply additional information, such information shall be furnished in the form of a supplement to the original application.

§ 201.3 Incorporation by reference.

Incorporation by reference shall be avoided. However, where two or more applications are filed by a single carrier, lengthy exhibits or other documents attached to one may be incorporated in the others by reference if that procedure will substantially reduce the cost to the applicant.

§ 201.4 General provisions concerning contents.

(a) All pages of an application shall be consecutively numbered, and the application shall clearly describe and identify each exhibit by a separate number or symbol. All exhibits shall be deemed to constitute a part of the application to which they are attached.

(b) All amendments to applications shall be consecutively numbered and shall comply with the requirements of this part.

(c) Requests for authority to engage in interstate air transportation shall not be included in the same application with requests for authority to engage in foreign air transportation. Similarly, requests for authority to engage in scheduled air transportation under section 41102 of the Statute shall not be included in the same application with requests for authority to engage in charter air transportation under section 41103 of the Statute.

(d) Each application shall specify the type or types of service (passengers, property or mail) to be rendered and whether such services are to be rendered on scheduled or charter operations.

(e) Each application for foreign scheduled air transportation shall include an adequate identification of each route for which a certificate is desired, including the terminal and intermediate points to be included in the certificate for which application is made.

(f) Each application shall give full and adequate information with respect to each of the relevant filing requirements set forth in part 204 of this chapter. In addition, the application may contain such other information and data as the applicant shall deem necessary or appropriate in order to acquaint the Department fully with the particular circumstances of its case; however, the statements contained in an application shall be restricted to significant and relevant facts.

(Approved by the Office of Management and Budget under control number 2106-0023)

[Docket No. 47582, 57 FR 38765, Aug. 27, 1992, as amended at 60 FR 43523, Aug. 22, 1995]

§ 201.5 Advertising and sales by applicants.

(a) An applicant for new or amended certificate or commuter air carrier authority shall not:

(1) Advertise, list schedules, or accept reservations for the air transportation covered by its application until the application has been approved by the Department; or

(2) Accept payment or issue tickets for the air transportation covered by its application until the authority or amended authority has become effective or the Department issues a notice authorizing sales.

(b) An applicant for new or amended certificate or commuter air carrier authority may not advertise or publish schedule listings for the air transportation covered by its application until the authority or amended authority has become effective or the Department issues a notice authorizing sales.

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§ 201.6 Applicability.

Unless the certificate or the order authorizing its issuance shall otherwise provide, such terms, conditions and limitations as are set forth in this part, and as may from time to time be prescribed by the Department, shall apply to the exercise of the privileges granted by each certificate issued under section 41102 or section 41103 of the Statute.

[Docket No. 47582, 57 FR 38765, Aug. 27, 1992, as amended at 60 FR 43523, Aug. 22, 1995]

§ 201.7 General certificate conditions.

(a) It shall be a condition upon the holding of a certificate that any intentional failure by the holder to comply with any provision of Statute or any order, rule, or regulation issued thereunder or any term, condition, or limitation of such certificate shall be a failure to comply with the terms, conditions, and limitations of the certificate within the meaning of section 41110 of the Statute even though the failure to comply occurred outside the territorial limits of the United States, except to the extent that such failure shall be necessitated by an obligation, duty, or liability imposed by a foreign country.

(b) Failure to file the reports required by part 241, 291, or 298 of this chapter shall be sufficient grounds to revoke a certificate.

(c) The authority to transport U.S. mail under a certificate is permissive, unless the Department, by order or rule, directs a carrier or class of carriers to transport mail on demand of the U.S. Postal Service; such certificate confers no right to receive subsidy, for the carriage of mail or otherwise.

(d) An all-cargo air transportation certificate shall confer no right to carry passengers, other than cargo attendants accompanying a shipment, or to engage in any air transportation outside the geographical scope of interstate cargo transportation. Such certificate shall not, however, restrict the right of the holder to provide scheduled, charter, contract, or other transportation of cargo, by air, within that geographical scope.

(e) It shall be a condition upon the holding of a certificate that the holder have and maintain in effect and on file with the Department a signed counterpart of Agreement 18900 (OST Form 4523), and a tariff (for those carriers otherwise generally required to file tariffs) that includes its terms, and that the holder comply with all other requirements of part 203. OST Form 4523 may be obtained from the Office of Aviation Analysis, Special Authorities Division.

[Docket No. 47582, 57 FR 38765, Aug. 27, 1992, as amended at 60 FR 43523, Aug. 22, 1995]

PART 203—WAIVER OF WARSAW CONVENTION LIABILITY LIMITS AND DEFENSES

Sec.
203.1 Scope.
203.2 Applicability.
203.3 Filing requirements for adherence to Montreal Agreement.
203.4 Montreal Agreement as part of airline-passenger contract and conditions of carriage.
203.5 Compliance as condition on operations in air transportation.


S Ource: ER−1324, 48 FR 8044, Feb. 25, 1983, unless otherwise noted.

§ 203.1 Scope.

This part requires that certain U.S. and foreign direct air carriers waive the passenger liability limits and certain carrier defenses in the Warsaw Convention in accordance with the provisions of Agreement 18900, dated May 13, 1966, and provides that acceptance of authority for, or operations by the carrier in, air transportation shall be considered to act as such a waiver by that carrier.


§ 203.2 Applicability.

This part applies to all direct U.S. and foreign direct air carriers, except for air taxi operators as defined in part
§ 203.3

298 of this chapter that (a) are not commuter air carriers, (b) do not participate in interline agreements, and (c) do not engage in foreign air transportation.

§ 203.3 Filing requirements for adherence to Montreal Agreement.

All direct U.S. and foreign air carriers shall have and maintain in effect and on file in the Department's Documentary Services Division (Docket 17325) on OST Form 4523 a signed counterpart to Agreement 18900, an agreement relating to liability limitations of the Warsaw Convention and Hague Protocol approved by CAB Order E-23660, dated May 13, 1966 (the Montreal Agreement), and a signed counterpart of any amendment or amendments to such Agreement that may be approved by the Department and to which the air carrier or foreign air carrier becomes a party. U.S. air taxi operators registering under part 298 of this chapter may comply with this requirement by filing completed OST Forms 4507 and 4523, respectively, with the Department's Office of Aviation Analysis. Copies of these forms can be obtained from the Office of Aviation Analysis, Special Authorities Division.


§ 203.4 Montreal Agreement as part of airline-passenger contract and conditions of carriage.

(a) As required by the Montreal Agreement, carriers that are otherwise generally required to file tariffs shall file with the Department's Tariffs Division a tariff that includes the provisions of the counterpart to Agreement 18900.

(b) As further required by that Agreement, each participating carrier shall include the Agreement's terms as part of its conditions of carriage. The participating carrier shall give each of its passengers the notice required by the Montreal Agreement as provided in § 221.175 of this chapter.

(c) Participation in the Montreal Agreement, whether by signing the Agreement, filing a signed counterpart to it under § 203.3, or by operation of law under § 203.5, shall constitute a special agreement between the carrier and its passengers as a condition of carriage that a liability limit of not less than $75,000 (U.S.) shall apply under Article 22(1) of the Warsaw Convention for passenger injury and death. Such participation also constitutes a waiver of the defense under Article 20(1) of the Convention that the carrier was not negligent.

(The reporting provisions contained in paragraph (a) were approved by the Office of Management and Budget under control number 3024-0064.)


§ 203.5 Compliance as condition on operations in air transportation.

It shall be a condition on the authority of all direct U.S. and foreign carriers to operate in air transportation that they have and maintain in effect and on file with the Department a signed counterpart of Agreement 18900, and a tariff (for those carriers otherwise generally required to file tariffs) that includes its provisions, as required by this subpart. Notwithstanding any failure to file that counterpart and such tariff, any such air carrier or foreign air carrier issued license authority (including exemptions) by the Department or operating in air transportation shall be deemed to have agreed to the provisions of Agreement 18900 as fully as if that air carrier or foreign air carrier had in fact filed a properly executed counterpart to that Agreement and tariff.

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204.4 Carriers proposing to provide essential air service.

204.5 Certificated and commuter air carriers undergoing or proposing to undergo substantial change in operations, ownership, or management.

204.6 Certificated and commuter air carriers proposing a change in operations, ownership, or management which is not substantial.

204.7 Revocation for dormancy.


SOURCE: Docket No. 47582, 57 FR 38766, Aug. 27, 1992, unless otherwise noted.

Subpart A—General Provisions

§ 204.1 Purpose.

This part sets forth the fitness data that must be submitted by applicants for certificate authority, by applicants for authority to provide service as a commuter air carrier to an eligible place, by carriers proposing to provide essential air transportation, and by certificated air carriers and commuter air carriers proposing a substantial change in operations, ownership, or management. This part also contains the procedures and filing requirements applicable to carriers that hold dormant authority.

[Docket No. 47582, 57 FR 38766, Aug. 27, 1992, as amended at 60 FR 43523, Aug. 22, 1995]

§ 204.2 Definitions.

As used in this part:

(a) All-cargo air carrier or section 41103 carrier means an air carrier holding an all-cargo air transportation certificate issued under section 41103 of the Statute authorizing the transportation by aircraft in interstate air transportation of only property or only mail, or both.

(b) Certificate authority means authority to provide air transportation granted by the Department of Transportation or Civil Aeronautics Board in the form of a certificate of public convenience and necessity under section 41102 of the Statute or an all-cargo air transportation certificate to perform all-cargo air transportation under section 41103 of the Statute. Certificated carriers are those that hold certificate authority.

(c) Citizen of the United States means:

(1) An individual who is a citizen of the United States;

(2) A partnership each of whose partners is an individual who is a citizen of the United States; or

(3) A corporation or association organized under the laws of the United States or a State, the District of Columbia, or a territory or possession of the United States, of which the president and at least two-thirds of the board of directors and other managing officers are citizens of the United States, and in which at least 75 percent of the voting interest is owned or controlled by persons that are citizens of the United States.

(d) Commuter air carrier means an air carrier holding or seeking authority under part 298 of this Chapter that carries passengers on at least five round trips per week on at least one route between two or more points according to its published flight schedules that specify the times, days of the week, and places between which those flights are performed.

(e) Eligible place means a place in the United States that—

(1) Was an eligible point under section 419 of the Federal Aviation Act of 1958 as in effect before October 1, 1988;

(2) Received scheduled air transportation at any time between January 1, 1990, and November 4, 1990; and

(3) Is not listed in Department of Transportation Orders 89-9-37 and 89-12-52 as a place ineligible for compensation under Subchapter II of Chapter 417 of the Statute.

(f) Essential air service is that air transportation which the Department has found to be essential under Subchapter II of Chapter 417 of the Statute.

(g) Fit means fit, willing, and able to perform the air transportation in question properly and to conform to the provisions of the Statute and the rules, regulations and requirements issued under the Statute.

(h) Interstate air transportation means the transportation of passengers or property by aircraft as a common carrier for compensation, or the transportation of mail by aircraft—

(1) Between a place in—

(i) A State, territory, or possession of the United States and a place in the
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District of Columbia or another State, territory, or possession of the United States;

(ii) Hawaii and another place in Hawaii through the airspace over a place outside Hawaii;

(iii) The District of Columbia and another place in the District of Columbia; or

(iv) A territory or possession of the United States and another place in the same territory or possession; and

(2) When any part of the transportation is by aircraft.

(i) Key personnel include the directors, president, chief executive officer, chief operating officer, all vice presidents, the directors or supervisors of operations, maintenance, and finance, and the chief pilot of the applicant or air carrier, as well as any part-time or full-time advisors or consultants to the management of the applicant or air carrier.

(j) Normalized operations are those which are relatively free of start-up costs and temporary barriers to full-scale operations posed by the carrier’s limited experience.

(k) Relevant corporations are the applicant or air carrier, any subsidiary thereof, any predecessor thereof (i.e., any air carrier in which any directors, principal officers or persons having a substantial interest have or once had a substantial interest), and any company (including a sole proprietorship or partnership) which has a significant financial or managerial influence on the applicant or air carrier. The latter includes:

(1) Any company (including a sole proprietorship or partnership) holding more than 50 percent of the outstanding voting stock of the applicant or air carrier; and

(2) Any company (including a sole proprietorship or partnership) holding between 20 percent and 50 percent of the outstanding voting stock of the applicant or air carrier as indicated, for example, by 25 percent representation on the board of directors, participation in policy-making processes, substantial inter-company transactions, or managerial personnel with common responsibilities in both companies.

(l) Substantial change in operations, ownership, or management includes, but is not limited to, the following events:

(1) Changes in operations from charter to scheduled service, cargo to passenger service, short-haul to long-haul service, or (for a certificated air carrier) small-aircraft to large-aircraft operations;

(2) The filing of a petition for reorganization or a plan of reorganization under Chapter 11 of the federal bankruptcy laws;

(3) The acquisition by a new shareholder or the accumulation by an existing shareholder of beneficial control of 10 percent or more of the outstanding voting stock in the corporation; and

(4) A change in the president, chief executive officer or chief operating officer, and/or a change in at least half of the other key personnel within any 12-month period or since its latest fitness review, whichever is the more recent period.

(m) Substantial interest means beneficial control of 10 percent or more of the outstanding voting stock.

[Docket No. 47582, 57 FR 38766, Aug. 27, 1992, as amended at 60 FR 43523, Aug. 22, 1995]

Subpart B—Filing Requirements

§ 204.3 Applicants for new certificate or commuter air carrier authority.

An applicant for a type of certificate authority it does not currently hold or for commuter air carrier authority shall file the data set forth in paragraphs (a) through (v) of this section.

In addition, the Department may require an applicant to provide additional data if necessary to reach an informed judgment about its fitness. If the applicant has previously formally filed any of the required data with the Department or with another Federal agency and they are available to the Department, and those data continue to reflect the current state of the carrier’s fitness, the applicant may instead identify the data and provide a citation for the date(s) and place(s) of filing. Prior to filing any data, the applicant may contact the Air Carrier Fitness Division to ascertain what data required by this section are already available to the Department and need not be included in the filing.
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NOTE: If the applicant intends to use as evidence data it has previously filed pursuant to part 241 reporting requirements and those data contain errors, the applicant must first file corrected reports in accordance with §241.22(g).

(a) The name, address, and telephone number of the applicant.

(b) The form of the applicant’s organization.

(c) The State law(s) under which the applicant is organized.

(d) If the applicant is a corporation, a statement provided by the Office of the Secretary of State, or other agent of the State in which the applicant is incorporated, certifying that the applicant corporation is in good standing.

(e) A sworn affidavit stating that the applicant is a citizen of the United States.

(f) The identity of the key personnel who would be employed by the applicant, including:
   (1) Their names and addresses;
   (2) The experience, expertise, and responsibilities of each;
   (3) The number of shares of the applicant’s voting stock held by each and the percentage of the total number of such shares issued and outstanding, and the citizenship and principal business of any person for whose account, if other than the holder, such interest is held;
   (4) The citizenship of each; and
   (5) A description of the officerships, directorships, shares of stock (if 10 percent or more of total voting stock outstanding), and other interests each holds or has held in any air carrier, common carrier or person substantially engaged in the business of aeronautics or persons whose principal business (in purpose or fact) is the holding of stock in or control of any air carrier, common carrier or person substantially engaged in the business of aeronautics.

(g) A list of all persons having a substantial interest in the applicant. Such list shall include:
   (1) Each person’s name, address and citizenship;
   (2) The number of shares of the applicant’s voting stock held by each such person and the corresponding percentage of the total number of such shares issued and outstanding, and the citizenship and principal business of any person for whose account, if other than the holder, such interest is held;
   (3) If any two or more persons holding a substantial interest in the applicant are related by blood or marriage, such relationship(s) shall be included in the list; and
   (4) If any person or subsidiary of a person having a substantial interest in the applicant is or has ever been
      (i) An air carrier, a foreign air carrier, a common carrier, or
      (ii) Substantially engaged in the business of aeronautics, or
      (iii) An officer or director of any such entity, or
      (iv) A holder of 10 percent or more of total outstanding voting stock of any such entity, the list shall describe such relationship(s).

(h) A list of the applicant’s subsidiaries, if any, including a description of each subsidiary’s principal business and relationship to the applicant.

(i) A list of the applicant’s shares of stock in, or control of, any air carrier, foreign air carrier, common carrier, or person substantially engaged in the business of aeronautics.

(j) To the extent any relevant corporation has been engaged in any business prior to the filing of the application, each applicant shall provide:
   (1) Copies of the 10K Annual Reports filed in the past 3 years by any relevant corporation required to file such reports with the Securities and Exchange Commission, and
   (2) Copies of recently filed 10Q Quarterly Reports, as necessary, in order to show the financial condition and results of operations of the enterprise current to within 3 months of the date of the filing of the application.

(k) If 10K Reports are not filed with the Securities and Exchange Commission, the following, for the 3 most recent calendar or fiscal years, reflecting the financial condition and results of operations of the enterprise current to within 3 months of the date of the filing of the application:
   (1) The Balance Sheet of each relevant corporation;
   (2) The Income Statement of each relevant corporation;
   (3) All footnotes applicable to the financial statements, including:
(i) A statement as to whether the documents were prepared in accordance with Generally Accepted Accounting Principles, and
(ii) A description of the significant accounting policies of each relevant corporation, such as for depreciation, amortization of intangibles, overhauls, unearned revenues, and cost capitalization;
(4) A statement of significant events occurring subsequent to the most recent Balance Sheet date for each relevant corporation; and
(5) A statement identifying the person who has prepared the financial statements, his or her accounting qualifications, and any affiliation he or she has with the applicant.
(l) A list of all actions and outstanding judgments for more than $5,000 against any relevant corporation, key personnel employed (or to be employed) by any relevant corporation, or person having a substantial interest in any relevant corporation, including the amount of each judgment, the party to whom it is payable, and how long it has been outstanding.
(m) The number of actions and outstanding judgments of less than $5,000 against each relevant corporation, key personnel employed (or to be employed) by any relevant corporation, or person having a substantial interest in any relevant corporation, and the total amount owed by each on such judgments.
(n) A description of the applicant's fleet of aircraft, including:
(1) The number of each type of aircraft owned, leased and to be purchased or leased;
(2) Applicant's plans, including financing plans, for the purchase or lease of additional aircraft; and
(3) A sworn affidavit stating that each aircraft owned or leased has been certified by the FAA and currently complies with all FAA safety standards.
(o) A description of the current status of all pending investigations, enforcement actions, and formal complaints filed by the Department, including the FAA, involving the applicant or any relevant corporation, any personnel employed (or to be employed) by any relevant corporation or person having a substantial interest in any relevant corporation, regarding compliance with the Statute or orders, rules, regulations, or requirements issued pursuant to the Statute, and any corrective actions taken. (If an applicant has a compliance history that warrants it, additional information may be required.)
(p) A description of all charges of unfair or deceptive or anticompetitive business practices, or of fraud, felony or antitrust violation, brought against any relevant corporation or person having a substantial interest in any relevant corporation, or member of the key personnel employed (or to be employed) by any relevant corporation in the past 10 years. Such descriptions shall include the disposition or current status of each such proceeding.
(q) A description of any aircraft accidents or incidents (as defined in the National Transportation Safety Board Regulations, 49 CFR 830.2) experienced by the applicant, its personnel, or any relevant corporation, which occurred either during the year preceding the date of application or at any time in the past and which remain under investigation by the FAA, the NTSB, or by the company itself, including:
(1) The date of the occurrence;
(2) The type of flight;
(3) The number of passengers and crew on board and an enumeration of any injuries or fatalities;
(4) A description of any damage to the aircraft;
(5) The FAA and NTSB file numbers and the status of the investigations, including any enforcement actions initiated against the carrier or any of its personnel; and
(6) Positive actions taken to prevent recurrence. (If an applicant's history of accidents or incidents warrants it, additional information may be required.)
(r) A brief narrative history of the applicant.
(s) A description of all Federal, State and foreign authority under which the applicant has conducted or is conducting transportation operations, and the identity of the local FAA office and personnel responsible for processing an application for any additional FAA authority needed to conduct the proposed operations.
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(t) A description of the service to be operated if the application is granted, including:

(1) A forecast Balance Sheet for the first normal year ending after the initially proposed operations have been incorporated, along with the assumptions underlying the accounts and amounts shown; and

(2) A forecast Income Statement, broken down by quarters, for the first year ending after the initially proposed operations are normalized, and an itemization of all pre-operating and start-up costs associated with the initiation of the proposed service. Such Income Statement shall include estimated revenue block hours (or airborne hours, for charter operators) and revenue miles by type of aircraft, number of passengers and number of tons of mail and cargo to be carried, transport revenues and an estimate of the traffic which would be generated in each market receiving the proposed service. Such statements shall also include a statement as to whether the statements were prepared on the accrual or cash basis, an explanation of how the estimated costs and revenues were developed, a description of the manner in which costs and revenues are allocated, how the underlying traffic forecasts were made, and what load factor has been assumed for the average and peak month. Pre-operating and start-up costs should include, but are not limited to, the following: Obtaining necessary government approval; establishing stations; introductory advertising; aircraft, equipment and space facility deposits and rent; training; and salaries earned prior to start-up.

(u) A signed counterpart of Agreement 18900 (OST Form 4523) as required by part 203 of this chapter.

(v) The following certification, which shall accompany the application and all subsequent written submissions filed by the applicant in connection with its application:

Pursuant to title 18 United States Code section 1001, I (the individual signing the application, who shall be a principal owner, senior officer, or internal counsel of the applicant), in my individual capacity and as the authorized representative of the applicant, have not in any manner knowingly and willfully falsified, concealed or covered up any material fact or made any false, fictitious, or fraudulent statement or knowingly used any documents which contain such statements in connection with the preparation, filing or prosecution of the application. I understand that an individual who is found to have violated the provisions of 18 U.S.C. section 1001 shall be fined nor more than $10,000 or imprisoned not more than five years, or both.

(The reporting requirements contained in this section were approved by the Office of Management and Budget under control number 2106-0023)

[Docket No. 47582, 57 FR 38766, Aug. 27, 1992, as amended at 60 FR 43524, Aug. 22, 1995]

§ 204.4 Carriers proposing to provide essential air service.

Applicants proposing to provide essential air service have been divided into two categories, and are subject to differing data submission requirements as set forth in paragraphs (a) and (b) of this section. However, if a carrier has previously filed any of the required data with the Department or other Federal agency and they are available to the Department, and these data continue to reflect the current state of the carrier’s fitness, the carrier may instead identify the data and provide a citation for the date and place of filing. All carriers may contact the Air Carrier Fitness Division to ascertain what information is already available to the Department and thus may not need to be resubmitted.

(a) Carriers who propose to begin or expand non-subsidized essential air service when the incumbent leaves the market must file the following information:

(1) All of the information required under §204.3 of this part.

(2) A description of the back-up aircraft available to the applicant, including:

(i) The number of each type of such aircraft;

(ii) The conditions under which such aircraft will be available to the carrier;

(iii) The carrier’s plans for financing the acquisition or lease of such additional aircraft; and

(iv) A sworn affidavit stating that all such aircraft have been certified by the FAA and currently comply with all FAA safety standards.

(3) A description of the fuel available to perform the proposed essential air service.
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services and the carrier’s contracts with fuel suppliers.

(4) The carrier’s systemwide on-time and completion record for the preceding year and, if applicable, in the subject market(s).

(5) A list of the markets the carrier serves and the number of weekly round trips it provides in each.

(6) A description of the average number of block hours each type of aircraft is currently flown per day.

(7) An estimate of the impact the proposed essential air service would have on the carrier’s utilization of its aircraft fleet.

(8) A detailed schedule of the service to be provided, including times of arrivals and departures, the aircraft to be used for each flight, and the fares to be charged.

(9) A pro-forma income statement for the proposed operation for the first annual period.

(b) Carriers filing proposals to provide subsidized service in response to an order inviting proposals shall file:

(1) All of the information required under §204.3 of this part.

(2) All of the information required under paragraph (a) of this section.

(3) A forecast income statement covering the operations conducted in essential air service for the first year following the initiation of the proposed essential services. Such statement shall include:

   (i) Subsidy needed;

   (ii) Estimated block hours and revenue miles by type of aircraft;

   (iii) Total projected revenue including volumes of passengers and freight by essential air service market and the associated fares and rates;

   (iv) An explanation of the derivation of estimates of operating expenses; and

   (v) A description of the manner in which costs and revenues are allocated.

(4) A traffic forecast including a load factor analysis on all segments between the small community and the hub; and an estimate of the number of seats available to and from the eligible point each day.

(Approved by the Office of Management and Budget under control number 2106-0023)

[Docket No. 47582, 57 FR 38766, Aug. 27, 1992, as amended at 60 FR 43524, Aug. 22, 1995]
§ 204.6 Certificated and commuter air carriers proposing a change in operations, ownership, or management which is not substantial.

Carriers proposing to make a change which would not substantially affect their operations, management, or ownership, such as certificated carriers applying for additional authority which would not substantially change their operations, will be presumed to be fit and need not file any information relating to their fitness at time of the change. However, if the Department concludes, from its own analysis or based on information submitted by third parties, that such change may bring the carrier’s fitness into question, the Department may require the applicant carrier to file additional information.

§ 204.7 Revocation for dormancy.

(a) An air carrier that has not commenced any type of air transportation operations for which it was found fit, willing, and able within one year of the date of that finding, or an air carrier that, for any period of one year after the date of such a finding, has not provided any type of air transportation for which that kind of finding is required, is deemed no longer to continue to be fit to provide the air transportation for which it was found fit and, accordingly, its authority to provide such air transportation shall be revoked.

(b) An air carrier found fit which commences operations within one year after being found fit but then ceases operations, shall not resume operations without first filing all of the data required by §204.3 at least 45 days before it intends to provide any such air transportation. Such filings shall be addressed to the Documentary Services Division, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20090. The Department will entertain requests for exemption from this 45-day advance filing requirement for good cause shown. If there has been no change in fitness data previously formally filed with the Department, the carrier shall file a sworn statement to that effect signed by one of its officers. The carrier may contact the Department (Air Carrier Fitness Division) to ascertain which data are already available to the Department and need not be refiled. A carrier to which this paragraph applies shall not provide any air transportation for which it is required to be found fit, willing, and able until the Department decides that the carrier continues to be fit, willing, and able to perform such air transportation. During the pendency of the Department’s consideration of a data submission under this paragraph, the expiration period set out in paragraph (a) of this section shall be stayed. If the decision or finding by the Department on the issue of the carrier’s fitness is favorable, the date or that decision or finding shall be the date considered in applying paragraph (a) of this section.

(c) For purposes of this section, the date of a Department decision or finding shall be the service date of the Department’s order containing such decision or finding, or, in cases where the Department’s decision or finding is made by letter, the date of such letter.

(d) For purposes of this section, references to operations and to the providing of air transportation shall refer only to the actual performance of flight operations under an operating certificate issued to the carrier by the FAA.

(Approved by the Office of Management and Budget under control number 2106-0023)

PART 205—AIRCRAFT ACCIDENT LIABILITY INSURANCE

Sec. 205.1 Purpose.
205.2 Applicability.
205.3 Basic requirements.
205.4 Filing of evidence of insurance.
205.5 Minimum coverage.
205.6 Prohibited exclusions of coverage.
205.7 Cancellation, withdrawal, modification, expiration, or replacement of insurance coverage.
205.8 Cargo liability disclosure statement.


Source: ER-1253, 46 FR 52577, Oct. 27, 1981, unless otherwise noted.

§ 205.1 Purpose.

This part contains the rules for aircraft accident liability insurance coverage needed by U.S. direct air carriers to obtain or to exercise authority from
§ 205.2 Applicability.

These rules apply to all U.S. direct air carriers, including commuter air carriers and air taxi operators as defined in §298.2 of this chapter, and foreign direct air carriers, including Canadian charter air taxi operators as defined in §294.2(c) of this chapter.

[Docket No. 47939, 57 FR 40100, Sept. 2, 1992]

§ 205.3 Basic requirements.

(a) A U.S. or foreign direct air carrier shall not engage in air transportation unless it has in effect aircraft accident liability insurance coverage that meets the requirements of this part for its air carrier or foreign air carrier operations. The minimum amounts of coverage required by this part may be provided either by insurance policies or by self-insurance plans. The currently effective policy of insurance or complete plan for self-insurance shall be available for inspection by the Department at the carrier’s principal place of business. The current certificate of insurance shall be signed by an authorized officer, agent, or other representative of the insurer or the insurance broker.

(b) For purposes of this part, a certificate of insurance is one or more certificates showing insurance by one or more insurers (excluding reinsurers) of currently effective and properly endorsed policies of aircraft accident liability insurance in compliance with this part. When more than one such insurer is providing coverage, the limits and types of liability assumed by each insurer (excluding reinsurers) shall be clearly stated in the certificate of insurance. Insurance policies and self-insurance plans named in a certificate of insurance that accompanies an application for initial registration or for operating authority shall become effective not later than the proposed starting date for air carrier operations as shown in the application.

(c) The certificate of insurance shall list the types or classes of aircraft, or the specific aircraft by FAA or foreign government registration number, with respect to which the policy of insurance applies, or shall state that the policy applies to all aircraft owned or operated by the carrier in its air transportation operations. With respect to certificates of insurance that list aircraft by government registration number, the policy or self-insurance plan shall state that, while an aircraft owned or leased by the carrier and declared in the policy is withdrawn from normal use because of its breakdown, repair, or servicing, such insurance as is provided by the policy or plan for that aircraft shall apply also to another aircraft of similar type, horsepower, and seating capacity, whether or not owned by the insured, while temporarily used as a substitute aircraft.

(d) Each certificate of insurance shall be signed by an authorized officer, agent, or other representative of the insurer or the insurance broker.

(e) Insurance coverage to meet the requirements of this part shall be obtained from one or more of the following:

(1) An insurer licensed to issue aircraft accident liability policies in any State, Commonwealth, or Territory of the United States, or in the District of Columbia;

(2) Surplus line insurers named on a current list of such insurers issued and approved by the insurance regulatory authority of any State, Commonwealth, or Territory of the United States or of the District of Columbia; or

(3) Insurers licensed or approved by a foreign government.

This requirement may be waived by the Department in the public interest.

§ 205.4 Filing of evidence of insurance.

(a) A U.S. or foreign air carrier shall file a certificate of insurance or a complete plan for self-insurance with the Department's Office of Aviation Analysis. Each carrier shall ensure that the evidence of aircraft accident liability coverage filed with the Department is correct at all times. The Department will normally notify the carrier within 20 days of receipt if the certificate or plan does not meet the requirements of this part. The two Certificates of Insurance (OST Form 6410 for U.S. air carriers, including commuter air carriers and air taxi operators, and OST Form 6411 for foreign air carriers, including Canadian charter air taxi operators) are available from the Office of Aviation Analysis. The Department may return the certificate or self-insurance plan to the carrier if it finds for good cause that such plan or certificate does not show adequate evidence of insurance coverage under this part.

(b) If the coverage is by type or class of aircraft or by specific aircraft, endorsements that add previously unlisted aircraft or aircraft types or classes to coverage, or that delete listed aircraft, types, or classes from coverage, shall be filed with the Department's Office of Aviation Analysis not more than 30 days after the effective date of the endorsements. Aircraft shall not be listed in the carrier's operations specifications with the FAA and shall not be operated unless liability insurance coverage is in force.

(c) When the insured air carrier is a U.S. air taxi operator operating in the State of Alaska, certificates and endorsements shall be filed with the Department's Alaska Field Office, 801 B Street, Suite 506, Anchorage, Alaska 99501-3657.

(Approved by the Office of Management and Budget under control number 2106-0030)


§ 205.5 Minimum coverage.

(a) Insurance contracts and self-insurance plans shall provide for payment on behalf of the carrier, within the specific limits of liability in this section, of all sums that the carrier shall become legally obligated to pay as damages, excluding any deductible in the policy, for bodily injury to or death of a person, or for damage to the property of others, resulting from the carrier's operation or maintenance of aircraft in air transportation provided under its authority from the Department.

(b) U.S. and foreign direct air carriers, including commuter air carriers but excluding U.S. air taxi operators and Canadian charter air taxi operators, shall maintain the following coverage:

(1) Third-party aircraft accident liability coverage for bodily injury to or death of persons, including non-employee cargo attendants, other than passengers, and for damage to property, with minimum limits of $300,000 for any one person in any one occurrence, and a total of $20,000,000 per involved aircraft for each occurrence, except that for aircraft of not more than 60 seats or 18,000 pounds maximum payload capacity, carriers need only maintain coverage of $2,000,000 per involved aircraft for each occurrence.

(2) Any such carrier providing air transportation for passengers shall, in addition to the coverage required in paragraph (b)(1) of this section, maintain aircraft accident liability insurance coverage for bodily injury to or death of aircraft passengers, with minimum limits of $300,000 for any one person in any one occurrence, and a total per involved aircraft for each occurrence of $300,000 times 75 percent of the number of passenger seats installed in the aircraft.

(c) U.S. air taxi operators registered under part 298 shall maintain the following coverage:

(1) Third-party aircraft accident liability coverage for bodily injury to or death of persons, including non-employee cargo attendants, other than passengers, with minimum limits of:

(i) $75,000 for any one person in any one occurrence, and a total of $300,000 per involved aircraft for each occurrence, and

(ii) A limit of a least $100,000 for each occurrence for loss of or damage to property.

(2) Any such carrier providing air transportation for passengers shall, in addition to the coverage required in paragraph (b)(1) of this section, maintain aircraft accident liability insurance coverage for bodily injury to or death of aircraft passengers, with minimum limits of $300,000 for any one person in any one occurrence, and a total per involved aircraft for each occurrence of $300,000 times 75 percent of the number of passenger seats installed in the aircraft.

(Approved by the Office of Management and Budget under control number 2106-0030)

paragraph (c)(1) of this section, maintain aircraft accident liability insurance coverage for bodily injury to or death of aircraft passengers, with minimum limits of $75,000 for any one passenger, and a total per involved aircraft for each occurrence of $75,000 times 75 percent of the number of passenger seats installed in the aircraft.

(d) Canadian charter air taxi operators registered under part 294 of this chapter shall maintain the following coverage:

(1) Third-party aircraft accident liability coverage for bodily injury to or death of persons, including non-employee cargo attendants, other than passengers, and for damage to property, with a minimum coverage of $75,000 for any one person in any one occurrence, and a total of $2,000,000 per involved aircraft for each occurrence, except that Canadian charter air taxi operators operating aircraft of more than 30 seats or 7,500 pounds maximum cargo payload capacity, and a maximum authorized takeoff weight on wheels not greater than 35,000 pounds shall maintain coverage for those aircraft of $20,000,000 per involved aircraft for each occurrence.

(2) Canadian charter air taxi operators engaging in passenger charter air service under part 294 of this chapter shall, in addition to the coverage required in paragraph (d)(1) of this section, maintain aircraft accident liability coverage for bodily injury to or death of aircraft passengers, with a minimum coverage of $75,000 for any one passenger and a total per involved aircraft for each occurrence of $75,000 times 75 percent of the total number of passenger seats installed in the aircraft.

(e) Notwithstanding paragraphs (b), (c) and (d) of this section, the carrier may be insured for a combined single limit of liability for each occurrence. The combined single-limit coverage must be not less than the combined required minimums for bodily injury and property damage coverage plus, if the aircraft is used in passenger service, the required total passenger coverages stipulated in paragraph (b) of this section for U.S. and foreign direct air carriers and commuter carriers, paragraph (c) of this section for U.S. air taxi operators, or paragraph (d) of this section for Canadian charter air taxi operators. The single-limit liability policy for the required aircraft accident liability coverage may be provided by a single policy or by a combination of primary and excess policies.

(f) The liability coverage shall not be contingent upon the financial condition, solvency, or freedom from bankruptcy of the carrier. The limits of the liability for the amounts required by this part shall apply separately to each occurrence. Any payment made under the policy or plan because of any one occurrence shall not reduce the coverage for payment of other damages resulting from any other occurrence.

[Docket No. 47939, 57 FR 40101, Sept. 2, 1992; 57 FR 52590, Nov. 4, 1992]

§ 205.6 Prohibited exclusions of coverage.

(a) No warranty or exclusion in the policy or plan or in any endorsement or amendment to the policy or plan, nor any violation of the policy or plan by the carrier, shall remove the liability coverage required by this part, except as specifically approved by the Department. This requirement shall not limit the right of insurers to recover from the carrier for amounts paid.

(b) A policy of insurance or a self-insurance plan required by this part shall not contain the following exclusions:

(1) Violation of any safety-related requirement imposed by statute or by rule of a government agency.

(2) Liability assumed by the carrier under an agreement to raise the liability limitations of the Warsaw Convention by signing a counterpart to the agreement of carriers (such as the Montreal Agreement, 18900, as approved by Board Order E-23680, May 13, 1966, agreeing to a limit on the carrier’s liability for injury or death of

1For example: the minimum single limit of liability acceptable for any aircraft in air taxi passenger service with 16 passenger seats would be computed on the basis of limits set forth in paragraph (c) as follows: 16 x .75 equals 12; 12 x $75,000 equals $900,000; $900,000 plus $300,000 (nonpassenger liability per occurrence) equals $1,300,000. The latter amount is the minimum in which a single-limit liability policy may be written.
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§ 206.1 Emergency transportation.

Notwithstanding the provisions of section 41101 of the Statute, and any term, condition or limitation attached to the exercise of the privileges of an air carrier certificate of public convenience and necessity which prohibits an air carrier from engaging in air transportation between any points on its route, the air carrier may carry between such points (a) any person or persons certified by a physician to be in need of immediate air transportation in order to secure emergency medical or surgical treatment together with any necessary attendant or attendants and (b) any medical supplies certified by a physician as requiring immediate air transportation for the protection of life. Air carriers offering passengers of $75,000 per passenger), or any amendment to such agreement that may be approved by the Department and to which the carrier becomes a party.


§ 205.7 Cancellation, withdrawal, modification, expiration, or replacement of insurance coverage.

(a) Each policy of aircraft accident liability insurance and plan for self insurance shall specify that it shall remain in force, and may not be replaced, canceled, withdrawn, or in any way modified to reduce the minimum standards set forth in this part, or to change the extent of coverage, by the insurer or the carrier, nor expire by its own terms, in regard to coverage for the carrier in its common carrier operations in air transportation, until 10 days after written notice by the insurer (in the event of replacement, by the retiring insurer), or by the insurer's representative, or by the carrier, describing the change, to the Department's Office of Aviation Analysis (or, for Alaskan air taxi operators, to the Department's Alaska Field Office), which 10-day notice period shall start to run from the date such notice is actually received at the Department. For purposes of this part, a policy will not be considered to have expired if the same insurer renews its coverage without reduction in the extent of coverage or amounts of coverage, and without a break in coverage, whether or not a new policy is issued, and notice to the Department is not required in that event. If the coverage being changed is by type or class of aircraft or by specific aircraft, endorsements adding or deleting specific aircraft or types or classes of aircraft, for which prior notice would be required by this paragraph, shall be filed in accordance with §205.4(b), and prior notice of the change need not be given under this paragraph.

(b) The requirements of this section shall not apply if the policy contains a lesser time period for cancellation in a war risk exclusion. If the war risk exclusion is activated by the insurer, the insurer or its representative shall immediately notify the Department.

[§ 206.1 Docket No. 47939, 57 FR 40100, 40101, Sept. 2, 1992]

§ 205.8 Cargo liability disclosure statement.

Every direct U.S. or foreign air carrier providing air cargo service in air transportation shall give notice in writing to the shipper, when a shipment is accepted, of the existence or absence of cargo liability insurance, and the limits on the extent of its liability, if any. The notice shall be clearly and conspicuously included on or attached to all of its rate sheets and airwaybills.

[ER–1282, 47 FR 16173, Apr. 15, 1982]
§ 206.2 Exemption from schedule filing.

All air carriers are hereby exempted from the requirements of section 41902(b) of the Statute, which provides that each air carrier must periodically provide the Department and the U.S. Postal Service a listing of all of its regularly operated aircraft schedules and schedule changes, showing for each schedule the points served and the departure and arrival times.


§ 206.3 Transportation of newpersons by all-cargo carriers.

Notwithstanding the provisions of section 41101 and Chapter 415 of the Statute and part 221 of this chapter, an air carrier holding a certificate of public convenience and necessity for the transportation of only property and mail may provide transportation to persons on regularly scheduled cargo flights for the purpose of collecting data for preparation of feature news, pictorial or like articles provided that the transportation is limited to the writer, journalist, or photographer engaged in the preparation of data for use in feature news, pictorial, or like articles which are to appear in newspapers or magazines, or on radio or television programs and which will publicize the regularly scheduled cargo operations of the carrier.


§ 206.4 Exemption of air carriers for military transportation.

Air carriers providing air transportation pursuant to a contract with the Department of Defense are hereby exempted from Chapter 415 of the Statute, and from part 221, §§ 207.4 and 208.32, of this chapter, with respect to those services.


§ 206.5 Small aircraft operations by certificated carriers.

(a) A carrier holding an effective certificate issued under section 41102 of the Statute, when conducting operations with small aircraft, is exempt from the requirements of the Statute as set forth in subpart B of part 298 of this chapter, except section 41708 of the Statute, and is subject to the requirements set forth in the following provisions of this chapter:

(1) Part 205, with the minimum coverage requirements of § 205.5(b),
(2) Part 215,
(3) Part 298, subpart D, §§ 298.30, and 298.38, and subpart H, and
(4) Part 298, subpart F, if the certificated carrier conducts operations with small aircraft only (a certificated carrier conducting operations with both small and large aircraft is subject only to the reporting requirements contained in part 241 of this chapter).

(b) If a certificated carrier, when conducting operations with small aircraft, provides foreign air transportation that includes a segment for which tariff filing is required and another segment for which tariff filing is not required, then for through service over that routing the carrier has the option of filing a tariff or charging the sum of the applicable local rates, fares, or charges. If the carrier files a tariff for through service, it is not exempt from Chapter 415 or section 41310 of the Statute for that air transportation.

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§ 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.

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

Sec.
208.1 Applicability.
208.2 Terms of service.


§ 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.

PART 211—APPLICATIONS FOR PERMITS TO FOREIGN AIR CARRIERS

Subpart A—General

Sec.
211.1 Purpose.
211.2 Applicability.

Subpart B—General Requirements
211.10 Filing specifications.
211.11 Verification.
211.12 Filing and service.
211.13 Amendments to applications.
§ 211.10

and foreign charter operators shall register under subpart F of part 380 of this chapter.

(Approved by the Office of Management and Budget under control number 3024-0068)

[ER-1386, 49 FR 39439, Aug. 23, 1984, as amended by ER-1397, 49 FR 50027, Dec. 26, 1984]

Subpart B—General Requirements

§ 211.10 Filing specifications.

(a) Except as provided in paragraph (b) of this section, applicants shall follow the requirements in § 302.3 of this chapter as to execution, number of copies, and formal specifications of papers.

(b) Mexican air taxi operators filing applications for foreign air carrier permits authorizing charter flights across the Mexico-United States border with small aircraft (a maximum passenger capacity of 60 seats or less, or a maximum payload capacity of 18,000 pounds or less) shall file an original and two copies of the application. The application shall conform to the instruction document available from the Foreign Air Carrier Licensing Division, Office of International Aviation, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

(c) An application shall have consecutively numbered pages, and shall clearly describe and identify each exhibit by a separate number or symbol. All exhibits are part of the application to which they are attached.

(d) Applications shall state all weights, measures and monetary units in U.S. terms, and all text in English.

(Approved by the Office of Management and Budget under control number 3024-0068)

[ER-1386, 49 FR 39439, Aug. 23, 1984, as amended by ER-1397, 49 FR 50027, Dec. 26, 1984]

§ 211.11 Verification.

Applications shall be verified and subscribed and sworn to before a Notary Public or other officer authorized to administer oaths in the jurisdiction in which the application is executed. An application verified before a United States consular officer meets the requirements of this section.

(Approved by the Office of Management and Budget under control number 3024-0068)

[ER-1386, 49 FR 39439, Aug. 23, 1984, as amended by ER-1397, 49 FR 50027, Dec. 26, 1984]

§ 211.12 Filing and service.

All types of applications for foreign air carrier permits (initial, renewal, amendment, or transfer) are filed as of the date the applications are received at the Department’s Docket Facility. Each applicant shall serve those persons as required in part 302, subpart Q, of this chapter.

(Approved by the Office of Management and Budget under control number 3024-0068)

[ER-1386, 49 FR 39439, Aug. 23, 1984, as amended by ER-1397, 49 FR 50027, Dec. 26, 1984]

§ 211.13 Amendments to applications.

An applicant shall submit any information required by this part that is omitted from the original application, or any additional information, as an amendment to the original application. Applicants shall consecutively number amendments to applications and shall comply with the requirements of this subpart.

(Approved by the Office of Management and Budget under control number 3024-0068)

[ER-1386, 49 FR 39439, Aug. 23, 1984, as amended by ER-1397, 49 FR 50027, Dec. 26, 1984]

§ 211.14 Incorporation by reference.

Where two or more applications are filed by a single carrier, the applicant may incorporate lengthy exhibits, or other documents, attached to one application into others by reference. The applicant may not incorporate by reference and update any information from a previous docket unless submitted within the past 2 years. The applicant must identify the docket, and the page number or exhibit number being incorporated, and state that there has been no change in that information since submitting the original information.

(Approved by the Office of Management and Budget under control number 3024-0068)

[ER-1386, 49 FR 39439, Aug. 23, 1984, as amended by ER-1397, 49 FR 50027, Dec. 26, 1984]

§ 211.15 Statements of fact.

The applicant shall include only significant and relevant facts in an application. Each application shall contain adequate information with respect to the evidence required in subpart C of this part. The application may contain
other information and data the applicant considers necessary to explain particular circumstances.

(Approved by the Office of Management and Budget under control number 3024–0068)


§ 211.16 Oral hearing.

If an oral evidentiary hearing is convened, the applicant must make available witnesses who are competent and able to testify to the accuracy of the statements and documents submitted.

(Approved by the Office of Management and Budget under control number 3024–0068)


Subpart C—Information Requirements

§ 211.20 Initial foreign air carrier permit or transfer of a permit.

A person applying for an initial foreign air carrier permit or the transfer of a permit shall submit the information listed below. The applicant must fully comply with this requirement. If the applicant is unable to respond to an item, the application shall contain an explanation, and include substitute information most closely approximating the information requested. The Department may require an applicant to provide additional information as necessary.

(a) State the name and address of the applicant, the nature of its organization (individual, partnership, corporation, etc.), and, if other than an individual, the name of the country under the laws of which it is organized and the statutory citation of such laws, if any.

(b) State the name and official address of the government air transport authority of applicant’s country of citizenship having regulatory jurisdiction over applicant.

(c) Supply the following information regarding the services proposed:

1. A complete statement of the authority sought; and

2. A description of the services proposed, specifying:

   (i) The point or points in the United States proposed to be served;

   (ii) The frequency of service planned at the start of operations, indicating any seasonal variations; whether the service proposed is to be scheduled, nonscheduled or charter; whether the service would be passenger, or property and mail, or a combination; and the type of equipment (and configuration) to be used; and

   (iii) A service schedule stating the manner in which the service will be operated (e.g., nonstop or multi-stop, and the identity of proposed intermediate traffic and nontraffic points).

(d) Provide the names, addresses (both residence and business), and citizenship of all Directors, Officers and key management personnel, including the President, Vice Presidents, the Directors or Supervisors of Operations, Maintenance, and Finance, and the chief pilot and chief inspector. Indicate whether any of these persons are related by blood or marriage.

(e) Provide the names and citizenship of all persons holding five percent (5%) or more of the capital stock or capital of the applicant. Also indicate the number and percentage of shares of stock or percentage of capital held by each. If five percent or more of the applicant’s stock is held by a corporation or partnership, set forth the name and citizenship of each person holding five percent or more of the entire capital stock or capital of that corporation or partnership and the respective interest of each. If any shares are held for the benefit of another person, give the name and citizenship of that person.

(f) If the applicant is not wholly owned by its homeland government, state whether the applicant (each officer, director, manager, or holder of five percent or more of the capital stock) holds any interest directly or indirectly (through brokers or holding companies) in any of the entities listed below. If no interest is held, so state.

1. Any U.S. carrier;

2. Any other foreign air carrier;

3. Any persons engaged in the business of aeronautics; and

4. Any common carrier, or any person whose principal business is the holding of stock in, or control of, any air carrier.
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(g) Indicate the relationship between the applicant and its homeland government. If the applicant is wholly owned or substantially owned by the government, indicate which governmental department has responsibility for managerial decisions.

(h) State whether the applicant’s insurance coverage meets or exceeds the liability limits of 14 CFR part 205. State the name(s) of its insurance carrier(s).

(i) Supply certified evidence, in English, of the applicant’s operating authority issued by its government that relates to the operations proposed. This evidence must include a description of the applicant’s present authority, the expiration date of this authority, and the manner in which it is expected to be renewed.

(j) Summarize the operating history of the applicant. Include the types of transportation services rendered, points served, etc., from the beginning of operations to the present. Also, if the applicant is a new airline (i.e., an airline that began direct air services within the past 12 months), briefly summarize the business experience of each officer, director and key management personnel, emphasizing any air transportation experience.

(k) Provide a list of the aircraft owned, leased and operated by the applicant. State each aircraft registration number and the country of registration. If leased, state the address and citizenship of each lessor. Describe any plans for the acquisition or lease of additional aircraft if the present permit application is granted as proposed. If any of the listed aircraft will not be used exclusively by the applicant, explain its proposed use. State whether any aircraft are or will be wet-leased.

(l) State where and by whom the maintenance of the aircraft is or will be performed. State whether the applicant’s maintenance program complies with the provisions of ICAO Pilots and Airmen Annexes 1, 6 (Part 1) and 7. Also state whether the applicant’s home country is a contracting State to the Convention on International Civil Aviation.

(m) Briefly describe any agreements or cooperative working arrangements (e.g., block-space, wet-lease), both oral and written, entered with and between the applicant, or on behalf of the applicant, and any U.S. or foreign air carrier, affecting the proposed services to the United States that are not on file with the Department. If there are no such agreements, so state.

(n) Supply financial data summaries, setting forth in U.S. dollars the applicant’s profit and loss statements and balance sheets for the 2 most recent available years (calendar or fiscal). These summaries must be accompanied by a statement from the applicant’s official responsible for preparation of the summaries that the submissions are complete and accurate. These summaries must include the following data, but need not be more detailed than the financial data summaries published by ICAO:

(1) The profit and loss summary shall identify:

(i) Total air transport operating revenues (separated into three categories: passenger, cargo, and other transport revenues);

(ii) Total air transport operating expenses;

(iii) Operating result (difference between (i) and (ii));

(iv) Non-operating items; and

(v) Profit or loss after income taxes.

(2) The balance sheet summary shall state and identify:

(i) Current assets;

(ii) Flight equipment (after depreciation);

(iii) Other assets;

(iv) Total assets (sum of (i) through (iii));

(v) Current liabilities;

(vi) Other liabilities;

(vii) Long-term debt;

(viii) Capital stock;

(ix) Retained earnings (balance including capital surplus); and

(x) Total liabilities and equity (sum of (v) through (ix)).

(o) Describe the amount, type and reason for financial assistance received or expected from the applicant’s home government, if any.

(p) Submit an estimate showing the total traffic and the financial results of the proposed services for the first full year of normal operations and the supporting data employed to calculate the financial forecast.
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(q) If the air transportation proposed is not covered by an air transport agreement, state in narrative form each of the elements of reciprocity or comity relied upon for the requested authority. If the authority requested is governed by an agreement, state whether the applicant has been formally designated by its homeland government, and, if so, cite the diplomatic note.

(r) To the extent not described in paragraph (q), state the policy of the applicant’s homeland government with respect to U.S. carriers’ applications for scheduled and charter authority. Specifically state whether the homeland government grants Fifth Freedom traffic rights to U.S. carriers.

(s) For the preceding 5 years, state whether the applicant has been involved in any safety or tariff violations or any fatal accidents. If so, furnish details.

(t) Submit 3 completed copies of OST Form 4523 (Waiver of liability limits under the Warsaw Convention).

(Approved by the Office of Management and Budget under control number 3024-0068)


§ 211.21 Amendments or renewal of foreign air carrier permits.

A person applying for an amendment or renewal of a foreign air carrier permit shall submit the information listed below. The applicant must comply fully with this requirement. If the applicant is unable to respond to an item, the application shall contain an explanation and include substitute information most closely approximating the information requested. The Department may require an applicant to provide any additional information necessary.

(a) The information required in paragraphs (a), (b), (i), (o), (q), (r), and (s), of §211.20.

(b) Except if seeking renewal of existing authority, the information specified in paragraphs (c) and (p) of §211.20 regarding the new or altered services proposed to be operated.

(c) If the financial material for the applicant on file with the Department is more than 2 years old, financial summaries setting forth, in U.S. dollars, the applicant’s profit and loss statements and balance sheets for the 2 most recent available years (calendar or fiscal) as required in paragraph (n) of §211.20, together with the statement of completeness and accuracy required by that paragraph. If the financial material on file with the Department is 2 years old or less, the applicant may incorporate that information by reference as described in §211.14 of this part.

(d) If the ownership and control of the applicant are substantially unchanged, so state. If a change has occurred, the applicant shall respond to the paragraph in §211.20 that most closely relates to the change that has taken place.

(e) A statement that applicant’s maintenance program continues to comply with the provisions of ICAO Pilots and Airmen Annexes 1, 6 (Part 1) and 7.

[ER-1386, 49 FR 33439, Aug. 23, 1984]

Subpart D—Freely Associated State Air Carriers


EDITORIAL NOTE: Nomenclature changes to subpart D appear at 61 FR 34725, July 3, 1996.

§ 211.30 Eligibility.

Foreign carriers owned and controlled by citizens of the Federated States of Micronesia, the Marshall Islands, Palau and/or the United States may, in accordance with the provisions of paragraph 5(b) of Article IX of the Federal Programs and Services Agreement, implementing section 221(a)(5) of the Compact of Free Association between the United States and those governments, apply for authority as “Freely Associated State Air Carriers.” The permit application for such authority shall be labeled on the front page, “Application for Freely Associated State Air Carrier Permit.”

§ 211.31 Application.

The application shall include, in addition to other requirements of this
part, documentation clearly establishing:
(a) That the carrier is organized under the laws of the Federated States of Micronesia, the Marshall Islands, Palau or the United States;
(b) That substantial ownership and effective control of the carrier are held by citizens of the Federated States of Micronesia, the Marshall Islands, Palau and/or the United States;
(c) That citizens of other countries do not have interests in the carrier sufficient to permit them substantially to influence its actions, or that substantial justification exists for a temporary waiver of this requirement;
(d) That the Administrator of the Federal Aviation Administration has determined that the carrier complies with such safety standards as the Administrator considers to be required.
(e) That the government or governments of the Freely Associated States concerned have consented to the carrier’s operation as a “Freely Associated State Air Carrier.”

§ 211.32 Issuance of permit.
If the Department is satisfied that the applicant meets the requirements of §211.31 (a) through (e), and that grant of all or part of the requested authority would otherwise be in the public interest, the Department may, subject to Presidential review under section 801(a) of the Federal Aviation Act, issue a “Freely Associated State Foreign Air Carrier Permit” to the applicant, including such terms, conditions or limitations as the Department may find to be in the public interest.

§ 211.33 Interstate and interstate authority.
(a) An application under this subpart may include a request, in addition to other foreign air transportation, for authority to engage in interstate air transportation between Guam, the Commonwealth of the Northern Mariana Islands and Honolulu, Hawaii, and interstate air transportation within the Commonwealth of the Northern Mariana Islands. A request for all or part of such limited interstate air transportation authority shall be supported by documentation establishing:
(1) The impact of such interstate air transportation services on the economic projections of the carrier’s proposed operations;
(2) The need for such proposed interstate air transportation by the affected U.S. points;
(3) The economic impact of such interstate air transportation on services provided by other carriers providing essential air transportation services to eligible Freely Associated State points within the scope of part 272 of this chapter.
(b) The Department may grant a Freely Associated State Air Carrier authority to engage in all or part of the interstate air transportation requested in paragraph (a) of this section provided that the Department finds:
(1) That grant of such interstate air transportation authority would be in furtherance of the objectives of the Compact of Free Association and related agreements between the United States and the Freely Associated States, and would otherwise be in the public interest; and
(2) That grant of such interstate air transportation authority would not significantly impair the economic viability of existing services providing essential air transportation to any eligible Freely Associated State point within the scope of part 272 of this chapter, or significantly increase compensation that may be required to maintain any such essential air transportation.
(c) The Department may, at any time, subject to Presidential review under section 41307, suspend, modify, or revoke such interstate authority if it concludes that the requirements specified in paragraph (b) of this section are not then being met.


§ 211.34 Other permits.
Nothing in this section shall be construed as limiting the authority of the Department to issue a foreign air carrier permit, other than a Freely Associated State Foreign Air Carrier Permit, to a carrier owned or controlled, in whole or in part, by citizens of the Federated States of Micronesia, the Marshall Islands or Palau, that does not meet the requirements of this section.
§ 211.35 Termination of eligibility.

The eligibility of a carrier owned or controlled, in whole or in part, by citizens of the Federated States of Micronesia, the Marshall Islands or Palau, respectively, for issuance of a Freely Associated State Foreign Air Carrier Permit under this subpart shall exist only for such period as subparagraphs (a), (d), and (e) (eligibility for Freely Associated State essential air transportation subsidy compensation), or subparagraph (c) (limited interstate air transportation authority), of paragraph (5) of the Agreement on Civil Aviation Economic Services and Related Programs (Article IX of the Federal Programs and Services Agreement) remain in effect between the Government of those States and the Government of the United States, insofar as authority is conferred by such permits for purposes specified in those subparagraphs.


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

Sec. 212.1 Scope.

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212.3 General provisions.

212.4 Authorized charter types.

212.5 Operation of affinity (pro rata) charters.

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212.8 Protection of customers' payments.

212.9 Prior authorization requirements.

212.10 Application for statement of authorization.

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212.12 Waiver.

APPENDIX A TO PART 212—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 TO PART 212—CERTIFICATION OF COMPLIANCE

Authority: 49 U.S.C. 40101, 41002, 41009, 40113, 41101, 41103, 41504, 41702, 41708, 41712, 46101.

Source: Docket No. OST-97-2356, 63 FR 28236, May 22, 1998, unless otherwise noted.

§ 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.

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 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.

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

(ii) 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...
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§ 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
§ 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
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§ 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.

(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
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.

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.

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 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.

1While 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.
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 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...
§ 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 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 TO PART 212—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) in __________ (State) as Principal (hereinafter called Principal), and __________ (name of Surety) a corporation created and existing under the laws of __________ (State) as Surety (hereinafter called Surety) are held and firmly bound unto the United States of America in an unlimited amount, 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 the United States Government the performance of all charter trips (other than cargo charter trips) originating in 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 this bond is written to assure 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.

The 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

By: Signature and title

Witness

Surety

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’.

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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.

time to time be prescribed by the Department.
[ER–680, 36 FR 7306, Apr. 17, 1971, as amended
at 61 FR 34725, July 3, 1996]

§ 213.2

Reports of traffic data.

The Department may at any time require any foreign air carrier to file
with the Department traffic data disclosing the nature and extent of such
carrier’s engagement in transportation
between points in the United States
and points outside thereof. The Department will specify the traffic data required in each such instance. Interested persons seeking reconsideration
of a Department determination under
this section may file a petition pursuant to Rule 37 of part 302 within 10 days
after Department action.

APPENDIX B TO PART 212—
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.

PART 213—TERMS, CONDITIONS
AND LIMITATIONS OF FOREIGN
AIR CARRIER PERMITS

§ 213.3 Filing and approval of schedules.
(a) In the absence of provisions to the
contrary in the permit and of Department action pursuant to this section, a
foreign air carrier may determine the
schedules (including type of equipment
used) pursuant to which it engages in
transportation between points in the
United States and points outside thereof.
(b) In the case of a foreign air carrier
permit for scheduled air transportation
which is not the subject of an air transport agreement between the United
States and the government of the holder, the Department, if it finds that the
public interest so requires, may with or
without hearing order the foreign air
carrier to file with it within 7 days
after service of such order, an original
and three copies of any or all of its existing schedules of service between any
point in the United States and any
point outside thereof, and may require
such carrier thereafter to file an original and three copies of any proposed
schedules of service between such
points at least 30 days prior to the date
of inauguration of such service. Such
schedules shall contain all schedules of
aircraft which are or will be operated
by such carrier between each pair of
points set forth in the order, the type
of equipment used or to be used, the
time of arrival and departure at each
point, the frequency of each schedule,

Sec.
213.1 Applicability.
213.2 Reports of traffic data.
213.3 Filing and approval of schedules.
213.4 [Reserved]
213.5 Filing and service of schedules and applications for approval of schedules; procedure thereon.
213.6 Compliance.
213.7 Filing requirements for adherence to
Montreal Agreement.
AUTHORITY: 49 U.S.C. Chapters 401, 411, 413,
415, 417.
SOURCE: ER–624, 35 FR 8881, June 9, 1970,
unless otherwise noted.
EDITORIAL NOTE: Nomenclature changes to

§ 213.1 Applicability.
This regulation sets forth terms, conditions, and limitations applicable to
foreign air carrier permits issued under
section 41302 of Title 49 of the United
States Code (Transportation) authorizing scheduled foreign air transportation. Unless such permits or the orders issuing such permits otherwise
provide, the exercises of the privileges
to engage in scheduled foreign air
transportation granted by any such
permit shall be subject to the terms,
conditions, and limitations as are set
forth in this part, and as may from

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§ 213.5 Filing and service of schedules and applications for approval of schedules; procedure thereon.

(a) Number of copies and certificate of service. An original and three copies of each schedule, and an original and seven (7) copies of application for approval of schedules (§ 213.3(e)) shall be filed with the Department, each setting forth the names and addresses of the persons, if any, required to be served, and stating that service has been made on all such persons by personal service or by registered or certified mail (if the addressee is located within the United States, its territories and possessions) or by registered air mail (if the addressee is located outside the United States, its territories and possessions) and the date of such service. In the case of service by mail, the date of mailing shall be considered the date of service.

(b) Pleadings by interested persons. Any interested person may file and serve upon the foreign air carrier a memorandum in opposition to, or in support of, schedules or an application for approval of schedules within 10 days of the filing opposed or supported. All memoranda shall set forth in detail the

and the effective date of any proposed schedule.

(c) In the case of any foreign air carrier permit for scheduled air transportation which is the subject of an air transport agreement between the United States and the government of the holder, the Department may with or without hearing issue an order, similar to that provided for in paragraph (b) of this section, if it makes the findings provided for in that subsection and, in addition, finds that the government or aeronautical authorities of the government of the holder, over the objections of the U.S. Government, have: (1) Taken action which impairs, limits, terminates, or denies operating rights, or (2) otherwise denied or failed to prevent the denial of, in whole or in part, the fair and equal opportunity to exercise the operating rights, provided for in such air transport agreement, of any U.S. air carrier designated thereunder with respect to flight operations to, from, through, or over the territory of such foreign government.

(d) The carrier may continue to operate existing schedules, and may inaugurate operations under proposed schedules 30 days after the filing of such schedules with the Department, unless the Department with or without hearing issues an order, subject to stay or disapproval by the President of the United States within 10 days after adoption, notifying the carrier that such operations, or any part of them, may be contrary to applicable law or may adversely affect the public interest. If the notification pertains to a proposed schedule, service under such schedule shall not be inaugurated; if the notification pertains to existing schedules, service under such schedules shall be discontinued on the date specified in the Department’s order. Such date shall be not less than ten days after adoption of the Department’s order unless affirmative Presidential approval is obtained at an earlier date.

(e) No petitions for reconsideration may be filed with respect to Department orders issued pursuant to paragraph (b), (c), or (d) of this section. Nevertheless, if the Department serves a notification under paragraph (d) of this section, the carrier may make application to the Department for approval of any or all existing or proposed schedules, pursuant to the provisions of § 213.5. The Department may with or without hearing withdraw, in whole or in part, its notification at any time and may permit existing or proposed schedules to be operated for such period or periods as the Department may determine.

(f) The date of service on a foreign air carrier of orders and notifications pursuant to this section shall be the date of mailing thereof, by certified or registered mail, to the agent designated by the foreign air carrier pursuant to 49 U.S.C. 46103 or, if the foreign air carrier has failed to designate an agent, the date of mailing by registered air mail to the foreign air carrier’s home office.

§ 213.4 [Reserved]
§ 213.6
reasons for the position taken together with a statement of economic data and other matters which it is desired that the Department officially notice, and affidavits stating other facts relied upon. Memoranda shall contain a certificate of service as prescribed in paragraph (a) of this section. An executed original and seven (7) true copies shall be filed with the Department’s Docket Facility. Unless otherwise provided by the Department, further pleadings will not be entertained.

(c) Determination and petitions for reconsideration. The Department may make its determination upon the application and other pleadings or, in its discretion, after hearing. Interested persons seeking reconsideration of the Department’s determination on an application approval of schedules may file a petition pursuant to Rule 37 of part 302 of this chapter within 10 days of Department action. Any interested person may file an answer in opposition to, or in support of, the petition within 10 days after it is filed. An executed original and 19 copies of such petition for reconsideration or memorandum shall be filed with the Docket Facility. All petitions for reconsideration shall contain a certificate of service in the form prescribed by paragraph (a) of this section. Unless ordered by the Department upon application or upon its own motion, further pleadings will not be entertained.

§ 213.7 Filing requirements for adherence to Montreal Agreement.

It shall be a condition upon the holding of a foreign air carrier permit or other authority authorizing direct foreign scheduled air transportation that the holder have and maintain in effect and on file with the Department a signed counterpart of Agreement 18900 (OST Form 4523), and a tariff (for those carriers otherwise generally required to file tariffs) that includes its provisions, and comply with all other requirements of part 203 of this chapter. That form can be obtained from the Foreign Air Carrier Licensing Division (X-45), Office of International Aviation, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

(Approved by the Office of Management and Budget under control number 3024-0064)

§ 213.6 Compliance.

Any violation by the foreign air carrier of applicable provisions of Subtitle VII of Title 49 of the U.S. Code or of orders, rules or regulations issued thereunder, or of the terms, conditions or limitations applicable to the exercise of the privileges granted by the permit shall constitute a failure to comply with the terms, conditions and limitations of such permit: Provided, That upon a showing that a violation of a provision not mandatorily prescribed by law resulted from the observance by the holder of an obligation, duty or liability imposed by a foreign country, the Department may excuse the violation.


§ 213.1 Filing requirements for adherence to Montreal Agreement.

It shall be a condition upon the holding of a foreign air carrier permit or other authority authorizing direct foreign scheduled air transportation that the holder have and maintain in effect and on file with the Department a signed counterpart of Agreement 18900 (OST Form 4523), and a tariff (for those carriers otherwise generally required to file tariffs) that includes its provisions, and comply with all other requirements of part 203 of this chapter. That form can be obtained from the Foreign Air Carrier Licensing Division (X-45), Office of International Aviation, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

(Approved by the Office of Management and Budget under control number 3024-0064)

PART 215—USE AND CHANGE OF NAMES OF AIR CARRIERS, FOREIGN AIR CARRIERS AND COMMUTER AIR CARRIERS

Sec. 215.1 Applicability.
215.2 Purpose.
215.3 Use of name.
215.4 Change of name or use of trade name.
215.5 Procedure in case of similarity of names.
215.6 Acknowledgment of registration.


SOURCE: 53 FR 17923, May 19, 1988, unless otherwise noted.

§ 215.1 Applicability.

This part applies to all certified air carriers, commuter air carriers, and foreign direct air carriers and to initial or amended applications for authority, applications for certificate or permit transfers or reissuances, and registration of business names.

§ 215.2 Purpose.

This part sets rules under which direct air carriers may use the names in their operating authorizations and change those names. It further provides for notification to air carriers that may be affected by the use by other air carriers of the same or similar names. Its purpose is to place the responsibility for resolving private disputes about the use of similar names with the air carriers involved, through recourse to the trade names statutes and the courts. These rules do not preclude Department intervention or enforcement action should there be evidence of a significant potential for, or of actual, public confusion.

§ 215.3 Use of name.

In holding out to the public and in performing air transportation services, a direct air carrier or foreign direct air carrier subject to this part shall use only the name in which its operating authorization is issued or trade name is registered, and shall not operate or hold out to the public in a name not acknowledged by the Department to be so registered. Except as provided in §§221.21(j) and 221.35(d) of this chapter, minor variations in the use of this name, including abbreviations, contractions, initial letters, or other variations of the name that are identifiable with the authorized name, are permitted. Slogans and service marks shall not be considered names for the purpose of this part, and their use is not restricted.

§ 215.4 Change of name or use of trade name.

(a) Registrations. Any air carrier subject to this part that desires to change the name in which its operating authorization has been issued, or to use a trade name, or to obtain initial operating authority must register the name with the Department. The Department will construe any application for initial, reissued, or transferred authority, as well as any commuter air carrier registration or amendment filed under part 298, as containing a “registration” of the intended name. A separate name registration document need not be filed. A carrier registering use of a trade name, without seeking reissuance of its underlying certificate or foreign air carrier permit or exemption authority, must file a statement that complies with §§302.3 and 302.4 of this chapter registering its intended name with the Air Carrier Fitness Division if it is a U.S. certificated or commuter carrier, or within the Licensing Division if it is a foreign air carrier.

(b) Montreal Agreement. Each registration under this section shall be accompanied by three copies of a counterpart to the Montreal Agreement (Agreement 18900) (OST Form 4523) signed by the carrier using the proposed name. Upon arrival of the application, the Department will place a copy of the signed OST form 4523 in Docket 17325.

(Reporting and recordkeeping requirements in paragraph (b) were approved by the Office of Management and Budget under control number 3024-0064.)
§ 215.5 Procedure in case of similarity of names.

The Department will compare the proposed name in any registration filed under this part or in an application for new, reissued, or transferred authority with a list of names used by existing certificated, commuter and foreign direct air carriers. The Department will notify the applicant of any other certificated, foreign or commuter carriers that may have an identical or similar name. The registrant must then notify those carriers of its registration. The notification will identify the applicant and state its proposed name or the name requested, area of operation or proposed area of operation, type of business, and other pertinent matters. The registrant must then file a certificate of service of the notification with the Department.

§ 215.6 Acknowledgment of registration.

After completion of the filing and notification requirements of this part, the Department may acknowledge the registration by notice in the action granting the application for initial operating authority, transfer, or reissuance or in approving the commuter registration, or by separate notice in the case of use of a trade name. Non-action under this provision shall not be construed as an adjudication of any rights or liabilities.

PART 216—COMMINGLING OF BLIND SECTOR TRAFFIC BY FOREIGN AIR CARRIERS

Sec.
216.1 Definitions.
216.2 Applicability.
216.3 Prohibition.
216.4 Special authorizations.
216.5 Existing permits.
216.6 Existing unauthorized operations.

AUTHORITY: Sec. 204(a), 72 Stat. 743; 49 U.S.C. 1324(a). Interpret or apply secs. 402 and 1108(b), 72 Stat. 757, 798; 49 U.S.C. 1372, 1508(b).

SOURCE: ER-525, 33 FR 692, Jan. 19, 1968, unless otherwise noted.

§ 216.1 Definitions.

(a) As used in this part, unless the context otherwise requires:

- Act means the Federal Aviation Act of 1958, as amended.
- Blind sector traffic means revenue traffic, carried by a foreign air carrier on a flight operating in air transportation, which is enplaned at one foreign point and deplaned at another foreign point, where at least one of such points is not named as a terminal or intermediate point in the carrier’s applicable foreign air carrier permit.
- NOTE: This definition shall not be deemed to include the carriage of authorized beyond homeland traffic (i.e., traffic carried between a point named in a carrier’s foreign air carrier permit and a point beyond a homeland terminal point authorized under such permit).
- Revenue traffic means persons, property or mail carried for compensation or hire.
- Terms defined in section 101 of the Act have the meaning expressed in such definitions.

§ 216.2 Applicability.

This part sets forth the requirements applicable to foreign air carriers for obtaining a Special Authorization from the Board with respect to any deviation from an authorized foreign air transportation route for the purpose of commingling blind sector traffic with air transportation traffic carried pursuant to a foreign air carrier permit issued by the Board. The deviation by a foreign air carrier from its authorized route for the purpose of combined carriage to or from the United States of nonrevenue or other traffic, the carriage of which does not constitute engaging in foreign air transportation, is governed by the provisions of part 375 of this chapter.

§ 216.3 Prohibition.

No foreign air carrier shall carry any blind sector traffic, as defined in this part, on any flight operating in air transportation pursuant to the authority of a foreign air carrier permit issued under section 402 of the Act, unless the combined carriage of such traffic has been specifically authorized by such permit, or by a Special Authorization issued under § 216.4.
§ 216.4 Special authorizations.

(a) Applications. Any foreign air carrier may apply to the Board for a Special Authorization, as required by this part, for the carriage of blind sector traffic on a particular flight, series of flights, or for a specified or indefinite period of time between specified points. Applications shall be submitted directly to the Board, addressed to the attention of the Director, Bureau of International Aviation. One original and two copies in conformity with the requirements of §§302.3(b) and 302.4(b) and (c) of this chapter shall be filed. The applications shall contain a proper identification of the applicant; the flight or flights upon which it is proposed to carry such blind sector traffic, including routing, nontraffic stops, and dates or duration of the authority sought; a full description of such traffic, and points between which such traffic will be carried; information or documentation as to whether the country of which the applicant is a national grants reciprocal privileges to U.S. carriers; and the reasons for requesting such authorization together with such additional information as will establish that the grant of such authority will otherwise be in the public interest. Such additional information as may be specifically requested by the Board shall also be furnished.

(b) Service. Applications shall be served upon each direct U.S. air carrier certificated to engage in individually ticketed or waybilled foreign air transportation over any portion of the route to which the application pertains, and on such other persons as the Board may require, and proof of such service shall accompany the application as provided in §302.8 of this chapter. Notice of such applications shall also be published in the Board's Weekly List of Applications Filed.

(c) Memoranda in support or opposition. Any interested person may file a memorandum in support of or in opposition to the grant of an application. Such memorandum shall set forth in detail the reasons why it is believed that the application should be granted or denied and shall be accompanied by such data, including affidavits, which it is desired that the Board consider. Copies of the memorandum shall be served upon the applicant. Nothing in this subparagraph shall be deemed to preclude the Board from granting or denying an application when the circumstances so warrant without awaiting the filing of memoranda in support of or in opposition to the application.

(d) Time for filing. (1) Applications seeking authority to engage in blind sector operations for a period of 3 months or longer, shall be submitted at least 60 days in advance of the proposed commencement of such operations. Memoranda in response to such an application shall be submitted within 15 days after the date of filing thereof. (2) Applications seeking authority to engage in blind sector operations for a period less than three months shall be filed at least 20 days in advance of the proposed commencement of such operations, and memoranda in response thereto within 7 days after the date of filing thereof: Provided, That the Board may consider late filed applications upon a showing of good cause for failure to adhere to this requirement.

(e) General procedural requirements. Except as otherwise provided herein, the provisions of part 302, subpart A, of this chapter shall apply to the extent applicable.

(f) Issuance of Special Authorization. A Special Authorization authorizing the carriage of blind sector traffic will be issued only if the Board finds that the proposed carriage is fully consistent with applicable law and this part, and that grant of such authority would be in the public interest. The application may be granted or denied in whole or in part without hearing, and a Special Authorization made subject to any conditions or limitations, to the extent that such action is deemed by the Board to be in the public interest. Special Authorizations are not transferable.

(g) Nature of the privilege conferred. A Special Authorization issued pursuant to this section shall constitute a privilege conferred upon a carrier, which may be enjoyed only to the extent that its continued exercise remains in the interest of the public. Accordingly, any Special Authorization issued pursuant
§ 216.5

Existing permits.

"Foreign aircraft permits" issued by the Board under the provisions of part 375 of the Board's Special Regulations, authorizing the combined carriage of blind sector traffic as defined in this part, shall continue in effect in accordance with their terms until their expiration date unless sooner terminated, revoked or modified by the Board. Such permits shall, upon the effective date of this part, be deemed to constitute a Special Authorization issued pursuant to §216.4.

§ 216.6 Existing unauthorized operations.

Notwithstanding the provisions of §216.3, if within 30 days after the effective date of this part a carrier files an application for a Special Authorization to continue to perform existing blind sector operations which have been regularly performed by such carrier commencing on a date prior to August 9, 1967, such carrier may continue to engage in such blind sector operations until final decision by the Board on such application: Provided, That any such application shall, in addition to the requirements of §216.4(a), contain a statement that the carrier is relying upon this section for continuance of preexisting blind sector operations, and shall fully describe such operations including the date inaugurated, and the frequency and continuity of performance.

PART 217—REPORTING TRAFFIC STATISTICS BY FOREIGN AIR CARRIERS IN CIVILIAN SCHEDULED, CHARTER, AND NON-SCHEDULED SERVICES

§ 217.1 Definitions.

Foreign Air Carrier means a non-U.S. air carrier holding a foreign air carrier permit or exemption authority from the Department of Transportation.

Large Aircraft means an aircraft designed to have a passenger capacity of more than 60 seats or a payload of more than 18,000 pounds.

Small Aircraft means an aircraft that is not a large aircraft.

Statement of Authorization under this part means a statement of authorization from the Department, pursuant to 14 CFR part 207, 208, or 212, as appropriate, that permits joint service transportation, such as block space agreements, part-charters, code-sharing or wet-leases, between two direct air carriers holding underlying economic authority from the Department.

§ 217.2 Applicability.

§ 217.3 Reporting requirements.

§ 217.4 Data collected (service classes).

§ 217.5 Data collected (data elements).

§ 217.6 Extension of filing time.

§ 217.7 Certification.

§ 217.8 Reporting procedures.

§ 217.9 Waivers from reporting requirements.

§ 217.10 Instructions.

§ 217.11 Reporting compliance.

Authority: 49 U.S.C. 329 and chapters 401, 413, 417.

Source: 53 FR 46294, Nov. 16, 1988, unless otherwise noted.

§ 217.1 Definitions.

As used in this part:

Foreign Air Carrier means a non-U.S. air carrier holding a foreign air carrier permit or exemption authority from the Department of Transportation.

Large Aircraft means an aircraft designed to have a passenger capacity of more than 60 seats or a payload of more than 18,000 pounds.

Small Aircraft means an aircraft that is not a large aircraft.

Statement of Authorization under this part means a statement of authorization from the Department, pursuant to 14 CFR part 207, 208, or 212, as appropriate, that permits joint service transportation, such as block space agreements, part-charters, code-sharing or wet-leases, between two direct air carriers holding underlying economic authority from the Department.

§ 217.2 Applicability.

This part applies to foreign air carriers that are authorized by the Department to provide civilian passenger and/or cargo scheduled, nonscheduled and charter services to or from the United States, whether performed pursuant to a permit or exemption authority. Operations conducted wholly with small aircraft are exempt from the requirements of this part. Where the service operations involve both large and small aircraft, only the large aircraft services must be reported.

§ 217.3 Reporting requirements.

(a) Each foreign air carrier shall file BTS Form 41 Schedule T-100(f) "Foreign Air Carrier Traffic Data by Non-stop Segment and On-flight Market." All traffic statistics shall be compiled
in terms of each flight stage as actually performed.

(b) The traffic statistics reported on Schedule T-100(f) shall be accumulated in accordance with the data elements prescribed in §217.5 of this part, and these data elements are patterned after those in section 19-5 of part 241 of this chapter.

(c) One set of Form 41 Schedule T-100(f) data shall be filed.

(d) Schedule T-100(f) shall be submitted to the Department within thirty (30) days following the end of each reporting month.

(e) Schedule T-100(f) shall be filed with the Bureau of Transportation Statistics at the address referenced in §217.10 and the Appendix to §217.10 of this part.

§ 217.4 Data collected (service classes).

(a) The statistical classifications are designed to reflect the operating elements attributable to each distinctive class of service offered for scheduled, nonscheduled and charter service.

(b) The service classes that foreign air carriers shall report on Schedule T-100(f) are:

(1) F Scheduled Passenger/Cargo
(2) G Scheduled All-Cargo
(3) L Nonscheduled Civilian Passenger/Cargo Charter
(4) P Nonscheduled Civilian All-Cargo Charter
(5) Q Nonscheduled Services (Other Than Charter). This service class is reserved for special nonscheduled cargo flights provided by a few foreign air carriers under special authority granted by the Department.

§ 217.5 Data collected (data elements).

(a) Within each of the service classifications prescribed in §217.4, data shall be reported in applicable traffic elements.

(b) The statistical data to be reported on Schedule T-100(f) are:

(1) Air carrier. The name and code of the air carrier reporting the data. The carrier code is assigned by DOT. The Office of Airline Information (OAI’S) will confirm the assigned code upon request; OAI’S address is in the Appendix to §217.10 of this part.

(2) Reporting period date. The year and month to which the reported data are applicable.

(3) Origin airport code. This code represents the industry designator as described in the Appendix to §217.10 of this part. A common private industry source of these industry designator codes is the Official Airline Guides (OAG). Where none exists, OAI will furnish a code upon request. OAI’S address is in the Appendix to §217.10 of this part.

(4) Destination airport code. This represents the industry designator, from the source described in §217.5(b)(3).

(5) Service class code. For scheduled and other services, the applicable service class prescribed in §217.4 of this part shall be reported.

(6) Aircraft type code. This represents the aircraft type, as specified in the Appendix to §217.10 of this part. Where none exists, OAI will furnish a code upon request.

(7) Revenue aircraft departures performed (Code 510). The number of revenue aircraft departures performed.

(8) Revenue passengers transported (Code 130). The total number of revenue passengers on board over a flight stage, including those already on the aircraft from previous flight stages. Includes both local and through passengers on board the aircraft.

(9) Revenue freight transported (kilograms) (Code 237). The volume, expressed in kilograms, of revenue freight that is transported. As used in this part, “Freight” means revenue cargo other than passengers or mail.

(10) Total revenue passengers in market (Code 110). The total number of revenue passengers enplaned in a market, boarding the aircraft for the first time. While passengers may be transported over several flight stages in a multi-segment market, this data element (code 110) is an unduplicated count of passengers originating within the market.

(11) Total revenue freight in market (kilograms) (Code 217). The amount of revenue freight cargo (kilograms) that is enplaned in a market, loaded on the aircraft for the first time.

(12) Available capacity-payload (Code 270). The available capacity is collected in kilograms. This figure shall reflect
§ 217.6 Extension of filing time.

(a) If circumstances prevent the filing of a Schedule T-100(f) report on or before the due date prescribed in section 22 of part 241 of this chapter and the Appendix to §217.10 of this part, a request for an extension must be filed with the Director, Office of Airline Information.

(b) The extension request must be received at the address provided in §217.10 at least 3 days in advance of the due date, and must set forth reasons to justify granting an extension, and the date when the report can be filed. If a request is denied, the air carrier must submit the required report within 5 days of its receipt of the denial of extension.

§ 217.7 Certification.

The certification for BTS Form 41 Schedule T-100(f) shall be signed by an officer of the air carrier with the requisite authority over the collection of data and preparation of reports to ensure the validity and accuracy of the reported data.

§ 217.8 Reporting procedures.

Reporting guidelines and procedures for Schedule T-100(f) are prescribed in the Appendix to §217.10 of this part.

§ 217.9 Waivers from reporting requirements.

(a) A waiver from any reporting requirement contained in Schedule T-100(f) may be granted by the Department upon its own initiative, or upon the submission of a written request of the air carrier to the Director, Office of Airline Information, when such a waiver is in the public interest.

(b) Each request for waiver must demonstrate that: Existing peculiarities or unusual circumstances warrant a departure from the prescribed procedure or technique; a specifically defined alternative procedure or technique will result in substantially equivalent or more accurate portrayal of the operations reported; and the application of such alternative procedure will not adversely affect the uniformity in reporting applicable to all air carriers.

§ 217.10 Instructions.

(a) Foreign air carriers shall submit Form 41 Schedule T-100(f) on either floppy discs produced on microcomputers or on other ADP media, such as magnetic tape, or hardcopy reports.

(b) The detailed instructions for preparing Schedule T-100(f) are contained in the Appendix to this section. Blank copies of Schedule T-100(f) are available from the Office of Airline Information, K-25, Room 4125, U.S. Department of Transportation, 400 Seventh St., SW., Washington, DC 20590.

APPENDIX TO SECTION 217.10 OF 14 CFR
PART 217—INSTRUCTIONS TO FOREIGN AIR CARRIERS FOR REPORTING TRAFFIC DATA ON FORM 41 SCHEDULE T-100(F)

(a) General instructions.

(1) Description. Form 41 Schedule T-100(f) provides flight stage data covering both passenger/cargo and all cargo operations in scheduled and nonscheduled services. The schedule is used to report all flights which serve points in the United States or its territories as defined in this part.

(2) Applicability. Each foreign air carrier holding a 402 permit, or exemption authority, and operating aircraft with seating configurations of more than sixty seats and/or
available capacity (payload of passengers and cargo) of more than 18,000 pounds shall file Form 41 Schedule T-100(f). Reference to 402 is to section 402 of the Federal Aviation Act of 1958, as amended (FAAct).

(3) Address for filing reports: Office of Airline Information, K-25, Room 425, U.S. Department of Transportation, 400 Seventh St., SW., Washington, DC 20590.

(4) Filing period. Form 41 Schedule T-100(f) shall be filed monthly and is due at the Department thirty (30) days following the end of the reporting month to which the data are applicable.

(5) Number of copies. A single set of legible Form 41 Schedule T-100(f) data and certification shall be submitted.

(6) Foreign air carrier certification. Each foreign air carrier shall submit a certification statement (illustrated at the end of this Appendix) as an integral part of each monthly Schedule T-100(f), as prescribed in §217.5 of this part.

(7) Alternative filing on Automatic Data Processing (ADP) media. Foreign air carriers are encouraged to use ADP equipment to reduce the manual effort of preparing Schedule T-100(f). Foreign air carriers may use the floppy disk medium. ADP submission requirements for floppy discs are prescribed in paragraph (f).

(b) Preparation of Form 41 Schedule T-100(f):

(1) Explanation of nonstop segments and on-flight markets. There are two basic categories of data, one pertaining to nonstop segments and the other pertaining to on-flight markets. For example, the routing (A-B-C-D) consists of three nonstop segment records A-B, B-C, and C-D, and six on-flight market records A-B, A-C, A-D, B-C, B-D, and C-D.

(2) Guidelines for reporting a nonstop segment. A nonstop segment is reported when one or both points are in the United States or its territories. These data shall be merged with that for all of the other reportable non-stop operations over the same segment. Non-stop segment data must be summarized by aircraft type, under paragraph (h)(1), and class of service, paragraph (g)(1)(v).

(3) Rules for determining a reportable on-flight market. On-flight markets are reportable when one or both points are within the U.S., with the following exceptions: (i) Do not report third country to U.S. markets resulting from flight itineraries which serve a third country prior to a homeland point in flights passing through the homeland bound for the U.S.; and (ii) do not report U.S. to third country markets resulting from itineraries serving third country points subsequent to a homeland point in flights outbound from the U.S. and passing through the homeland. In reporting data pertaining to these two exceptions, the traffic moving to or from the U.S. relating to the applicable prior or subsequent third countries (referred to as “behind” or “beyond” traffic) is to be combined with the applicable foreign homeland gateway point, just as though the traffic were actually enplaned or deplaned at the homeland gateway, without disclosure of the actual prior or subsequent points. Applicable flights are illustrated in examples (6) and (7) under paragraph (c).

(c) Examples of flights. Following are some typical flight itineraries that show the reportable nonstop segment and on-flight market entries. The carrier’s homeland is the key factor in determining which on-flight markets are reportable.

(1) SQ flight # 11 LAX—NRT—SIN. This is an example of a flight with an intermediate foreign country. It is not necessary to report anything on the NRT—SIN leg.

SQ—Singapore Airlines
LAX—Los Angeles, USA
NRT—Tokyo-Narita, Japan
SIN—Singapore, Singapore

LAX NRT SIN
X X X
8161 2400 4800
400 2000 4300

(2) SQ flight #15 LAX—HNL—TPE—SIN. This is an example of two U.S. points, an intermediate third country, and a homeland point. Information is reportable on only the on-flight markets and nonstop segments that consist of one or both U.S. points.

SQ—Singapore Airlines
LAX—Los Angeles, USA
HNL—Honolulu, USA
TPE—Taipei, Taiwan
SIN—Singapore, Singapore

LAX HNL TPE SIN
X X X X
8161 400 2000 4300

Office of the Secretary, DOT §217.10
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(3) LB flight #902 LPB-VVI-MAO-CCS-MIA. This flight serves two homeland points and two different foreign countries before terminating in the U.S. Nonstop segment information is required only for the nonstop segment involving a U.S. point. On-flight market information is required in 4 of the 10 markets, LPB-MIA and VVI-MIA, since these involve homeland and U.S. points; MAO-MIA is necessary to show traffic carried into the U.S., and CCS-MIA for the same reason, and also because in all cases where a nonstop segment entry is required, a corresponding on-flight market entry must also be reported.

LB—Lloyd Aero Boliviano
LPB—La Paz, Bolivia
VVI—Santa Cruz-Viru Viru, Bolivia
MAO—Manaus, Brazil
CCS—Caracas, Venezuela
MIA—Miami, USA

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(4) LY flight #005 TLV-AMS-ORD-LAX. This flight serves a single foreign intermediate point and two U.S. points after its homeland origination. The information on the TLV-AMS leg is not reportable.

LY—El Al Israel Airlines
TLV—Tel Aviv, Israel
AMS—Amsterdam, Netherlands
ORD—Chicago, USA
LAX—Los Angeles, USA

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(5) QF flight #25 SYD—BNE—CNS—HNL—YVR. This flight serves three homeland points, a U.S. point, and a subsequent third
country. Nonstop segment information is required on the respective legs into and out of the United States. All on-flight market entries involving the U.S. point HNL are also required. Data are not required on the homeland to homeland markets, or the homeland—third country markets.

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<td>X</td>
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<td>HNL...</td>
<td>YVR</td>
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(6) JL flight #002 HKG—NRT—SFO. This flight originates in a third country prior to the homeland. No data is required on the HKG-NRT leg, but the HKG-SFO passengers and cargo shall be shown as enplanements in the NRT-SFO on-flight market entry. These volumes are included by definition in the passenger and cargo transported volumes of the NRT-SFO nonstop segment entry.

<table>
<thead>
<tr>
<th>Origin</th>
<th>Destination</th>
<th>F</th>
<th>G</th>
<th>L</th>
<th>P</th>
<th>Q</th>
<th>A-3—Airport code</th>
<th>A-4—Airport code</th>
<th>A-5—Service class (mark an x)</th>
<th>By aircraft type</th>
<th>Sum of all aircraft types</th>
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<tr>
<td>NRT...</td>
<td>SFO</td>
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(7) JL flight #001 SFO-NRT-HKG. This flight is the reverse sequence of flight #002 above; it requires a nonstop segment entry covering SFO-NRT, and a single on-flight market entry also for SFO-NRT. In this case, the on-flight traffic enplaned at SFO and destined for HKG, a beyond homeland point, shall be included in the SFO-NRT entry; a separate SFO-HKG entry is not required.

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<tr>
<th>Origin</th>
<th>Destination</th>
<th>F</th>
<th>G</th>
<th>L</th>
<th>P</th>
<th>Q</th>
<th>A-3—Airport code</th>
<th>A-4—Airport code</th>
<th>A-5—Service class (mark an x)</th>
<th>By aircraft type</th>
<th>Sum of all aircraft types</th>
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</thead>
<tbody>
<tr>
<td>SFO...</td>
<td>NRT</td>
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(8) BA flight #5 LHR-ANC-NRT-OSA. This example contains a single homeland point and a single U.S. point followed by two third country points. It is necessary to report the nonstop segments into and out of the U.S., and all three of the on-flight markets which have the U.S. point ANC as either an origin or destination.
§ 217.10

(1) Nonstop Segment Entries. The flight stays data applicable to nonstop segment entries must be summarized to create totals by aircraft equipment type, within service class, within pairs-of-points.

(2) On-flight Market Entries. The applicable on-flight market entries shall be summarized to create totals by service class within pair-of-points.

(a) Preparation of hard copy Schedule T-100(f):

(i) Nonstop Segment Entries. The flight stay data applicable to nonstop segment entries must be summarized to create totals by aircraft equipment type, within service class, within pairs-of-points.

(ii) On-flight Market Entries. The applicable on-flight market entries shall be summarized to create totals by service class within pair-of-points.

(b) Reporting medium. ADP data submission of T-100(f) information must be on IBM compatible floppy disk, including diskettes, floppy disks, or flexible disks. The particular type of acceptable minidisk is 5¼ inch, double-sided/double density, with a capacity of approximately 360,000 characters of data (360K).

(c) File characteristics. OAI files are recorded in ASCII delimited format, sometimes called Data Interchange Format (DIF). This form of recording data provides for variable length fields (data elements) which, in the case of alphabetic data, are enclosed by quotation marks ("), and separated by a comma (,); numeric data elements are recorded without editing symbols and separated by a comma (,). Each record submitted by an air carrier shall contain the specified number of data elements all of which must be juxtapositionally correct.

(d) Provisions to reduce paperwork:

(i) Reporting medium. ADP data submission of T-100(f) information must be on IBM compatible floppy disk, including diskettes, floppy disks, or flexible disks. The particular type of acceptable minidisk is 5¼ inch, double-sided/double density, with a capacity of approximately 360,000 characters of data (360K).

(ii) File characteristics. OAI files are recorded in ASCII delimited format, sometimes called Data Interchange Format (DIF). This form of recording data provides for variable length fields (data elements) which, in the case of alphabetic data, are enclosed by quotation marks ("), and separated by a comma (,); numeric data elements are recorded without editing symbols and separated by a comma (,). Each record submitted by an air carrier shall contain the specified number of data elements all of which must be juxtapositionally correct.

(iii) Schedule T-100(f) record layout. Each minidisk record shall consist of data fields for recording a maximum of eleven (11) elements. The order and description of the data fields are as follows:

1. Carrier code: Alphanumeric
2. Report date: Numeric
3. Origin airport: Alphabetic
4. Destination airport: Alphabetic
5. Aircraft type code: Numeric
6. Aircraft departures performed: Numeric
7. Revenue passengers transported: Numeric
8. Revenue freight transported: Numeric
9. Total revenue passengers in market: Numeric
10. Total revenue freight in market: Numeric

<table>
<thead>
<tr>
<th>A−3−Airport code</th>
<th>A−4−Airport code</th>
<th>A−5−Service class (mark an x)</th>
<th>A−6−Service class (mark an x)</th>
<th>A−7−Service class (mark an x)</th>
<th>B−1−Act. type code</th>
<th>B−2−Revenue aircraft departures</th>
<th>B−3−Revenue passengers transported</th>
<th>B−4−Revenue freight transported (kg)</th>
<th>C−1−Total revenue passengers in market</th>
<th>C−2−Total revenue freight in market (kg)</th>
</tr>
</thead>
<tbody>
<tr>
<td>LHR</td>
<td>ANC</td>
<td>X</td>
<td>8161</td>
<td>10</td>
<td>3000</td>
<td>50000</td>
<td>100</td>
<td>100</td>
<td>1000</td>
<td>150</td>
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<tr>
<td>ANC</td>
<td>NRT</td>
<td>X</td>
<td>8161</td>
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<td>3150</td>
<td>55000</td>
<td>100</td>
<td>100</td>
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<td>150</td>
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<td>OSA</td>
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</tbody>
</table>

NRT—Tokyo-Narita, Japan
OSA—Osaka, Japan
BA—British Airways
LHR—London, England
ANC—Anchorage, USA

(1) ADP media reports:

(i) ADP report format. A foreign air carrier may, in accordance with the following guidelines, use personal computers (and in some cases mainframe or minicomputers) to report Schedule T-100(f) data.
Office of the Secretary, DOT

§ 217.10

(11) Total revenue freight in market: Numeric
   (A) Fields numbered 1 through 11 must always be provided. Therefore, enter a zero (0)
   or space when there is no reportable data for a given element. See paragraph (g)(1)
   through (g)(3) for a detailed definition of each data element.
   (B) The following are sample disk records:

<table>
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<tr>
<th>Sample No.</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6</th>
<th>7</th>
<th>8</th>
<th>9</th>
<th>10</th>
<th>11</th>
</tr>
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<tbody>
<tr>
<td>Sample No. 1</td>
<td>&quot;CCC&quot;</td>
<td>8701</td>
<td>&quot;JFK&quot;</td>
<td>&quot;LHR&quot;</td>
<td>&quot;F&quot;</td>
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<td>69</td>
<td>79</td>
<td>89</td>
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<tr>
<td>Sample No. 2</td>
<td>&quot;CCC&quot;</td>
<td>8701</td>
<td>&quot;JFK&quot;</td>
<td>&quot;LHR&quot;</td>
<td>&quot;F&quot;</td>
<td>6901</td>
<td>299</td>
<td>599</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Sample No. 3</td>
<td>&quot;CCC&quot;</td>
<td>8701</td>
<td>&quot;JFK&quot;</td>
<td>&quot;LHR&quot;</td>
<td>&quot;G&quot;</td>
<td>7102</td>
<td>299</td>
<td>0</td>
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<tr>
<td>Sample No. 4</td>
<td>&quot;CCC&quot;</td>
<td>8701</td>
<td>&quot;JFK&quot;</td>
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<td>0</td>
<td>0</td>
<td>0</td>
<td>699</td>
<td>799</td>
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</table>

Sample No. 1 represents a full record, using the applicable fields for reporting both the nonstop segment (6 through 9) and the on-flight market information (10 and 11). The service class is "F" indicating scheduled passenger/cargo service; the aircraft type code is 8161; the 816 indicates a Boeing 747-100, and the 1 in the units position indicates the standard "passengers-above and cargo-below" configuration.

Sample No. 2 contains nonstop segment information only. It is needed in this example to report the volumes transported on the same nonstop segment, but with a second aircraft type.

Sample No. 3 contains nonstop segment and on-flight market information for the same points, but for another service class (code letter "G" indicates all-cargo service). Also, the units position of aircraft type is a 2, indicating a cargo cabin. Field numbers 8 and 10 are for reporting passengers. In this case both contain a zero, indicating no passengers, while at the same time maintaining the required juxtaposition.

Sample No. 4 shows the reporting of only on-flight market information for a pair-of-points for which there is no corresponding nonstop segment information.

(2) External labeling requirements: Physical label. The following data must be clearly printed on a label affixed to the minidisk or its container.

Carrier Name
Carrier code (as prescribed by DOT, BTS, OAI)
File identification = "T-10F DATA"
Report date (year, month to which data applies)
(3) Collating sequence, optional. If practical, the records should be sorted by origin and destination airport codes, service class, and aircraft type. However, the sequence is optional. Data may be submitted in any sequence including random.

(4) Summarization. See summarization rules as specified in paragraph (d)(1).
   (1) Service pattern information.
   (i) Line A-1 Carrier code. Use the carrier code established by the Department. This code is provided to each carrier in the initial reporting letter from the Office of Airline Information (OAI). If there are any questions about these codes, contact the OAI Data Administration Division at the address in paragraph (a)(3) of this Appendix.

(ii) Line A-2 Report date. This is the year and month to which the data are applicable. For example, 8001 indicates the year 1980, month of January.

(iii) Line A-3 Origin airport code. This is the departure airport, where an aircraft begins a flight segment, and where the passengers originate in an on-flight market. Use the 3-letter code from the City/Airport Codes section of the Official Airline Guide Worldwide Edition. If no 3-letter code is available, OAI will assign one; the address is in paragraph (a)(3) of this Appendix.

(iv) Line A-4 Destination airport code. This is the arrival airport, where an aircraft stops on a flight segment, and where passengers deplane (get off the flight) after reaching their destination in a market. Use the 3-letter code from the source described in paragraph (g)(1)(iii) of this Appendix.

(v) Line A-5 Service class code. Select one of the following single letter codes which describes the type of service being reported on a given flight operation.
   F = Scheduled Passenger/cargo Service
   G = Scheduled All-cargo Service
   L = Nonscheduled Civilian Passenger/Cargo Charter
   P = Nonscheduled Civilian All-Cargo Charter
   Q = Nonscheduled Services (Other than Charter)

(2) Nonstop segment information:
   (i) Line B-1 Aircraft type code. Use the four digit numeric code prescribed in paragraph (h)(1) of this Appendix. If no aircraft type code is available, OAI will assign one. The address is in paragraph (a)(3) of this Appendix.

(ii) Line B-2 Aircraft departures performed. This is the total number of physical departures performed with a given aircraft type, within service class and pair-of-points.

(iii) Line B-3 Revenue passengers transported. This is the total number of revenue passengers transported on a given nonstop segment. It represents the total number of
§ 217.10

revenue passengers on board over the segment without regard to their actual point of enplanement.

(iv) Line B–4 Revenue freight transported. This item is the total weight in kilograms (kg) of the revenue freight transported on a given nonstop segment without regard to its actual point of enplanement.

(3) On-flight market information:

(i) Line C–1 Total revenue passengers in market. This item represents the total number of revenue passengers, within service class, that were enplaned at the origin airport and deplaned at the destination airport.

(ii) Line C–2 Total revenue freight in market. This item represents the total weight in kilograms (kg) of revenue freight enplaned at the origin and deplaned at the destination airport.

(h) [Reserved]

(i) Joint Service.

(2) Joint service operations shall be reported in Form 41 Schedules T–100 and T–100(f) within the following guidelines: (i) Blocked space, part-charters and code-sharing arrangements shall be reported by the carrier in operational control of the flight. The traffic moving under those agreements is reported the same as any other traffic on board the aircraft. (ii) Wet lease agreements shall be reported by the lessee as though the leased aircraft and crew were a part of the lessee's own fleet. (iii) If there are questions about reporting a joint service operation, contact the Director, Office of Aviation Information Management at the address in paragraph (a)(3) of this Appendix. (iv) The Department may require information pertaining to joint service operations in addition to that reported in Schedules T–100 and T–100(f) by U.S. and foreign air carriers. If additional information is needed, ad hoc reporting will be used by the Director, Office of Aviation Information Management (OAI), under authority delegated in §385.27 (b) and (d) of this chapter. Ad hoc reporting requirements will be communicated to the applicable carriers by letter.

(j) Schedules.
<table>
<thead>
<tr>
<th>No.</th>
<th>ORIGIN</th>
<th>DEST</th>
<th>L</th>
<th>P</th>
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§ 217.11 Reporting compliance.

(a) Failure to file reports required by this part will subject an air carrier to civil and criminal penalties prescribed in sections 901 and 902 of the Federal Aviation Act of 1958, as amended.

(b) Title 18 U.S.C. 1001, Crimes and Criminal Procedure, makes it a criminal offense subject to a maximum fine of $10,000 or imprisonment for not more than 5 years, or both, to knowingly and willfully make, or cause to be made, any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States.

FOREIGN AIR CARRIER TRAFFIC DATA
BY NONSTOP SEGMENT AND ON-FLIGHT MARKET
SCHEDULE T-100(f)

FOREIGN AIR CARRIER CERTIFICATION

| Carrier name | __________________________ |
| Address | __________________________ |
| | __________________________ |
| | __________________________ |
| | __________________________ |
| Carrier code | __________________________ |
| Report date (Year/Month) | ____________ |

I, the undersigned,

Title __________________________________________________________________________

Signature __________________________ Date ____________

Print or type name __________________________________________________________________________

RSPA Form 41 Certification for Schedule T-100(f)

§ 218.1 Definitions.

For the purpose of this part the term "lease" shall mean an agreement under which an aircraft is furnished by one party to the agreement to the other party, irrespective of whether the agreement constitutes a true lease, charter arrangement, or some other arrangement.

§ 218.2 Applicability.

This part applies to foreign air carriers and other persons not citizens of the United States which, as lessors or lessees, enter into agreements providing for the lease of aircraft with crew to a foreign air carrier for use in foreign air transportation. For purposes of section 402 of the Act, the person who has operational control and safety responsibility is deemed to be the carrier, and is required to have appropriate operating authority.

§ 218.3 Prohibition against unauthorized operations employing aircraft leased with crew.

(a) No foreign air carrier, or other person not a citizen of the United States, shall lease an aircraft with crew to a foreign air carrier for use by the latter in performing foreign air transportation unless either:

1. The lessor holds a foreign air carrier permit issued under section 402 of the Act or an approved registration issued under part 294 of this chapter, and any statement of authorization required by part 212 of this chapter; or
2. The Board has issued an exemption under section 416 of the Act specifically authorizing the lessor to engage in the foreign air transportation to be performed under the lease; or
3. The Board has issued an order under §218.6 disclaiming jurisdiction over the matter.

(b) For purposes of this part, an aircraft shall be considered to be leased with crew if:

1. The pilot in command or a majority of the crew of the aircraft, other than cabin attendants:
   i. Is to be furnished by the lessor;
   ii. Is employed by the lessor;
   iii. Continues in the employ of the lessor in the operation of services other than those provided for in the agreement between the parties; or
   iv. Has been employed by the lessor prior to the lease, and the employment of whom by the lessee is coextensive with the period or periods for which the aircraft is available to the lessee under the lease; or
2. The aircraft is operated under operations specifications issued to the lessor by the Federal Aviation Administration.

§ 218.4 Condition upon authority of lessee.

In any case where a foreign air carrier leases from another foreign air carrier or other person not a citizen of the United States an aircraft with crew for use in performing foreign air transportation, it shall be a condition upon the authority of the lessee to perform such foreign air transportation that compliance be achieved with the requirements of this part.

§ 218.5 Application for disclaimer of jurisdiction.

The parties to a lease with crew as described in §218.3(b) may apply to the Board for an order disclaiming jurisdiction over the matter. The application...
§ 218.6
shall be filed jointly by both parties to the lease, and shall generally conform to the procedural requirements of part 302, subpart A, of this chapter. It shall be served upon any air carrier providing services over all or any part of the route upon which air transportation services will be provided pursuant to the agreement. The application should set forth in detail all evidence and other factors relied upon to demonstrate that true operational control and safety responsibility for the air transportation services to be provided are in the hands of the lessee rather than the lessor. A copy of the agreement and all amendments thereof, as well as a summary interpretation of its pertinent provisions, shall be included with the applications. Any interested person may file an answer to the application within 7 days after service hereof. Until the Board has acted upon the application, no operations in foreign transportation shall be performed pursuant to the agreement.

§ 218.6 Issuance of order disclaiming jurisdiction.
If the Board finds that true operational control and safety responsibility will be vested in the lessee and not in the lessor (i.e., that the lease transaction is in substance a true lease of aircraft rather than a charter or series of charters), and that the performance of the operations provided for in such lease will not result in the lessor’s being engaged in foreign air transportation, it will issue an order disclaiming jurisdiction over the matter. Otherwise the application for disclaimer of jurisdiction will be denied.

§ 218.7 Presumption.
Whether under a particular lease agreement the lessor of the aircraft is engaged in foreign air transportation is a question of fact to be determined in the light of all the facts and circumstances. However, in circumstances where the lessor furnishes both the aircraft and the crew, there is a presumption that true operational control and safety responsibility are exercised by the lessor, and that the agreement constitutes a charter arrangement under which the lessor is engaged in foreign air transportation. The burden shall rest upon the applicants for disclaimer of jurisdiction in each instance to demonstrate by an appropriate factual showing that the operation contemplated will not constitute foreign air transportation by the lessor.

PART 221—TARIFFS
Subpart A—General

Sec. 221.1 Applicability of this part.
221.2 Board may direct reissue of publications.
221.3 Carrier’s duty.
221.4 Definitions.
221.5 English language.
221.6 [Reserved]
221.7 Unauthorized air transportation.

Subpart B—Who Is Authorized To Issue and File Tariffs

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Subpart A—General

§ 221.1 Applicability of this part.

All tariffs and amendments to tariffs of air carriers and foreign air carriers filed with the Board pursuant to section 403 of the act shall be constructed, published, filed, posted and kept open for public inspection in accordance with the regulations in this part.

§ 221.2 Board may direct reissue of publications.

The Board for good cause shown, may direct the reissue of any tariff publication, concurrence, or power of attorney at any time.

§ 221.3 Carrier's duty.

(a) Must file tariffs. Except as set forth in paragraph (d) or (e) of this section, every air carrier and every foreign air carrier shall file with the Board, and print, and keep open to public inspection, tariffs showing all rates, fares, and charges for air transportation between points served by it, and between points served by it and points served by any other air carrier or foreign air carrier, when through service and through rates shall have been established, and showing to the extent required by regulations of the Board, all classifications, rules, regulations, practices, and services in connection with such air transportation. Tariffs shall be filed, posted, and published in such form and manner, and shall contain such information as the Board shall by regulation prescribe. Any tariff so filed which is not consistent with section 403 of the act and such regulations may be rejected. Any tariff so rejected shall be void.

(b) Must observe tariffs. No air carrier or foreign air carrier shall charge or demand or collect or receive a greater or less or different compensation for air transportation or for any service in connection therewith, than the rates, fares and charges specified in its currently effective tariffs; and no air carrier or foreign air carrier shall, in any manner or by any device, directly or indirectly, or through any agent or broker, or otherwise, refund or remit any portion of the rates, fares, or charges so specified, or extend to any person any privileges or facilities, with respect to matters required by the Board to be specified in such tariffs, except those specified in such tariffs.

(c) No relief from violations. Nothing contained in this part shall be construed as relieving any air carrier or foreign air carrier from liability for violations of the act, nor shall the filing of a tariff, or amendment thereto, relieve any air carrier or foreign air carrier from such violations or from violations of regulations issued under the act.

(d) Exemption authority. Air carriers and foreign air carriers, both direct and indirect, are exempted from the requirement of section 403 of the Act and any requirement of this chapter to file, and shall not file with the Board, tariffs for operations under the following provisions:

(1) Part 291, Domestic Cargo Transportation, except to the extent noted in §291.31(a)(1);

(2) Part 296, Indirect Air Transportation of Property;

(3) Part 297, Foreign Air Freight Forwarders and Foreign Cooperative Shippers Association;
§ 221.4 Definitions.

As used in this part, terms shall be defined as follows:

Act means the Federal Aviation Act of 1958, as amended.

Area No. 1 means all of the North and South American Continents and the islands adjacent thereto; Greenland; Bermuda; the West Indies and the islands of the Caribbean Sea; and the Hawaiian Islands (including Midway and Palmyra).

Area No. 2 means all of Europe (including that part of the Union of the Soviet Socialist Republics in Europe) and the islands adjacent thereto; Iceland; the Azores; all of Africa and the islands adjacent thereto; Ascension Island; and that part of Asia lying west of and including Iran.

Area No. 3 means all of Asia and the islands adjacent thereto except that portion included in Area No. 2; all of the East Indies; Australia; New Zealand; and the islands adjacent thereto;

§ 221.4 (4) Part 298, Exemption for Air Taxi Operations, except to the extent noted in §298.11(b);

(5) Part 380, Public Charters;

(6) Part 207, Charter Trips and Special Services;

(7) Part 208, Terms, Conditions, and Limitations of Certificates to Engage in Charter Air Transportation;

(8) Part 212, Charter Trips by Foreign Air Carriers;

(9) Part 292, International Cargo Transportation, except as provided in 292.

(e) Domestic passenger fare tariffs. For interstate and overseas air transportation of passengers, the following provisions apply to each pair of points served by an air carrier:

(1) The carrier shall file a tariff stating an unrestricted coach fare for service between those points. The carrier may also file tariffs describing other fare categories (e.g., first class, super-saver). Such tariffs shall include the availability conditions applicable to each fare category filed. The carrier shall not charge any passenger more than the fare on file for the fare category purchased by the passenger, but may charge less than that fare. If there is no fare on file for the fare category purchased by the passenger, the carrier shall not charge more than the unrestricted coach fare on file, except for service that includes additional amenities. The carrier may arrange, by contract with its ticket agents, to specify fixed fares to be charged by the ticket agents, and may provide notice of such arrangements in its tariffs. Failure of ticket agents to observe such arrangements will not, however, be considered a violation of the Act or of Board rules. The Board does not hereby approve such contractual arrangements under section 412 of the Act or exempt them from the antitrust laws under section 414.

(4) Air carriers and ticket agents are exempt from the requirements of section 403(a) and (b)(1) of the Act and the other provisions of this part to the extent necessary to allow the filing of tariffs and the charging of prices for interstate and overseas air transportation as set forth in this paragraph (e).

In this paragraph, “charge” includes “charge,” “collect,” “demand,” and “receive,” as those terms are used in section 403 of the Act.


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and the islands of the Pacific Ocean except those included in Area No. 1.

Board means the Civil Aeronautics Board.

Book tariff means a tariff consisting of pages bound together in book form which conforms with the specifications applicable only to book tariffs.

Bundled Normal Economy Fare means the lowest one-way fare available for unrestricted, on-demand service in any city-pair market.

CRT means a video display terminal that uses a cathode ray tube as the image medium.

Carrier means an air carrier or foreign air carrier subject to section 403 of the Act.

Class rate means a rate which is published to apply on articles or commodities assigned to a numbered class by a classification or an exception thereto.

Consignee means the person whose name appears on the airwaybill as the party to whom the shipment is to be delivered by the carrier.

Contract of carriage means those fares, rates, rules, and other provisions applicable to the foreign air transportation of passengers, baggage, or property, as defined in the Federal Aviation Act.

Direct-service market means an international market where the carrier provides service either on a nonstop or single-flight-number basis, including change-of-gauge.

ECAC agreement means the Memorandum of Understanding between the United States and various member nations of the European Civil Aviation Conference, signed on December 17, 1962, as revised and renewed on October 11, 1984, as further revised and renewed on February 12, 1987, and may be subsequently further revised and renewed.

Electronic Tariff means an international passenger fares tariff or a special tariff permission application transmitted to the Department by means of an electronic medium, and containing fares for the transportation of persons and their baggage or property, and including such associated data as arbitraries, footnotes, routings, and fare class explanations.

Fare means the amount per passenger or group of persons stated in the applicable tariff for the transportation thereof and includes baggage unless the context otherwise requires.

Fare tariff means a tariff containing fares for the air transportation of person and may include baggage charges and provisions relating thereto.

Field means a specific area of a record used for a particular category of data.

Filer means an air carrier, foreign air carrier, or tariff publishing agent of such a carrier filing electronic tariffs on its behalf in conformity with this subpart.

General commodity rate means a rate which is published to apply on all articles or commodities except those which will not be accepted for transportation under the terms of the tariff containing such rate or of governing tariffs.

General effective date means the effective date shown on the title page of a tariff as required by §221.31(a)(11), the effective date shown on title page of a supplement as required by §221.112(b)(8), and the effective date shown on an original or revised page as required by §221.22(b)(6). Also, see §221.160.

Item means a small subdivision of a tariff designated as an item and identified by a number, a letter, or other definite method for the purpose of facilitating reference and amendment.

Joint fare or rate means a fare or rate that applies to transportation over the joint lines or routes of two or more carriers and which is made and published by arrangement or agreement between such carriers evidenced by concurrence or power of attorney.

Joint tariff means a tariff that contains joint fares or rates.

Local fare or rate means a fare or rate that applies to transportation over the lines or routes of one carrier only.

Local tariff means a tariff that contains local fares or rates.

Loose-leaf tariff means a tariff consisting of loose-leaf pages and conforming with the specifications applicable to loose-leaf tariffs as set forth in §221.22.

Machine-Readable Data means encoded computer data, normally in a binary format, which can be read electronically by another computer with
the requisite software without any human interpretation.

Official DOT Tariff Database means those data records constituted pursuant to §§221.283 and 221.286 of this subpart, which are in the custody of, and are maintained by, the Department of Transportation.

On-line Tariff Database means the remotely accessible, on-line version, maintained by the filer, of (1) the electronically filed tariff data submitted to the official DOT tariff database, and (2) the Departmental approvals, disapprovals, and other actions, as well as any Departmental notation concerning such approvals, disapprovals, or other actions, that subpart W of part 221 requires the filer to maintain in its database.

Original tariff, as applied to a loose-leaf tariff, refers to the tariff as it was originally filed exclusive of any supplements, revised pages, or additional original pages. Original tariff, as applied to a book tariff, refers to the tariff as it was originally filed exclusive of any supplements.

Passenger means any person who purchases, or who contacts a ticket office or travel agent for the purpose of purchasing, or considering the purchase of, air transportation.

Passenger tariff means a tariff containing fares, charges, or governing provisions applicable to the air transportation of persons and their baggage.

Property tariff means a tariff containing rates, charges, or governing provisions applicable to the air transportation of property (other than baggage accompanied or checked by passengers).

Proportional rate (or fare) means a rate (or fare) which may be used only to construct a through combination rate (or fare) on traffic which:

1. Originates at a point beyond the point from which such proportional rate (or fare) applies, or
2. Is destined to a point beyond the point to which such proportional rate (or fare) applies, or
3. Both originates at a beyond point specified in paragraph (1) above and is destined to a beyond point specified in paragraph (2) above.

Proportional tariff or basing tariff means a tariff which contains proportional or basing rates or fares.

Rates means the amount per unit stated in the applicable tariff for the transportation of property, and includes charge unless the context otherwise requires.

Rate tariff means a tariff containing rates and charges for the air transportation of property, other than baggage accompanying or checked by passengers.

SFFL means the Standard Foreign Fare Level as established by the Department of Transportation under section 1002 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1482).

Shipper means the person whose name appears on the airwaybill as the party contracting with, or a person who contacts a carrier, a cargo sales office or agent of a carrier for the purpose of contracting with the carrier for carriage of a shipment.

Specific commodity rate means a rate which is published to apply only on a specific commodity or commodities which are specifically named or described in the item naming such rate or in an item specifically referred to by such rate in the manner prescribed by §221.75.

Statutory Notice means the number of days required for tariff filings in §221.160(a).

Tariff publication means a tariff, a supplement to a tariff, or an original or revised page of a loose-leaf tariff, and includes an index of tariffs (subpart L) and an adoption notice (§221.230).

Through fare means the total fare from point of origin to destination. It may be a local fare, a joint fare, or combination of separately established fares.

Through rate means the total rate from point of origin to destination. It may be a local rate, a joint rate, or combination of separately established rates.

Ticket/Cargo Sales Office means a station, office, or other location where tickets are sold, or airwaybills or other similar documents are issued, that is under the charge of a person employed exclusively by the carrier, or by it jointly with another person.
Unbundled Normal Economy Fare means the lowest one-way fare available for on-demand service in any city-pair market which is restricted in some way, e.g., by limits set and/or charges imposed for enroute stopovers or transfers.

United States means the several States, the District of Columbia, and the several Territories and possessions of the United States, including the Territorial waters and the overlying air space thereof.


§ 221.5 English language.

All tariff publications, powers of attorney, concurrences, revocations of powers of attorney or concurrences, letters of tariff transmittal, Special Tariff Permission applications, waiver applications and all other documents filed with the Board pursuant to this part shall be in the English language.

§ 221.6 [Reserved]

§ 221.7 Unauthorized air transportation.

Tariff publications shall not contain rates, fares, or charges, or their governing provisions, applicable to air transportation which the issuing or participating carriers are not authorized by the Board to perform, except where the Board expressly requests or authorizes tariff publications to be filed prior to the Board’s granting authority to perform the air transportation covered by such tariff publications. Any tariff publication filed pursuant to such express request or authorization which is not consistent with section 403 of the Act and this part may be rejected; any tariff publication so rejected shall be void.

Subpart B—Who Is Authorized To Issue and File Tariffs

§ 221.10 Carrier.

(a) Local or joint tariffs. A carrier may issue and file, in its own name, tariff publications which contain:

(1) Local rates or fares of such carrier only and provisions governing such local rates or fares, and/or

(2) Joint rates or fares which apply jointly via such issuing carrier in connection with other carriers (participating in the tariff publications under authority of their concurrences given to the issuing carrier as provided in §221.210 and provisions governing such joint rates and fares. Provisions for account of an individual participating carrier may be published to govern such joint rates or fares provided §221.38(k) is complied with.

A carrier shall not issue and file tariff publications containing local rates or fares of other carriers, joint rates or fares in which the issuing carrier does not participate, or provisions governing such local or joint rates or fares.

(b) Issuing officer. An officer or designated employee of the issuing carrier shall be shown as the issuing officer of a tariff publication issued by a carrier, and such issuing officer shall file the tariff publication with the Board on behalf of the issuing carrier and all carriers participating in the tariff publication. (See §§221.22(b)(7), 221.31(a)(12), and 221.112(b)(9) for location of issuing officer’s name on tariff publications.)

§ 221.11 Agent.

An agent may issue and file, in his or its own name, tariff publications naming local rates or fares and/or joint rates or fares, and provisions governing such rates or fares, for account of carriers participating in such tariff publications, under authority of their powers of attorney given to such issuing agent as provided in §221.220. The issuing agent shall file such tariff publications with the Board on behalf of all carriers participating therein. Only one issuing agent may act in issuing and filing each such tariff publication.
Subpart C—Form and Other Specifications of Tariff Publications

§ 221.20 Book or loose-leaf form.
Tariffs shall be prepared either in the form of book tariffs or in the form of loose-leaf tariffs. Supplements shall be prepared in book form in accordance with the specifications applicable to book tariffs.

§ 221.21 Specifications applicable to all tariff publications.
(a) Paper and size. Tariff publications shall be prepared on paper of good quality and strong texture 8½ by 11 inches.
(b) Printing or other durable process; legible copies. Tariff publications shall be plainly and legibly printed, planographed, mimeographed, stereotyped, or prepared by other similar durable process. Typewritten copies, carbon copies, proof sheets, or copies reproduced by hectograph (or similar process where the printed matter is subject to fading) shall not be used for filing or posting. Copies of tariff publications posted and filed shall be clear and legible in all respects.
(c) Size of type. The size of type shall not be less than 8-point bold or full face type except:
(1) As provided in §221.31(a)(1), (C.A.B. number),
(2) Not less than 6-point bold or full face type may be used for explanations or reference marks (when such explanations appear on the page where the reference marks are used), for the cross reference required by §221.35(a), the statement of filing with other countries required by §221.24, and for column headings.
(d) Margin. A clear margin of not less than one inch without any printing shall be allowed on each page at the vertical binding edge of each tariff or supplement (including all revised or original pages of a loose-leaf tariff, notwithstanding that such pages shall contain no binding).
(e) Alterations prohibited. Alteration by writing, erasure, rubber stamps, or otherwise shall not be made in tariff publications.
(f) Tables to be ruled or spaced. When fares, rates, charges, and numbers or letters (used for rate bases or similar purposes) are shown in tables, such tables shall be systematically arranged, and ruled or spaced to prevent misapplication. When not more than three figures (digits) or letters, including reference marks, are employed to express each rate, fare, charge, rate base, etc., the column shall be not less than one-fourth of an inch in width with a proportionately greater width when more than three figures or letters, including reference marks, are so employed. Tables shall not contain more than six horizontal lines of printed matter without a horizontal break in the printed matter (either by a ruled line or by at least one blank space across the table) where it is necessary for the tariff user to refer to corresponding provisions on the same line in parallel columns.
(g) Items and similar units to be in numerical order. All items in a tariff publication shall be arranged in numerical or alphabetical order (with the lowest appearing first and the highest appearing last in the tariff). Each item shall bear a separate item designation and the same designation shall not be assigned to more than one item in the tariff. A gap between item designations may be allowed for the addition of future items, for example, the items in an original tariff may be numbered Items Nos. 5, 10, 15, etc. The requirements of this paragraph are also applicable to units similar to items (see §221.38(b) for designating rules).
(h) Item, rule, or similar unit continued to next page. Where an item, rule, or similar unit is commenced on one page and is continued on the following page, the notation ``(continued on next page)'' shall be shown at the bottom of the portion of the item, rule, or unit on the page from which it is continued, and the following page to which it is continued shall show the designation of the item, rule, or similar unit followed by ``(continued)''.
(i) Tariff shall apply to persons or property (not both). Rates and charges applicable to the transportation of property or provisions governing such rates or charges shall not be published in the same tariff with fares or charges applicable to the transportation of persons or provisions governing such fares or charges, except:
(1) [Reserved]
(2) A tariff applicable to passengers may include provisions applicable to passengers' baggage.

(3) A tariff applicable to property may include provisions applicable to persons accompanying shipments, provided that the carrier holds authority to transport such persons.

(j) Carrier's name. Wherever the name of a carrier appears in a tariff publication, such name shall be shown in full exactly as it appears in the carrier's certificate of public convenience and necessity, foreign air carrier permit, letter of registration, or whatever other form of operating authority of the Board to engage in air transportation is held by the carrier, or such other name which has specifically been authorized by order of the Board. Except as provided in §221.35(d), a carrier's name may be abbreviated, provided the abbreviation is explained in the tariff.

(k) Agent's name and title. Wherever the name of an agent appears in tariff publications, such name shall be shown in full exactly as it appears in the powers of attorney given to such agent by the participating carriers and the title "Agent" or "Alternate Agent" (as the case may be) shall be shown immediately in connection with the name.

(Secs. 102, 204, 403, and 416 of the Federal Aviation Act of 1958, as amended by Pub. L. 95-504, 72 Stat. 743, 758, and 771, 92 Stat. 1731, 1732 (49 U.S.C. 1302, 1324, 1373, and 1386))

[ER-439, 30 FR 9439, July 29, 1965, as amended by ER-1125, 44 FR 33059, June 8, 1979]

§ 221.22 Specifications applicable only to loose-leaf tariff publications.

(a) No binding. Pages of a loose-leaf tariff shall not be bound, but may be secured by a single staple or similar removable device when submitted to the Board for filing.

(b) Information required on all interior pages. Each original page and revised page following the title page of a loose-leaf tariff shall contain the following information in the location specified:

(1) In the upper left corner, the name of the issuing carrier or the name and title of the issuing agent.

(2) In the upper left corner, immediately below the name of the issuing carrier or agent, the title of the tariff.

(3) In the upper right corner, the C.A.B. number of the tariff.

(4) Immediately below the C.A.B. number, the original page number or the revised page number, as the case may be, and, if a revised page, the cancellation of preceding issues of that page (see paragraph (c) of this section and §221.111).

(5) In the lower left corner, the issued date of the page.

(6) In the lower right corner, the effective date on which the fares, rates, charges, rules, and other provisions will become effective (see §221.160). When a page which is published back-to-back with another page on the same leaf is reissued without change in its provisions, the same general effective date shall be shown on both pages: Provided, however, That the general effective date on the page which reissues matter without change shall allow at least the statutory notice (see §221.160) and shall not be earlier than the general effective date of the prior issue of such page.

(7) Centered at the bottom of the page, the name, title and address of:

(i) The issuing officer (if tariff is issued by a carrier).

(ii) The issuing agent (if tariff is issued by an individual agent).

(iii) The official or employee of a corporate agent designated by such agent to issue and file tariff publications in the corporate agent's name (if tariff is issued by a corporate agent).

The information required by paragraph (b)(7) of this section may be omitted from interior loose-leaf pages provided that, whenever there is a change in such required information, a revision of the title page is issued and filed immediately to reflect the current name, title and address. When such information is omitted from interior pages, each letter of tariff transmittal tendering revised or original interior pages for filing shall bear the name, address and title of the issuing officer, individual agent, or corporate agent's designee shown on the latest issue of the title page at the time of filing; if a letter of tariff transmittal bears a different name, title or address from that on the latest issue of the title page, the pages submitted with such letter of
§ 221.23 Specifications applicable only to book tariffs and supplements.

(a) Binding. The pages of a book tariff or supplement shall be bound together in book form at the left binding edge of the tariff or supplement. The binding shall be by two or more staples, wire or other permanent book binding.

(b) Numbering pages. The title page of a book tariff or supplement shall bear no page number. The pages following the title page of each book tariff or supplement shall be consecutively numbered as 1, 2, 3, 4, etc. (to be shown at the bottom of the page) and shall be consecutively numbered in only one series of page numbers throughout the entire tariff or supplement.

(c) Information which is not to be shown on interior pages. The pages following the title page of a book tariff or supplement shall not contain any of the information specified in §221.22(b) except that, if desired, the name of the issuing carrier or agent, the number of the supplement, and the title of the tariff may be shown at the top of each interior page.

§ 221.24 Statement of filing with foreign government to be shown in air carriers' tariff publications.

(a) Every tariff publication issued by or on behalf of an air carrier which contains rates, fares, rules, or other tariff provisions which by treaty, convention, or agreement entered into between any foreign country and the United States are required to be filed with that foreign country, shall include a statement substantially as follows:

The rates, fares, charges, classifications, rules, regulations, practices, and services provided herein have been filed in each country in which filing is required by treaty, convention, or agreement entered into between that country and the United States, in accordance with the provisions of the applicable treaty, convention, or agreement.

(b) The foregoing statement may be included upon each tariff publication by a symbol which is properly explained.

(c) The required statement may be omitted from a tariff publication which has been filed with the foreign country pursuant to its tariff regulations and which bears a tariff filing designation of the foreign country in addition to the C.A.B. number appearing on the tariff required by this part.

Subpart D—Contents of Tariff

§ 221.30 Arrangement and nature of contents.

(a) Except as otherwise provided in this part, tariffs shall contain only the contents prescribed by §§ 221.31 to 221.41, inclusive, which shall be arranged in each tariff in the following order:

(1) Title page (§221.31).
Office of the Secretary, DOT

§ 221.31 Title page.

(a) Contents. Except as otherwise required in this part, or by other regulatory agencies, the title page of every tariff shall contain the following information to be shown in the order named in paragraphs (a) (1) through (12) of this section and shall contain no other matter:

(1) C.A.B. number. In the upper right-hand corner of the title page, the C.A.B. number of the tariff shall be shown in not less than 12-point bold face type. Except as provided in §221.224(d), tariffs shall bear consecutive C.A.B. numbers in the series of the issuing carrier or the issuing agent. Each carrier and each agent shall issue and file tariffs consecutively in its own individual series of C.A.B. numbers, commencing with C.A.B. No. 1, and shall use only one series of C.A.B. numbers for all of the tariffs which it issues. Passenger tariffs and property tariffs shall be consecutively numbered in the same series of C.A.B. numbers and a separate series shall not be used for each type of tariff. C.A.B. numbers shall not bear prefixes or suffixes.

(2) Tariff cancellation. In the upper right-hand corner of the title page, immediately below the C.A.B. number, the cancellation of tariffs to be superseded shall be shown in the manner prescribed by §221.113.

(3) Issuing carrier or agent. The name of the issuing carrier or the name and title of the issuing agent shall be shown in the upper central portion of the title page.

(4) Title of tariff. The title of the tariff, including the issuing carrier’s or issuing agent’s tariff serial number, if any, shall be shown in the upper central portion of the title page, below the name of the issuing carrier or agent. The title should be descriptive of the type of tariff, for example, Mileage Guide No. 1.

(5) Description of rates, fares, or other contents of tariff. In the central portion of the title page, below the title of the tariff, there shall be shown a statement indicating the kinds or types of rates or fares contained in the tariff or, if the tariff is a governing tariff such as a rules tariff, classification, or mileage guide, a brief description of the tariff’s contents shall be shown. Such statement in a fare or rate tariff shall specify:

(i) Whether the tariff contains local fares or rates, joint fares or rates, or local and joint fares or rates.

(ii) If a fare tariff, that the tariff applies on passengers.

(iii) If a rate tariff, the type(s) of rates contained therein such as class, specific commodity, or general commodity rates, or any combination thereof.

(iv) If a fare tariff, the type(s) of fares contained therein, such as normal first class, coach, excursion, or other types of fares, or any combination thereof.

(6) Description of territory. The title page shall contain a brief but reasonably comprehensive description of the territory within which the rates or fares in the tariff apply. The territory shall be described by the names of cities, states, countries, or other definite geographical designations.

(7) Reference to governing tariffs. If a tariff is governed by other tariffs as authorized in this part, such as rules tariffs, mileage guides, and classifications, the title page shall show reference to such governing tariffs (by title, C.A.B. number, and issuing carrier or agent thereof in substantially the following form:

This tariff is governed, except as otherwise provided herein, by ____ (show tariff title), C.A.B. No. ____. issued by ____ (show name of issuing carrier or agent), by ____ (show tariff title), C.A.B. No. ____, issued by ____ (show name of issuing carrier or agent).
carrier or agent), and by supplements to and successive issues of said publications. If preferred, reference to governing tariffs may be omitted from the title page and published in the first rule of the tariff, provided that the title page refers to such rule in the following manner:

For reference to governing tariffs, see rule No. ____ as amended.

(8) Reference to Special Tariff Permissions, orders, and regulations. Where an entire tariff is issued pursuant to a Special Tariff Permission order, or regulation which requires the tariff to bear a notation referring to such Special Tariff Permission order or regulation, such notation shall be shown in the manner required thereby. If only certain tariff provisions, and not the entire tariff, are issued pursuant to permission, order, or regulation, reference to the permission, order, or regulation shall be shown in connection with such tariff provisions and not on the title page.

(9) Expiration date. If the entire tariff is to expire with a given date, such expiration date shall be shown in distinctive type on the title page in the following manner:

This tariff expires with _______ (show date in full) unless sooner canceled, changed, or extended.

If, however, only a portion of the tariff is to expire with a given date, the expiration date shall not be shown on the title page but shall be shown in connection with the particular item, rule, or other provision which is to expire.

(10) Issued date. The date on which the tariff is issued shall be shown in the lower left-hand portion of the title page in the following manner:

Issued: _______ 19____.

(Tariffs must be received by the Board on or before the designated issued date. (See §221.160(d) and §221.171 of this part.)

(11) Effective date. The date on which the fares, rates, charges, rules and other provisions in the tariff will become effective shall be shown in the lower right-hand portion of the title page (directly opposite the issued date) in the following manner:

Effective: ________________, 19____.

(Show month, date, and year in full, using no abbreviations.)

See §221.160 for required notice.

(12) Issuing officer, agent or designee. The name, title and address of the following person shall be shown centered at the bottom of the title page:

(i) The issuing officer (if tariff is issued by a carrier),

(ii) The issuing agent (if tariff is issued by an individual agent),

(iii) The official or employee of a corporate agent designated by such agent to issue and file tariff publications in the corporate agent's name (if tariff is issued by a corporate agent).

With respect to loose-leaf tariffs, the title page shall be revised immediately, upon lawful notice, to reflect the current name, title and address of the above person whenever there is a change in such information. The title of an issuing officer of a carrier or the official or employee designated by a corporate agent to issue and file tariff publications shall not include the terms “Agent” or “Alternate Agent.” (See §§221.10 and 221.11 stating who may issue tariffs.)

(b) Specimen title page. See §221.248 containing a specimen title page which is shown only for the purpose of illustrating the arrangement of the contents of a title page.

(Secs. 204, 403, 1002; 72 Stat. 743, 758, 788 (49 U.S.C. 1324, 1373, 1482, as amended))

[ER-439, 30 FR 9439, July 29, 1965, as amended by ER-1104, 44 FR 9577, Feb. 13, 1979]

§221.32 Correction number check sheet (loose-leaf tariff).

Original Page 1 (page following the title page) of each loose-leaf tariff shall contain a check sheet of correction numbers (see §221.111(c)). Original Page 1 shall contain no other contents of the tariff unless the tariff contains less than 30 pages. Such check sheet shall consist of the following explanatory provision followed by columns of consecutive correction numbers arranged in numerical order, commencing with No. 1, which shall be shown in the following manner:

CORRECTION NUMBER CHECK SHEET

Each time revised or additional original pages are received, check marks should be
made on this check sheet opposite the correction numbers corresponding to those appearing in the lower right-hand corner of the revised or additional original pages. If pages are received not bearing consecutive correction numbers, the issuing carrier or agent should be requested to furnish the page bearing the correction number for which a page has not been received.

**CORRECTION NUMBERS**

1  2  3  4  5  6  7  8  9  10  11  12  13  14  15  16  17  18  19  20  21  22  23  24  25  26  27  28  29  30  31  32  33  34  35  36  37  38  39  40

When all correction numbers on a check sheet have been used and additional corrections are to be issued, the check sheet should be revised to continue the series of correction numbers. The correction numbers on a revised check sheet shall commence with the correction number following the last number on the preceding check sheet.

§ 221.33 Table of contents.

The table of contents shall contain a full and complete statement of the exact locations where information in the tariff will be found. Such statement shall show all subjects in alphabetical order and shall show the page number and the number of the item, rule, or unit where each subject will be found. The general headings of the various parts of the tariff, the subjects of individual rules and regulations, and terms descriptive of the application of the sections or tables of fares, rates or charges shall be included in the subjects of the tables of contents. If preferred, a separate index of the rules and regulations may be published immediately following the table of contents, provided the latter makes reference to such index. If a tariff or supplement contains so small a volume of matter that its title page or its interior arrangement plainly discloses its contents, the table of contents may be omitted.

§ 221.34 List of participating carriers.

(a) One list of carriers arranged alphabetically. Except as provided in paragraph (e) of this section and in §221.151, the names of all carriers which participate in a tariff shall be shown in alphabetical order in one list with the power of attorney or concurrence number of each carrier shown opposite its name. If a participating carrier is an individual or partnership doing business under a trade name, the trade name should be shown in its alphabetical sequence in the list of participating carriers followed by the name of the individual or partners in the following manner:

Doe Airlines (John Doe and Earl Doe, doing business as).

(b) Agent’s tariff. Except as provided in paragraph (e) of this section and §221.151, the list of participating carriers in an agent’s tariff shall be published in the following manner:

**LIST OF PARTICIPATING CARRIERS**

This tariff is issued and filed with the Civil Aeronautics Board by /emlowln/emlowln/emlowln/emlowln/ (show name and title of agent) for and on behalf of the following participating carriers under authority of their powers of attorney filed with the Civil Aeronautics Board:

<table>
<thead>
<tr>
<th>Participating carrier</th>
<th>Power of attorney No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Doe Airlines</td>
<td>1234</td>
</tr>
</tbody>
</table>

(c) Carrier’s tariff. Except as provided in paragraph (e) of this section, the list of participating carriers in a tariff issued by a carrier shall be published in the following manner:

**LIST OF PARTICIPATING CARRIERS**

This tariff is issued and filed with the Civil Aeronautics Board by /emlowln/emlowln/emlowln/emlowln/ (show name of issuing carrier) for and on behalf of itself and the following participating carriers under authority of their concurrences filed with the Civil Aeronautics Board:

<table>
<thead>
<tr>
<th>Participating carrier</th>
<th>Concurrence No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Doe Airlines</td>
<td>5678</td>
</tr>
</tbody>
</table>

(d) Restrictions upon participation. Restrictions upon the extent to which a carrier participates in the tariff shall not be shown in the list of participating carriers (as amended) but shall be shown elsewhere in the tariff as authorized by this part.

(e) When powers of attorney or concurrence numbers may be omitted. Powers of
attorney numbers and concurrence numbers need not be shown in the tariff as required above by the publishing carrier or agent, provided:

(1) That with the filing of each tariff, a separate alphabetical list of all participating carriers be transmitted to the Board, which list shall include opposite the name of each carrier the current power of attorney or concurrence number under which the carrier participates in the tariff; and

(2) That when revisions of the tariff propose the addition or elimination of any carrier in the tariff, such tariff revision shall be accompanied by a revised alphabetical list showing all participating carriers and specifically indicating additions and cancellations, and such list shall also be filed when there is any change in a power of attorney or concurrence such as a cancellation, revocation, reissue.

§ 221.35 Explanations of abbreviations, reference marks, and symbols.

(a) Explanation required. Abbreviations, reference marks, and symbols which are used in the tariff shall be explained either on the same page on which they are used or their explanations shall be shown preceding the indexes of commodities and points. Each page on which abbreviations, reference marks or symbols are used but not explained thereon shall refer to the page containing their explanations substantially in the following manner (at the bottom of the page):

For explanations of abbreviations, reference marks, and symbols used but not explained hereon, see page ___ (as amended).

(b) Uniform symbols. The following symbols shall be used only in the manner specified in §221.114 and the following explanations of such symbols shall be used in all tariff publications.

(R) or — denotes reductions.

(A) or ♦—denotes increases.

(C) or ▲—denotes changes which result in neither increases nor reductions.

(K) or — denotes no change.

(N) or ■—addition.

Either the set of lettered symbols above or the set of solid black symbols to their right, but not both, shall be used.

(c) Restrictions on use of certain symbols. The symbols £ and $ shall be used only to indicate currencies and shall clearly define the type of currency for which used. The symbol % shall be used only to mean percent.

(d) Prohibited abbreviations, symbols, or reference marks. The following shall be shown in full and shall not be designated by symbols, abbreviations, or reference marks:

(1) Name of an agent.

(2) Name of a carrier (except in the rules or regulations and in the routings and indexes of points).

(3) Name of a city or town (except in routings).

(4) Name of a month when used in issued, effective or expiration dates.

§ 221.36 Index of commodities (property tariff).

(a) Complete index. Except as provided in paragraph (d) of this section, each property tariff shall contain a complete, alphabetical index of all commodities or articles for which ratings or specific commodity rates are provided in the tariff. Opposite each commodity or article in the index, reference shall be shown to the number of each item (or similar unit, such as group) in which such commodity or article is shown.

(b) Alphabetical arrangement. Commodities shall be arranged in the index in alphabetical order according to their nouns, for example, “wrapping paper” shall be shown and indexed as “paper, wrapping”. If the noun is not sufficiently explicit, the commodity should also be indexed under the adjective as well as under the noun. All of the entries for the same noun should be grouped together and indexed alphabetically first according to the noun and then according to the adjective appearing after the noun, for example, various kinds of paper would be indexed under “paper” in the following manner:

<table>
<thead>
<tr>
<th>Commodity</th>
<th>Item No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Paper, gummed</td>
<td>120</td>
</tr>
<tr>
<td>Paper, printing</td>
<td>210</td>
</tr>
<tr>
<td>Paper, waxed</td>
<td>130</td>
</tr>
<tr>
<td>Paper, wrapping</td>
<td>240</td>
</tr>
</tbody>
</table>

(c) Indexing commodity lists. When a tariff contains specific commodity rates applicable to a list of specific commodities or articles grouped under
§ 221.37 Index of points.

(a) Alphabetical index required. Each tariff shall contain an alphabetical index of all points of origin named in the tariff and a separate alphabetical index of all points of destination named in the tariff, except that the points of origin and destination may be included in one alphabetical index when all or substantially all of the rates or fares in the tariff apply in both directions between their respective points. The state, territory, possession, or District of Columbia in which each United States point is located shall be shown in connection with each such point. If the tariff applies to or from foreign countries, the respective country shall also be shown in connection with each and every point in the index except that:

(1) Only the name of the state, possession, territory or the District of Columbia is required to be shown in connection with each point in the United States.

(2) Only the name of the province is required to be shown in connection with each point in Canada.

(3) Only the name of the possession or territory is required to be shown in connection with each foreign point which is situated within a possession or territory of a mother country, for example, Antigua, British West Indies; however, if such point is coextensive with the territory or possession in which it lies, such as Hong Kong, it shall be identified by nationality in the following manner: Hong Kong (British).

Opposite each point, reference shall be made to the number of each item (or similar unit) in which the respective point appears. If the point is not published in a numbered item (or similar unit), reference shall be made to the page on which the point appears. If the tariff contains rates or fares for account of more than one carrier, each point in the index shall show the carrier or carriers serving the respective point.

(b) When index may be omitted. The index of points may be omitted provided that all points of origin and destination are arranged in alphabetical order throughout the tariff or, if the fares or rates are published in two or more distinct sections or tables, throughout each section or table. Such alphabetical arrangement shall be explained as required by paragraph (c) of this section. In addition, when fares or...
§ 221.38 Rules and regulations.

(a) Contents. Except as otherwise provided in this part, the rules and regulations of each tariff shall contain:

(1) Such explanatory statements regarding the fares, rates, rules or other provisions contained in the tariff as may be necessary to remove all doubt as to their application.

(b) Explanation required when index omitted. When the index of points is omitted as provided in paragraph (b) of this section, a comprehensive explanation of the alphabetical arrangement of points must be shown in the place where the index of points would have been published. The following are some examples of such explanations which may be modified to explain the particular alphabetical arrangement employed in the tariff:

INDEX OF POINTS OF ORIGIN AND DESTINATION

Points of origin are arranged alphabetically as headline points throughout the tariff. Points of destination are arranged alphabetically as sideline points under each origin point. (See §221.37(b)(1).)

or

Points in the United States are arranged alphabetically as headline points throughout the tariff. Points in Canada are arranged alphabetically as sideline points under each headline point. (See §221.37(b)(3).)

or

Points of origin and destination are arranged alphabetically throughout the tariff (or each section or table of fares (or rates)). (See §221.37(b)(4).)

or

Points of origin and destination are arranged alphabetically throughout the tariff (or each section or table of fares (or rates)) first by States or provinces, thence by points of origin and destination grouped under their respective States or provinces. (See §221.37(b)(4).)

(d) When reference to items (or similar units) or pages may be omitted from index. If an index is published in a tariff containing rates or fares for account of two or more carriers, the index of points shall show the carrier or carriers serving each point but may omit reference to each item (or similar unit) or page where each point appears, provided that the tariff conforms with §221.37(b) and that the explanation of the alphabetical arrangement of points is shown in the heading of the index on each page thereof in the manner set forth in paragraph (c) of this section.
(2) All of the terms, conditions, or other provisions which affect the rates, fares, or charges for air transportation named in the tariff.

(3) All the rates or charges for, and the provision governing, terminal services, and all other services which the carrier undertakes or holds out to perform on, for, or in connection with air transportation, except that, in the case of pick-up and delivery services, the tariff need only specify the extent to which the air transportation rates named in the tariff include such services; and, where pick-up and delivery services are provided only at an additional charge, such additional charges shall not be included in the tariffs.

(4) All other provisions and charges which in any way increase or decrease the amount to be paid on any shipment or by any passenger, or which in any way increase or decrease the value of the services rendered to the shipper or passenger.

(5) [Reserved]

(6) For individually ticketed passenger service, the name of each type of aircraft used in rendering such service by manufacturer model designation and a description of the seating configuration (or configurations if there are variations) of each type of aircraft. Where fares are provided for different classes or types of passenger service (that is, first class, coach, day coach, night coach, tourist, economy or whatever other class or type of service is provided under the tariff), the tariff shall specify the type of aircraft and the seating configuration used on such aircraft for each class or type of passenger service. When two or more classes or types of passenger service are performed in a single aircraft, the seating configuration for each type or class shall be stated. The description of the seating configuration of each type of service on each aircraft shall include the following:

(i) The number of seats abreast.
(ii) The maximum and minimum distances in inches from the forward edge of a seat to the forward edge of the seat directly in front thereof (pitch).
(iii) The number of lounge seats.
(iv) The number of lounge seats or other seats withheld from sale and available for passengers' temporary use during flight. If some or all lounge seats are available for sale under certain conditions, such fact and conditions shall be explicitly stated.

(7) Denied boarding compensation. For carriers subject to part 250, denied boarding compensation as specified in part 250.

(8) For certificated air carriers, the rules and regulations relating to the transportation of persons who may need assistance to evacuate the aircraft during an emergency. All such provisions shall be in conformity with part 121 of the Federal Aviation Regulations (14 CFR part 121), as amended or revised from time to time: Provided, That no provision of the Board's regulations issued under this part or elsewhere shall be construed to permit the filing of any tariff rules limiting or conditioning a carrier's obligation to provide transportation and services in connection therewith upon reasonable request therefor to a person who may require assistance of another person in expeditiously moving to an emergency exit of the aircraft in the event of an evacuation, except as provided for in said part 121.

(b) Rule numbers. Each rule or regulation shall be given a separate designation. The same designation shall not be assigned to more than one rule in the tariff. The rules and regulations shall be shown in the tariff in numerical or alphabetical order. A gap between rule numbers may be allowed for the addition of future rules, for example, the rules in an original tariff may be numbered Rules Nos. 5, 10, 15, etc. When a rule contains more than one paragraph, the paragraphs and subparagraphs shall be consecutively lettered or numbered.

(c) Single subject and caption. Each numbered rule shall be confined to a single subject and shall bear a caption descriptive of the subject matter therein. Such caption shall be shown in distinctive type.

(d) Rules of limited application. A rule affecting only a particular rate, fare, or other provisions in the tariff shall be specifically referred to in connection with such rate, fare, or other provision, and such rule shall indicate that it is applicable only in connection with such rate, fare or other provision.
§ 221.38  14 CFR Ch. II (1–1–99 Edition)

Such rule shall not be published in a separate governing rules tariff.

(e) Clear, explicit, and definite statements required. All rules and regulations shall be stated in clear, explicit, and definite terms. Ambiguous or indefinite terms or language shall not be used. Where the rules and regulations contain any rates or charges or other amounts affecting the charges to be paid on any shipment or by any passenger, such rates, charges, or amounts shall be stated in United States dollars or cents to be applied to a definite unit of weight, measurement, time, currency, or other definite measure. Where transportation fares or rates are published in foreign currency under authority of §221.51(b), any charges or other amounts set forth in rules or regulations may be stated in such foreign currency in addition to the required statement in United States currency, provided that such charges or other amounts in foreign currency are substantially equivalent in value to the respective charges or other amounts stated in United States currency. Where the carrier holds out to perform terminal or other services in connection with air transportation, the rule covering such services shall describe the exact service, state the rates or charges which the carrier will make for such service, and set forth in definite terms the conditions under which the carrier will perform such service. Where a rule provides a charge in the nature of a penalty, the rule shall state the exact conditions under which such charge will be imposed. Rules and regulations shall not contain indefinite statements to the effect that traffic of any nature will be "taken only by special arrangements", or that services will be performed or penalties imposed "at carrier's option", or that the carrier "reserves the right" to act or to refrain from acting in a specified manner, or other provisions of like import; instead, the rules shall state definitely what the carrier will or will not do under the exact conditions stated in the rules.

(f) Conflicting or duplicating rules prohibited. The publication of rules or regulations which duplicate or conflict with other rules or regulations published in the same or any other tariff for account of the same carrier or carriers and applicable to or in connection with the same transportation is hereby prohibited.

(g) Separate rules tariff. If desired, the rules and regulations required by this section may be published in separate governing tariffs to the extent authorized and in the manner required by §§221.100 through 221.104, and 221.107.

(h) Personal liability rules. No provision of the Board's regulations issued under this part or elsewhere shall be construed to require on and after March 2, 1954, the filing of any tariff rules stating any limitation on, or condition relating to, the carrier's liability for personal injury or death. No subsequent regulation issued by the Board shall be construed to supersede or modify this rule of construction except to the extent that such regulation shall do so in express terms.

(i) Carriers' extension of credit—passenger tariffs, property tariffs. Air carriers and foreign air carriers shall not file tariffs that set forth charges, rules, regulations, or practices relating to the extension of credit for payment of charges applicable to the air transportation of persons or property.

(j) Notice of limitation of liability for death or injury under the Warsaw Convention. Notwithstanding the provisions of paragraph (h) of this section, each air carrier and foreign air carrier shall publish in its tariffs a provision stating whether it avails itself of the limitation on liability to passengers as provided in Article 22(1) of the Warsaw Convention or whether it has elected to agree to a higher limit of liability by a tariff provision. Unless the carrier elects to assume unlimited liability, its tariffs shall contain a statement as to the applicability and effect of the Warsaw Convention, including the amount of the liability limit in dollars. Where applicable, a statement advising passengers of the amount of any higher limit of liability assumed by the carrier shall be added.

(k) Individual carrier provisions governing joint rates or fares. Provisions governing joint rates or fares. Provisions governing joint rates or fares may be published for account of an individual carrier participating in such joint rates or fares provided that the tariff clearly indicates how such individual carrier's...
provisions apply to the through transportation over the applicable joint routes comprised of such carrier and other carriers who either do not maintain such provisions or who maintain different provisions on the same subject matter.

(l) Passenger tariffs; property which cannot lawfully be carried in the aircraft cabin. Each air carrier shall set forth in its tariffs governing the transportation of persons, including passengers' baggage, charges, rules, and regulations providing that such air carrier receiving as baggage any property of a person traveling in air transportation, which property cannot lawfully be carried by such person in the aircraft cabin by reason of any Federal law or regulation, shall assume liability to such person, at a reasonable charge and subject to reasonable terms and conditions, within the amount declared to the air carrier by such person, for the full actual loss or damage to such property caused by such air carrier.


§ 221.39 Classification ratings or exceptions to governing classification ratings.

(a) Classification ratings. Each tariff containing class rates shall list all articles or commodities accepted for transportation together with their applicable ratings in the following manner:

(1) The articles or commodities on which the ratings apply shall be described and listed in an orderly manner, and opposite each article or commodity there shall be shown the class rating applicable to the respective article or commodity.

(2) The articles or commodities shall be listed alphabetically in one sequence throughout the section of class ratings to the greatest extent that is practicable. A group of articles or commodities may be published under a generic commodity heading: Provided, That the generic heading appears in its proper alphabetical sequence in the section of class ratings and that the articles or commodities in such group are listed alphabetically and indented under such generic heading.

(3) The class ratings assigned to the articles or commodities shall be numbered classes corresponding identically to the numbered classes for which class rates are provided. (See §221.3(c) describing rates on numbered classes.)

(4) Each commodity description and its applicable class rating shall be published in a separate, numbered item. The items shall be shown in numerical order in sequence with other item numbers as may be used in the tariff.

(5) An item shall not state that the rating on any article or commodity will be that applying on another article or commodity, for example, an item shall not provide that “paper wrappers” will take “wrapping paper” ratings. (If “paper wrappers” are to take the same rating as “wrapping paper”, such rating shall be shown in the item listing “paper wrappers”.)

(6) The publication of class ratings which duplicate or conflict with other class ratings is hereby prohibited. Also, class ratings shall not take precedence over other class ratings (except as provided in paragraph (c) of this section).

(7) The following format is suggested for the publication of classification ratings in the tariff containing the class rates, but may be adjusted to conform with the format or context of a particular tariff:

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Article or commodity</th>
<th>Class</th>
</tr>
</thead>
</table>

(b) Classification ratings in governing tariff. The classification of articles required by paragraph (a) of this section may be omitted from the rate tariff provided that it is published in its entirety in a separate classification tariff.
in accordance with §§221.100, 221.101, and 221.105.

(c) Exceptions to governing classification ratings. When the classification ratings are published in a separate classification tariff as provided under paragraph (b) of this section and it is found necessary to publish ratings which are exceptions to such classification ratings without canceling the classification ratings, this part of the class rates tariff shall contain the ratings which are exceptions to the ratings in the governing classification tariff. Such exception ratings shall be published in compliance with the following requirements:

(1) The exceptions ratings shall comply with paragraph (a)(1) through (7) of this section, except that the heading reading “Classification Ratings” in paragraph (a)(7) of this section shall be changed to read substantially “Exceptions to Ratings in Governing Classification.”

(2) Exceptions ratings shall be exceptions, in fact, to ratings in the governing classification and shall not be published to cover commodities for which no ratings are provided in the governing classification.

(3) Exceptions ratings restricted to apply from and to or between a small number of points shall not be published to avoid the publication of specific commodity rates from and to or between such points.

(4) The descriptions of the commodities on which the exceptions ratings apply shall conform as closely as possible to the commodity descriptions in the governing classification tariff.

§ 221.40 Statement of fares or rates for air transportation.

The statement of fares for the air transportation of persons shall be prepared in accordance with the provisions of subpart E. The statement of rates for the air transportation of property shall be prepared in accordance with the provisions of subparts E and F.

§ 221.41 Routing.

(a) Required routing. The route or routes over which each fare or rate applies shall be stated in the tariff in such manner that the following information can be definitely ascertained from the tariff:

(1) The carrier or carriers performing the transportation,

(2) The point or points of interchange between carriers if the route is a joint route (via two or more carriers),

(3) The intermediate points served on the carrier’s or carriers’ routes applicable between the origin and destination of the rate or fare and the order in which such intermediate points are served. (This information, however, is not required in those property tariffs which are not subject to rules or other provisions for stopping in transit or to any other provisions which require determining what intermediate points are served via the tariff routing between the origin point and destination point of a rate; nor is it required in passenger tariffs of carriers whose operations are other than over defined routes stated in certificates or permits issued by the Board; nor in charter tariffs.) On an experimental basis, for the purposes of complying with this paragraph, tariffs may include for each carrier a separate map of the carrier’s routes, showing intermediate points in the order served.

(b) Individually stated routings—(1) Method of publication. Except as otherwise authorized in paragraphs (c) and (d) of this section, the routing required by paragraph (a) of this section shall be shown directly in connection with each fare, rate or charge for transportation, or in a routing portion of the tariff (following the rate or fare portion of the tariff), or in a governing routing tariff. When shown in the routing portion of the tariff or in a governing routing tariff, the fare or rate from each point of origin to each point of destination shall bear a routing number and the corresponding routing numbers with their respective explanations of the applicable routings shall be arranged in numerical order in the routing portion of the tariff or in the governing routing tariff.

(2) Class of passenger service and aircraft type specified in routing. Where a passenger fare applies via one class of service (or type of aircraft) over a portion of the routing applicable from origin to destination and via a different...
Office of the Secretary, DOT § 221.41  

class or classes of service (or a different type or types of aircraft) over the remainder of the routing, provisions as to the classes of services (or types of aircraft) provided over the respective segments of the routing may be included in the applicable routing published in accordance with paragraph (b)(1) of this section. When routings containing such provisions are published in a separate routing section of the tariff or in a governing routing tariff, the headings of the pages containing fares subject to such routings shall indicate that provisions as to class of service or type of aircraft are set forth in the routing.

(c) Diagrammatic routings. For property rates between United States points, on the one hand, and points in foreign countries or United States Territories or Possessions, on the other hand, the routing information required by paragraphs (a)(1) and (2) of this section may be shown in the form of routing diagrams. A routing diagram consists of a series of connected columns or rectangular figures, each naming or designating a group of points, with carrier routing designated between each pair of consecutive, connected groups, and an explanation of how to use the diagram in determining applicable routings. An illustration of an acceptable form of routing diagram is set forth in Illustration No. 1 at the end of this paragraph. Publication of routing diagrams shall conform to the following requirements:

(1) Each routing diagram shall bear a routing number. Only connected groups shall be included in one diagram.

(2) Routing diagrams shall be published in numerical order, by routing number, in the routing portion of the tariff following the rate portion or in a governing routing tariff.

(3) The pages containing the rates shall refer, by routing number, to the applicable routing diagrams. Where all rates in a tariff, table or section are subject to one routing diagram, such reference may be shown in the heading of each rate page thereof. Otherwise, reference to the applicable routing diagrams shall be shown directly in connection with the respective rates from each origin to each destination.

(4) An explanation of the application and use of each routing diagram shall be published in connection therewith in sufficient detail to enable the applicable routings to be definitely determined.

(5) Groups of points of origin, destination and interchange shall be designated in the diagram by definite geographic terms.

(6) The carriers performing the transportation between each pair of consecutive, connected groups of points in the diagram shall be specifically designated in the routing diagram except that where space limitations make this impractical, such carrier routing may be published in the following manner:

(i) Except as otherwise authorized in paragraph (a)(6)(ii) of this section, the routing between two consecutive, connected groups in the diagram may be shown by referring to a routing chart conforming to the following requirements. Routing charts shall be in tabular form showing the specific points in one group as headline points and the specific points in the other group as sideline points. Headline points shall be arranged alphabetically and the sideline points shall be arranged alphabetically under the respective headline points. Carrier routing between each headline point and each sideline point shall be shown in the intersecting space in the tabular chart. An illustration of such routing chart (using abbreviations to designate carriers) is set forth in Illustration No. 2 at the end of this paragraph.

(ii) Carrier routing between two consecutive, connected groups consisting exclusively of foreign points may be shown either by a routing chart authorized under paragraph (a)(6)(i) of this section or in the following manner. The routing diagram may provide that carrier routing between such groups of foreign points shall be via any single-carrier service and shall refer to the tariff's alphabetical index or list of points of origin and destination to determine the carriers serving the respective points in each group. The latter method of publication may be used only where the tariff contains an alphabetical index or list of points of origin and destination showing the carriers serving the respective points,
§ 221.50  Clear and explicit statement; systematic arrangement.

All fares, rates, and charges shall be clearly and explicitly stated and shall be arranged in a simple and systematic manner. Complicated plans and ambiguous or indefinite terms shall not be used. So far as practicable, the fares, rates, and charges shall be subdivided into items or similar units, and an identifying number shall be assigned to each item or unit to facilitate reference thereto.

§ 221.51  Currency.

(a) Statement in United States currency required. All fares, rates, and charges shall be stated in cents or dollars of the United States except as provided in paragraph (b) of this section.

(b) Statements in both United States and foreign currencies permitted. Rates, fares, and charges applying between points in the United States, on the one hand, and points in foreign countries, on the other hand, or applying between points in foreign countries, may also be stated in the currencies of foreign countries in addition to being stated in United States currency as required by paragraph (a) of this section: Provided, That:

(1) The fares, rates, and charges stated in currencies of countries other than the United States are substantially equivalent in value to the respective fares, rates, and charges stated in cents or dollars of the United States.

(2) Each page containing fares, rates, and charges shall clearly indicate the respective currencies in which the fares, rates, and charges thereon are stated, and

(3) The fares, rates, and charges stated in cents or dollars of the United States are published separately from those stated in currencies of other countries. Such separate publication shall be done in a systematic manner and the fares, rates, and charges in the respective currencies shall be published either in separate columns on the same page, or on separate pages, or in separate sections or tables of the tariff.
§ 221.53 Airport-to-airport application, accessorical services.

(a) Tariff publications containing rates or fares for air transportation shall specify whether or not they include additional services in one or more of the following ways:

(1) The tariff shall indicate that rates or fares include pick-up, delivery, or other services, explicitly defining the services to be furnished, and defining areas or points within or between which the services will be performed; or

(2) The tariffs shall indicate that the rates or fares apply from airport-to-airport and that the carrier does not perform additional services; or

(3) The tariff shall indicate that the rates or fares apply only from airport-to-airport but that additional services are furnished subject to additional charges, and, except for pick-up and delivery services, the tariff shall set forth charges for all other services and other provisions applicable thereto, as required by §221.38, clearly and explicitly specifying the extent to which such services will be furnished.

(b) The above requirements shall not be construed as precluding the publication of rates or fares for air transportation which include pick-up or delivery service at certain specified points or areas within the pick-up and delivery zone of the airport city of origin or destination but subject to a further provision that pick-up or delivery service will be provided at other specified areas or points within the same pick-up and delivery zone only upon payment of an additional charge.

(c) The airport-to-airport application of rates or fares for air transportation and the statements as to the extent to which such rates or fares include pick-up, delivery or other accessorical services shall be published in the rate or fare tariff and not in a governing tariff. However, the definitions of such services, the definitions of areas or points within or between which such services will be performed, and the rates or
§§ 221.54—221.55

charges for such services (when not included in the air transportation rates or fares) may be published in a governing rules tariff conforming to §221.102, except that additional charges for pick-up and delivery services shall not be included in the tariffs.

[ER-1229, 46 FR 32551, June 24, 1981]

§§ 221.54—221.55 [Reserved]

§ 221.56 Rates may include transfer at interchange points.

A rate applying locally over the lines of one carrier or jointly over the lines of two or more carriers shall include transfer service at interchange points unless the tariff otherwise provides. In the case the transfer service is not included, the tariff containing such rates shall state that such transfer service is not included or is provided at a specified additional charge.

§ 221.57 Proportional fares or rates.

(a) Definite application. Proportional fares or rates shall be specifically designated as “proportional” fares or rates on each page where they appear. Subject to paragraph (b) of this section, proportional fares or rates shall be specifically restricted to apply:

(1) Only on traffic which:

(i) Originates at a point of origin beyond the point from which the proportional fare or rate applies, or

(ii) Is destined to a point of destination beyond the point to which the proportional fare or rate applies, or

(iii) Both originates at a beyond point specified in paragraph (a)(1)(i) of this section and is destined to a beyond point specified in paragraph (a)(1)(ii) of this section.

(2) Only when the passenger is transported on a through ticket or the shipment is transported on a through air waybill or other form of transportation contract or document covering the through transportation from and/or to such beyond points, or, with respect to foreign air transportation, when such through ticket or through air waybill, or other form of through transportation contract or document cannot be issued, the tariff shall provide that the proportional fare or rate may be used only upon presentation by the passenger or shipper of clear and convincing evidence that the passenger or shipment has been or will be transported from and/or to such beyond points.

(b) Restrictions upon beyond points or connecting carriers. If a proportional fare or rate is intended for use only on traffic originating at and/or destined to particular beyond points or is to apply only in connection with particular connecting carriers, such application shall be clearly and explicitly stated directly in connection with such proportional fare or rate.

§ 221.58 Arbitraries.

(a) A tariff may provide that rates or fares from (or to) particular points shall be determined by the addition of arbitraries to, or the deduction of arbitraries from, rates or fares therein which apply from (or to) a base point. An arbitrary is a specific amount in dollars or cents published specifically for application in the above manner. Provisions for the addition or deduction of such arbitraries shall be shown either directly in connection with the fare or rate applying to or from the base point or in a separate provision which shall specifically name the base point. The tariff shall clearly and definitely state the manner in which such arbitraries shall be applied. In the case of arbitraries applicable to the transportation of property, the arbitraries shall be published in the same units of currency and rate as those in which the base rates are stated, and shall be stated to apply on the same minimum quantities (or quantity groups) as those on which the base rates apply.

(b) The tariff shall state definitely whether the arbitraries are to be added to, or deducted from, the fares or rates applying from (or to) the base points (for example, it may provide in effect that the arbitraries shall be added to the fares or rates applying from (or to) the base points except that those arbitraries bearing a particular reference mark, such as a minus sign (−), shall be deducted from such base fares or rates). In some circumstances, it may be necessary to publish a zero amount “0” in the table of arbitraries; in this event, the tariff shall state definitely that the fare or rate applying from (or to) the base point shall also...
§ 221.59 Fares or rates stated in percentages of other fares or rates; other relationships prohibited.

(a) Fares or rates for air transportation of persons or property shall not be stated in the form of percentages, multiples, fractions, or other relationships to other fares or rates except to the extent authorized in paragraphs (b), (c), (d), and (e) of this section with respect to passenger fares and baggage charges and in subpart F with respect to property rates.

(b) A basis of fares for refund purposes may be stated, by rule, in the form of percentages of other fares.

(c) Transportation rates for the weight of passengers' baggage in excess of the baggage allowance under the applicable fares may be stated, by rule, as percentages of fares, provided reference is made to a conversion table complying with paragraph (e) of this section for the purpose of determining the amounts of such rates in dollars or cents represented by the published percentages of the fares.

(d) Children's fares, round-trip fares, or other types of fares may be stated, by rule, as percentages of other fares published specifically in dollars and cents (hereinafter referred to as base fares): Provided, That:

(1) Fares stated as percentages of base fares shall apply from and to the same points, via the same routes, and for the same class of service and same type of aircraft to which the applicable base fares apply, and shall apply to all such base fares in a fares tariff or designated section or table of a fares tariff except that:

(i) If the base fares are published for account of two or more participating carriers, such percentage fares may be restricted to apply for account of only certain participating carriers. If such carriers participate in joint base fares, the extent to which such restricted percentage fares apply to the joint base fares shall be clearly indicated.

(ii) If the base fares are named between points in the continental United States and points outside thereof, such percentage fares may be restricted territorially to apply between, within, or from and to any of the following areas (but not portions of a single area): Alaska. Hawaii. Continental United States. United States of America. One or more Territories or Possessions of the United States. One or more foreign countries. A definite geographic area larger than a country.

The term "continental United States," as used in this paragraph, means all of the 48 contiguous States and the District of Columbia.

(2) Fares shall not be stated as percentages of base fares for the purpose of establishing fares applying from and to points, or via routes, or on types of aircraft, or for classes of service different from the points, routes, types of aircraft, or classes of service to which the base fares are applicable.

(3) Fares stated as percentages of base fares shall refer to a conversion table complying with paragraph (e) of this section for the purpose of determining the amounts of such fares in dollars and cents represented by the published percentages of the base fares.

(e)(1) A conversion table shall be published in the fares section of the tariff containing the base fares or, if that tariff is governed by a rules tariff, the table may be published after the last rule therein. The conversion table shall contain in the first column, in numerical order ranging from the lowest to the highest amounts, the amounts of all the base fares on which the percentages are to be applied. Each of the other columns shall be captioned with a percentage corresponding to a percentage in which a fare is stated. In each of the percentage-captioned columns and directly opposite each base fare, the amount in dollars or cents represented by the stated percentage of the respective base fare shall be shown. Such columns shall be arranged in numerical order (according to percentage). A clear and definite explanation of how to use the conversion table shall be shown in connection therewith.

(2) Instead of showing in the first column all base fares from the lowest to the highest, the table may contain in the first column $0.05 and all multiples...
thereof to and including $1.00 and all multiples of $1.00 to and including $100.00 with a plainly stated rule for using, in combination, amounts ascertained in the percentage columns for the separate portions of the base fare. The rule shall provide, for example, that if the base fare is $7.65, the percentages for $7.00 and $0.65 are to be ascertained separately and combined.

§ 221.60 Conflicting or duplicating rates or fares prohibited.

The publication of rates or fares of a carrier which duplicate or conflict with the rates or fares of the same carrier published in the same or any other tariff for application over the same route or routes is hereby prohibited.

§ 221.61 Provisions for alternative use of or precedence of rates or fares prohibited.

Except as specifically authorized otherwise in this part, a tariff containing rates or fares shall not contain nor be made subject to any tariff provisions to the effect that rates or fares in such tariff take precedence over or apply alternatively with other rates or fares in the same or any other tariff, or that the rates or fares in any other tariff take precedence over or alternate with the rates or fares in such tariff.

§ 221.62 [Reserved]

§ 221.63 Applicable rate when no through local or joint fares or rates.

(a) Lowest combination fare or rate applicable. Where no applicable local or joint fare or rate is provided from point of origin to point of destination over the route of movement, whichever combination of applicable fares or rates provided over the route of movement produces the lowest charge shall be applicable, except that a tariff may state that a fare or rate cannot be used in any combination or in a combination on particular traffic or under specified conditions, provided another combination is available.

(b) Date governing combination fares or rates. A combination fare or rate for through transportation shall be treated as a unit (single-factor fare or rate) from point of origin to final destination. The combination fare or rate applied shall be the combination of the intermediate fares or rates in effect on the date on which the passenger begins his transportation or shipment was received by the carrier and all of the rules and other tariff provisions applicable to each intermediate fare or rate in effect on such date shall be observed and cannot be varied as to that passenger or shipment during the period of transportation to final destination; except that in foreign or overseas air transportation, carriers may, by appropriate tariff rules, provide for application of combination fares in effect on date of sale of ticket for transportation commencing not later than 30 days after the effective date of an increase in any intermediate fares when such transportation is sold prior to the issue date of tariffs stating increased fares, and provided that each factor of the combination is subject to like tariff provisions.

Subpart F—Requirements Applicable Only to Statements of Property Rates

§ 221.70 Definite unit of rate.

(a) All rates for the air transportation of property shall be clearly and explicitly stated in cents or dollars per pound, per 100 pounds, per kilogram, per ton of 2,000 pounds, per ton of 2,240 pounds, per United States gallon, or other definite unit of weight, measurement or value except that:

(1) [Reserved]

(2) Rates stated to apply on specific types of animals may be stated in cents or dollars per animal.

(b) When rates are stated in units of cubical measurement, such as per cubic foot, the tariff containing such rates, or its governing rules tariff, shall explicitly state how the cubical measurement of the articles shipped (including irregular shaped articles) is to be determined.

(c) Rates shall not be stated to apply per package or other shipping unit unless definite specifications as to size, weight, or capacity of the package or other shipping unit is specified in the tariff. This rule does not prohibit the publication of charges or rates other
than by units for accessorial services performed by the carrier.

(Secs. 102, 204, 403, and 416 of the Federal Aviation Act of 1958, as amended by Pub. L. 95-504, 72 Stat. 740, 743, 758, and 771, 92 Stat. 1731, 1732; 49 U.S.C. 1302, 1324, 1373, and 1386)

[ER-439, 30 FR 9439, July 29, 1965, as amended by ER-1125, 44 FR 33059, June 8, 1979]

§ 221.71 Quantities on which rates apply.

(a) Quantities shall be specified. When rates for the air transportation of property are to apply only on particular quantities, such quantities shall be specified in the tariff in connection with the rates or, in the case of class rates, they may be stated in connection with the class ratings. Such quantities shall be stated in the same unit of weight or measurement as the rate; for example, rates stated in cents per pound shall be subject to minimum weights in pounds, rates stated in cents per kilogram shall be subject to minimum weights in kilograms. The published quantities to which rates are subject may be stated as minimum quantities (for example, minimum weight ___ pounds), or they may be stated in the form of quantity groups (for example, weight groups of "under 100 pounds", "100 pounds and over but less than 3,000 pounds", "3,000 pounds and over but less than 10,000 pounds", and "10,000 pounds and over"). These particular weights are shown for purposes of illustration only. This provision does not prohibit the publication of specific minimum charges in lieu of or in addition to minimum quantities.

(b) Different rates subject to different quantities. Different rates on the same commodities from and to the same points subject to different minimum quantities or quantity groups may be published provided the following requirements are complied with:

1. A lower rate shall be provided on a greater minimum quantity or quantity group.

2. A tariff containing such rates or its governing rules tariff shall contain a rule to the effect that when two or more rates subject to different minimum quantities are provided on the same commodity in the same shipping form from and to the same points over the same route, the lower of the two charges specified under paragraph (b)

(2) (i) and (ii) of this section shall be applied:

(i) The charge computed on the quantity shipped at the rate applicable to such quantity, or

(ii) The charge computed on the next greater quantity, for which a lower rate is provided at the rate applicable to such greater quantity.

(3) All such rates of the same type (class, specific commodity, or general commodity) applying on the same commodities from the same point of origin to the same point of destination via the same route shall be published together continuously on one page or two or more successive pages or in one item, except as otherwise authorized in paragraph (c) of this section. This does not waive the requirements of §221.75(b) as to publishing specific commodity rates in numbered items.

(c) Volume rate conversion table. Rates meeting the requirements of paragraph (b) of this section may be published in the following manner. Where a rate table names rates subject to a definite minimum weight, for example, "minimum weight 100 pounds," lower rates for greater minimum weights may be published in a separate conversion table substantially in the following form:

<table>
<thead>
<tr>
<th>TABLE OF VOLUME RATES (IN DOLLARS PER 100 POUNDS)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Where the rate of subject to minimum weight 100 pounds is</td>
</tr>
<tr>
<td>The rate for the following minimum weights will be as specified in the respective columns below (minimum weight in pounds):</td>
</tr>
<tr>
<td>1,000</td>
</tr>
<tr>
<td>4.00</td>
</tr>
</tbody>
</table>

The particular minimum weights shown in the above form are for illustrative purposes only. Such conversion table shall be published immediately following each table or section naming the applicable base rates or, where a single conversion table applies to two or more tables or sections of base rates, such conversion table may be published immediately following the last table or section of rates in the tariff. Each conversion table shall provide
§ 221.72 Types of property rates (class, general commodity, or specific commodity) which may be published.

(a) Types permitted. Except as otherwise authorized in this part, only the following types of rates shall be published to apply on the air transportation of property:

(1) Class rates (see §221.73).

(2) General commodity rates (see §221.74).

(3) Specific commodity rates (see §221.75).

(b) Order of publication in same tariff. If both general commodity rates and specific commodity rates are published in the same tariff, the general commodity rates shall be published in tables or sections preceding the specific commodity rates. If both class rates and specific commodity rates are published in the same tariff, the class rates shall be published in tables or sections preceding the specific commodity rates.

§ 221.73 Class rates.

(a) Captions. Class rates shall be published under the caption “Class Rates” to be shown on each page containing such rates.

(b) Governing classification and exceptions thereto. A tariff of class rates shall contain a classification which shall assign a class rating to each specific article or commodity as required by §221.39(a) or shall be governed by a separate tariff containing such class ratings (see §221.106). Also, the class rates may be made subject to exceptions to the ratings in the governing tariff as provided in §221.39(c).

(c) Rates may be published on specified classes; percentage relationship. (1) Class rates may be published for specified classes which shall correspond identically to the classes assigned to the various articles or commodities by the classification or exceptions thereto and on which such rates are applicable.

(2) The classes shall be specified, for example:

Method 1. The classes shall be consecutively numbered as “Class 1,” “Class 2,” “Class 3,” “Class 4,” etc., ranging from the class taking the highest rates to the class taking the lowest rates, respectively. All rates published for each class lower or higher than Class 1 shall bear the same percentage relationship to the respective Class 1 rates, for example, each Class 2 rate may equal 85 percent of the respective Class 1 rate, each Class 3 rate may equal 70 percent of the respective Class 1 rate.

Method 2. The classes shall be consecutively numbered as “Class 1,” “Class 2,” “Class 3,” “Class 4,” etc., ranging from the class taking the highest rates to the class taking the lowest rates, respectively. All rates published for each class lower or higher than Class 1 shall bear the same percentage relationship to the respective Class 1 rates, for example, each Class 2 rate may equal 85 percent of the respective Class 1 rate, each Class 3 rate may equal 70 percent of the respective Class 1 rate.

§ 221.74 General commodity rates and exception ratings thereto.

(a) General commodity rates. General commodity rates shall be published under the caption “General Commodity Rates.” Such caption shall be shown on each page containing such rates. Each tariff which contains general commodity rates shall contain a rule captioned “Application of General Commodity Rates” which shall provide that the general commodity rates apply on all commodities except those which will not be accepted for transportation under the terms of the tariff or of governing tariffs. Each rule shall be published in the tariff containing the general commodity rates and not in a governing tariff. If it is desired to
establish a rate on a particular commodity different from the general commodity rate, an exception rating to the general commodity rate (see paragraph (b) of this section) or a specific commodity rate (see § 221.75) shall be published on such commodity.

(b) Exception ratings to general commodity rates. Exception ratings to general commodity rates may be stated as percentages of general commodity rates applying from and to the same points over the same route or routes provided the following requirements are complied with:

(1) Such exception ratings shall be published under the caption “Exception Ratings to General Commodity Rates (stated as percentages of the General Commodity Rates)”. Such caption shall be shown on each page containing the exception ratings.

(2) Such exception ratings shall be published in numbered items in the same tariff naming the general commodity rates to which they are exceptions, and shall follow the general commodity rates and precede specific commodity rates (if published therein) in the order of the tariff’s contents.

(3) Such exception ratings shall be published to apply only on specific articles or commodities which shall be named directly in connection with the applicable exception ratings.

(4) Each exception rating shall be stated as a single percentage of the general commodity rates for all quantities on which the general commodity rates apply. However, where the general commodity rates vary according to the different quantities on which they apply, exception ratings may be stated as percentages of one or more of such general commodity rates provided the quantities to which the exception ratings apply are specifically stated.

(5) Such exception ratings shall not be published unless they are to apply from and to or between all of the points for which general commodity rates are provided in the tariff or in a designated table or section of the tariff except:

(i) If the tariff names general commodity rates for account of two or more carriers, such exception ratings may be restricted to apply for account of only certain carriers. If the tariff names joint general commodity rates in which such carriers participate, the tariff shall clearly indicate the extent to which such restricted exception ratings apply in connection with the joint general commodity rates.

(ii) If the tariff names general commodity rates between points in the continental United States and points outside thereof, such exception ratings may be restricted territorially to apply between, within, or from and to any of the following areas (but not portions of a single area):

Areas

- Alaska.
- Hawaii.
- Continental United States.
- United States of America.
- One or more Territories of Possessions of the United States.
- One or more foreign countries.
- A definite geographic area larger than a country.

The term “continental United States,” as used in this paragraph (b)(5)(ii), means all of the 48 contiguous States and the District of Columbia.

(6) Such exception ratings shall refer to a conversion table in the same tariff complying with paragraph (b)(7) of this section for the purpose of determining the rates in cents or dollars represented by the exception rating percentages of the general commodity rates.

(7) A conversion table shall be published immediately following such exception ratings. The conversion table shall contain in the first column, in numerical order ranging from the lowest to the highest amounts, the amounts of all of the base general commodity rates on which the percentages are to be applied. Each of the following columns shall be captioned with a percentage corresponding to a percentage in which an exception rating is stated. In each of the latter columns and directly opposite each base rate, the amount in cents or dollars represented by the stated percentage of the respective base rate shall be shown. Such columns shall be arranged in numerical order (according to percentages). A clear and definite explanation of how to use the conversion table shall be shown in connection therewith. Instead of showing in the first column all base
§ 221.75 Specific commodity rates.

(a) Applicable on specific articles or commodities named in tariff. Specific commodity rates shall be published to apply only on specific articles or commodities which shall be specifically named in the tariff. Generic commodity descriptions shall not be used except to the extent permitted in paragraph (c) in this section. The commodity descriptions shall be set forth directly in connection with the respective rates to which they apply, except as otherwise provided in this section. Specific commodity rates shall apply only on the specific articles or commodities on which they are indicated by the tariff to apply and shall not apply on analogous articles or commodities. As far as possible, uniform commodity descriptions shall be use in all tariffs.

(b) Page caption and numbered items. Specific commodity rates shall be published under the caption “Specific Commodity Rates” to be shown on each page containing such rates. Specific commodity rates shall be published in numbered items except as otherwise provided in paragraph (d) in this section. Two or more commodities taking different specific commodity rates from and to the same points shall not be published in the same item. When an item containing specific commodity rates is continued to a successive page or pages, either the commodity description shall be repeated on each such successive page or the commodity description may be omitted from each such successive page provided such page refers to the commodity description in the following manner:

For commodity description of this item, see page ___.

(c) When generic commodity descriptions may be used. A generic commodity description may be used in connection with a specific commodity rate to designate a number of specific commodities or articles embraced within such generic description, without naming such specific commodities or articles in connection with the rate: Provided, That the following requirements are complied with:

(1) The generic commodity description shown in connection with the rate shall refer to a numbered item (other than a rate item) in the same tariff which contains a list of the specific commodities or articles embraced within such generic commodity description and on which the rate will apply. The generic commodity description shall be shown in connection with the rate exactly as it appears in the heading of the item to which reference is made. Such generic commodity description and reference to the description item in the same tariff shall be shown in connection with the rate substantially in the following manner:

Abrasives, as described in Item No. __ (as amended).

(2) The item to which such reference is made in accordance with paragraph (c)(1) of this section shall show:

(i) The same generic commodity description as a heading and the list of specific articles or commodities on which the rate is to apply, arranged in alphabetical order under such generic heading. For example, if the rate is indicated to apply on “Abrasives, as described in Item No. __ (as amended), the item to which such reference is made shall contain the following heading: “Abrasives, namely:’’ and the specific abrasives on which the rate is to apply shall be named in alphabetical order and indented under such heading, for example:

Abrasives, namely:
Abrasive cloth or paper, including emery or sandpaper.
Alundum, corundum, emery or other natural or synthetic abrasive material.
Wheels, pulp grinding.
or,
(ii) The same generic commodity description as a heading followed by an
explicit explanation of the application of the generic description.

(a) Exception ratings to general commodity rates versus general commodity rates. When both general commodity rates and exception ratings to general commodity rates (stated as percentages of the general commodity rates) are published to apply from and to the same points via the same routes, the tariffs containing such rates and exception ratings (or their governing rules tariffs) shall contain a rule reading as follows:

A specific commodity rate removes the application of the general commodity rate and the exception rating to the general commodity rate on the same quantity of the same article or commodity (in the same package or shipping form) from and to the same points over the same route.

(b) Specific commodity rates versus general commodity rates and exceptions to general commodity rates. When specific commodity rates, general commodity rates and exception ratings to general commodity rates (stated as percentages of the general commodity rates) are published to apply from and to the same points via the same routes, the tariffs containing such rates and exception ratings (or their governing rules tariffs) shall contain a rule reading as follows:

A specific commodity rate removes the application of the general commodity rate and the exception rating to the general commodity rate on the same quantity of the same article or commodity (in the same package or shipping form) from and to the same points over the same route.

If no exception ratings to general commodity rates are published, the phrase “and the exception rating to the general commodity rate” shall be omitted from the above rule.

(c) Specific commodity rates versus class rates. When both specific commodity rates and class rates are published to apply from and to the same points via the same routes, the tariffs containing such rates (or their governing rules or classification tariffs) shall contain a rule reading as follows:

A specific commodity rate removes the application of the class rate on the same quantity of the same article or commodity (in the same package or shipping form) from and to the same points over the same route.
§ 221.77 Prescribed rules in forwarder tariffs. When the rules prescribed in this section are published in tariffs of Air Freight Forwarders or International Air Freight Forwarders, the phrase “over the same route” shown in the prescribed rules shall be omitted from the rules published in such tariffs.

§ 221.77 Straight or mixed shipments.

(a) Rates will apply on straight or mixed shipments unless restricted. When a rate is subject to a commodity description which names two or more commodities, such rate shall apply on a straight shipment (consisting wholly of only one of the commodities) or on a mixed shipment (containing two or more of the commodities), unless the commodity description specifies that the rate applies on the commodities in straight shipments only or on the commodities in mixed shipments only. If a rate is restricted to apply only on mixed shipments, the restriction shall specify whether two or more or all of the commodities named in the applicable description must be included in a single shipment.

(b) Mixed shipment rule. Each rate tariff (or its governing rules or classification tariff) shall contain a rule stating how the rates and charges are to be applied to a single mixed shipment of two or more commodities for which the same or different rates or charges are separately published. The rule shall state which minimum quantity is applicable to the entire mixed shipment where different minimum quantities are provided on the commodities in a mixed shipment and, if different rates are made applicable to the commodities in such mixed shipment, the rule shall state which rate is applicable to any deficit quantity (the difference between the quantity shipped and the applicable minimum quantity when the latter is greater).

§ 221.80 Rate scale method of publishing rates.

(a) When to be used. In lieu of publishing the points of origin and destination directly in connection with the rates as required by §221.52(a), the rate scale method of publication may be employed in the manner authorized by either paragraph (b) or (c) of this section. The rate scale method will normally reduce the volume of publication where a rate tariff names numerous points of origin and destination for class rates, general commodity rates or rates on one specific commodity (or one group of specific commodities taking the same rates) and the same rate or rates apply in many instances between different points of origin and destination. Where such conditions do not exist, the rate scale method shall not be used and the points of origin and destination shall be shown directly in connection with the rates as required by §221.52(a) which results in a more simplified tariff format. When the rate scale method authorized by this section is employed, the volume rate conversion table method of publication under §221.71(c) shall not be used.

(b) Rate scale method without zone numbers. The rate scale method without zone numbers consists of publishing two tables, namely, a table of rate scale numbers showing the rate scale number applicable between each point of origin and each point of destination and referring to a table of rates to determine the applicable rates for the respective rate scale numbers, and a table of rates listing such rate scale numbers (in numerical order) and showing the applicable rates for each rate scale number. Such tables shall conform to the following requirements:

(1) Table of rate scale numbers. The table of rate scale numbers shall be published immediately preceding the table of rates. The points of origin and destination shall be arranged in alphabetical order, conforming with §221.37(b) (1) through (4), in the table of rate scale numbers which shall show the rate scale number applying from each point of origin to each point of destination (or applying between such points). All such pairs of points taking the same rates shall be assigned the same rate scale number. The heading on each page of the table shall refer to the table of rates substantially in the following manner: “To determine rates for the applicable rate scale number, refer to Section ____.”

(2) Table of rates. The rate scale numbers shall be arranged in the table of rates in numerical order (from lowest to highest) and the rates for each rate
scale number shall be shown directly in connection with the respective rate scale number. The rates shall conform to all requirements of this part. The heading on each page of the table shall refer to the table of rate scale numbers substantially in the following manner: “To determine the applicable rate scale number, refer to Section ___.”

(c) Rate scale method with zone numbers. The rate scale method with zone numbers may be used where, in addition to the rate situations mentioned in paragraph (a) of this section, the points of origin and destination fall into zones with all points in each zone taking the same rates (common rated points). It shall not be used where such common rated points are not extensive, or where the method of publishing common rated points authorized by §221.52(b) is used. The rate scale method with zone numbers consists of three parts, namely, an alphabetical index or list of origin and destination points showing the rate zone number assigned to each point, a table of rate scale numbers showing the rate scale number applicable between each pair of zone numbers (arranged in numerical order in headline and sideline format), and a table of rates which lists the rate scale numbers (in numerical order) showing the applicable rates for each rate scale number. Such tables shall conform to the following requirements:

(1) Alphabetical index or list of points showing zone numbers. A zone number shall be assigned to each and every point of origin or destination. Points taking the same rates shall be assigned the same zone number. Such zone numbers shall be published in a column captioned “Zone Number” in the index of points or, if the tariff contains no index of points, in an alphabetical list of origin and destination points placed immediately preceding the table of rate scale numbers. If such list or index of points is published in a tariff containing rates for account of two or more carriers, such list or index shall also show the carrier or carriers serving each respective point. The heading of each page of such index or list of points shall refer to the table of rate scale numbers substantially in the following manner: “To determine applicable rate scale numbers, refer to Section ___.”

(2) Table of rate scale numbers. The table of rate scale numbers shall be published immediately preceding the table of rates. The zone numbers assigned to the points of origin and destination shall be arranged in numerical order in headline and sideline format in the table of rate scale numbers which shall show the rate scale number applying between each headline zone number and each sideline zone number (or from each headline zone number to each sideline zone number, or in the reverse direction). All such pairs of zone numbers taking the same rates shall be assigned the same rate scale number. The heading on each page of the table shall refer to the index or list of points substantially in the following manner: “To determine the zone numbers of the points of origin and destination, refer to Section ___,” and shall also refer to the table of rates substantially in the following manner: “To determine rates for the applicable rate scale number, refer to Section ___.”

(3) Table of rates. The table of rates shall conform to the requirements of paragraph (b)(2) of this section.

(d) Routing. When the rate scale method of publication makes it impossible to show comprehensibly the required routing provisions directly in connection with the rates in accordance with §221.41, such routing provisions shall be shown directly in connection with each respective rate scale number in the table of rate scale numbers. If the routing provisions cannot be indicated comprehensibly under the above methods, the rate scale method of publication shall not be used.

Subpart G—Governing Tariffs

§221.100 When reference to governing tariffs permitted.

(a) Reference to other tariffs, etc., prohibited except as authorized. A tariff shall not refer to nor provide that it is governed by any other tariff, document, or publication, or any part thereof, except as specifically authorized by this part.

(b) Reference by rate or fare tariff to governing tariffs. A fare tariff or a rate
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A rate tariff or a fare tariff may refer to a separate governing tariff authorized by this subpart only when all carriers participating in such rate tariff or fare tariff are also shown as participating carriers in the governing tariff: Provided, That:

(1) If such reference to a separate governing tariff does not apply for account of all participating carriers and is restricted to apply only in connection with local or joint rates or fares applying over routes consisting of only particular carriers, only the carriers for whom such reference is published are required to be shown as participating carriers in the governing tariff to which such qualified reference is made.

(2) Maximum number of governing tariffs. A single fare tariff or a single rate tariff shall not make reference to conflicting governing tariffs.

[ER–1062, 43 FR 34443, Aug. 4, 1978]

§ 221.102 Rules tariff.

Carriers may publish all the rules and regulations as required by §221.38, in separate governing tariffs, conforming to §§221.100 and 221.101, instead of being included in the rate tariffs or fare tariffs.

[ER–1062, 43 FR 34443, Aug. 4, 1978]

§ 221.103 [Reserved]

§ 221.104 Explosives and other dangerous or restricted articles.

Carriers may publish rules and regulations governing the transportation of explosives and other dangerous or restricted articles in separate governing tariffs, conforming to §§221.100 and 221.101, instead of being included in the fares or rate tariffs or in the governing rules tariff authorized by §221.102. This separate governing tariff shall contain no other rules or governing provisions.

[ER–1062, 43 FR 34443, Aug. 4, 1978]

§ 221.105 Classification tariff.

(a) Requirements. When the classification ratings required by §221.39(a) are published in a separate classification tariff pursuant to §221.39(b), such separate classification tariff shall conform with §§221.100 and 221.101 and the requirements in this section.

(b) Index of commodities. Each classification tariff shall contain an index of commodities conforming with §221.36.

(c) Rules or regulations. Each classification tariff shall contain such rules or regulations as may be necessary to make the application of the classification ratings clear and definite. If the classification tariff is published for account of more than one carrier, any exceptions to such rules or regulations for account of a particular carrier shall
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be published in the tariff containing the class rates of that carrier.
(d) Classification ratings. All articles or commodities accepted for transportation shall be listed together with their applicable class ratings in the manner described in §221.39 (a) (1) through (6). Any exceptions to the classification ratings shall be published in the tariffs containing the class rates governed by such classification tariff (see §221.39(c)).

§ 221.106 [Reserved]

§ 221.107 Aircraft equipment tariff.
If desired, the seating configuration data required by §221.38(a)(6) may be published in a separate governing aircraft equipment tariff conforming to §§221.100 and 221.101 in lieu of publishing such data in the fare tariff or in the governing rules tariff authorized by §221.102. Such aircraft equipment tariff may also include other definite data concerning the respective configurations, capacities or other physical characteristics of the various types of aircraft to the extent that such data are pertinent to the application of fares or charges in tariffs governed thereby. The seating configuration and other aircraft equipment data shall be arranged in a simple and systematic manner.

§ 221.108 Other types of governing tariffs.
Carriers may publish other types of governing tariffs not specified in this subpart, such as routing guides.

Subpart H—Amendment of Tariffs

§ 221.110 Methods of amending tariffs.
(a) Loose-leaf tariffs. Amendment of a loose-leaf tariff shall be made only by (1) issuing revised pages or additional original pages to such tariff as provided in §221.111, or (2) reissuing the tariff, that is, issuing a new tariff canceling completely the tariff to be amended.
(b) Book tariffs. Amendment of a book tariff shall be made only by (1) issuing supplements to such tariff as provided in §221.112, or (2) reissuing the tariff, that is, issuing a new tariff canceling completely the tariff to be amended.
(c) Who may amend. A tariff shall be amended only by the carrier or agent who issued the tariff (except as otherwise authorized in subparts S and T).
(d) Amendment symbols. All amendments of rates, fares, rules, and other tariff provisions accomplished by tariffs, supplements, revised pages, or original pages shall be indicated by the use of uniform amendment symbols in the manner prescribed by §221.114.
(e) Amendments involving suspension. All amendments involving tariff provisions suspended by the Board or continued in effect by such suspension are also subject to the requirements of subparts I, J, and K.

§ 221.111 Amending loose-leaf tariff by revised pages and additional original pages.
(a) Amendment by revised pages—(1) Method. The amendment of any page of a loose-leaf tariff shall be made by reissuing the particular page upon which the change, addition or cancellation is to be made. Reissuing a page means to cancel it by a new page which shall be designated as a revised page in the manner shown in paragraphs (a) (2) and (3) of this section and shall contain the same tariff provisions except for whatever additions, changes, or cancellations are to be made in such provisions. Where provisions are to be amended on only one of two pages published back-to-back on the same leaf, both pages shall be reissued on lawful notice, and the page containing no changes shall bear the notation “NO CHANGE OF THIS PAGE” at its top.
Reissuance of pages containing suspended matter or matter continued in effect by suspension shall comply with §221.122 (a) or (b), whichever is applicable.
(2) Revised page numbers. Each revised page shall bear the same page number as the page which it amends and shall bear a consecutive revision number. A revised page which amends an original page shall be designated “1st Revised Page ___” and revisions of the same page subsequent to the 1st revision
shall bear consecutive revisions numbers: “2nd Revised Page ___”, “3rd Revised Page ___”, “4th Revised Page ___”, etc.

(3) Page cancellation. Each revised page shall direct the cancellation of the original or revised page which it amends and such cancellation shall be shown in the following manner (using page 10 as an example):

1st Revised Page 10 cancels Original Page 10

or, when 1st Revised Page 10 is to be amended, it shall be canceled by 2nd Revised Page 10 in the following manner:

2nd Revised Page 10 cancels 1st Revised Page 10

In the case of revised title pages, the designation of the revised title page and the page cancellation shall be shown as “1st Revised Title Page cancels Original Title Page”, “2nd Revised Title Page cancels 1st Revised Title Page”, etc., in the above manner.

(4) Revised title page shall show effective date of original tariff. Each revised title page shall bear (immediately below its own effective date) the effective date of the original tariff which is to be shown in the following manner:

(Original tariff effective ________) (show date).

(5) Revised title page shall bring forward tariff cancellation. Each revised title page shall bring forward without change any tariff cancellation or reference to a cancellation notice that is shown below the tariff’s C.A.B. number on the original title page.

(b) Adding original pages for expanded or added matter. If, after a loose-leaf tariff has been issued, it becomes necessary to add pages thereto to provide for expanded or added tariff matter, such added page shall comply with the following requirements:

1. A page added between pages shall be designated as an original page (not a revised page) and shall be given the same page number as the page which it follows but a letter suffix (in alphabetical sequence) shall be shown in such page number, for example:

   (i) In a tariff where matter is printed on only one face of each leaf, a page added between pages 4 and 5 shall be designated as “Original Page 4-A”; a page added between pages 4-A and 5 shall be designated “Original Page 4-B”; and so on.

   (ii) In a tariff where matter is printed on both faces of each leaf, two consecutive pages printed back-to-back on the same leaf to be added between pages 30 and 31 shall be designated “Original Page 30-A” and “Original Page 30-B”, respectively; two consecutive pages printed back-to-back on the same leaf to be added between pages 30-B and 31 shall be designated “Original Page 30-C” and “Original Page 30-D”, respectively; and so on.

2. When a page is added at the end of the tariff after the last page, the added page shall be designated as an original page and shall bear the next consecutive page number following the number of the last page of the tariff. For example, if the last page of the tariff is page 99, the added page shall be designated Original Page 100.

3. A page shall not be added between two pages both bearing page numbers with letter suffixes.

4. A page shall not be added between two pages printed back-to-back on the same leaf. For example, if a tariff contains pages 31 and 32 published back-to-back, pages designated as Original Pages 31-A and 31-B shall not be added to such tariff.

5. Where pages are added to a tariff in which matter is printed on both faces of each leaf, original pages shall be issued simultaneously on both faces of each added leaf. If the added or expanded matter requires the space of only one page on the added leaf, the body of the page on the reverse side thereof shall bear the notation “This page intentionally left blank.”

(c) Correction numbers. Each revised page and each original page (added to the tariff after issuance of the tariff) shall bear a consecutive correction number in the lower right-hand corner of the page. One series of consecutive correction numbers shall be used for each loose-leaf tariff. The first revised page or added original page issued to
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the tariff shall be “Correction No. 1” and subsequent revised or original pages issued to that tariff shall bear consecutive Corrections Nos. 2, 3, 4, etc. (see § 221.32).

(d) Transferring matter from page to page. When a revised page of a loose-leaf tariff is issued which omits rates, fares, rules, or other provisions formerly published on the page which it cancels and such omitted matter is transferred to a different page, such revised page shall make specific reference to the respective page on which such omitted matter will thereafter be found, for example:

For (here identify the omitted matter) formerly published on ___ Revised Page ___ Revised Page ___

The page to which such omitted matter is transferred shall refer, substantially in the following manner, to the respective page on which such matter was formerly published:

For (here identify the transferred matter) in effect prior to the effective date hereof, see ___ Revised Page ___ (or, Original Page ___).

The cancellation of the matter from the former page shall be made effective simultaneously with the effective date of such matter on the page to which it is transferred. Subsequent revisions of the respective pages accomplishing such transfer shall omit the references required above with respect to such transferred matter.

(e) Cancellation of omitted matter. If a rate, fare, rule or other tariff provision on a page is to be canceled entirely and is not to be transferred to another page of the same tariff, the revised page which effects such amendment shall specifically show the cancellation of such provisions and identify the provisions to be canceled. For example, if a rule is canceled, the number and caption of the rule shall be brought forward on the new page but the body of the rule shall be omitted and, in lieu thereof, a statement that the rule is canceled shall be shown; or, if a fare is to be canceled, the points of origin and destination shall be brought forward on the new page but the fare shall be omitted and, in lieu thereof, a statement that the fare is canceled shall be shown. Alternatively, such cancellation (but not transfer of matter to another page) may be accomplished by omitting the matter to be canceled, provided that a footnote at the bottom of the revised page specifically identifies the matter to be canceled and directs its cancellation. All of the foregoing cancellation shall be omitted from subsequent revisions of the revised page which effected the cancellation.

(f) Matter reissued before it becomes effective. When rates, fares, rules, or other provisions which have not become effective are reissued and brought forward on a page which bears a general effective date earlier than the effective date of such rates, fares, rules, or other provisions, such page shall conform with the following:

(1) Such rates, fares, rules, or other provisions shall bear their original effective date, shall be designated as reissued matter, and shall indicate the page from which they are reissued. Such information shall be shown, either directly in connection with the reissued matter or by the use of a reference mark (explained on the same page), in the following manner:

Effective __ __ __. Released from __ __ __. Re-\nvised Page __ __ __

(2) The general effective date of the page shall be qualified by a notation reading “(Except as noted)” to be shown directly following the general effective date.

(g) Cancellation of participating carrier. When a participating carrier is canceled by a revised page, the fares (or rates) and other provisions of the tariff insofar as they apply in connection with such carrier shall be canceled at the same time, by either of the following methods:

(1) Such cancellation shall be accomplished by revising the particular pages containing the fares (or rates) and other provisions applying in connection with the canceled participating carrier, or

(2) Such cancellation shall be accomplished by publishing the following statement (following the list of participating carriers) which shall be referred to in connection with the elimination of the carrier from the list of participating carriers:

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§ 221.112 Amending book tariff by supplement (also applicable to supplements to loose-leaf tariffs when such supplements are specifically authorized in this part).

(a) Form of supplement. (1) A supplement shall be constructed in the same manner and its contents arranged in the same order as the tariff to which it is issued, subject to the provisions of this section.

(2) When points in a tariff are given station numbers, index numbers, or similar designations, the same designation shall be used for the same point in all supplements to the tariff.

(b) Title page of supplement. Except as otherwise provided in this part, the title page of each supplement shall contain the following information to be shown in the order named below and shall contain no other matter:

(1) Supplement and C.A.B. numbers. Each supplement shall bear a consecutive supplement number as follows: The first supplement issued to a particular tariff shall be designated as Supplement No. 1 and subsequent supplements to the same tariff shall be consecutively numbered Supplements Nos. 2, 3, 4, etc. The supplement number and the C.A.B. number (of the tariff to which the supplement is issued) shall be shown in the upper right-hand corner of the title page in the manner shown in the following example:

Supplement No. 1 to C.A.B. No. 1

(2) Specifying canceled and effective supplements. Each supplement shall specify on its title page the supplements which it cancels in full and the supplements which remain in effect. Such provisions shall be shown immediately below the supplement and C.A.B. numbers in the upper right-hand corner of the title page in the manner shown in the following example:

Supplement No. 3 to C.A.B. No. 1

(Cancels Supplement No. 1)

Supplements Nos. 2 and 3 are the only effective supplements.

The only cancellation of prior supplements or of the tariff which shall be shown on the title page of a supplement shall be the complete cancellation of prior supplements or of the tariff as provided in this paragraph and in paragraph (b)(3) of this section. Specific cancellation of the particular items, rules, rates, fares or other provisions to be amended shall be made within the supplement in the manner required by this section.

(3) Specifying cancellation of original tariff. When a tariff is canceled in full by a supplement issued thereto, such cancellation shall specify the C.A.B. number of the tariff and shall be shown immediately under the supplement and C.A.B. numbers in the upper right-hand corner of the title page of the supplement in the manner shown in the following example:
Supplement No. 4
to
C.A.B. No. 1

cancels
C.A.B. No. 1

(Also, see § 221.113(d).)

(4) Provisions to be reproduced from title page of tariff (as amended), The following provisions appearing on the title page of the tariff (to which the supplement is issued), as amended, shall be shown on the title page of the supplement in the same order and location as it appears on the title page of the tariff, as amended:

(i) Name of issuing carrier or agent,
(ii) Title of tariff (the supplement number may also be shown immediately above the title of the tariff, if desired),
(iii) Description of rates, fares, or other contents of tariff,
(iv) Description of territory.

(5) Reference to Special Tariff Permissions, orders, and regulations. Where an entire supplement is issued pursuant to a Special Tariff Permission, order, or regulation which requires the supplement to bear a notation referring to such Special Tariff Permission, order, or regulation, such notation shall be shown in the manner required thereby. If only certain provisions, and not the entire supplement, are issued pursuant to such permission, order, or regulation, such notation shall be shown in connection with those provisions and not on the title page.

(6) Expiration date. When a tariff is indicated on its title page to expire with a specified date, the title page of a supplement to such tariff shall indicate that the supplement expires with the same date. When a supplement is to expire with a given date, for the above or other reasons, the expiration date shall be shown in distinctive type in the following manner:

This supplement expires with __________ (Show date) unless sooner canceled, changed, or extended.

If, however, only a portion of the supplement is to expire with a given date, such expiration date shall not be shown on the title page but shall be shown in connection with the particular item, rule, or other provision which is to expire.

(7) Issued date. The date on which the supplement is issued shall be shown in the lower left-hand portion of the title page. Tariffs must be received by the Board on or before the designated issued date. (See § 221.160(d) and § 221.171 of this part.)

(8) Effective date. The date on which the fares, rates, charges, rules and other provisions in the supplement will become effective shall be shown in the lower right-hand portion of the title page (See § 221.160 for required notice.)

(9) Issuing officer or agent. The name, title, and address of the issuing officer or the issuing agent shall be shown centered at the bottom of the title page. If the supplement is issued by a corporate agent, the name, title and business address of the person designated by the corporation to issue and file tariffs in the corporation’s name shall also be shown. The issuing officer or employee of a carrier or the person so designated by a corporate tariff agent shall not use the title “Agent” or “Alternate Agent” (see §§ 221.10 and 221.11).

(c) Table of contents. A supplement shall contain a table of its contents conforming to § 221.33.

(d) List of participating carriers. (1) When a tariff contains a list of participating carriers (see § 221.34), each supplement issued thereto shall contain the following provision:

List of participating carriers. The list of participating carriers is as shown in tariff, as amended, except:

LIST OF PARTICIPATING CARRIERS

The list of participating carriers is as shown in tariff, as amended, except:

<table>
<thead>
<tr>
<th>Revised as indicated</th>
<th>Participating carriers</th>
<th>Concurrency No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Add .......................</td>
<td>Boe Air Lines, Inc ...............</td>
<td>1</td>
</tr>
<tr>
<td>Change .................</td>
<td>Doe Airways, Inc .................</td>
<td>2</td>
</tr>
</tbody>
</table>
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LIST OF PARTICIPATING CARRIERS—Continued

The list of participating carriers is as shown in tariff, as amended, except:

<table>
<thead>
<tr>
<th>Cancel</th>
<th>Participating carriers</th>
<th>Concurrency No.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Roe Airline Co</td>
<td></td>
</tr>
</tbody>
</table>

NOTE: Concurrency numbers may be omitted if carrier complies with §221.34(e). The listing of participating carriers in a supplement shall otherwise conform to the requirements of §221.34.

(2) When the participation of a carrier in a tariff is canceled by supplement, the fares or rates and other provisions, so far as they apply in connection with such carrier, shall be canceled at the same time. Such cancellation shall be accomplished by amending the affected items or other provisions in the manner prescribed by paragraphs (h) and (i) of this section.

(e) Index of commodities. A supplement shall contain an index of the commodities therein conforming to §221.36.

(f) Index of points. A supplement shall contain an index of the points therein conforming to §221.37.

(g) Explanations of abbreviations, reference marks, and symbols. All abbreviations, reference marks, and symbols used in a supplement shall be explained and subject to the provisions of §221.35. Each page of a supplement on which abbreviations, reference marks, or symbols are used but not explained thereon shall refer to the page of the supplement or to the page of the original tariff which contains their explanations.

(h) Amending numbered items, rules, and similar units—(1) Method of amending. When any provision contained in a numbered item, rule, or similar unit is amended, all provisions (in their amended form) of such item, rule, or unit shall be published in their entirety in the supplement effecting such amendment and shall be given the same item, rule, or unit number followed by a letter suffix (each item, rule, or unit number shall be assigned letter suffixes in consecutive alphabetical sequence, commencing with “A”). The revised item, rule, or unit containing the amended provisions shall direct the cancellation of the former item, rule, or unit which it amends. The numbers of such revised items, rules, or units and the cancellation of such former items, rules, or units shall be shown in the following manner (using successive amendments in an Item 10 series as examples): When Item 10 is to be amended, the revised item containing the amended provisions shall show “Item 10-A cancels Item 10”; when Item 10-A is to be amended, the revised item containing the amended provisions shall show “Item 10-B cancels Item 10-A”; when Item 10-B is to be amended, the revised item containing the amended provisions shall show “Item 10-C cancels Item 10-B”; and so on. Using similar successive amendments in a Rule 10 series as examples, the successive issues of Rule 10 shall show “Rule 10-A cancels Rule 10”; “Rule 10-B cancels Rules 10-A”; “Rule 10-C cancels Rule 10-B” and so on.

(2) Withdrawing an item, rule, or similar unit. When all provisions in a numbered item, rule, or similar unit are to be canceled, such cancellation shall be made by amending the time, rule, or similar unit in the manner prescribed by paragraph (h)(1) of this section, but the canceled matter shall not be reproduced in the revised item, rule, or like unit except to the extent necessary to identify the subject matter which is being canceled. For example, only the caption or subject of a rule or the generic commodity caption of a rating or rate item shall be shown when such rule, rates or ratings are to be canceled.

(3) Reestablishing expired or canceled items, rules, or other units. The provisions of an expired or canceled item, rule, or similar unit may be reinstated only by republishing such provisions under a new effective date allowing lawful notice. The item, rule, or similar unit which effected the cancellation of such provisions or which contained the expired provisions shall be amended in the manner prescribed by paragraph (h)(1) of this section and the provisions shall be republished in the revised item, rule, or similar unit.

(4) Transferring matter. When all or part of the matter in a numbered item, rule, or similar unit is to be transferred to another portion of the tariff or to a different tariff, such item, rule, or similar unit shall be amended in the manner prescribed by paragraph (h)(1) of this section and shall specify the
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Cancellation of such matter and where it will thereafter be published; for example, "Item 10-A cancels Item 10; rates formerly appearing in Item 10 but not shown herein will be found in Item ___ (or in Item ___ of C.A.B. No. ___)."
The item, rule, or similar unit, or different tariff, to which the matter has been transferred shall show reference to the item, rule or similar unit, or other tariff, which formerly contained the transferred matter.

(i) Amending matter not published in numbered units. When an amendment is made in a provision which is not published in a numbered item, rule, or similar unit, the changed provision shall be published in its entirety in a supplement. The cancellation of the former provision shall be shown directly in connection with such changed provision, and such cancellation shall refer to the page of the tariff or supplement containing the former provision and clearly specify the matter to be canceled. Where the provision to be amended is published in a prior supplement, the cancellation of such provision shall specify both the page of the prior supplement and the page of the tariff which contained the corresponding provision; or, if the provision was published initially in a supplement and not in the tariff, the cancellation shall specify both the page of the prior supplement and the page of any effective supplement previously issued thereto which contained the corresponding provision.

(j) Omitted matter. When a supplement canceling a previous supplement omits points of origin or destination, routes, rates, fares, ratings, rules, or other provisions appearing in the previous supplement, the new supplement shall specifically indicate the cancellation of such omitted matter, and if such omission effects changes in rates, fares, charges, or services, that fact shall be indicated by the use of the uniform symbols prescribed in §221.114.

(k) Reissued matter—(1) Designating reissued matter. When a supplement cancels a preceding supplement to the same tariff, those provisions and amendments in the canceled supplement which have not been amended by subsequent supplements and which are not to be amended by the new supplement shall be brought forward without change in the new supplement (except that amendment symbols required by §221.114 shall not be brought forward). Such matter brought forward without change from one supplement to another shall be specifically designated “Reissued” in distinctive type and shall show the number of the original supplement form which it was reissued. For example, if Item 5-A was published in Supplement No. 1 and is brought forward without change to Supplement No. 2 (cancelling Supplement No. 1), the following notation shall be shown in Item 5-A in Supplement No. 2: “Reissued from Supplement No. 1”; if Item 5-A is again brought forward without change, for example, in Supplement No. 3 (cancelling Supplement No. 2), it shall continue to bear the same notation indicating that it is reissued from Supplement No. 1. Such reissued matter may also be indicated by the use of a reference mark shown preceding such matter and explained in the supplement in which it is used. When the latter method is used, the reference mark shall consist of a number within a square and the number shall be that of the original supplement from which the matter is reissued, for example, the reference mark ☐ shall be used to indicate matter reissued from Supplement No. 1. The reference marks shall be explained in the following manner:

☐—Reissued from Supplement No. 1.
☐—Reissued from Supplement No. 2.

Such reference marks comprised of a number within a square shall be used only for the above purpose and shall not be used for any other purpose.

(2) Matter reissued before its effective date. When matter published in a supplement is brought forward as reissued matter in a subsequent supplement which bears a general effective date earlier than the effective date of such reissued matter shall be included in the reissued notation required by paragraph (k)(1) of this section. For example, if Item 5-A published to become effective May 1, 1952 in Supplement No. 1 is brought forward without change in Supplement No. 2 (cancelling Supplement No. 1) which bears a general effective date of April 15, 1952, Item 5-A
shall bear the following notation indicating its effective date and that it is reissued matter:

Effective May 1, 1952. Reissued from Supplement No. 1.

When the supplement contains reissued matter to become effective after the general effective date of the supplement, the notation "(Except as otherwise provided herein)" shall be shown directly after the general effective date on the title page of the supplement.

(3) Expired matter. When an item, rule, or other matter in a supplement has expired by its own terms and such supplement is canceled by a subsequent supplement, the latter supplement shall identify, but not republish, the matter which has expired and shall show when it expired and the supplement in which it appeared when it expired. For example, if the expired matter is an item which formerly contained commodity rates, the item number and cancellation and an identifying portion of the commodity description should be shown with a statement reading substantially: "This term expired with ___ in Supplement No. ___." Such notation shall be shown in all successive reissues of the supplement.

(l) Maximum supplemental matter permitted. (1) Except as authorized in paragraphs (l)(2), (3), and (4) of this section, a book tariff containing the number of pages stated in Column 1 in the table below may have in effect at any time not more than the number of supplements shown directly opposite thereto in Column 2 in the table below and all supplements in effect at any time to such tariff may contain in the aggregate not more than the aggregate number of pages indicated directly opposite thereto in Column 3 in the table of this paragraph.

<table>
<thead>
<tr>
<th>Column 1—Number of pages in tariff</th>
<th>Column 2—Number of effective supplements permitted</th>
<th>Column 3—Aggregate number of pages permitted in aggregate of effective supplements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Over 200</td>
<td>4</td>
<td>(See Note 1)</td>
</tr>
</tbody>
</table>

NOTE 1: 33 1/3 percent of the number of pages in the original tariff. Resulting fractions of a page shall be increased to a whole page.

In determining the number of pages in a tariff or an effective supplement, the title page of the tariff and the title pages of the supplements shall be counted in all instances, and every page of an effective supplement shall be counted regardless of whether the provisions on a particular page are in effect.

(2) The supplements (and the numbers of pages therein) authorized or required to be filed under the terms of the following sections shall be in addition to the number of supplements and volume of supplemental matter permitted by the terms of paragraph (l)(1) of this section:

Sec. 221.113(d) (Cancellation supplement)
221.121 (Suspension supplement)
221.131 (Vacating supplement)
221.140 (Provided the supplement contains only matter described in §221.140)
221.223(c) (Take-over supplement issued by alternate agent)
221.224(b) (Take-over supplement issued by new principal agent)
221.231 (Adoption supplement)

(3) A supplement which has been canceled except as to matter suspended by the Board or a supplement suspended in full by the Board shall be in addition to the maximum number of supplements and supplement pages permitted by paragraph (l)(1) of this section. If, upon termination of the suspension, such supplements result in a greater number of effective supplements or supplement pages than permitted by paragraph (l)(1) of this section, the tariff shall be brought into conformity with paragraph (l)(1) of this section by the next amendment of the tariff issued subsequently to the termination of the suspension.

(4) When a tariff is continued in effect by reason of the Board's suspending an entire tariff, any supplements lawfully issued and filed during the suspension period to the tariff continued in effect by the suspension shall
be in addition to the maximum number of supplements and supplement pages permitted by paragraph (l)(1) of this section. If the maximum number of supplements or supplement pages permitted under paragraph (l)(1) of this section is exceeded under this authority and the Board orders the cancellation of the suspended tariff, the tariff which was continued in effect by the suspension shall be brought into conformity with paragraph (l)(1) of this section by a supplement filed within 120 days after the date of such order of the Board or such tariff shall be re-issued within that time. (Secs. 204, 403, 1002; 72 Stat. 743, 758, 788; 49 U.S.C. 1324, 1373, 1482, as amended) [ER–439, 30 FR 9439, July 29, 1965, as amended by ER–1104, 44 FR 9577, Feb. 13, 1979]

§ 221.113 Reissuing and canceling tariffs; transferring matter to other tariffs.

(a) One or more tariffs superseded by one new tariff. (1) When one new tariff is issued to supersede one or more previously filed tariffs (of the same issuing carrier or agent) which are to have no further effect, such new tariff shall direct the cancellation of the tariff or tariffs to be superseded. Such cancellation shall specify the C.A.B. numbers of the tariff or tariffs to be canceled and shall be shown in the upper right-hand corner of the title page of the new tariff (immediately below its C.A.B. number) in the following manner:

  C.A.B. No. ___

  cancels

  C.A.B. No. ___

(2) If the tariff or tariffs to be canceled contain any rates, fares, or other tariff provisions which are to be canceled and not brought forward in the new tariff, the new tariff shall contain a notice reading substantially as follows:

  NOTICE

  Rates (or fares, charges, rules, ratings, as the case may be) formerly published in C.A.B. No. ___ but not brought forward herein are hereby canceled.

Such notice shall be published immediately following the table of contents and reference thereto shall be shown on the title page of the new tariff, immediately below the cancellation prescribed by paragraph (a)(1) of this section, in the following manner:

  C.A.B. No. ___

  cancels

  C.A.B. No. ___

(See Notice on Page ___ hereof)

(b) One tariff superseded by two or more new tariffs. When two or more new tariffs are issued to supersede one previously filed tariff (of the same issuing carrier or agent) which is to have no further effect, a supplement shall be issued to the tariff to be superseded and such supplement shall direct the cancellation of the tariff in the manner prescribed by §221.112 (b) (3) and paragraph (d) (2) of this section and shall refer to the new tariffs in the manner required thereby. Each of the new tariffs shall direct the following cancellation of the tariff to be superseded (to be shown in the upper right-hand corner of the title page of each new tariff immediately below its C.A.B. number):

  C.A.B. No. ___

  cancels

  C.A.B. No. ___

(to the extent shown in Supplement No. ___ thereto)

(c) Transferring rates, fares or provisions from one tariff to another. When all or a portion of the rates, fares, or other provisions of a tariff are to be transferred to another tariff or other tariffs, such transfer shall be accomplished by the following amendments (except that this paragraph shall not apply when paragraphs (a) and (b) of this section are applicable):

  (1) If no effective provisions are to remain in the tariff from which the provisions are transferred, the issuing carrier or agent shall issue a supplement thereto canceling such tariff in its entirety in the manner prescribed by §221.112 (b) (3) and paragraph (d) (2) of this section and stating where the transferred provisions will thereafter be found.

  (2) If only a portion of a tariff’s provisions are to be transferred, the tariff
§ 221.113

shall be amended (in the manner required by §221.110) by specifically canceling the provisions to be transferred and, in connection with such cancellation, a reference shall be shown to the tariff or tariffs (specifying their C.A.B. numbers) to which the provisions are transferred.

(3) The tariff or tariffs to which the provisions are to be transferred shall be amended (in the manner prescribed by §221.110) by adding the transferred provisions thereto effective on the same date as the date on which the cancellation of such provisions from the former tariff becomes effective. The publication effecting the addition of the transferred provisions shall refer to the former tariff in the following manner:

(i) If the publication to which the provisions are transferred is a new tariff (issued by the same issuing carrier or agent of the former tariff), it shall direct a partial cancellation of the former tariff and such cancellation shall be shown in the following manner (in the upper right-hand corner of the title page of the new tariff immediately below its C.A.B. number):

C.A.B. No. _____ cancels C.A.B. No. _____ to the extent shown in Supplement No. ____ (or, Revised Page ____) thereto.

(ii) If the publication to which the provisions are transferred is a new tariff (issued by an agent or carrier other than the issuing agent or carrier of the former tariff), the new tariff shall bear the following notation “(see notice on page ____ hereof)” in the upper right-hand corner of the title page (immediately below the C.A.B. number and any cancellation thereunder and the notice referred to shall be shown following the table of contents and shall read substantially:

NOTICE

Rates (or fares, rules, etc.), herein applying (____ briefly identify transferred rates, etc.) were formerly published in C.A.B. No. ___.

See C.A.B. No. ______ issued by ______ for rates between ______ and ______.

If the canceled tariff contains any rates, fares, or other provisions which are to be canceled and not brought forward in the new tariffs, the following cancellation statement shall be added to the above notice:

Rates (or fares, etc.) formerly published herein but not carried forward to the above tariffs are hereby canceled.
The cancellation notice in this sub-
paragraph shall be published either in
the body of the title page of the can-
cellation supplement (below the terri-
torial application and above the issued
and effective dates) or on the next
page.

§ 221.114 Amendment symbols to indi-
cate changes in rates, fares and
other provisions.

(a) Uniform amendment symbols re-
quired. All tariffs, supplements, origi-
nal pages, and revised pages shall indi-
cate the changes made thereby in ex-
isting rates, fares, routings, ratings, rules, and other tariff provi-
sions and shall indicate the character
of each change, that is, whether it re-
sults in a reduction or an increase in
fares, rates, or charges or is a change
resulting in neither increase nor reduc-
tion. The changes and their character
shall be indicated by the use of the fol-
lowing uniform amendment symbols
and, except as provided in paragraph
(b) of this section, shall be shown im-
mediately in connection with and pre-
ceding each change
(R) or • to denote increases.
(A) or ♦ to denote reductions.
(C) or ▲ to denote changes which result in
neither increases nor reductions.
(N) or ■ to denote addition.

(b) Indicating general changes—(1)
Changes of same character in all fares,
rates, or charges. When a change of the
same character (either increase or re-
duction) is effected by all of the rates,
fares, or charges in a tariff or supple-
ment, or a page thereof, including a re-
vised page or added original page, the
fact and the character of such change
shall be indicated by the use of the fol-
lowing uniform amendment symbols
and, except as provided in paragraph
(b) of this section, shall be shown im-
mediately in connection with and pre-
ceding each change
(Notation for title page of tariff or
supplement)
ALL ** IN THIS ISSUE ARE ****.
(Notation for other pages)
ALL ** ON THIS PAGE ARE ****.

**—show RATES, FARES, or CHARGES,
whichever is appropriate.
****—show INCREASES or REDUCTIONS,
whichever is appropriate.

(2) Changes of same character in sub-
stantial portion of rates, fares, or charges.
The notations prescribed in paragraph
(b)(1) of this section may be qualified
by adding thereto the words “unless
otherwise indicated” and such qualified
notations may be used, in the manner
described in paragraph (b)(1) of this
section, to indicate changes of the
same character in a substantial portion
but not all of the rates, fares, or
charges in a tariff, supplement, or a
page thereof, including a revised page
or added original page. When this
method is used to indicate such
changes, any rates, fares, or charges
which are exceptions to the qualified
notation used shall be indicated by:
(i) Showing a bold-faced dot “O” or
the symbol “(K)” in connection with
and preceding a rate, fare, or charge in
which no change has been made, and
(ii) Using the proper amendment
symbol prescribed in paragraph (a) of
this section for the purpose of indi-
cating the character of any changes
which are not indicated by the nota-
tion used on the title page or at the top
of the page, as the case may be.

(c) Explanations and uniform use of
symbols. Explanations of the symbols
prescribed in paragraphs (a) and (b) of
this section shall be provided in the
manner prescribed by §221.35 and such
symbols shall not be used for any other
purpose.

(d) Symbols and notations not to be
brought forward. When a symbol or no-
tation prescribed by this section is
used in a tariff, supplement, or page,
such symbol or notation shall not be
carried forward into reissues, supple-
ments, or revised pages when the mat-
ter in connection with which they were
used is reissued without change.

§ 221.115 Reinstating canceled or ex-
pired tariff provisions.

Any rates, fares, rules, or other tariff
provisions which have been canceled or
which have expired may be reinstated
only by republishing such provisions
and posting and filing the tariff publi-
cations (containing such republished
provisions) on lawful notice in the form
and manner required by this part.
§ 221.116 Supplement to loose-leaf tariff authorized when service terminated or suspended.

When the Board authorizes or requires a carrier to suspend air transportation service to and from a particular point, or terminates authority to serve a particular point, supplements may be issued to loose-leaf tariffs for the purpose of canceling rates, fares, or other provisions therein applying to, from, at, or via such point for account of such carrier. The title page of a supplement issued hereunder shall bear the following notation on its title page, “Issued under § 221.116 of Economic Regulations of Civil Aeronautics Board.” A single tariff shall have not more than one supplement, issued under authority of this section, in effect at any one time. Supplements issued hereunder shall contain no provisions other than the cancellation of rates, fares, or other provisions published under the above authority. When a supplement is issued under authority of this section, the canceled rates, fares, or other provisions shall be specifically removed from the tariff pages on which they appear by reissuing such pages not later than 180 days after the effective date of such supplement.

Subpart I—Suspension of Tariff Provisions by Board

§ 221.120 Effect of suspension by Board.

(a) Suspended matter not to be used. A rate, fare, charge, or other tariff provision which is suspended by the Board, under authority of section 1002(g) of the act, shall not be used during the period of suspension specified by the Board’s order.

(b) Suspended matter not to be changed. A rate, fare, charge, or other tariff provision which is suspended by the Board shall not be changed in any respect or withdrawn or the effective date thereof further deferred except by authority of an order or special tariff permission of the Board.

(c) Suspension continues former matter in effect. If a tariff publication containing matter suspended by the Board directs the cancellation of a tariff, supplements, or loose-leaf tariff page, or any portion thereof, which contains fares, rates, charges, or other tariff provisions sought to be amended by the suspended matter, such cancellation is automatically suspended for the same period insofar as it purports to cancel any tariff provisions sought to be amended by the suspended matter.

(d) Matter continued in effect not to be changed. A rate, fare, charge, or other tariff provision which is continued in effect as a result of a suspension by the Board shall not be changed during the period of suspension unless the change is authorized by order or special tariff permission of the Board, except that such matter may be reissued without change during the period of suspension.

[ER–439, 30 FR 9439, July 29, 1965, as amended by ER–991, 42 FR 19126, Apr. 12, 1977]

§ 221.121 Suspension supplement.

(a) To be filed immediately to either book or loose-leaf tariff. Upon receipt of an order of the Board suspending any tariff publication in part or in its entirety, the carrier or agent who issued such tariff publication shall immediately issue and file with the Board a consecutively numbered supplement for the purpose of announcing such suspension. Such supplement, referred to in this subpart as a suspension supplement, is required to be filed to a loose-leaf tariff as well as a book tariff and shall conform fully with the provisions of this section.

(b) Title page of suspension supplement. The title page of a suspension supplement shall be constructed in the manner prescribed in § 221.112(b) except that it shall not contain an effective date and it shall contain the suspension notice required by paragraph (c) of this section.

(c) Suspension notice. The title page of a suspension supplement shall contain a notice of suspension (to be shown immediately below the description of tariff contents and territory) which shall:

(1) Indicate what particular rates, fares, charges, or other tariff provisions are under suspension,

(2) State the date to which such tariff matter is suspended,

(3) State the Board’s docket number and order number which suspended such tariff matter,

(4) Give specific reference to the tariffs (specifying their C.A.B. numbers),
supplements, revised pages, original pages, items, etc., which contain the rates, fares, charges, or other tariff provisions continued in effect.

NOTE: Where impracticable to provide on the title page the required detailed suspension notice, the title page may, under the caption "Suspension Notice", make specific reference to where the detailed suspension notice is provided in the supplement.

The following are illustrations of such notices of suspension:

(When a portion of the fares on a revised page are suspended):

SUSPENSION NOTICE

The fares applying between New York, N.Y., and Chicago, Ill., on 1st Revised Page 75 of this tariff are suspended to and including August 23, 1953 by Civil Aeronautics Board order No. E in Docket No. . Such fares shall not be used on or before August 23, 1953. For fares between the above points continued in effect as a result of the suspension, see Original Page 75 of this tariff.

(When an item in a supplement is suspended):

SUSPENSION NOTICE

Item No. 10±B in Supplement No. 5 is suspended to and including August 23, 1953 by Civil Aeronautics Board order No. E in Docket No. . The rates and other provisions in Item No. 10±B of Supplement No. 5 shall not be used on or before August 23, 1953. For rates continued in effect as a result of the suspension, see Item No. 10±A in Supplement No. 4.

(d) Quote Board’s order in part. A suspension supplement shall quote the following portions of the Board’s order of suspension (to be shown on the page following the title page):

(1) The heading of the order,
(2) The portions describing the suspended matter,
(3) The paragraph naming the date to which such matter is suspended,
(4) The paragraph prohibiting changes in the suspended matter,
(5) The paragraph prohibiting changes in the matter continued in effect by the suspension.

(e) Cancel reissue of suspended matter. When the Board has suspended a loose-leaf tariff page or a supplement in whole or in part, it may occur that prior to receipt of the suspension order, the issuing carrier or agent has transmitted for filing a revised page or a supplement subsequent to that containing the suspended matter and such subsequent revised page or supplement reissues without change the matter suspended in the previous loose-leaf tariff page or supplement. In such circumstances, the suspension supplement required by this section shall:

(1) Cancel such reissued matter published in the subsequent revised page or supplement, and
(2) Amend the cancellation which such subsequent revised page or the title page of such subsequent supplement directs of the loose-leaf page or of the supplement containing the suspended matter. Such cancellation shall be amended so as to exclude cancellation of the suspended matter. The suspension supplement accomplishing such amendments shall be filed promptly since a page or supplement which cancels suspended matter without authority of the Board is subject to rejection.

§ 221.122 Reissuing tariff publications suspended in part or containing matter continued in effect by suspension.

(a) Loose-leaf tariff page suspended in part. When a loose-leaf tariff page suspended in part is reissued, the reissue of such page shall conform with the following requirements:

(1) The revised page (reissue) shall not reproduce or bring forward the matter under suspension.

(2) The revised page (reissue) shall direct the cancellation of the partially suspended page except the portions thereof under suspension. Such page cancellation shall be set forth in substantially the manner shown in the following example:

2nd Revised Page 10 cancels
1st Revised Page 10 (except portions under suspension in C.A.B. Docket No. .)

(3) If the suspension has continued in effect tariff provisions on preceding issues of the page, the cancellation of the page suspended in part shall bring forward without change those tariff provisions which were continued in effect by the suspension. In such cases, such reissue shall, in addition to directing the page cancellation required by paragraph (a)(2) of this section, complete
§ 221.122

the cancellation of the page which contained the matter continued in effect by the suspension. Such cancellation shall be set forth in substantially the manner shown in the following example:

2nd Revised Page 10

cancels

1st Revised Page 10 (except portions under suspension in C.A.B. Docket No. ___) and completes the cancellation of Original Page 10

All subsequent revisions of the same page, which are issued after such reissue and which become effective during the period of suspension, shall bring forward unchanged the tariff provisions continued in effect by the suspension and shall bear reference to the revision containing the suspended matter. Such reference shall be set forth immediately below the page number and cancellation in the manner shown in the following example:

3rd Revised Page 10

cancels

2nd Revised Page 10

(1st Revised Page 10 contains portions under suspension in C.A.B. Docket No. ___)

(b) Reissuing a loose-leaf page continued in effect by suspension of entire revised page. When the Board has suspended a revised page in its entirety and the prior revision (which is continued in effect by such suspension) is to be reissued, the reissue shall conform with the following requirements:

(1) The revised page (reissue) shall not reproduce or bring forward the matter under suspension.

(2) The revised page (reissue) shall bring forward without change those tariff provisions which are continued in effect by the suspension and shall cancel the page containing such provisions.

(3) The revised page (reissue) shall not direct any cancellation of the suspended page but shall contain a statement that such page is under suspension which shall be set forth (immediately below the page number and page cancellation) in the manner shown in the following example:

3rd Revised Page 10

cancels

1st Revised Page 10

(2nd Revised Page 10 is under suspension in C.A.B. Docket No. ___)

All subsequent revisions of the same page, which are issued after such reissues and which become effective during the period of suspension, shall bring forward unchanged the tariff provisions continued in effect by the suspension and shall bear reference to the suspended revision to be set forth in the manner shown in the above example.

(c) Supplement suspended in part. When a supplement suspended in part is reissued, the reissue of such supplement shall conform to the following requirements:

(1) The supplement (reissue) shall not reproduce or bring forward the matter under suspension.

(2) The supplement (reissue) shall direct the cancellation of the partially suspended supplement except the portions thereof under suspension. Such supplement cancellation shall be set forth in the upper right-hand corner of the title page of the reissue in substantially the manner shown in the following example:

Supplement No. 4
to

c.A.B. No. 2

(Cancels Supplement No. 2 except portions under suspension in C.A.B. Docket No. ___)

Supplements Nos. *2, 3, and 4 are the only effective supplements.

*—Contains only matter suspended in C.A.B. Docket No.

(3) If the suspension has continued in effect tariff provisions in a prior supplement which is indicated as canceled by the partially suspended supplement, except as to the provisions continued in effect by the suspension, the reissue of the partially suspended supplement shall bring forward unchanged the matter continued in effect by the suspension and the title page of such reissue shall, in addition to directing the supplement cancellation, complete the cancellation of the supplement containing the matter continued in effect.
Office of the Secretary, DOT

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by the suspension. Such cancellation shall be set forth in substantially the manner shown in the following example:

Supplement No. 4 to C.A.B. No. 1

(Cancels Supplement No. 2 except portions under suspension in C.A.B. Docket No.___ and completes the cancellation of Supplement No. 1)

Supplements Nos. *2, 3, and 4 are the only effective supplements.

*—contains only matter suspended in C.A.B. Docket No.___.

(d) Tariff suspended in part. When a tariff suspended in part (including a tariff having a supplement suspended wholly or in part) is reissued, the reissue of such tariff shall conform to the following requirements:

(1) The tariff (reissue) shall not reproduce or bring forward the matter under suspension.

(2) The tariff (reissue) shall direct the cancellation of the partially suspended tariff except the portions thereof under suspension. Such cancellation shall be set forth (in the upper right-hand corner of title page of the reissue) in substantially the manner shown in the following example:

C.A.B. No. 8 cancels C.A.B. No. 2 (except portions under suspension in C.A.B. Docket No. ____ ) and completes the cancellation of C.A.B. No. 1

(e) Item, rule, or similar unit suspended in part. When a numbered item, rule, or similar unit in a book tariff or supplement thereto is suspended in part, a reissue of such item, rule, or similar unit shall conform to the following requirements:

(1) The reissue shall not reproduce or bring forward the matter under suspension.

(2) The reissue shall direct the cancellation of the partially suspended item, rule, or similar unit except the portions thereof under suspension. Such cancellation shall be set forth in substantially the manner shown in the following example:

Item No. 10-B cancels Item No. 10-A (except portions under suspension in C.A.B. Docket No. ____ )

(3) If the suspension has continued in effect tariff provisions in preceding issues of the partially suspended item, rule, or similar unit, the reissue of the partially suspended item, rule, or similar unit shall bring forward without change the tariff provisions which were continued in effect by the suspension. In such cases, such reissue shall, in addition to directing the cancellation required by paragraph (e)(2) of this section, complete the cancellation of the item, rule, or similar unit which contained the matter continued in effect by the suspension. Such cancellation shall be set forth in substantially the manner shown in the following example:

Item No. 10-B cancels Item No. 10-A (except portions under suspension in C.A.B. Docket No. ____ ) and completes the cancellation of Item No. 10
§ 221.123 Reissue of matter continued in effect by suspension to be canceled upon termination of suspension.

When tariff provisions continued in effect by a suspension are reissued during the period of such suspension, the termination of the suspension and the coming into effect of the suspended matter will not accomplish the cancellation of such reissued matter. In such circumstances, prompt action shall be taken by the issuing agent or carrier to cancel such reissued provisions upon the termination of the suspension in order that they will not conflict with the provisions formerly under suspension.

Subpart J—Vacating the Suspension of Tariff Matter

§ 221.130 Tariff must be amended to make suspended matter effective.

(a) When the Board vacates an order which suspended certain tariff matter in full or in part, such matter will not become effective until the termination of the suspension period unless the issuing agent or carrier amends the pertinent tariffs in the manner prescribed in this subpart (except as provided in paragraph (b) of this section).

(b) If the Board vacates its suspension order prior to the original published effective date of the tariff provisions whose suspension is vacated, such provisions will become effective on their published effective date without filing a vacating supplement as required by this subpart.

§ 221.132 When tariff amendments in addition to vacating supplement are required.

(a) Notice and effective date. All amendments made pursuant to this section shall be filed on not less than one day’s notice, unless otherwise provided by the Board’s vacating order, and shall bear the same effective date as the effective date of the vacating supplement filed pursuant to §221.131, except as otherwise provided in paragraph (h) of this section, and except that the effective date of any tariff provisions other than the vacated matter shall not be advanced under this authority. All tariff amendments made pursuant to this section which are not published in the vacating supplement
shall bear the reference required by § 221.131(a)(6).

(b) When a loose-leaf page suspended in part has been reissued. When a loose-leaf page is suspended in part and such suspension is vacated in its entirety by the Board but, prior to such vacating of the suspension, the page has been canceled (except as to matter under suspension) by a subsequent revision of that page, the following tariff amendments shall be made in addition to issuing and filing a vacating supplement pursuant to § 221.131:

(1) A consecutive revision in the series of the page containing the suspended matter shall be issued which shall (i) republish the suspended matter without change, (ii) cancel the matter continued in effect by the suspension (if published on the preceding revisions of the page) and (iii) complete the cancellation of the page which contained the suspended matter. The latter cancellation shall be set forth (below the C.A.B. and page numbers in the upper right-hand corner of the page) in the manner shown in the following example:

3rd Revised Page 20

cancels

2nd Revised Page 20

(and completes the cancellation of 1st Revised Page 20)

In the above example, the 3rd revision (filed pursuant to this paragraph) cancels the 2nd revision and completes the cancellation of the 1st revision (which was previously canceled by the 2nd revision except as to the suspended matter).

(2) [Reserved]

(c) When a loose-leaf page continued in effect by suspension of entire revised page has been reissued. When an entire revised page has been suspended and the Board fully vacates such suspension but prior to such vacating of the suspension, the page continued in effect by such suspension has been revised, the following tariff amendments shall be made in addition to issuing and filing the vacating supplement pursuant to § 221.131:

(1) A consecutive revision in the series of the suspended page shall be issued and filed which shall (i) repub-

lish the suspended tariff provisions without change, (ii) cancel the reissue of the tariff provisions which were continued in effect by the suspension, and (iii) include the cancellation of the revised page whose suspension has been vacated.

(2) [Reserved]

(d) When provisions continued in effect by suspension of supplement (in full or in part) have been reissued in a supplement. When the Board has suspended in full or in part, a supplement to a book tariff and such suspension is vacated by the Board but (prior to such vacating of the suspension) all or part of the provisions which were continued in effect by the suspension have been reissued in a subsequent supplement to the same tariff, the vacating supplement shall include the following amendments:

(1) The vacating supplement shall cancel such reissue of the provisions continued in effect by the suspension.

(2) The vacating supplement shall republish without change the respective suspended provisions which are to supersede the provisions canceled pursuant to paragraph (d)(1) of this section and shall cancel such suspended provisions from the supplement which was under suspension.

(e) When partially suspended item, rule, or similar unit in a book tariff or supplement has been reissued in a supplement. When the Board has suspended, in part, a numbered item, rule, or similar unit in a book tariff or supplement and such suspension is fully vacated by the Board but (prior to such vacating of the suspension) the partially suspended item, rule, or similar unit has been canceled except as to the suspended matter by a subsequent issue of such item, rule, or unit, the vacating supplement shall amend such items, rules, or similar units as specified below:

(1) The tariff provisions whose suspension is vacated shall be republished without change.

(2) The tariff provisions which were continued in effect by such suspension shall be canceled.

(3) The cancellation of the partially suspended item, rule, or similar unit shall be completed in the manner shown in the following example:
Item No. 10-C cancels
Item No. 10-B
(and completes the cancellation of Item No. 10-A)

In the above example, Item No. 10-C in the vacating supplement directs the cancellation of the current Item No. 10-B and completes the cancellation of Item No. 10-A (which has been previously canceled by Item No. 10-B except as to the suspended matter).

(f) When tariff continued in effect by suspension has been amended by supplement or loose-leaf page. When the Board fully vacates the suspension of an entire tariff but, prior to such action, the tariff which was continued in effect by the suspension has been amended by supplement or loose-leaf page, the following tariff amendments shall be made in addition to issuing and filing the vacating supplement pursuant to § 221.131:

(1) If the suspended tariff is a book tariff, the vacating supplement issued to such tariff shall set forth as reissued matter (without change) any changes or additions which were lawfully published in the tariff continued in effect by the suspension but which are not included in the suspended tariff.

(2) If the suspended tariff is a loose-leaf tariff loose-leaf pages shall be issued thereto and such pages shall set forth as reissued matter (without change) any changes or additions which were lawfully published in the tariff continued in effect by the suspension but which are not included in the suspended tariff.

(g) When tariff continued in effect by suspension has been reissued. When the Board fully vacates the suspension of an entire tariff but, prior to such action, the tariff which was continued in effect by such suspension has been reissued, the following tariff amendments shall be made in addition to filing the vacating supplement pursuant to § 221.131:

(1) A supplement shall be issued and filed to the tariff containing the reissued tariff provisions which were continued in effect by the suspension and such supplement shall cancel that tariff in its entirety.

(2) Any changes or additions which have been lawfully published in the tariff specified in paragraph (g)(1) of this section but which are not included in the suspended tariff shall be republished:

(i) As reissued matter (without change) in the vacating supplement issued to the suspended tariff if the latter is a book tariff, or

(ii) As reissued matter (without change) in revised pages or additional original pages issued to the suspended tariff if the latter is a loose-leaf tariff.

(h) When a tariff suspended in part has been reissued. When a tariff has been suspended in part (or has a supplement suspended in full or in part) and the Board fully vacates such suspension but, prior to the vacating of the suspension, a new tariff has been issued which directs the cancellation of the partially suspended tariff (except as to the suspended provisions), the following tariff amendments are required in order to make the suspended tariff provisions effective under authority of the Board's vacating order:

(1) When the suspended tariff provisions are to be made effective prior to the effective date of such new tariff, a vacating supplement shall be issued and filed to the partially suspended tariff together with any amendments required by other paragraphs of this section. Also, the new tariff shall be amended in the manner prescribed by §221.110 for the purpose of establishing the following amendments effective on the effective date of the new tariff:

(i) The tariff cancellation shown on the title page of the new tariff shall be amended so that it fully cancels the former tariff by C.A.B. number instead of canceling it “except portions under suspension in C.A.B. Docket No.____”.

(ii) The tariff provisions whose suspension has been vacated in the former tariff shall be republished without change in the new tariff.

(iii) The reissue of the tariff provisions which were continued in effect by the suspension shall be canceled from the new tariff.

(2) When the suspended tariff provisions are to be made effective on or after the effective date of such new tariff, a vacating supplement shall not be issued to the partially suspended tariff
but a supplement shall be issued and filed to such tariff which shall cancel the suspended provisions, refer to such provisions as republished in the new tariff, and complete the cancellation of the tariff. The latter cancellation shall be set forth in the upper right corner of the supplement’s title page (below the supplement and C.A.B. numbers) in the manner shown in the following example:

Supplement No. 3
to
C.A.B. No. 6
(completes the cancellation of C.A.B. No. 6)

Also, the new tariff shall be amended simultaneously in the manner prescribed by §221.110 for the purpose of accomplishing the following amendments:

(i) The tariff provisions in the former tariff whose suspension has been vacated by the Board shall be republished without change in the new tariff.

(ii) The reissue of the tariff provisions which were continued in effect by such suspension shall be canceled from the new tariff.

§ 221.133 When Special Tariff Permission is required to file amendments making suspended matter effective pursuant to vacating order.

When tariff provisions continued in effect by a suspension have been reissued prior to the Board’s vacating the suspension and §221.132 does not authorize the amendments necessary to cancel such provisions in order to prevent a conflict with the tariff provisions whose suspension is being vacated, a vacating supplement shall not be issued and filed. In such circumstances, the issuing agent or carrier shall file an application for Special Tariff Permission specifically setting forth the amendments which are proposed to be issued and filed on one day’s notice (unless the Board’s vacating order provides otherwise) for the purpose of making the suspended matter effective and canceling the reissue of the tariff provisions continued in effect by the suspension. Upon approval of such application, the issuing agent or carrier shall then file the amendments authorized thereunder.

§ 221.140 Notice required when cancelling suspended matter in compliance with Board’s order.

When the Board orders the cancellation shall be filed on not less than one other tariff provisions theretofore suspended by the Board, the tariff amendments which accomplish such cancellation of rates, fares, charges, rules, or day’s notice to the Board and the public unless otherwise provided by the Board’s order. The tariff amendments which accomplish such cancellation of suspended matter shall bear reference to this subpart and the Board’s order in the following manner:

Issued in compliance with subpart K of Economic regulations and Order No. in Docket No. of the Civil Aeronautics Board.

§ 221.141 Cancellation of suspended matter subsequent to date to which suspended.

(a) Endeavor to cancel prior to expiration of suspension period. When an order of the Board requires the cancellation of tariff provisions which were suspended by the Board and such cancellation is required to be made effective on or before a date which is subsequent to the date to which such tariff provisions were suspended, the issuing carrier or agent shall, if possible, make the cancellation effective prior to the date to which such tariff provisions were suspended.

(b) When necessary to republish matter continued in effect by suspension. If suspended tariff provisions become effective upon expiration of their suspension period and thereby accomplish the cancellation of the tariff provisions continued in effect by the suspension, the issuing carrier or agent shall republish and reestablish such canceled tariff provisions effective simultaneously with the cancellation of the suspended provisions in compliance with the Board’s order. The tariff amendments which reestablish such canceled tariff provisions shall bear reference to this subpart and the Board’s order in the manner shown in §221.140.
§ 221.150 When index required.

Each carrier shall issue, post, and file individually or by a duly appointed agent an index of the tariffs which have been filed with the Board by such carrier or for its account when:

(a) The carrier has ten or more tariffs which it has issued and filed in its own name with the Board and such tariffs are either effective or are to become effective, or

(b) The carrier is shown as a participating carrier under authority of its power of attorney or concurrence in three or more tariffs issued by agents or other carriers, and such participation is either effective or is filed to become effective.

§ 221.151 Index to be issued and filed as a tariff.

The index of tariffs required by this subpart shall bear a consecutive C.A.B. number in the tariff series of the issuing carrier or agent and shall be prepared, posted, filed, and amended in the form and manner prescribed for a tariff except:

(a) Such index of tariffs shall contain only the following contents:

1. Title page.
2. Correction number check sheet if index is in loose-leaf form.
3. Explanations of abbreviations, reference marks, and symbols.
4. A list of tariffs on file with the Board which are in effect or are to become effective and which the carrier has issued in its own name or in which the carrier is shown as a participating carrier.

(b) Such index of tariffs shall be issued in the name of and filed by the carrier for whom it is published and, except as provided in paragraph (c) of this section, shall not be issued and filed by the carrier’s agent.

(c) An agent may publish an index of tariffs, and the regulations relating to powers of attorney will not apply: Provided, That the agency index contains a complete alphabetical index of carriers and that each carrier electing to publish its index in an agency issue shall inform the Board by letter as to what agency issue will include its index of tariffs. Also, any such carrier which changes its method of publishing the tariff index from individual carrier index to agency index or from agency index to individual carrier index or from one agent to another shall notify the Board by letter. The arrangement and information required by §§ 221.152 and 221.153 shall be observed in connection with each participant in an agency issue.

(d) Such index of tariffs (including supplements or loose-leaf pages issued thereto) shall bear an issued date but shall not bear an effective date. Such index of tariffs (including supplements or loose-leaf pages issued thereto) shall be transmitted to the Board promptly upon issuance. The requirement that tariff publications shall be filed on thirty days’ notice is not applicable to such index of tariffs (including amendments thereof).

(e) Such index of tariffs shall list both passenger tariffs and property tariffs and each carrier may have only one effective index of tariffs.

(f) The title page of an index issued by a carrier shall contain the following statement (below the title of the index):

THIS INDEX CONTAINS A LIST OF TARIFFS ISSUED BY OR ON BEHALF OF

(Show issuing carrier’s name)

(If an agency tariff, an agent must show participating carriers on the title page or make reference thereon to the list of participants named therein.)

§ 221.152 Arrangement of lists of tariffs.

When the carrier issuing the index of tariffs required by this subpart issues or participates in both passenger tariffs and property tariffs, the list of tariffs in such carrier’s index may be divided into two sections; the first section shall list the passenger tariffs only and the second section shall list the property tariffs only. When the carrier issues or participates in either passenger tariffs or property tariffs (but not both), all tariffs shall be listed in one section. The tariffs listed shall be shown in the following order in each section:

(a) The tariffs issued in the name of and by the carrier issuing the index
Office of the Secretary, DOT

§ 221.160

Subpart M—Filing Tariff Publications With Board

§ 221.160 Required notice.

(a) Statutory notice required. Unless otherwise authorized by the Board or specified in a bilateral agreement between the United States and a foreign country, all tariff filings shall be made on the following schedule, whether or not they affect any changes:

1. At least 30 days before they are to become effective, for tariffs stating a passenger fare within the zone created by section 1002(d)(4) of the Act (interstate and overseas) or the zone created by section 1002(j)(6) (foreign), or stating a rule that affects only such a fare;
2. At least 25 days before they are to become effective, for matching tariffs that are to become effective on the same date as the tariff to be matched and that meet competition as described in §221.165(d)(1)(iv); and
3. At least 60 days before they are to become effective, for all other tariffs.

(b) When single publication contains changes effective on different dates. Each tariff, supplement, or loose-leaf tariff page which contains various changes to become effective on different dates shall:

1. Bear a general effective date which shall allow at least thirty days' notice,
2. Show directly in connection with such general effective date the following notation: ``(except as noted)'',
3. Show in connection with each change which is to become effective earlier or later than such general effective date, its specific effective date which shall allow at least thirty days' notice unless the Board authorizes the change to be filed on less notice.
4. When matter is authorized by the Board to be filed on less than thirty days' notice, show reference to the Board's order, regulation, or special tariff permission authorizing such filing. Such reference shall be shown (immediately following the specific effective date of such matter) in the manner required by the order, regulation, or special tariff permission, for example:

Effective: . Issued on . days' notice under Special Tariff Permission No. of the Civil Aeronautics Board. (See also §221.194.)
§ 221.161 Delivering tariff publications to Board.

Tariff publications will be received for filing only by delivery thereof to the Board through normal mail channels, or by delivery thereof directly to that office of the Board charged with the responsibility of maintaining the Board's official file of tariffs. Tariff publications will be received for filing only during the established business hours of the Board. The office of the Board is closed on Saturdays and Sundays and on the following holidays:

- New Year's Day (January 1).
- Inauguration Day (January 20, 1973, and January 20 of each fourth year thereafter).
- Washington's Birthday (third Monday in February).
- Memorial Day (last Monday in May).
- Independence Day (July 4).
- Labor Day (first Monday in September).
- Columbus Day (second Monday in October).
- Veterans Day (November 11).
- Thanksgiving Day (fourth Thursday in November).
- Christmas (December 25).

When any such holiday falls on Saturday, the office of the Board will be closed on the preceding Friday. When any such holiday falls on Sunday, the office of the Board will be closed on the following Monday. No tariff publication will be accepted by the Board unless it is delivered to the Board free from all charges, including claims for postage.


§ 221.162 Number of copies required.

Three copies of each tariff, supplement, loose-leaf tariff page, index of tariffs, and adoption notice to be filed shall be sent to the Civil Aeronautics Board, Tariffs Section, Washington, DC 20428. All such copies shall be included in one package and shall be accompanied by a letter of tariff transmittal (§ 221.163).

§ 221.163 Letter of tariff transmittal.

All tariff publications (including indexes of tariffs and adoption notices) filed with the Board shall be accompanied by a letter of tariff transmittal in duplicate in the form prescribed in §221.240. Each letter of transmittal may include one or more tariff publications but passenger tariff publications shall not be included in the same letter of tariff transmittal with property tariff publications. If the filing carrier or agent desires a receipt for the filing, the letter of tariff transmittal shall be sent in triplicate (accompanied by a preaddressed postage paid return envelope, if return by mail is requested), and one copy thereof showing the date of receipt by the Board will be returned to the sender.

[Approved by the Office of Management and Budget under control number 3024-0038]


§ 221.164 Concurrences or powers of attorney not previously filed to accompany tariff transmittal.

When a tariff publication is filed on behalf of a carrier participating therein under authority of its concurrence or power of attorney, such concurrence or power of attorney shall, if not previously filed with the Board, be transmitted with such tariff publication submitted for filing and shall be listed in the letter of tariff transmittal.

[Approved by the Office of Management and Budget under control number 3024-0038]


§ 221.165 Explanation and data supporting tariff changes and new matter in tariff publications.

When a tariff publication is filed with the Board which contains new or changed local or joint rates, fares, or
charges for air transportation, or new or changed classifications, rules, regulations, or practices affecting such rates, fares, or charges, or the value of the service thereunder, the issuing air carrier, foreign air carrier, or agent shall submit with the filing of such publication, in or attached to the transmittal letter:

(a) An explanation of the new or changed matter and the reasons for the filing, including (if applicable) the basis of rate making employed. Where a tariff publication is filed pursuant to an intercarrier agreement approved by the Board, the explanation shall identify such agreement by CAB agreement number, IATA, or ATC resolution number, or if none is designated, then by other definite identification. Where a tariff publication is filed on behalf of a foreign air carrier pursuant to a Government order, a copy of such order shall be submitted with the letter of tariff transmittal.

(b) Economic data and/or information in support of the new or changed matter, including, in cases where pertinent,

(1) Estimates of costs of service, with supporting details and references to sources, and
(2) Estimates of the aggregate effect of the new or changed matter upon such carrier's traffic, schedules, and revenues, and an explanation of the basis for the estimates (including, where available, data as to past traffic, schedules and revenues).

(c) In cases where such publication contains new or changed local or joint rates (other than charter rates), fares, or charges (whether such rates, fares, or charges are published specifically or by rule), a table prepared as follows:

(1) In the first column, a sample of the pairs of points between which such new or changed rates, fares, or charges apply, which sample shall contain every 10th pair of all such pairs (but not less than 10 pairs, unless such new or changed rates, fares, or charges apply between fewer than 10 pairs of points, in which event all such pairs shall be included), but need not include more than 75 pairs of points, for each new or changed type of rate, fare (e.g., first class, coach, etc.), or charge included in such publication;

(2) In the second column, the existing rates, fares, or charges canceled or superseded by the new or changed rates, fares, or charges, except in cases where the publication contains new rates, fares, or charges which do not cancel or supersede existing rates, fares, or charges, in which event the second column shall contain those rates, fares, or charges upon which the filing air carrier relies for comparison in evaluating such new rates, fares, or charges;

(3) In the third column, the new or changed rates, fares, or charges;

(4) In the fourth column, the differences between the rates, fares, or charges listed in the second and third columns, expressed as percentages of those listed in the second column;

(5) In the fifth column, the existing fares per mile or rates or charges per ton-mile;

(6) In the sixth column, the new or changed fares per mile, or rates or charges per ton-mile; and

(7) In the seventh column, the airport-to-airport mileage used in computing the fares per mile or rates or charges per ton-mile.

5 If a carrier's freight rates are published in rate scales rather than on a point-to-point basis, the table shall contain a representative sample of the proposed rates and charges for each rate scale, which sample shall contain 10 percent of all rates or charges, but not less than 10 rates or charges unless such new or changed rates or charges are less than 10, in which event all such rates or charges shall be included: Provided, however, that the sample need not include more than a total of 75 representative rates and charges for each new or changed type of rate or charge (e.g., general commodity or specific commodity) included in such publication.

6 Identify as, e.g., jet coach fare, general commodity rate, etc. If reliance is placed upon rates, fares, or charges for different pairs of points than shown in the first column, such points should be indicated by footnote.

7 The direct airport-to-airport mileage between the points shown in the first column shall normally be used for purposes of this table. Where points with multiple airports are involved, show the mileage from the principal airport with respect to the related service. Other than direct mileages may be used where appropriate (e.g., where the filing
(d) Exceptions: (1) The requirement for data and/or information in paragraphs (b) and (c) of this section will not apply to tariff publications containing new or changed matter which are filed.

   (i) In response to Board orders or specific policy pronouncements of the Board directly related to such new or changed matter.

   (ii) Pursuant to an intercarrier agreement approved by the Board prescribing the rates, fares, charges (or specific formulas therefor) or other matter

   (iii) For the interstate air transportation of property, as defined in §1002(k)(1) of the Act, or by air freight forwarders or international air freight forwarders, as defined in part 296 of this subchapter, or

   (iv) To meet competition: Provided, That

   (a) Changed matter will be deemed to have been filed to meet competition only when it affects decreases in rates, fares, or charges and/or increases the value of service so that the level of the rates or fares or charges and the services provided will be substantially similar to the level of rates or fares or charges and the services of a competing carrier or carriers.

   (b) New matter will be deemed to have been filed to meet competition only when it establishes or affects a rate, fare, or charge and a service which will be substantially similar to the rates, fares, or charges and the services of a competing carrier or carriers.

   (c) When new or changed matter is filed to meet competition over a portion of the filing carrier’s system and is simultaneously made applicable to the balance of the system, such matter, insofar as it applies over the balance of the system, will be deemed to be within the exception in this paragraph (d)(1)(iv) of this section only if such carrier submits an explanation as to the necessity of maintaining uniformity over its entire system with respect to such new or changed matter.

   (d) In any case where new or changed matter is filed to meet competition, the filing carrier or agent must supply, in or attached to the transmittal letter, the complete tariff references which will serve to identify the competing tariff matter which the tariff publication purports to meet. In such case the transmittal letter or attachment shall state whether the new or changed matter is identical to the competing tariff matter which it purports to meet or whether it approximates the competing tariff matter. If the new or changed matter is not identical, the transmittal letter or attachment shall contain a statement explaining, in reasonable detail, the basis for concluding that the tariff publication being filed is substantially similar to the competing tariff matter.

(2) The requirement for data and/or information in paragraph (b) of this section will not apply to foreign air carriers.

(3) The requirement for information in paragraph (c) of this section will not apply to tariff publications containing new or changed rates, fares or charges which result from (i) uniform percentage adjustments, (ii) specific increment adjustments, or (iii) cancellation of rates, fares or charges.

(4) The requirement for data and/or information in paragraph (b) of this section shall not apply to:

   (i) Fares for scheduled passenger service that are within a statutory or Board-established zone of fare flexibility; and

   (ii) Rates for cargo service in foreign air transportation that are within the rate flexibility zones set forth in §399.41 of this chapter, except as specifically required by the Board.

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(Sec. 102, 72 Stat. 740 (49 U.S.C. 1302); National Environmental Policy Act of 1969 (Pub. L. 91-90, 42 U.S.C. 4321 et seq.) and E. O. 11514)

§ 221.166 Explanation of missing C.A.B. numbers to accompany tariff transmittal.

Section 221.31(a) requires a carrier or agent to file tariffs under consecutive C.A.B. numbers. However, the Board may accept a tariff bearing a C.A.B. number which is not consecutive and results in an unused C.A.B. number intervening since the last previously filed tariff: Provided, That a letter accompanies the tariff transmittal explaining why the C.A.B. number of the tariff is not consecutive to the last previously filed tariff and stating whether or not the missing C.A.B. number will be used on a future tariff.

(Approved by the Office of Management and Budget under control number 3024±0038)

[ER±439, 30 FR 9439, July 29, 1965, as amended by ER±1271, 46 FR 63218, Dec. 31, 1981]

§ 221.167 Posting copies to be furnished participating carriers at time of filing.

At the same time that a tariff publication is transmitted to the Board for filing, the issuing carrier or agent shall send sufficient copies of the tariff publication for posting purposes to all participating carriers (see subpart N).

§ 221.168 Withdrawal or substitution of filed tariff publications prohibited.

A tariff publication filed with the Board will not be surrendered or returned and no substitution thereof will be permitted.

Subpart N—Posting Tariff Publications for Public Inspection

§ 221.170 Public notice of tariff information.

Carriers must make tariff information available to the general public, and in so doing must comply with either:

(a) Sections 221.171, 221.172, 221.173, 221.174, 221.175, and 221.176 or
(b) Sections 221.175, 221.176 and 221.177 of this subpart.

[53 FR 52677, Dec. 29, 1988]
§ 221.172 Accessibility of tariffs to the public.

Each file of tariffs shall be kept in complete and accessible form. Employees of the carrier shall be required to give any desired information contained in such tariffs, to lend assistance to seekers of information therefrom, and to afford inquirers opportunity to examine any of such tariffs without requiring the inquirer to assign any reason for such desire.

§ 221.173 Notice of tariff posting.

Each carrier shall cause to be displayed continuously in a conspicuous public place at each station, office, or location at which tariffs are required to be posted, a notice printed in large type reading as follows:

PUBLIC INSPECTION OF TARIFFS

All the currently effective passenger (and/or cargo as applicable) tariffs to which this company is a party and all passenger (and/or cargo as applicable) tariff publications which have been issued but are not yet effective are on file in this office, so far as they apply to traffic from or to ______. (Here name the point.) These tariffs may be inspected by any person upon request and without the assignment of any reason for such inspection. The employees of this company on duty in this office will lend assistance in securing information from the tariffs.

In addition, a complete file of all tariffs of this company, with indexes thereof, is maintained and kept available for public inspection at ______. (Here indicate the place or places where complete tariff files are maintained, including the street address, and where appropriate, the room number.)

[ER—439, 30 FR 9439, July 29, 1965, as amended by ER—1104, 44 FR 9578, Feb. 13, 1979]

§ 221.174 Notification to the passenger of status of fare, rule, charge or practice.

A carrier or ticket agent shall print, stamp upon, or affix to every purchased passenger ticket a notice stating that the terms and conditions of the contract of carriage including the price of the ticket are subject to adjustment prior to the commencement of transportation, except that such notice is not required where a passenger ticket is sold pursuant to an effective tariff rule which provides that the terms and conditions of the contract of carriage, including the price of the ticket, are not subject to any future adjustment during the validity of the ticket, or the ticket is sold for transportation commencing on the same day.

[53 FR 52677, Dec. 29, 1988]

§ 221.175 Special notice of limited liability for death or injury under the Warsaw Convention.

(a) In addition to the aforesaid requirements of this subpart, each air carrier and foreign air carrier which, to any extent, avails itself of the limitation on liability to passengers provided by the Warsaw Convention, shall, at the time of delivery of the ticket, furnish to each passenger whose transportation is governed by the Convention and whose place of departure or place of destination is in the United States, the following statement in writing:

ADVICE TO INTERNATIONAL PASSENGERS ON LIMITATIONS OF LIABILITY

Passengers embarking upon a journey involving an ultimate destination or a stop in a country other than the country of departure are advised that the provisions of a treaty known as the Warsaw Convention may be applicable to their entire journey including the portion entirely within the countries of departure and destination. The Convention governs and in most cases limits the liability of carriers to passengers for death or personal injury to approximately $10,000. Additional protection can usually be obtained by purchasing insurance from a private company. Such insurance is not affected by any limitation of the carrier’s liability under the Warsaw Convention. For further information please consult your airline or insurance company representative.

Provided, however, That when the carrier elects to agree to a higher limit of liability to passengers than that provided in Article 22(1) of the Warsaw Convention, such statement shall be modified to reflect the higher limit. The statement prescribed herein shall be printed in type at least as large as 10-point modern type and in ink contrasting with the stock on:

(1) Each ticket; (2) a piece of paper either placed in the ticket envelope
Office of the Secretary, DOT § 221.176

with the ticket or attached to the ticket; or (3) the ticket envelope; And provided further, That a carrier which has heretofore been furnishing a statement including either the sum of "$8,290" or the sum of "$9,000," in place of the sum of "$10,000" in the text of the statement prescribed by this paragraph, may continue to use such statement until July 15, 1974.

(b) Each air carrier and foreign air carrier which, to any extent, avails itself of the limitation on liability to passengers provided by the Warsaw Convention, shall also cause to be displayed continuously in a conspicuous public place at each desk, station, and position in the United States which is in the charge of a person employed exclusively by it or by it jointly with another person, or by any agent employed by such air carrier or foreign air carrier to sell tickets to passengers whose transportation may be governed by the Warsaw Convention and whose place of departure or destination may be in the United States, a sign which shall have printed thereon the statement prescribed in paragraph (a) of this section:

Provided, however, That an air carrier, except an air taxi operator subject to part 298 of this subchapter, or foreign air carrier which provides a higher limitation of liability than that set forth in the Warsaw Convention and has signed a counterpart of the agreement among carriers providing for such higher limit, which agreement was approved by the Board by Order E-23680, dated May 13, 1966 (31 FR 7302, May 19, 1966), may use the alternate form of notice set forth in the proviso to § 221.176(a) of this chapter in full compliance with the posting requirements of this paragraph. And provided further, That an air taxi operator subject to part 298 of this subchapter, which provides a higher limitation of liability than that set forth in the Warsaw Convention and has signed a counterpart of the agreement among carriers providing for such higher limit, which agreement was approved by the Board by Order E-23680, dated May 13, 1966 (31 FR 7302, May 19, 1966), may use the following notice in the manner prescribed above in full compliance with the posting requirements of this paragraph:

ADVICE TO INTERNATIONAL PASSENGERS ON LIMITATION OF LIABILITY

Passengers traveling to or from a foreign country are advised that airline liability for death or personal injury and loss or damage to baggage may be limited by the Warsaw Convention and tariff provisions. See the notice with your ticket or contact your airline ticket office or travel agent for further information.

Such statements shall be printed in bold faced type at least one-fourth of an inch high.

(Sec. 402, 72 Stat. 757; 49 U.S.C. 1372)

§ 221.176 Notice of limited liability for baggage; alternative consolidated notice of liability limitations.

(a) Each air carrier and foreign air carrier which, to any extent, avails itself of limitations on liability for loss of, damage to, or delay in delivery of baggage shall cause to be displayed continuously in a conspicuous public place at each desk, station, and position in the United States which is in the charge of a person employed exclusively by it or by it jointly with another person, or by any agent employed by such air carrier or foreign air carrier to sell tickets to persons or accept baggage for checking, a sign which shall have printed thereon the following statement:

NOTICE OF LIMITED LIABILITY FOR BAGGAGE
For most international travel (including domestic portions of international journeys) liability for loss, delay, or damage to baggage is limited to approximately $9.07 per pound for checked baggage and $400 per passenger for unchecked baggage unless a higher value is declared and an extra charge is paid. Special rules may apply for valuables. Consult your carrier for details.

Provided, however, That an air carrier or foreign air carrier which provides a higher limitation of liability for death or personal injury than that set forth in the Warsaw Convention and has signed a counterpart of the agreement approved by the Board by Order E-23680, dated May 13, 1966 (31 FR 7302, May 19, 1966), may use the following notice in full compliance with the posting requirements of this paragraph and of § 221.175(b):

ADVICE TO INTERNATIONAL PASSENGERS ON LIMITATION OF LIABILITY

Passengers traveling to or from a foreign country are advised that airline liability for death or personal injury and loss or damage to baggage may be limited by the Warsaw Convention and tariff provisions. See the notice with your ticket or contact your airline ticket office or travel agent for further information.

Such statements shall be printed in bold faced type at least one-fourth of an inch high.

(Sec. 402, 72 Stat. 757; 49 U.S.C. 1372)
§ 221.177 Alternative notice of tariff terms.

(a) Terms incorporated in the contract of carriage. (1) A ticket, airwaybill, or other written instrument that embodies the contract of carriage for foreign air transportation shall contain or be accompanied by notice to the passenger, shipper, or consignee as required in paragraphs (b) and (d) of this section.

(2) Each carrier shall make the full text of all terms that are incorporated
in a contract of carriage readily available for public inspection at each airport or other ticket/cargo sales office of the carrier; Provided, That the medium, i.e., printed or electronic, in which the incorporated terms and conditions are made available to the consumer shall be at the discretion of the carrier.

(3) Each carrier shall display continuously in a conspicuous public place at each airport or other ticket/cargo sales office of the carrier a notice printed in large type reading as follows:

**EXPLANATION OF CONTRACT TERMS**

All passenger (and/or cargo as applicable) contract terms incorporated by law to which this company is a party are available in this office. These provisions may be inspected by any person upon request and for any reason. The employees of this office will lend assistance in securing information, and explaining any terms.

In addition, a file of all tariffs of this company, with indexes thereof, from which the incorporated contract terms are obtained is maintained and kept available for public inspection at /emlowln/emlowln/emlowln/emlowln. (Here indicate the place or places where tariff files are maintained, including the street address and, where appropriate, the room number.)

(4) Each carrier shall provide to the passenger, shipper or consignee a complete copy of the text of any/all terms and conditions applicable to the contract of carriage, free of charge, immediately, if feasible, or otherwise promptly by mail or other delivery service, upon request at any airport or other ticket/cargo sales office of the carrier. In addition, all other locations where the carrier’s tickets or airwaybills may be issued shall have available at all times, free of charge, information sufficient to enable the passenger, shipper or consignee to request a copy of such term(s).

(b) Notice of incorporated terms. Each carrier and ticket agent shall include on or with a ticket, airwaybill or other written instrument given to the passenger, shipper, or consignee, that embodies the contract of carriage, a conspicuous notice that:

(1) The contract of carriage may incorporate by law terms and conditions filed in public tariffs with U.S. authorities; passengers, shippers and consignees may inspect the full text of each applicable incorporated term at any of the carrier’s airport locations or other ticket/cargo sales offices of the carrier; and passengers, shippers and consignees have the right to receive, upon request at any airport or other ticket/cargo sales office of the carrier, a free copy of the full text of any/all such terms by mail or other delivery service;

(2) The incorporated terms may include, among others, the terms shown in paragraphs (b)(2) (i) through (v) of this section. Passengers may obtain a concise and immediate explanation of the terms shown in paragraphs (b)(2) (i) through (v) of this section from any location where the carrier’s tickets are sold, and a shipper or consignee may obtain the same information at any location where an airwaybill or any similar document may be issued:

(i) Limits on the carrier’s liability for personal injury or death of passengers (subject to § 221.175), and for loss, damage, or delay of goods and baggage, including fragile or perishable goods.

(ii) Claim restrictions, including time periods within which passengers, shippers, or consignees must file a claim or bring an action against the carrier for its acts or omissions or those of its agents.

(iii) Rights of the carrier to change the terms of the contract. (Rights to change the price, however, are governed by paragraph (d) of this section).

(iv) Rules about re-confirmations or reservations, check-in times, and refusal to carry.

(v) Rights of the carrier and limitations concerning delay or failure to perform service, including schedule changes, substitution of alternate carrier or aircraft, and rerouting.

(3) The salient features of any applicable terms that restrict refunds of the transportation price, impose monetary penalties on passengers, shippers or consignees, or permit a carrier to raise the price, are also being provided on or with the ticket.

(c) Explanation of incorporated terms. Each carrier shall ensure that any passenger, shipper, or consignee can obtain from any location where its tickets are sold, or airwaybills or any similar documents are issued, a concise and
§ 221.178

immediate explanation of any term incorporated concerning the subjects listed in paragraph (b)(2) or identified in paragraph (d) of this section.

(d) Direct notice of certain terms. A passenger, shipper or consignee must receive conspicuous written notice, on or with the ticket, airwaybill, or other similar document, of the salient features of any terms that (1) restrict refunds of the price of the transportation, (2) impose monetary penalties on passengers, shippers, or consignees, or (3) permit a carrier to raise the price: Provided, That the notice specified in paragraph (d)(3) of this section is not required where a passenger ticket is sold pursuant to an effective tariff rule which provides that the terms and conditions of the contract of carriage, including the price of the ticket, are not subject to any future adjustment during the validity of the ticket, or the ticket is sold for transportation commencing on the same day.

[53 FR 52677, Dec. 29, 1988]

§ 221.179 Transmission of tariff filings to subscribers.

(a) Each carrier required to file tariffs in accordance with this part shall make available to any person so requesting a subscription service as described in paragraph (b) of this section separately for its passenger tariffs and its freight tariffs issued by it or by a publishing agent on its behalf.

(b) Under the required subscription service one copy of each new tariff, supplement, and loose-leaf page, including the justification required by §221.165, must be transmitted to each subscriber thereto by first-class mail (or other equivalent means agreed upon by the subscriber) not later than one day following the time the copies for official filing are transmitted to the Board. The subscription service described herein shall not preclude the offering of additional types of subscription services by carriers or their agents.

(c) The carriers or their publishing agents at their option may establish a charge for providing the required subscription service to subscribers: Provided, That the charge may not exceed a reasonable estimate of the added cost of providing the service.

(Secs. 102, 204, 403, and 416 of the Federal Aviation Act of 1958, as amended by Pub. L. 95-504, 72 Stat. 740, 743, 758, and 771, 92 Stat. 1731, 1732; 49 U.S.C. 1302, 1324, 1373, and 1386)

[ER-1001, 42 FR 28877, June 6, 1977, as amended by ER-1125, 44 FR 33059, June 8, 1979]

Subpart O—Rejection of Tariff Publications

§ 221.180 Board’s authority to reject.

Under the terms of section 403(a) of the act, the Board is empowered to reject any tariff publication which is not consistent with section 403 of the act or with the regulations in this part.

§ 221.181 Notification of rejection.

When a tariff publication is rejected, the issuing carrier or agent thereof will be notified in writing that the publication is rejected and of the reason for such rejection. The rejected publication will not be returned to the issuing carrier or issuing agent.

§ 221.182 Rejected publication is void and must not be used.

A tariff publication rejected by the Board is void and is without any force or effect whatsoever. Such rejected tariff publication must not be used.

§ 221.183 Tariff publication issued in lieu of rejected publication.

When a publication is rejected by the Board, the number which it bears must not be again used. Such publication must not thereafter be referred to as canceled or amended but a publication that is issued in lieu of such rejected publication shall bear the following notation (to be shown in the manner described in paragraphs (a), (b), and (c) of this section):

(issued in lieu of rejected by C.A.B.) (Show number of rejected publication)

(a) If the rejected publication is a tariff, the tariff which is issued in lieu thereof shall show the above required notation under its C.A.B. number on the title page in the manner shown in the following example:
Subpart P—Special Tariff Permission To File on Less Than Statutory Notice

§ 221.190 Grounds for approving or denying Special Tariff Permission applications.

(a) General authority. The Board is authorized, when actual emergency or real merit is shown, to permit changes in rates, fares, or other tariff provisions on less than the statutory notice required by section 403 of the Act.

(b) Grounds for approval. The following facts and circumstances constitute some of the grounds for approving applications for Special Tariff Permission in the absence of other facts and circumstances warranting denial:

(1) Clerical or typographical errors. Clerical or typographical errors in tariff publications constitute grounds for approving applications for Special Tariff Permission to file on less than statutory notice the tariff changes necessary to correct such errors. Each application for Special Tariff Permission based on such grounds shall plainly specify the errors and contain a complete statement of all the attending facts and circumstances, and such application shall be presented to the Board with reasonable promptness after issuance of the defective tariff publication.

(2) Rejection caused by clerical or typographical errors or illegibility. Rejection of a tariff publication caused by illegible printing (in matter reissued without change) or by clerical or typographical errors constitutes grounds for approving applications for Special Tariff Permission to file on less than statutory notice, effective not earlier than the original effective dates in the rejected publication, all changes contained in the rejected publication but with the errors corrected. Each application for the grant of Special Tariff Permission based on such grounds shall plainly specify the errors and contain a complete statement of all the attending facts and circumstances, and such application shall be filed with the Board within five days after receipt of the Board’s notice of rejection.

(3) Incorrect page cancellation caused by rejection of prior issue. When a revision of a loose-leaf page bears incorrect
§ 221.191 How to prepare and file applications for Special Tariff Permission.

(a) Form. Except as set forth in §221.195, each application for Special Tariff Permission to file a tariff on less than statutory notice shall be prepared in the form prescribed in §221.241 and shall show all of the information required by that section.

(b) Number of copies and place of filing. The original and one copy of each such application for Special Tariff Permission, including all exhibits thereto and amendments thereof, shall be sent to the Civil Aeronautics Board, Tariffs Section, Washington, D.C. 20428.

(c) Who may make application. Applications for Special Tariff Permission to file rates, fares, or other tariff provisions on less than statutory notice shall be made only by the issuing carrier or agent authorized to issue and file the proposed tariff publication. Such application by the issuing carrier or agent will constitute application on behalf of all carriers participating in the proposed rates, fares, or other tariff provisions.

(d) More than one tariff. Where the same special circumstances or unusual conditions are relied upon as justifying Special Tariff Permission involving amendments of more than one tariff, the applicant may file one application covering the proposed amendments of all tariffs involved or an individual application for each tariff involved. Since one tariff may present a problem not encountered in the other tariffs, the filing of individual applications may preclude delay in the processing of applications other than the one with respect to the tariff to which the problem pertains. Passenger tariff amendments shall not be included in the same application with property tariff amendments.

(e) When notice is required. Notice in the manner set forth in paragraph (f) of this section is required when a carrier...
files an application for Special Tariff Permission:

(1) To offer passenger fares that would be outside a Board-established zone of fare flexibility or, in markets for which the Board has not established such a zone, outside the statutory zone of fare flexibility; or

(2) To file any price increase or rule change that the carrier believes is likely to be controversial.

(f) Form of notice. When notice of filing of a Special Tariff Permission application affecting passenger fares is required by paragraph (e) of this section, the carrier shall, when it files the application, give immediate telegraphic notice or other notice approved by the Chief of the Tariffs Division, Bureau of International Aviation, to all certificated and foreign route carriers authorized to provide nonstop or one-stop service in the markets involved, and to civic parties that would be substantially affected. When notice of an application affecting cargo rates is required by paragraph (e) of this section, the carrier shall give the notice as described in the previous sentence to readily identifiable representatives of affected shippers. The application shall include a list of the parties notified.

(Approved by the Office of Management and Budget under control number 3024-0038)

§ 221.192 Special Tariff Permission to be used in its entirety as granted.

Each Special Tariff Permission to file rates, fares, or other tariff provisions on less than statutory notice shall be used in its entirety as granted. If it is not desired to use the permission as granted, and lesser or more extensive or different permission is desired, a new application for Special Tariff Permission conforming with §§ 221.191 and 221.241 in all respects and referring to the previous permission shall be filed.

[ER−439, 30 FR 9439, J July 29, 1965, as amended by ER−1038, 43 FR 1323, Jan. 9, 1978]

§ 221.193 Re-use of Special Tariff Permission when publication is rejected.

If a tariff publication containing matter issued under Special Tariff Permission is rejected, the same Special Tariff Permission may be used in a tariff publication issued in lieu of such rejected publication provided that such re-use (a) is not precluded by the terms of the Special Tariff Permission, and (b) is made within the time limit thereof or within seven days after the date of the Board’s notice of rejection, whichever is later, but in no event later than fifteen days after the expiration of the time limit specified in the Special Tariff Permission.

§ 221.194 Reference to Special Tariff Permission on tariff publications.

The terms of Special Tariff Permissions require that tariff publications filed pursuant thereto shall bear reference to the Special Tariff Permission substantially in the following form:

Issued on ___ days’ notice under Special Tariff Permission No. ___ of the Civil Aeronautics Board.

At the election of the publisher, the Board’s Special Tariff Permission number may be omitted from such notation on the tariff publication provided that:

(a) The Special Tariff Permission number is shown in the letter of tariff transmittal in connection with the listed tariff publication containing matter issued under such permission, and

(b) The Special Tariff Permission application number of the issuing carrier or agent is shown in the notation on the tariff publication in the following manner:

Issued on ___ days’ notice under Special Tariff Permission of the Civil Aeronautics Board. (Appl. No. ___.)

Publishers should elect to omit the Special Tariff Permission number from the tariff publication only when publication and filing will be expedited since it is preferable that the Special Tariff Permission number be shown on the tariff publication.
§ 221.195 Pre-filing tariff approval for fare reductions.

(a) Carriers obtaining Special Tariff Permission under this section are exempt from section 403 (b) and (c) of the Act to the extent necessary to charge passenger fares approved by the Board under these procedures.

(1) Applications shall be filed with the Chief, Tariffs Division, Bureau of Domestic Aviation, and be entitled “Special Tariff Permission Application No. —Pre-filing Approval Requested.” The title page of the application shall include the name and telephone number of the contact person for the carrier.

(2) Applications filed with the Board before 12 noon on any business day will be acted on the same day. Applications filed with the Board after 12 noon will be acted on by the end of the next business day. The Chief, Tariffs Division, will inform the carrier by telephone as soon as a decision is made on the application.

(3) The new fare may be put into effect by the carrier at 12:01 a.m. on the day following approval of the application.

(4) Within 7 days after approval of any application under this section, the carrier shall file a tariff reflecting the changed fare. The tariff shall show the date on which the fare became effective. A succession of fare changes in accordance with this section may be reflected in a single tariff filing by showing the superseded fares and their effective dates in footnotes.

(b) Applications shall be in easily readable and understandable format.

(1) The application shall describe: (i) the fare for which approval is sought, (ii) the tariff to be amended, (iii) the current fare to be changed, if any, and (iv) the current page and revision number of the affected tariff.

(2) Extensive or complicated exhibits included with the application shall be summarized in a statement explaining the intent of the proposal.

(c) The procedures in this section apply to interstate and overseas passenger fares. They shall be used only for proposing either (1) a decrease in an existing fare, or (2) a fare that is within the downward zone set for interstate and overseas passenger fares in subpart C of 14 CFR part 399 and does not increase an existing fare. For these purposes an increase or decrease in an existing fare means a change in the fare amount without changing any of the conditions.

(d) The procedures in this section do not apply to proposals to match other fares already filed on statutory notice set forth in §221.60. Applications proposing fares that raise significant questions or lawfulness, as set forth in §399.35 of this chapter, will be denied.

(e) An application under this section may be filed on a weekend or holiday if it proposes to match a fare approved under this section on the preceding business day. Such an application shall be filed by Western Union TWX (7108229066 CABAIR WSH). Along with the information set forth in paragraph (b)(1) of this section, it shall identify the fare to be matched, by carrier, fare class, and amount. If the application is filed before noon, as indicated on the TWX, the carrier may consider it as having been granted on that day and so put the new fare into effect at 12:01 a.m. the next day. The application will be acted on by the end of the first business day after it is filed. Any disapproval will be prospective only.

[ER-1205, 45 FR 87009, Dec. 31, 1980]

Subpart Q—Waiver of Tariff Regulations

§ 221.200 Applications for waiver of tariff regulations.

Applications for waiver or modification of any of the requirements of this part 221 or for modification of section 403 with respect to the filing and posting of tariffs shall be made by the issuing carrier or issuing agent.

§ 221.201 Form of application for waivers.

Applications for waivers shall be in the form of a letter addressed to the Civil Aeronautics Board, Tariffs Section, Washington, DC 20428, and shall:

(a) Specify (by section and paragraph) the particular regulation which the applicant desires the Board to waive.
Office of the Secretary, DOT § 221.212  

(b) Show in detail how the proposed provisions will be published in the tariff publication or other document under authority of such waiver if granted (submitting exhibits of the proposed publication where necessary to clearly show this information).  
(c) Set forth all facts and circumstances on which the applicant relies as warranting the Board's granting the authority requested. No tariff publication or other documents shall be filed pursuant to such application prior to the Board's granting the authority requested.

Subpart R—Giving and Revoking Concurrences to Carriers

§ 221.210 Method of giving concurrence.  
(a) Prescribed form of concurrence. A concurrence prepared in accordance with the form set forth in § 221.242 shall be used by a carrier to give authority to another carrier to issue and file with the Board tariff publications which contain joint rates, fares, or charges, including provisions governing such rates, fares, or charges, applying to, from, or via points served by the carrier giving the concurrence. A concurrence shall not be used as authority to publish joint rates, fares, or charges in which the carrier to whom the concurrence is given does not participate, and it shall not be used as authority to publish local rates, fares, or charges.

(b) Number of copies. Each concurrence shall be prepared in triplicate. The original of each concurrence shall be filed with the Board, the duplicate thereof shall be given to the carrier in whose favor the concurrence is issued, and the third copy shall be retained by the carrier issuing the concurrence.

§ 221.211 Method of revoking concurrence.  
(a) Prescribed form of revocation notice. A concurrence may be revoked by filing with the Board in the manner specified in this section a Notice of Revocation of Concurrence prepared in accordance with the form set forth in § 221.243.

(b) Sixty days' notice required. Such Notice of Revocation of Concurrence shall be filed on not less than sixty days' notice to the Board. A Notice of Revocation of Concurrence will be deemed to be filed only upon its actual receipt by the Board, and the period of notice shall commence to run only from such actual receipt.

(c) Number of copies. Each Notice of Revocation of Concurrence shall be prepared in triplicate. The original thereof shall be filed with the Board and, at the same time that the original is transmitted to the Board, the duplicate thereof shall be sent to the carrier to whom the concurrence was given. The third copy shall be retained by the carrier issuing such notice.

(d) Amendment of tariffs when concurrence revoked. When a concurrence is revoked, a corresponding amendment of the tariff or tariffs affected shall be made by the issuing carrier of such tariffs on not less than statutory notice to become effective not later than the effective date stated in the Notice of Revocation of Concurrence. In the event of failure to so amend the tariff or tariffs, the provisions therein shall remain applicable until lawfully canceled.

(Approved by the Office of Management and Budget under control number 3024-0038) [ER-439, 30 FR 9439, July 29, 1965, as amended by ER-1038, 43 FR 1323, Jan. 9, 1978; ER-1271, 46 FR 63218, Dec. 31, 1981]

§ 221.212 Method of withdrawing portion of authority conferred by concurrence.  

If a carrier desires to issue a concurrence conferring less authority than a previous concurrence given to the same carrier, the new concurrence shall not direct the cancellation of such previous concurrence. In such circumstances, such previous concurrence shall be revoked by issuing and filing a Notice of Revocation of Concurrence in the form and manner prescribed by § 221.211. Such revocation notice shall include reference to the new concurrence, "(set
§ 221.220 Method of giving power of attorney.

(a) Prescribed form of power of attorney. A power of attorney prepared in accordance with the applicable form set forth in §221.244 shall be used by a carrier to give authority to an agent and (in the case of the agent being an individual) such agent's alternate to issue and file with the Board tariff publications which contain local or joint rates, fares, or charges, including provisions governing such rates, fares or charges, applicable via and for account of such carrier. Agents may be only natural persons or corporations (other than incorporated associations of air carriers). The authority conferred in a power of attorney may not be delegated to any other person.

(b) Designation of tariff issuing person by corporate agent. When a corporation has been appointed as agent it shall forward to the Board a certified excerpt of the minutes of the meeting of its Board of Directors designating by name and title the person responsible for issuing tariffs and filing them with the Board. Only one such person may be designated by a corporate agent, and the title of such designee shall not contain the word "Agent". When such a designee is replaced the Board shall be immediately notified in like manner of his successor. An officer or employee of an incorporated tariff-publishing agent may not be authorized to act as tariff agent in his individual capacity. Every tariff issued by a corporate agent shall be issued in its name as agent.

(c) Number of copies. Each power of attorney shall be prepared in triplicate. The original of each power of attorney shall be filed with the Board, the duplicate thereof shall be given to the agent in whose favor the power of attorney is issued, and the third copy shall be retained by the carrier who issued the power of attorney.

(d) Conflicting authority to be avoided. In giving powers of attorney, care should be taken to avoid giving authority to two or more agents which, if used, would result in conflicting or duplicate tariff provisions.

§ 221.221 Method of revoking power of attorney.

(a) Prescribed form of revocation notice. A power of attorney may be revoked only by filing with the Board in the manner specified in this section a Notice of Revocation of Power of Attorney prepared in accordance with the form set forth in §221.245.

(b) Sixty days' notice required. Such Notice of Revocation of Power of Attorney shall be filed on not less than sixty days' notice to the Board. A Notice of Revocation of Power of Attorney will be deemed to be filed only upon its actual receipt by the Board, and the period of notice shall commence to run only from such actual receipt.

(c) Number of copies. Each Notice of Revocation of Power of Attorney shall be prepared in triplicate. The original thereof shall be filed with the Board and, at the same time that the original is transmitted to the Board, the duplicate thereof shall be sent to the agent in whose favor the power of attorney was issued (except, if the alternate agent has taken over the tariffs, the duplicate of the Notice of Revocation of Power of Attorney shall be sent to the alternate agent). The third copy of the notice shall be retained by the carrier.

(d) Amendment of tariffs when power of attorney is revoked. When a power of attorney is revoked, a corresponding amendment of the tariff or tariffs affected shall be made by the issuing agent of such tariffs on not less than statutory notice to become effective not later than the effective date stated in the Notice of Revocation of Power of Attorney. In the event of failure to so
amend the tariff or tariffs, the provisions therein shall remain applicable until lawfully canceled.

(Approved by the Office of Management and Budget under control number 3024-0038)


§ 221.223 Procedure for alternate agent to assume the duties of and take over tariffs of the principal agent.

(a) Alternate may act only upon death or disability of principal agent. An alternate agent may exercise the authority granted in the power of attorney to the principal agent only in the event of death or disability of the principal agent. The term "disability" as used here and in the power of attorney means resignation, permanent transfer to other duties, or other duties, or other permanent absence of the principal agent, and does not mean temporary absence of the principal agent caused by vacation, illness, or other similar causes. After an alternate agent has once exercised the authority granted by the power of attorney, the principal agent shall not thereafter act under such authority.

(b) Affidavit to be made by alternate. When an alternate agent assumes the duties of the principal agent, his exercising the authority in the power of attorney shall be evidenced by an affidavit which shall be submitted to the Board on or before the date on which the alternate agent files any tariff publications under such authority.

(c) Take-over supplement to be filed by alternate. When an alternate agent assumes the duties of the principal agent, he shall file with the Board a supplement to each of the effective tariffs issued by the principal agent which shall comply with the following:

(1) Such supplements shall be filed to loose-leaf tariffs as well as book tariffs.

(2) Such supplement shall consist of a title page prepared in accordance with §221.112(b) except:

(i) Such supplement shall not bear an effective date.

(ii) Such supplement shall contain the following statement (to be shown immediately below the description of the tariff's contents and territory):

On and after ________________ (show date when principal agent ceased to act) this tariff (as amended), which was heretofore issued by ________________ (show name and title of former agent), shall be considered as the issue of ________________ (show name of alternate), Alternate Agent.

(3) All such supplements to all effective tariffs shall be filed at one time under one letter of tariff transmittal.

(d) Revised title pages to be filed by alternate. Simultaneously with the filing of take-over supplements pursuant to §221.223(c), the alternate agent shall file, on lawful notice, a revised title page to each effective loose-leaf tariff of the principal agent for the purpose of specifically showing the name and title of the alternate agent in lieu of the principal agent's name and title wherever the latter appears on the title page.

(e) Alternate agent's title to be shown in tariff publications. The title "Alternate Agent" shall be shown in connection with the alternate agent's name in all tariff publications which he issues and files under his authority as alternate agent and in all tariff publications
§ 221.224 Procedure for having new principal agent assume the duties of and take over tariffs of another agent.

(a) Procedure. When it is desired to transfer authority from the current principal agent (or an alternate agent acting in the principal's stead) to a new principal agent and have the new agent take over (assume the duties of issuing) all of the effective tariffs of the current agent, the following procedure shall be observed:

(1) Each carrier which has issued a power of attorney in favor of the current agent (or alternate agent) shall issue a new power of attorney in favor of the new principal agent (and his alternate) and such new power of attorney shall be prepared and filed in accordance with the following:

(i) Such new power of attorney shall direct the cancellation of the power of attorney issued in favor of the principal agent and alternate agent from whom the authority is transferred.

(ii) Such new power of attorney shall bear the following statement (in the upper right portion under the date): (This power of attorney shall become effective on the date of its receipt by the Civil Aeronautics Board.)

(iii) Such new power of attorney shall not confer less authority than the power of attorney which it cancels.

(iv) Such new power of attorney shall not be transmitted by the carrier directly to the Board but shall be transmitted to the new principal agent named therein.

(v) The new principal agent shall secure such powers of attorney from all carriers participating in all of the effective tariffs of the agent or alternate agent to be superseded and, immediately upon securing all such powers of attorney, the new principal agent shall file the originals thereof with the Board all at one time. A new corporate agent shall also file with the Board a certified excerpt of the minutes of the meeting of its Board of Directors showing the name and title of the persons designated to issue and file tariffs in the corporation's name.

(2) At the same time that the new principal agent files with the Board the originals of the powers of attorney pursuant to paragraph (a)(1)(v) of this section, the new principal agent shall file with the Board a take-over supplement, conforming with paragraph (b) of this section, to each one of the former agent's effective tariffs.

(b) Take-over supplement to be filed by new principal agent. The take-over supplement to be filed by the new principal agent pursuant to paragraph (a)(2) of this section shall conform with the following:

(1) Such supplements shall be filed to loose-leaf tariffs as well as book tariffs.

(2) The title page of such supplement shall be prepared in accordance with §221.112(b) except that:

(i) The title page shall not bear an effective date.

(ii) The title page shall contain the following statement (to be shown immediately below the description of the tariff's contents and territory): On and after (show date when new powers of attorney are filed with the Board), this tariff (as amended), which was heretofore issued by (show name and title of former issuing agent), shall be considered as the issue of (show name and title of new principal agent).

(3) The page following the title page of such take-over supplement shall contain the following amendment of the list of participating carriers in the tariff (as amended) for the purpose of
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reflecting the changes in the power of attorney numbers and issuing agent:

Refer to page ___ (or Original Page ___ or Revised Page ___), if filed to a loose-leaf tariff of the tariff (as amended) and change the List of Participating Carriers in its entirety to read as follows:

**LIST OF PARTICIPATING CARRIERS**

This tariff is issued and filed with the Civil Aeronautics Board by (Show name of new principal agent) Agent for and on behalf of the following participating carriers (under authority of their powers of attorney filed with the Civil Aeronautics Board):

<table>
<thead>
<tr>
<th>Participating carrier</th>
<th>Power of attorney No.</th>
</tr>
</thead>
</table>

(List alphabetically all carriers participating in the tariff and their respective new power of attorney numbers)

Such amendment shall not attempt to add, change or eliminate participating carriers but only show the changes in the power of attorney numbers and the issuing agent. If power of attorney numbers have been omitted from the tariff pursuant to §221.34(e), the take-over supplement may omit such numbers, provided that an accompanying statement conforming to §221.34(e) is submitted to the Board with such supplement.

(4) All such take-over supplements to all of the effective tariffs of the predecessor agent shall be filed at one time under one letter of tariff transmittal and shall be accompanied by the powers of attorney in favor of the new principal agent.

(c) Revised title pages to be filed by new principal agent. Simultaneously with the filing of take-over supplements pursuant to §221.224(b), the new principal agent shall file, on lawful notice, a revised title page to each effective loose-leaf tariff of the former agent for the purpose of specifically showing the name and title of the new principal agent in lieu of the former agent’s name and title wherever the latter appears on the title page.

(d) C.A.B. number of tariffs issued by new principal agent. (1) If the new principal agent has not filed tariffs with the Board as an issuing agent prior to taking over the former agent’s tariffs, the new agent shall number any tariffs, which he may subsequently issue, according to either one of the following two methods:

(i) The new principal agent shall number his tariffs consecutively continuing in the same tariff series of C.A.B. numbers of the former agent. In this event, the new principal agent shall notify the Board that his tariffs will be so numbered.


(2) If the new principal agent has filed tariffs with the Board as an issuing agent prior to taking over the former agent’s tariffs, the new agent shall continue to number any tariffs, which he may subsequently issue, consecutively in his own series of C.A.B. numbers.

(3) If tariffs issued by the new principal agent will be numbered in a different C.A.B. number series from those of the former agent, any supplements or loose-leaf pages filed to, any amendments directed of, or any references to the tariffs of the former agent shall show directly in connection with the C.A.B. numbers that they are in the series of the former agent, for example:

(i) When new agent issues a new tariff which is designated C.A.B. No. 1 in his series and cancels C.A.B. No. 4 in the series of the former agent:

C.A.B. No. 1

cancels

C.A.B. No. 4

(Agent John Doe’s series)

(ii) When new agent issues a supplement to tariff issued by the former agent:

Supplement No. 3

to

C.A.B. No. 4

(Agent John Doe’s series)

(iii) When new agent issues a revised page to tariff issued by the former agent:
(e) Numbering tariff transmittal of new principal agent. All letters of tariff transmittal of the new principal agent shall be numbered consecutively in such agent’s series of tariff transmittal numbers, and shall not be numbered in the former agent’s series.

(f) Numbering special tariff permission applications of new principal agent. Applications for Special Tariff Permission filed by the new principal agent shall be numbered consequently in such agent’s series of application numbers, and shall not be numbered in the former agent’s series.

Subpart T—Adoption Publications Required To Show Change in Carrier’s Name or Transfer of Operating Control

§ 221.230 Adoption notice.

(a) Prescribed form of adoption notice to be filed by adopting carrier. When the name of a carrier is changed or when its operating control is transferred to another carrier (including another company which has not previously been a carrier), the carrier which will thereafter operate the properties shall immediately issue, file with the Board, and post for public inspection an adoption notice prepared in accordance with the form set forth in §221.246. Such adoption notice shall contain no matter other than that required by the prescribed form. (The carrier under its former name or the carrier from whom the operating control is transferred shall be referred to in this subpart as the “former carrier”, and the carrier, company, or fiduciary to whom the operating control is transferred shall be referred to in this subpart as the “adopting carrier”.)

(b) Prepared, filed, and posted as a tariff publication. The adoption notice shall be prepared, filed, and posted as a tariff publication. The adoption notice shall be issued and filed by the adopting carrier and not by an agent.

(c) Copies to be sent to agents and other carriers. At the same time that the adoption notice is transmitted to the Board for filing, the adopting carrier shall send copies of such adoption notice to each agent and carrier to whom the new powers of attorney name a new principal agent, the procedure in §221.224 shall be followed. If the new powers of attorney name a new alternate agent without changing the principal agent, the principal agent shall also file amendments of the list of participating carriers in his tariffs to show the new power of attorney numbers at the same time as he files the new powers of attorney with the Board.
the former carrier has given a power of attorney or concurrence. (See §221.233.)

(Approved by the Office of Management and Budget under control number 3024-0038)


§ 221.231 Adoption supplements and revised title pages to be filed to former carrier's tariffs.

At the same time that the adoption notice is issued, posted, and filed pursuant to §221.230, the adopting carrier shall issue, post and file with the Board:

(a) A consecutively numbered supplement to each effective tariff (loose-leaf or book) issued by the former carrier which shall be prepared in accordance with the form set forth in §221.247 and shall contain no matter other than that required by the prescribed form, and

(b) A revised title page, on lawful notice, to each effective loose-leaf tariff issued by the former carrier for the purpose of specifically showing the name of the adopting carrier in lieu of the former carrier's name wherever the latter appears on the title page.

(Approved by the Office of Management and Budget under control number 3024-0038)


§ 221.232 Receiver shall file adoption notice and supplements.

A receiver shall, immediately upon assuming control of a carrier, issue and file with the Board an adoption notice and adoption supplements as prescribed by §§221.230 and 221.231 and shall comply with the requirements of this subpart. An adoption notice filed by a receiver shall be numbered consecutively in the tariff series of C.A.B. numbers of the former carrier and all subsequent tariffs issued by the receiver shall be consecutively numbered in that series. When such receivership relationship is terminated, the carrier taking over the assets shall file an adoption notice and adoption supplements in conformity with §§221.230 and 221.231.

§ 221.233 Agents' and other carriers' tariffs shall reflect adoption.

If the former carrier is shown as a participating carrier under concur-

§ 221.234 C.A.B. numbers of tariffs issued by adopting carrier and method of publishing reference to C.A.B. numbers of former carrier's tariffs.

(a) Numbering adopting carrier's tariffs. Except as otherwise provided in §221.232, the adopting carrier shall consecutively number its adoption notice and tariffs in its own tariff series of C.A.B. numbers, and not in the series of the former carrier. If the adopting carrier has not filed tariffs with the

Substitution Notice

(Show adopting carrier's name) by its Adoption Notice C.A.B. No. having taken over the tariffs, etc. of (Show former carrier's name) is hereby substituted for (Show former carrier's name) wherever the latter appears in this tariff (as amended).

Where the former carrier is specifically named in other parts of the tariff, the adopting carrier's name shall be specifically shown in lieu thereof whenever the issuing carrier or agent next has occasion to amend such parts of the tariff for other reasons.

[ER–439, 30 FR 9439, July 29, 1965, as amended by ER–1038, 43 FR 1323, Jan. 9, 1978]
§ 221.235

Board previous to its adoption notice, the adoption notice shall be designated C.A.B. No. 1 and subsequent tariffs shall be consecutively numbered C.A.B. Nos. 2, 3, 4, 5, etc.

(b) Method of publishing reference to former carrier's tariffs (This paragraph is not applicable where adopting carrier is a receiver or other fiduciary). Any supplements or loose-leaf pages filed to, any amendments directed of, or any references to the tariffs of the former carrier shall show directly in connection with the C.A.B. number that such number is in the series of the former carrier, for example:

(1) If the adopting carrier issues and files a tariff which cancels a tariff issued by the former carrier, the title page of the new tariff shall set forth its C.A.B. number and the cancellation of the former tariff in the manner shown in the following example:

C.A.B. No. 2

(cancels)

C.A.B. No. 5

(John Doe Air Co. series)

(2) If the adopting carrier issues a supplement to a tariff issued by the former carrier, the title page of the supplement shall set forth the supplement and C.A.B. numbers in the manner shown in the following example:

Supplement No. 6
to

C.A.B. No. 5

(John Doe Air Co. series)

Supplements Nos. 5 and 6 are the only effective supplements

(3) If the adopting carrier issues a revised or original page to a loose-leaf tariff issued by the former carrier, the page shall set forth the C.A.B. number and page reference in the manner shown in the following example:

C.A.B. No. 5

(John Doe Air Co. series)

3rd Revised Page 4

cancels

2nd Revised Page 4

§ 221.235 Concurrences or powers of attorney to be reissued.

(a) Adopting carrier shall reissue adopted concurrences and powers of attorney. Within a period of 120 days after the date on which the change in name or transfer of operating control occurs, the adopting carrier shall reissue all effective powers of attorney and concurrences of the former carrier by issuing and filing new powers of attorney and concurrences, in the adopting carrier's name, which shall direct the cancellation of the respective powers of attorney and concurrences of the former carrier. The adopting carrier shall consecutively number its powers of attorney and concurrences in its own series of power of attorney numbers and concurrence numbers (commencing with No. 1 in each series if it had not previously filed any such instrument with the Board), except that a receiver or other fiduciary shall consecutively number its powers of attorney or concurrences in the series of the former carrier. The cancellation reference shall show that the canceled power of attorney or concurrence was issued by the former carrier, for example:

Concurrence No. 1
cancels Concurrence No. 6 issued by John Doe Airways Co., Inc.

If such new powers of attorney or concurrences confer less authority than the powers of attorney or concurrences which they are to supersede, the new issues shall not direct the cancellation of the former issues; in such instances, the provisions of §§ 221.212 and 221.222 shall be observed. Concurrences and powers of attorney which will not be
replaced by new issues shall be revoked in the form and manner and upon the notice required by §§221.211 and 221.221.

(b) Reissue of other carriers’ concurrences issued in favor of former carrier.

Each carrier which has given a concurrence to a carrier whose tariffs are subsequently adopted shall reissue the concurrence in favor of the adopting carrier. If the carrier which issued the concurrence to the former carrier desires to revoke it or desires to replace it with a concurrence conferring less authority, the provisions of §§221.211 and 221.212 shall be observed.

(Approved by the Office of Management and Budget under control number 3024-0038)


§ 221.236 Numbering adopting carrier’s letters of tariff transmittal.

The adopting carrier (except a receiver or other fiduciary) shall consecutively number its letters of tariff transmittal in its own series of tariff transmittal numbers (commencing with No. 1 if the adopting carrier has not filed tariff publications with the Board prior to its adoption notice). A receiver or other fiduciary shall consecutively number its letters of tariff transmittal in the former carrier’s series of tariff transmittal numbers.

§ 221.237 Numbering adopting carrier’s Special Tariff Permission applications.

The adopting carrier (except a receiver or other fiduciary) shall consecutively number its applications for Special Tariff Permission in its own series of application numbers (commencing with No. 1 if the adopting carrier has not filed such applications prior to the adoption). A receiver or other fiduciary shall consecutively number its applications for Special Tariff Permission in the former carrier’s series of application numbers.

§ 221.238 Cessation of operations without successor.

If a carrier cease operations without having a successor, it shall:

(a) File a supplement to each tariff of its own issue and cancel such tariff in its entirety. Such supplement shall state that operations are discontinued and give reference to the Board’s order permitting such discontinuance.

(b) Revoke all powers of attorney and concurrences which it has issued.

(Approved by the Office of Management and Budget under control number 3024-0038)


Subpart U—Prescribed Forms

§ 221.240 Letter of tariff transmittal.

(a) Form. The letter of tariff transmittal required by §221.163 shall contain the following information and shall be prepared substantially in the following form (on durable paper 8 1/2 by 11 inches):

Name
Mail address
Signature
Date
Tariff Transmittal No.
To the CIVIL AERONAUTICS BOARD,
Tariffs Section, Washington, D.C., 20428.

Sent you for filing in compliance with the requirements of the Federal Aviation Act of 1958, as amended, is the accompanying tariff publication issued by ______ (1) ______ and bearing:

(3) Tariff C.A.B. No. ___
Original Page ___ of C.A.B. No. __, effective ______
(4) The above-named publication is concurred in by all carriers participating there-in under concurrences (or, powers of attorney) which are now on file with the Civil Aeronautics Board except that the concurrences (or, powers of attorney) of the following named carriers are attached hereto:

Sufficient copies of the above-named publication have been sent to each carrier participating in the above-named publication for posting purposes in accordance with subpart N of your Economic Regulations, where required.

Signature (6) ______________________________
(Show typed name and title of issuing officer or agent below signature.)

(For explanations of reference marks shown in above form, see paragraph (b) of this section.)

(b) Explanations of reference marks. Where a reference mark is shown in the above letter of tariff transmittal form, the information to be shown where
§ 221.241

such reference mark appears shall conform to the requirements stated in the following explanation of the respective reference mark:

<table>
<thead>
<tr>
<th>Reference mark</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>Show name of issuing carrier or agent exactly as it appears in the tariff publication. If issued by an agent, show the agent's title after the agent's name.</td>
</tr>
<tr>
<td>(2)</td>
<td>Show consecutive tariff transmittal number. Each issuing carrier or agent shall consecutively number its letter of tariff transmittals (commencing with Tariff Transmittal No. 1). Only one series of tariff transmittal numbers shall be used by each carrier or agent and separate series of numbers for passenger tariffs and property tariffs shall not be used.</td>
</tr>
<tr>
<td>(3)</td>
<td>Use whichever form of reference shown is appropriate for listing the publication filed. Each publication transmitted for filing shall be listed.</td>
</tr>
<tr>
<td>(4)</td>
<td>Omit the paragraph if no carriers other than the issuing carrier participate in the publication filed. Omit the clause beginning with the word “except” if all concurrences or powers of attorney have been previously filed with the Board.</td>
</tr>
<tr>
<td>(5)</td>
<td>Here state the changes and additions in the publications and the reasons therefor, or attach such statement and make reference thereto. (See §221.165.)</td>
</tr>
<tr>
<td>(6)</td>
<td>The letter of transmittal shall bear the signature of the issuing officer or agent of the tariff publication filed. In the case of a corporate agent the signature of the designee of the corporation authorized by it to issue and file tariffs with the Board in its name shall appear at this point.</td>
</tr>
</tbody>
</table>

The proposed tariff provisions will be published in ____(4)__. The proposed tariff provisions will supersede and take the place of ____ (5)__. The following air carriers and foreign air carriers are known to maintain competitive (Fares, rates, or charges) between the points where the proposed tariff provisions will apply (or points related thereto): ____ (6)__. The basis on which the proposed (Fares, rates, or charges) are constructed is as follows: ____ (7)__. The following facts are relied upon by your petitioner as constituting special circumstances or unusual conditions which justify the request made herein: ____ (8)__. 

By  ________________ (9)__. (Signature) 

(For explanations of reference marks shown in the above form, see paragraph (b) of this section.)

(b) Explanations of reference marks shown in prescribed form. Where a reference mark is shown in the above Special Tariff Permission application form, the information to be shown where such reference mark appears shall conform to the requirements stated in the following explanation of the respective reference mark:

<table>
<thead>
<tr>
<th>Reference mark</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>Show name of issuing carrier or agent making the application exactly as it appears in such carrier's or agent's tariffs. If application is made by an agent, it shall state that the application is filed &quot;for and on behalf of all carriers parties to tariff C.A.B. No. ____&quot;.</td>
</tr>
<tr>
<td>(2)</td>
<td>Show a consecutive application number. Each issuing carrier or agent shall consecutively number its Special Tariff Permission applications (commencing with No. 1) in only one series of application numbers.</td>
</tr>
<tr>
<td>(3)</td>
<td>The proposed rates, fares, charges, rules, or other tariff provisions shall be set forth clearly and completely, including the points of origin and destination of proposed rates, fares, and charges and the exact wording of proposed rules, commodity descriptions, routing, and other provisions. If the proposed provisions are to be published in a supplement, the proposed specific cancellation of the provisions to be superseded in the tariff and prior supplements shall be set forth. If desired, the proposed tariff provisions may be set forth in an attached exhibit or exhibits identified as Exhibits A, B, C, etc. and, in such instances, the application shall make reference to such exhibits substantially in the following manner:</td>
</tr>
</tbody>
</table>
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<table>
<thead>
<tr>
<th>Reference mark</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>(4)</td>
<td>Show the tariff publication(s) in which the proposed provisions will be published and the publication(s) to be canceled thereby, using whichever of the following forms of reference is appropriate:</td>
</tr>
<tr>
<td>(i) ___ Revised Page ___(which will cancel Original Page ___ or Revised Page ___) of C.A.B. No. ___</td>
<td></td>
</tr>
<tr>
<td>(Or, in lieu of the above form of reference)</td>
<td></td>
</tr>
<tr>
<td>(ii) __Original Page(s) ___ to be added to C.A.B. No. ___</td>
<td></td>
</tr>
<tr>
<td>(iii) __Consecutively numbered supplement (which will cancel Supplement No. ___) to C.A.B. No. ___</td>
<td></td>
</tr>
<tr>
<td>(iv) __“New tariff C.A.B. No. ___which will cancel tariff C.A.B. No. ___”</td>
<td></td>
</tr>
<tr>
<td>(5)</td>
<td>Show the published rates, fares, or other tariff provisions which it is desired to change. This may be done either by reference to an accompanying exhibit containing such information, or by reference to the number of the page and the item, rule, or similar unit of the tariff or supplement in which such tariff provisions are published.</td>
</tr>
<tr>
<td>(6)</td>
<td>When applicable show the names of the carriers known to maintain competitive rates, fares, and other tariff provisions together with reference (by C.A.B. number) to the respective tariffs containing such competitive tariff provisions, regardless of whether the proposed tariff provisions will result in greater, less, or the same charges or services than those maintained by the competitive carriers.</td>
</tr>
<tr>
<td>(7)</td>
<td>When applicable describe the specific basis on which the proposed rates, fares, or charges were constructed or determined. For example, if they are intended to meet competitive rates, fares, or charges, that fact should be stated together with reference (by C.A.B. number) to the tariffs containing such competitive rates, fares, or charges. If meeting a combination rate, fare, or charge, information shall be stated for each factor used in constructing such combination. If the proposed rate, fare, or charge is not designed to meet competition, state how the level or amount of the proposed rate, fare, or charge was computed or determined.</td>
</tr>
<tr>
<td>(8)</td>
<td>State the specific facts which are relied upon as constituting special circumstances or unusual conditions justifying the requested permission together with any related facts or circumstances which may aid the Board in determining whether the requested permission is justified.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Reference mark</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>(9)</td>
<td>The issuing officer or agent of the proposed tariff publication shall sign the application for Special Tariff Permission. In the case of a corporate agent the signature of the designee of the corporation authorized by it to issue and file tariffs with the Board in its name shall appear at this point.</td>
</tr>
</tbody>
</table>

(c) Telegraphic application. Application may be submitted initially by telegraph or cable, provided that:
(1) All necessary information and references are contained in the telegraphic request; and
(2) The applicant immediately submits written confirmation, in duplicate, which shall observe the requirements of paragraphs (a) and (b) of this section.

§ 221.242 Concurrence.

(a) Form. The concurrence required by § 221.210 shall be prepared in accordance with the following form (on durable, white paper 8½ by 11 inches):

CONCURRENCE

(1) Concurrence No. ___
(2) (Cancels Concurrence No. ___)
Name ___
Mail address ___
Date ___

Know All Men by This Instrument:

That ___ hereby assents to and concurs in the publication and filing with the Civil Aeronautics Board of tariffs (including supplements thereto and original or revised pages thereof) which ___ may issue and file and in which ___ is shown as a participating carrier, and the latter carrier hereby makes itself a party thereto and bound thereby in so far as such tariff publications contain joint rates, fares, or charges (including their governing provisions) in which the latter carrier is shown as participating.

RESTRICTION: This concurrence is further restricted to the publication and filing of ___

By: ___
(Signature)
(Show typed name and title under signature)

(7) Attest: ___
(Affix corporate seal) ___
(Signature) ___

Duplicate mailed to: ___
(Show full address)

For explanations of reference marks shown in above form, see paragraph (b) of this section.)
§ 221.243 Notice of Revocation of Concurrence.

(a) Form. The Notice of Revocation of Concurrence required by §221.211 shall be prepared in accordance with the following form (on durable, white paper 8½ by 11 inches):

NOTICE OF REVOCATION OF CONCURRENCE

Name (1) ______________________________________

Mail address ______________________________________

Date ______________________

Know All Men by This Instrument:

That effective __________ (6) , the concurrence No. __________ (5) , issued by __________ (7) , in favor of __________ (8) , is hereby canceled and revoked in its entirety.

By __________ (Signature)

(Show typed name and title under signature.)

(8) Duplicate mailed to: __________ (Address)

(For explanations of reference marks shown in the above form, see paragraph (b) of this section.)

(b) Explanations of reference marks. Where a reference mark is shown in the above form of Notice of Revocation of Concurrence, the information to be shown where such reference mark appears shall conform to the requirements stated in the following explanation of the respective reference mark:

<table>
<thead>
<tr>
<th>Reference mark</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>(6) ..........</td>
<td>The concurrence shall be signed by the owner if the carrier is an individual person and by a partner if the carrier is a partnership. If the carrier is a corporation or similar entity, the concurrence shall be signed by an officer thereof. If the latter authority is to include successive issues of the tariff, including supplements to and revised or original pages thereof.</td>
</tr>
<tr>
<td>(7) ..........</td>
<td>If the carrier is a corporation (or similar entity), the concurrence shall be attested by the secretary (or similar officer) thereof and the carrier's corporate seal shall be affixed thereto. If the carrier is a foreign carrier and, under the laws of the carrier's native country, such seal and attestation are not required, provided that such carrier certifies to the Board in writing that the laws of the carrier's native country do not require such attestation and seal to authenticate such concurrences.</td>
</tr>
</tbody>
</table>

(For Explanations of reference marks shown in the preceding section, see paragraph (b) of this section.)
Office of the Secretary, DOT

§ 221.244 Power of attorney.

(a) Form. The power of attorney required by §221.220 shall be prepared in accordance with the following form (on durable, white paper 8 1/2 by 11 inches):

POWER OF ATTORNEY

(1) Power of Attorney No.

(2) Cancel's Power of Attorney No.

Name

Mail address

Date

Know All Men by This Instrument:

That _____ (3) _____, a common carrier by aircraft, hereby makes and appoints _____ (4) _____ attorney and agent to publish and file, for such carrier, tariffs (including supplements thereto and revised or original pages thereof) which such carrier is required or permitted to file with the Civil Aeronautics Board by the Federal Aviation Act of 1958, as amended, and the regulations of the Civil Aeronautics Board issued pursuant thereto, and hereby ratifies and confirms all that said attorney and agent may lawfully do by virtue of the authority herein granted and hereby assumes full responsibility for the acts and failures to act of said attorney and agent.

RESTRICTION: This authority is restricted to the publication and filing of _____ (5) _____.

And, further, that _____ (3) _____ hereby makes and appoints _____ (6) _____ alternate attorney and agent to do and to perform the same acts and exercise the same authority herein granted to _____ (4) _____.

(3) ______

(4) ______

(5) ______

(6) ______

By ______ (7) ______

(Show typed name and title under signature)

(8) ______

(Show mail address)

For explanations of reference marks shown in above form see paragraph (b) of this section.

(b) Explanations of reference marks. Where a reference mark is shown in the above power of attorney form, the information to be shown where such reference mark appears shall conform to the requirements stated in the following explanation of the respective reference mark:

<table>
<thead>
<tr>
<th>Reference mark</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) ___ ___ ___</td>
<td>Show a consecutive power of attorney number. All powers of attorney issued by each carrier shall be consecutively numbered 1, 2, 3, 4, etc. in only one series of power of attorney numbers.</td>
</tr>
<tr>
<td>(2) ___ ___ ___</td>
<td>A power of attorney may only cancel a previous power of attorney given to the same agent and alternate agent (except as otherwise provided in §§221.224 and 221.225). A power of attorney shall not cancel a previous power of attorney which conferred greater authority (see §221.222).</td>
</tr>
<tr>
<td>(3) ___ ___ ___</td>
<td>Show name of carrier issuing the power of attorney. The name shall be shown exactly as it appears in such carrier's Certificate of Public Convenience and Necessity, Permit, Letter of Registration, or other form of operating authority issued by the Board, or such other name which has specifically been authorized by order of the Board.</td>
</tr>
<tr>
<td>(4) ___ ___ ___</td>
<td>Show name of agent to whom the power of attorney is given. The agent's name shall be shown uniformly in the same manner in all powers of attorney given by all carriers to such agent and shall be shown exactly as it appears in the tariffs of such agent.</td>
</tr>
<tr>
<td>(5) ___ ___ ___</td>
<td>If no restrictions are to be placed on the authority conferred in the power of attorney, the paragraph captioned “RESTRICTION” shall be deleted in its entirety. If the authority is to be restricted to the publication and filing of rates, fares, or charges (including their governing provisions) applying between particular points or territories or on particular traffic or via particular routes, such rates, fares, or charges shall be specified in explicit and definite terms in the paragraph captioned “RESTRICTION.” No restriction shall be imposed in the power of attorney with respect to the amounts or level of rates, fares, or charges. If the authority is to be restricted to the publication and filing of a particular tariff, the restriction shall be shown in the following manner:</td>
</tr>
</tbody>
</table>
§ 221.245 Notice of Revocation of Power of Attorney.

(a) Form. The Notice of Revocation of Power of Attorney required by §221.221 shall be prepared in accordance with the following form (on durable, white paper 8½ by 11 inches):

**NOTICE OF REVOCATION OF POWER OF ATTORNEY**

Name: ____________________________

Mail address: _______________________

Date: ______________________________

Know All Men By This Instrument:

That effective ___________ (2)______, Power of Attorney No. ______ issued by ______ (3)___ in favor of ______ (4)___ attorney and agent, and ______ (5)___, alternate attorney and agent, is hereby canceled and revoked in its entirety.

By: ________________________________

(Signature)

(Show typed name and title under the signature.)

(7) Attest:

(Affix corporate seal) __ (Signature) __

Duplicate mailed to: __________________

at: __________________

on: __________________

(For explanations of reference marks used in above form, see paragraph (b) of this section.)

(b) Explanations of reference marks. Where a reference mark is shown in the above form of Notice of Revocation of Power of Attorney, the information to be shown where such reference mark appears shall conform to the requirements stated in the following explanation of the respective reference mark:

<table>
<thead>
<tr>
<th>Reference mark</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>Show full name of carrier issuing the notice of revocation.</td>
</tr>
<tr>
<td>(2)</td>
<td>Show full date (month, date, and year) on which revocation and cancellation of power of attorney are to become effective.</td>
</tr>
<tr>
<td>(3)</td>
<td>Show full name of carrier who issued the power of attorney to be revoked. Such name shall be shown exactly as it appears in the power of attorney.</td>
</tr>
<tr>
<td>(4)</td>
<td>Show name of principal agent exactly as it appears in the power of attorney.</td>
</tr>
<tr>
<td>(5)</td>
<td>Show name of alternate agent exactly as it appears in the power of attorney to be revoked.</td>
</tr>
<tr>
<td>(6)</td>
<td>The notice of revocation shall be signed by the owner if the carrier is an individual person and by a partner if the carrier is a partnership. If the carrier is a corporation or similar entity, the power of attorney shall be signed by an officer thereof.</td>
</tr>
<tr>
<td>(7)</td>
<td>If the carrier is a corporation or similar entity, the power of attorney shall be attested by the secretary (or similar officer) thereof and the carrier's corporate seal shall be affixed thereto. If the carrier is a foreign carrier and, under the laws of the carrier's native country, such seal and attestation are not required, provided that such carrier or its agent certifies to the Board in writing that the laws of the carrier's native country do not require such attestation and seal to authenticate such powers of attorney.</td>
</tr>
<tr>
<td>(8)</td>
<td>If the carrier is a foreign carrier and its power of attorney is not required to bear such attestation and seal, the revocation of such power of attorney is not required to bear such attestation and seal.</td>
</tr>
<tr>
<td>(9)</td>
<td>Show name of principal agent unless the alternate agent has taken over the tariffs of the principal agent upon the death or disability of the latter. In the latter case, the alternate agent's name shall be shown and the duplicate shall be mailed to the alternate agent.</td>
</tr>
</tbody>
</table>

§ 221.246 Adoption notice.

(a) Form. The adoption notice required by §221.230 shall be prepared in accordance with the following form (on durable, white paper 8½ by 11 inches):
(b) Explanations of reference marks. Where a reference mark is shown in the above adoption notice form, the information to be shown where such reference mark appears shall conform to the requirements stated in the following explanation of the respective reference mark:

<table>
<thead>
<tr>
<th>Reference mark</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) .........</td>
<td>Except as provided under (ii) below, the adoption notice shall bear a consecutive C.A.B. number in the tariff series of the adopting carrier. If the adopting carrier has not filed tariffs with the Board previous to its adoption notice, the adoption notice shall be designated C.A.B. No. 1.</td>
</tr>
</tbody>
</table>

ADOPTION NOTICE

The above-named carrier hereby adopts, ratifies, and makes its own in every respect, as if the same had been originally filed and posted by it, all tariffs, classifications, rules, notices, traffic agreements, statements of divisions, powers of attorney, concurrences, or other instruments whatever, including supplements or amendments thereto, filed with the Civil Aeronautics Board by or on behalf of, or heretofore adopted by, prior to .

Issued pursuant to Subpart T, Part 221, of the Economic Regulations and Order No. of the Civil Aeronautics Board.

ISSUED: 

Issued by:
(show name and title of issuing officer)
(show full address)

(For explanation of reference marks shown in above form, see paragraph (b) of this section.)

(i) If the adopting carrier is a receiver or other fiduciary, its adoption notice shall bear a consecutive C.A.B. number in the tariff series of the former carrier.

(ii) If the adoption notice is issued by a receiver or other fiduciary, show the former carrier’s name and, immediately below such name, show the name and title of the fiduciary in parentheses.

(3) ......... Show the former carrier’s name.

(4) ......... Show the number of the Board’s order, which approved the change in name or transfer of operating control.

(5) ......... Show the date on which the adoption notice is prepared and transmitted to the Board for filing.
§ 221.247 Adoption supplement.

(a) Form. The adoption supplement required by §221.231 shall be prepared in accordance with the following form (on durable, white paper 8½ by 11 inches with a clear margin of not less than 1 inch at left side):

<table>
<thead>
<tr>
<th>Reference mark</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>(6) _______</td>
<td>Show the date on which the change in name or transfer of operating control occurs. If the Board's approval of such change in name or transfer of operating control is required, such date shall not be earlier than the Board's approval.</td>
</tr>
</tbody>
</table>

(1) Supplement No. __________

to

C.A.B. No. __________

(2) series

Supplements Nos. __________ are the only effective supplements.

(3) __________

Supplement No. __________

to

(4) __________

(5) __________

(6) __________

ADOPTION ANNOUNCEMENT

Effective __________, this tariff (as amended) became the tariff of (3) __________ as stated in such carrier's adoption notice C.A.B. No. __________.

Issued pursuant to Subpart I, Part 221, of the Economic Regulations and Order No. __________ (7) __________ of the Civil Aeronautics Board.

Issued: __________

Issued by:
(name and title of issuing officer)

(full address)

(For explanation of reference marks shown in above form, see paragraph (b) of this section.)

(b) Explanations of reference marks. Where a reference mark is shown in the above adoption supplement, the information to be shown where such reference mark appears shall conform to the requirements stated in the following explanation of the respective reference mark:
<table>
<thead>
<tr>
<th>Reference mark</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>The supplement number shall be consecutive to the number of the last previous supplement issued to the tariff.</td>
</tr>
<tr>
<td>(2)</td>
<td>Show the former carrier's name exactly in the same manner as it appears in the tariff.</td>
</tr>
<tr>
<td>(3)</td>
<td>Show the name of the adopting carrier exactly as it appears in the adoption notice.</td>
</tr>
<tr>
<td>(4)</td>
<td>Show the title of the tariff.</td>
</tr>
<tr>
<td>(5)</td>
<td>Show description of rates, fares, or other contents of the tariff in the same manner as such description appears on the title page of the tariff as amended.</td>
</tr>
<tr>
<td>(6)</td>
<td>Show description of territory in the same manner as it appears on the title page of the tariff as amended.</td>
</tr>
<tr>
<td>(7)</td>
<td>Show the number of the Board's order which approved the change in name or transfer of operating control.</td>
</tr>
<tr>
<td>(8)</td>
<td>Show the date on which the adoption supplement is prepared and transmitted to the Board for filing.</td>
</tr>
<tr>
<td>(9)</td>
<td>Show the date on which the change in name or transfer of operating control occurs. Such date shall be the same date as that shown in the adoption notice (see reference mark (6) in §221.246(b)).</td>
</tr>
</tbody>
</table>

§ 221.248 Specimen title page of tariff.

Set forth below is a specimen title page of a tariff which is shown only for the purpose of illustrating the arrangement and location of a title page's contents. The parenthetical numbers in the following specimen refer to correspondingly numbered paragraphs of §221.31(a) which prescribe the respective information to be shown (such parenthetical numbers shall not be shown on the actual title page):
(3) JOHN DOE AIRLINES, INC.

(4) Cargo Rates Tariff No. 1-A
    (cancels Cargo Rates Tariff No. 1)
    naming

(5) Local, Specific Commodity Rates
    applicable to
    Transportation of Cargo by Aircraft

(6) Between
    California, Florida, Oregon, Texas and Washington
    (on one hand)
    And
    New Jersey, New York and Pennsylvania
    (on the other hand)

(7) This tariff is governed, except as otherwise provided herein, by
    Cargo Rules Tariff No. 2, C.A.B. No. 2, issued by John Doe Air-
    lines, Inc., and by supplements to and successive issues of
    said publication.

(9) This tariff expires with December 31, 1965, unless sooner
    canceled, changed or extended.


(12) Issued by:
    John Doe, President
    905 Dean Road
    Washington, D. C. 20006

(Actual size of page shall be 8½ by 11 inches with a clear margin
of not less than 1 inch at left side of page.)

* - Designation "Original Title Page" shall be shown only on the
title page of a loose-leaf tariff and not on a book tariff.
Subpart V—Complaints Against Tariffs

§ 221.250 Complaints against tariffs.

All complaints against any air carrier's or foreign air carrier's tariffs, requests to prevent any foreign air carrier's tariffs from taking effect, and matters arising subsequent thereto, shall be governed by subpart E and the other pertinent provisions of part 302 of this chapter.

Subpart W—Electronically Filed Tariffs

SOURCE: Amdt. 221–68, 54 FR 2095, Jan. 19, 1989, unless otherwise noted.

§ 221.251 Applicability of the subpart.

(a) Any carrier, consistent with the provisions of this subpart, and part 221 generally, may file its international passenger fares tariffs and international passenger rules tariffs electronically in machine-readable form as an alternative to the filing of printed paper tariffs as provided for elsewhere in Part 221. This subpart applies to all carriers and tariff publishing agents and may be used by either if the carrier or agent complies with the provisions of subpart W. Any carrier or agent that files electronically under this subpart must transmit to the Department the remainder of the tariff, as applicable, in a form consistent with this Part 221, subparts A through V, on the same day that the electronic tariff would be deemed received under §221.270(b).

(b) To the extent that subpart W is inconsistent with the remainder of part 221, subpart W shall govern the filing of electronic tariffs. In all other respects, part 221 remains in full force and effect.


§ 221.260 Requirements for filing.

(a) No carrier or filing agent shall file an electronic tariff unless, prior to filing, it has signed a maintenance agreement or agreements, furnished by the Department of Transportation, for the maintenance and security of the on-line tariff database. (b) No carrier or agent shall file an electronic tariff unless, prior to filing, it has submitted to the Department's Office of International Aviation, Tariffs Division, and received approval of, an application containing the following commitments:

1. The filer shall file tariffs electronically only in such format as shall be agreed to by the filer and the Department. The filer shall include with its application a proposed format of tariff. The filer shall also submit to the Department all information necessary for the Department to determine that the proposed format will accommodate the data elements set forth in §221.283.

2. The filer shall provide, maintain and install in the Public Reference Room at the Department (as may be required from time to time) one or more CRT devices and printers connected to its on-line tariff database. The filer shall be responsible for the transportation, installation, and maintenance of this equipment and shall agree to indemnify and hold harmless the Department and the U.S. Government from any claims or liabilities resulting from defects in the equipment, its installation or maintenance.

3. The filer shall provide public access to its on-line tariff database, at Departmental headquarters, during normal business hours.

4. The access required at Departmental headquarters by this subpart shall be provided at no cost to the public or the Department.

5. The filer shall provide the Department access to its on-line tariff database 24 hours a day, 7 days a week, except, that the filer may bring its computer down between 6:00 a.m. and 6:00 p.m. Eastern Standard Time or Eastern Daylight Saving Time, as the case may be, on Sundays, when necessary, for maintenance or for operational reasons.

6. The filer shall ensure that the Department shall have the sole ability to approve or disapprove electronically any tariff filed with the Department and the ability to note, record and retain electronically the reasons for approval or disapproval. The carrier or agent shall not make any changes in data or delete data after it has been transmitted electronically, regardless
of whether it is approved, disapproved, or withdrawn. The filer shall be required to make data fields available to the Department in any record which is part of the on-line tariff database.

(7) The filer shall maintain all fares and rules with the Department and all Departmental approvals, disapprovals and other actions, as well as all Departmental notations concerning such approvals, disapprovals or other actions, in the on-line tariff database for a period of two (2) years after the fare or rule becomes inactive. After this period of time, the carrier or agent shall provide the Department, free of charge, with a copy of the inactive date on a machine-readable tape or other mutually acceptable electronic medium.

(8) The filer shall ensure that its on-line tariff database is secure against destruction or alteration (except as authorized by the Department), and against tampering.

(9) Should the filer terminate its business or cease filing tariffs electronically, it shall provide to the Department on a machine-readable tape or any other mutually acceptable electronic medium, a complete copy of its on-line tariff database.

(10) The filer shall furnish to the Department, on a daily basis, on a machine-readable tape or any other mutually acceptable electronic medium, all transactions made to its on-line tariff database.

(11) The filer shall ensure that its on-line tariff database is secure against destruction or alteration (except as authorized by the Department), and against tampering.

(12) The filer must provide a field in the Government Filing File for the signature of the approving U.S. Government Official through the use of a Personal Identification Number (PIN).

(13) The filer shall provide a leased dedicated data conditioned circuit with sufficient capacity (initially not less than 9.6K baud rate) to handle electronic data transmissions to the Department. Further, the filer must provide for a secondary or a redundancy circuit in the event of the failure of the dedicated circuit. The secondary or redundancy circuit must be equal to or greater than 4.8K baud rate. In the event of a failure of the primary circuit the filer must notify the Chief of the Tariffs Division of the Department’s Office of International Aviation, as soon as possible, after the failure of the primary circuit, but not later than two hours after failure, and must provide the name of the contact person at the telephone company who has the responsibility for dealing with the problem.

(c) Each time a filer’s on-line tariff database is accessed by any user during the sign-on function the following statement shall appear:

The information contained in this system is for informational purposes only, and is a representation of tariff data that has been formally submitted to the Department of Transportation in accordance with applicable law or a bilateral treaty to which the U.S. Government is a party.

[Amended by Doc. No. 50355, 61 FR 18074, Apr. 24, 1996]

§ 221.270 Time for filing and computation of time periods.

(a) A tariff, or revision thereto, or a special tariff permission application may be electronically filed with the Department immediately upon compliance with § 221.260, and anytime thereafter, subject to § 221.500. The actual date and time of filing shall be noted with each filing.

(b) For the purpose of determining the date that a tariff, or revision thereto, filed pursuant to this subpart, shall be deemed received by the Department:

(1) For all electronic tariffs, or revisions thereto, filed before 5:30 p.m. local time in Washington, DC, on Federal business days, such date shall be the actual date of filing.

(2) For all electronic tariffs, or revisions thereto, filed after 5:30 p.m. local time in Washington, DC, on Federal business days, and for all electronic tariffs, or revisions thereto, filed on days that are not Federal business
days, such date shall be the next Federal business day.

§ 221.275 Requirement for filing paper tariffs.
(a) Any tariff, or revision thereto, filed in paper format which accompanies, governs, or otherwise affects, a tariff filed electronically, must be received by the Department on the same date that a tariff or revision thereto, is filed electronically with the Department under §221.270(b). Further, such paper tariff, or revision thereto, shall be filed in accordance with the requirements of subparts A–V of part 221. No tariff or revision thereto, filed electronically under this subpart, shall contain an effective date which is at variance with the effective date of the supporting paper tariff, except as authorized by the Department.

(b) Any printed justifications, or other information accompanying a tariff, or revision thereto, filed electronically under this subpart, must be received by the Department on the same date as any tariff, or revision thereto, filed electronically.

(c) If a filer submits a filing which fails to comply with paragraph (a) of this section, or if the filer fails to submit the information in conformity with paragraph (b) of this section, the filing will be subject to rejection, denial, or disapproval, as applicable.

§ 221.280 Content and explanation of abbreviations, reference marks and symbols.
(a) Content. The format to be used for any electronic tariff must be that agreed to in advance as provided for in §221.260, and must include those data elements set forth in §221.282. Those portions that are filed in paper form shall comply in all respects with part 221, subparts A–V.

(b) Explanation of Abbreviations, Reference Marks and Symbols. Abbreviations, reference marks and symbols which are used in the tariff shall be explained in each tariff.

(1) The following symbols shall be used:

R—Reduction
I—Increase
N—New Matter
X—Canceled Matter

C—Change in Footnotes, Routings, Rules or Zones
E—Denotes change in Effective Date only.

(2) Other symbols may be used only when an explanation is provided in each tariff and such symbols are consistent throughout all the electronically filed tariffs from that time forward.

§ 221.282 Statement of filing with foreign governments to be shown in air carrier’s tariff filings.
(a) Every electronic tariff filed by or on behalf of an air carrier that contains fares which, by international convention or agreement entered into between any other country and the United States, are required to be filed with that country, shall include the following statement:

The rates, fares, charges, classifications, rules, regulations, practices, and services provided herein have been filed in each country in which filing is required by treaty, convention, or agreement entered into between that country and the United States, in accordance with the provisions of the applicable treaty, convention, or agreement.

(b) The statement referenced in §221.282(a) may be included with each filing advice by the inclusion of a symbol which is properly explained.

(c) The required symbol may be omitted from an electronic tariff or portion thereof if the tariff publication that has been filed with any other country pursuant to its tariff regulations bears a tariff filing designation of that country in addition to the C.A.B./D.O.T. number appearing on the tariff.

§ 221.283 The filing of tariffs and amendments to tariffs.
All electronic tariffs and amendments filed under this subpart, including those for which authority is sought to effect changes on less than bilateral/statutory notice under §221.302, shall contain the following data elements:

(a) A Filing Advice Status File—which shall include:

(1) Filing date and time;
(2) Filing advice number;
(3) Reference to carrier;
(4) Reference to geographic area;
(5) Effective date of amendment or tariff;
(6) A place for government action to be recorded; and
§ 221.283

(a) A Government Filing File—which shall include:

(1) Filing advice number;
(2) Carrier reference;
(3) Filing date and time;
(4) Proposed effective date;
(5) Justification text; reference to geographic area and affected tariff number;
(6) Reference to the Special Tariff Permission when applicable;
(7) Government control data, including places for:
   (i) Name of the government analyst, except that this data shall not be made public, notwithstanding any other provision in this or any other subpart;
   (ii) Action taken and reasons therefor;
   (iii) Remarks, except that internal Departmental data shall not be made public, notwithstanding any other provision in this or any other subpart;
   (iv) Date action is taken; and
   (v) Personal Identification Number;
and
(8) Fares tariff, or proposed changes to the fares tariffs, including:
   (i) Market;
   (ii) Fare code;
   (iii) One-way/roundtrip (O/R);
   (iv) Fare Amount;
   (v) Currency;
   (vi) Footnote (FN);
   (vii) Rule Number, provided that, if the rule number is in a tariff, reference shall be made to that tariff containing the rule;
   (viii) Routing (RG) Number(s), provided that the abbreviation MPM (Maximum Permissible Routing) shall be considered a number for the purpose of this file;
   (ix) Effective date and discontinue date if the record has been superseded;
   (x) Percent of change from previous fares; and
   (xi) Expiration date.
(9) Rules tariff, or proposed changes to the rules tariffs.
   (i) Rules tariffs shall include:
      (A) Title: General description of fare rule type and geographic area under the rule;
      (B) Application: Specific description of fare class, geographic area, type of transportation (one way, round-trip, etc.);
      (C) Period of Validity: Specific description of permissible travel dates and any restrictions on when travel is not permitted;
      (D) Reservations/ticketing: Specific description of reservation and ticketing provisions, including any advance reservation/ticketing requirements, provisions for payment (including prepaid tickets), and charges for any changes;
      (E) Capacity Control: Specific description of any limitation on the number of passengers, available seats, or tickets;
      (F) Combinations: Specific description of permitted/restricted fare combinations;
      (G) Length of Stay: Specific description of minimum/maximum number of days before the passenger may/must begin return travel;
      (H) Stopovers: Specific description of permissible conditions, restrictions, or charges on stopovers;
      (I) Routing: Specific description of routing provisions, including transfer provisions, whether on-line or inter-line;
      (J) Discounts: Specific description of any limitations, special conditions, and discounts on status fares, e.g. children or infants, senior citizens, tour conductors, or travel agents, and any other discounts;
      (K) Cancellation and Refunds: Specific description of any special conditions, charges, or credits due for cancellation or changes to reservations, or for request for refund of purchased tickets;
      (L) Group Requirements: Specific description of group size, travel conditions, group eligibility, and documentation;
      (M) Tour Requirements: Specific description of tour requirements, including minimum price, and any stay or accommodation provisions;
      (N) Sales Restrictions: Specific description of any restrictions on the sale of tickets;
      (O) Rerouting: Specific description of rerouting provisions, whether on-line or inter-line, including any applicable charges; and
Office of the Secretary, DOT

§ 221.301

(P) Miscellaneous provisions: Any other applicable conditions.

(ii) Rules tariffs shall not contain the phrase “intentionally left blank.”

(10) Any material accepted by the Department for informational purposes only shall be clearly identified as “for information only, not part of official tariff,” in a manner acceptable to the Department.

(c) A Historical File—which shall include:

(1) Market;
(2) Fare code;
(3) One-way/roundtrip (O/R);
(4) Fare amount;
(5) Currency;
(6) Footnote (F/N);
(7) Rule Number, provided that, if the rule number is in a tariff other than the fare tariff, reference shall be made to that tariff containing the rule;
(8) Rule text;
(9) Routing (RG) Numbers, provided that the abbreviation MPM (Maximum Permissible Routing) shall be considered a number for the purpose of this file;
(10) Effective Date;
(11) Discontinue Date;
(12) Government Action;
(13) Carrier;
(14) All inactive fares (two years);
(15) Any other fare data which is essential; and
(16) Any necessary cross reference to the Government Filing File for research or other purposes.


§ 221.301 Cancellation of suspended matter.

When, pursuant to an order of the Department, the cancellation of rules,
fares, charges, or other tariff provision is required, such action shall be made by the carrier by appropriate revisions to the tariff.

§ 221.302 Special tariff permission.

(a) When a filer submits an electronic tariff or an amendment to an electronic tariff for which authority is sought to effect changes on less than bilateral/statutory notice, and no related tariff material is involved. The submission shall bear a sequential filing advice number. The submission shall appear in the Government Filing File and the Filing Advice Status File, and shall be referenced in such a manner to clearly indicate that such changes are sought to be made on less than bilateral/statutory notice.

(b) When a filer submits an electronic tariff or an amendment to the electronic tariff for which authority is sought to effect changes on less than bilateral/statutory notice, and it contains related paper under §221.275, the paper submission must bear the same filing advice number as that used for the electronic submission. Such paper submission shall be in the form of a revised tariff page as prescribed by subpart H of 14 CFR part 221, rather than as a separate request for Special Tariff Permission. All material being submitted on a paper tariff page as part of an electronic submission, will clearly indicate the portion(s) of such tariff page that is being filed pursuant to, and in conjunction with, the electronic submission on less than bilateral/statutory notice.

(c) Departmental action on the Special Tariff Permission request, both electronic and paper, shall be noted by the Department in the Government Filing File and the Filing Advice Status File.

(d) When the paper portion of a Special Tariff Permission that has been filed with the Department pursuant to paragraph (b) of this section is disapproved or other action is taken by the Department, such disapproval or other action will be reflected on the next consecutive revision of the affected tariff page(s) in the following manner:

1. The portion(s) of ___ Revised Page ___ filed under EFA No. ___ was/were disapproved by DOT.
2. Example of other action: the portion(s) ___ Revised Page ___ filed under EFA No. ___ was/were required to be amended by DOT.

(e) When the Department disapproves in whole or in part or otherwise takes an action against any page filed under this section the filer must revise and refile a revised page within two business days following the disapproval or notice of other action.

(f) All submissions under this section shall comply with the requirements of §221.283.

§ 221.400 Discontinuation of electronic tariff system.

In the event that the electronic tariff system is discontinued, or the source of the data is changed, or a filer discontinues its business, all electronic data records prior to such date shall be provided immediately to the Department, free of charge, on a machine-readable tape or other mutually acceptable electronic medium.

§ 221.500 Filing of paper tariffs required.

(a) After approval of any application filed under §221.260 of this subpart to allow a filer to file tariffs electronically, the filer in addition to filing electronically must continue to file printed tariffs as required by subparts A-V of part 221 for a period of 90 days, or until such time as the Department shall deem such filing no longer to be necessary: Provided, That during the period specified by this section the filed printed tariff shall continue to be the official tariff.

(b) Upon notification to the filer that it may commence to file its tariffs solely in an electronic mode, concurrently with the implementation of filing electronically the filer shall:

1. Furnish the Department with a copy of all the existing effective and prospective records on a machine-readable tape or other mutually acceptable electronic medium accompanied by an affidavit attesting to the accuracy of such records; and

2. Simultaneously cancel such records from the paper tariff in the
manner prescribed by subparts A-V of part 221.

§ 221.600 Transmission of electronic tariffs to subscribers.

(a) Each filer that files an electronic tariff under this subpart shall make available to any person so requesting, a subscription service meeting the terms of paragraph (b) of this section.

(b) Under the required subscription service, remote access shall be allowed to any subscriber to the on-line tariff database, including access to the justification required by §221.286. The subscription service shall not preclude the offering of additional services by the filer or its agent.

(c) The filer at its option may establish a charge for providing the required subscription service to subscribers: Provided, That the charge may not exceed a reasonable estimate of the added cost of providing the service.

(d) Each filer shall provide to any person upon request, a copy of the machine-readable data (raw tariff data) of all daily transactions made to its on-line tariff database. The terms and prices for such value-added service may be set by the filer: Provided, That such terms and prices shall be non-discriminatory, i.e., that they shall be substantially equivalent for all similarly-situated persons.

§ 221.650 Copies of tariffs made from filer’s printer(s) located in Department’s public reference room.

Copies of information contained in a filer’s on-line tariff database may be obtained by any user at Departmental Headquarters from the printer or printers placed in Tariff Public Reference Room by the filer. The filer may assess a fee for copying, provided it is reasonable and that no administrative burden is placed on the Department to require the collection of the fee or to provide any service in connection therewith.

§ 221.700 Actions under assigned authority and petitions for review of staff action.

When an electronically filed record which has been submitted to the Department under this subpart, is disapproved (rejected), or a special tariff permission is approved or denied, under authority assigned by the Department of Transportation’s Regulations, 14 CFR 385.13, such actions shall be understood to include the following provisions:

Applicable to a Record or Records Which is/are Disapproved (rejected):

The record(s) disapproved (rejected) is/are void, without force or effect, and must not be used.

Applicable to a record or records which is/are disapproved (rejected), and to special tariff permissions which are approved or denied:

This action is taken under authority assigned by the Department of Transportation in its Organization Regulations, 14 CFR 385.13. Persons entitled to petition for review of this action pursuant to the Department’s Regulations, 14 CFR 385.50, may file such petitions within seven days after the date of this action. This action shall become effective immediately, and the filing of a petition for review shall not preclude its effectiveness.

PART 222—INTERMODAL CARGO SERVICES BY FOREIGN AIR CARRIERS

Sec. 222.1 Applicability.

222.2 Scope of permissible intermodal cargo services.

222.3 Application for Statement of Authorization.

222.4 Procedure on receipt of application for Statement of Authorization.

222.5 Cancellation or conditioning of a Statement of Authorization.

APPENDIX A TO PART 222—CAB FORM 222


SOURCE: ER-1228, 46 FR 32556, June 24, 1981, unless otherwise noted.

§ 222.1 Applicability.

This part applies to all air transportation of property that includes both air movement by a direct foreign air carrier and surface transportation to or from any point within the United States (hereafter referred to as “intermodal cargo services”).

§ 222.2 Scope of permissible intermodal cargo services.

(a) Under its foreign air carrier permit, a direct foreign air carrier may provide or control the surface portion of intermodal cargo services within a zone extending 35 miles from the
boundary of the airport or city it is authorized to serve. A direct foreign air carrier shall not provide or control the surface portion of intermodal cargo services outside of this 35-mile zone unless authorized to do so by the Board in accordance with §§222.3, 222.4 and 222.5.

(b) A direct foreign air carrier shall be considered to control the surface portion of intermodal cargo services if it has or publicly represents that it has any responsibility for or control over the movement of, or has any ownership, controlling or exclusive dealing relationship with, the carrier actually providing the surface transportation.

(c) Except as provided in paragraphs (a) and (b) of this section with respect to control by a direct foreign air carrier, any U.S. or foreign indirect air carrier, surface carrier or surface freight forwarder may provide the surface portion of intermodal cargo services without limitation as to geographic area within the United States.

(d) The Board may withdraw the authority of an indirect foreign air carrier to provide the surface portion of intermodal cargo services pursuant to joint fares with other carriers providing the surface transportation, at any time, with or without hearing, if the Board finds it in the public interest.

§ 222.3 Application for Statement of Authorization.

(a) Application for a Statement of Authorization shall be filed with the Board's Regulatory Affairs Division, Bureau of International Aviation, in duplicate, on CAB Form 222 (obtainable from the Civil Aeronautics Board, Publications Services Division, Washington, D.C. 20428), attached as Appendix A. In most cases the Board will act upon applications for Statements of Authorization within 60 days.

(b) Persons objecting to an application for a Statement of Authorization shall file their objections with the Regulatory Affairs Division, Bureau of International Aviation, within 28 days of the filing date of the application. The Board will list the names and nationalities of all persons applying for Statements of Authorization in its Weekly Summary of Filings.

(c) An application shall include a copy of any bilateral agreement, memorandum of consultations, or diplomatic note or letter, in support of the authority requested. Documents that appear in official U.S. publications may be incorporated by reference.

(Approved by the Office of Management and Budget under control number 3024-0045)

§ 222.4 Procedure on receipt of application for Statement of Authorization.

(a) After review of an application form filed under §222.3, the Board will take one or more of the following actions:

(1) Indicate by stamp on CAB Form 222 the effective date of the Statement of Authorization, and return to the carrier the duplicate copy of Form 222 as evidence of approval under this part;

(2) Request additional information from the applicant;

(3) Set the application for notice and hearing procedures;

(4) Disapprove the application or approve it subject to such terms, conditions, or limitations as may be required by the public interest; or

(5) Reject the application on the grounds that there is no agreement by the United States authorizing the proposed services.

(b) An order disapproving an application or subjecting it to conditions or limitations shall be transmitted to the President for stay or disapproval. If the President does not stay or disapprove the Board's order, it shall become effective on the 31st day after transmission to the President, or within any longer time period established in the order.

§ 222.5 Cancellation or conditioning of a Statement of Authorization.

A Statement of Authorization may be canceled or made subject to additional terms, conditions, or limitations, at any time, with or without hearing, if the Board finds that it is in the public interest to do so. An order
canceling or conditioning a Statement of Authorization shall be submitted to the President for stay or disapproval and shall become effective on the 31st day after transmittal or within any longer time period established by the Board.

<table>
<thead>
<tr>
<th>CAB Form 222</th>
<th>DO NOT WRITE - FOR OFFICIAL USE ONLY</th>
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</thead>
<tbody>
<tr>
<td>UNITED STATES OF AMERICA</td>
<td>CIVIL AERONAUTICS BOARD</td>
</tr>
<tr>
<td>FOREIGN AIR CARRIER APPLICATION FOR STATEMENT OF AUTHORIZATION FOR INTERMODAL CARGO SERVICES</td>
<td></td>
</tr>
<tr>
<td>TO: CIVIL AERONAUTICS BOARD</td>
<td>ATTENTION: Regulatory Affairs Division</td>
</tr>
<tr>
<td></td>
<td>Bureau of International Aviation</td>
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<td>Washington, D.C. 20428</td>
</tr>
</tbody>
</table>

Application is made for a Statement of Authorization to conduct intermodal cargo services under provisions of the applicants' foreign air carrier permit and Economic Regulation Part 222.

- Initial Application
- Change of Name/Address/nationality
- Application for Removal of conditions

1. Name of Applicant: 
   Nationality: 
2. Send Authorization to: 
   (Name and Address)
3. (a) estimated annual tonnage of cargo to be shipped by surface transportation:
   (b) percentage of total air cargo to be shipped by surface transportation beyond 35-mile pick-up and delivery zone.
4. Area in the United States to be served by surface transportation
CERTIFICATION

I certify that the information contained in this application, and in the attachments hereto, is complete and accurate to the best of my knowledge.

Signature: __________________________

Date: ______________ Name: ________________________

(please type)

Place: ______________ Title: _______________________

(see note)

NOTE: Application must be signed by a responsible officer, such as the President, Vice President, Secretary, or Treasurer of a corporation, or a partner or owner of other non-corporate applicants.

FOR CAB USE ONLY

Special conditions or limitations/reasons for disapproval/rejection/findings.
Office of the Secretary, DOT

PART 223—FREE AND REDUCED-RATE TRANSPORTATION

Subpart A—General Provisions

§ 223.1 Definitions.

As used in this part, unless the context otherwise requires:

An affiliate of a carrier means a person:

(a) Who controls that carrier, or is controlled by that carrier or by another person who controls or is controlled by that carrier; and

(b) Whose principal business in purpose or in fact is:

1. The holding of stock in one or more carriers;

2. Transportation by air or the sale of tickets therefor;

3. The operation of one or more airports, one or more of which are used by that carrier or by another carrier who controls or is controlled by that carrier or that is under common control with that carrier by another person; or

4. Activities related to the transportation by air conducted by that carrier or by another carrier that controls or is controlled by that carrier or which is under common control with that carrier by another person.

Air carrier means the holder of a certificate of public convenience and necessity issued by the Board under section 401 of the Act authorizing the carriage of persons.

Attendant means any person required by a handicapped person in order to travel, whether or not that person’s services are required while the handicapped passenger is in an aircraft.

Carrier means:

(a) An air carrier;

(b) An all-cargo air carrier operating under section 401 or section 418 of the Act;

(c) A foreign air carrier;

(d) An intrastate carrier;

(e) An air taxi (including a commuter air carrier) operating under parts 294 or 298 of this chapter; and

(f) Any person operating as a common carrier by air, or in the carriage of mail by air, or conducting transportation by air, in a foreign country.

Control, as used in this section, means the beneficial ownership of more than 40 percent of outstanding capital stock unless, ownership of more than 40 percent of outstanding capital stock unless, in a specific case, the Board determines under section 408 of the Act that control does not exist. Control may be direct or by or through one or more intermediate subsidiaries likewise controlled or controlling through beneficial ownership of more than 40 percent of outstanding voting capital stock.

Delivery flight means a flight from a point in the United States where a carrier has taken delivery of a newly manufactured aircraft to any point or points on its route system.

Foreign air carrier means the holder of a permit issued by the Board under section 402 of the Act authorizing the carriage of persons.

Free transportation means the carriage by an air carrier or foreign air carrier of any person or property (other than property owned by that carrier) in air transportation without compensation therefor.

Handicapped passenger means any person who has a physical or mental...
impairment (other than drug addiction or alcoholism), that substantially limits one or more major life activities.

Inaugural flight means a flight on an aircraft type being introduced by a carrier for the first time on a route, even if that aircraft type has been used by that carrier on other routes or on that route by other carriers.

Pass means a written authorization, other than actual ticket stock, issued by a carrier for free or reduced-rate transportation of persons or property.

Reduced-rate transportation means the carriage by an air carrier or foreign air carrier of any person or property (other than property owned by such carrier) in air transportation for a compensation less than that specified in the tariffs of that carrier on file with the Board and otherwise applicable to such carriage.

Retired means:
(a) With respect to carrier directors, officers, and employees, persons receiving retirement benefits from any carrier;
(b) With respect to the general public, persons not regularly working at a full-time paying job, and not intending to do so in the future.

§ 223.2 Exemption from section 401 of the Act.
(a) Any all-cargo carrier is exempted from section 401 of the Act to the extent necessary to carry, for purposes of in-flight observation, technical representatives of companies that have been engaged in the manufacture, development, or testing of aircraft or aircraft equipment.

(b) Every carrier providing transportation under this section shall also comply with the applicable regulations of the Federal Aviation Administration such as regulations pertaining to admission of persons to the aircraft flight deck.

§ 223.3 Mandatory free transportation.
Every air carrier shall carry, without charge, on any aircraft that it operates, the following persons:
(a) Security guards who have been assigned to the duty of guarding such aircraft against unlawful seizure, sabotage or other unlawful interference, upon the exhibition of such credentials as may be prescribed by the Administrator of the Federal Aviation Administration;
(b) Safety inspectors of the National Transportation Safety Board or of the Federal Aviation Administration who have been assigned to the duty of inspecting during flight such aircraft or its equipment, route facilities, operational procedures, or airman competency upon the exhibition of credentials or a certificate from the agency involved in authorizing such transportation; and
(c) Postal employees on duty in charge of the mails or traveling to or from such duty, upon the exhibition of the credentials issued by the Postmaster General.

§ 223.4 Transferability of passes.
Any pass authorizing free or reduced-rate transportation issued by a carrier may be made transferable to the extent specified by the granting carrier.

§ 223.5 Responsibility of agencies.
The Federal Aviation Administration, National Transportation Safety Board, National Weather Service, and the Postal Service shall be responsible for the following:
(a) The issuance of any credentials or certificates to their personnel eligible for free or reduced-rate transportation under this part; and
(b) The promulgation of any internal rules that are necessary to obtain compliance by such personnel with this part.

§ 223.6 Carrier's rules.
(a) Each air carrier and foreign air carrier shall maintain at its principal office either a copy or all instructions to its employees and of all company rules governing its practice in connection with the issuance and interchange of free and reduced-rate transportation passes or a statement describing those practices.
(b) The rules or statement required by this section shall, at a minimum, include the following:
(1) The titles of its officials upon whose authorizations passes may be issued;
(2) The titles of other officials who are authorized by these officials to
countersign passes on their behalf, and the extent of the authority granted to them; and

(3) The titles of persons who are authorized to request passes from other carriers.

(c) The rules, instructions, or statement required by this section shall be furnished to the Board upon request or to a member of the public upon payment of a reasonable charge for this service.

(Approved by the Office of Management and Budget under control number 3024-0002)

Subpart B—Domestic Travel

§ 223.11 Free and reduced-rate transportation permitted.

Air carriers may charge any rate or fare for interstate and overseas air transportation.

Subpart C—International Travel

§ 223.21 Free and reduced-rate transportation authorized by statute or regulation.

(a) Any air carrier or foreign air carrier may provide free or reduced-rate foreign air transportation to any classes of persons specifically named in section 403(b) of the Act or free transportation to those named in §375.35 of this chapter.

(b) Air carriers and foreign air carriers may offer reduced fares for foreign air transportation to ministers of religion, the elderly, retired, and handicapped passengers, and to attendants required by handicapped passengers, but shall file tariffs for such fares. Carriers may establish reasonable tariff rules to assist in identifying those who qualify for reduced fares.

§ 223.22 Other persons to whom free and reduced-rate transportation may be furnished.

Air carriers and foreign air carriers are exempted from sections 403 and 404(b) of the Act and part 221 of this chapter to the extent necessary to provide free or reduced-rate foreign air transportation, including passes, to the following:

(a) Directors, officers, employees, and retirees and members of their immediate families, of any carrier or of any affiliate of such carrier, subject to the requirements of §223.25.

(b) Persons to whom the carrier is required to furnish such transportation by law or government directive or by a contract or agreement between the carrier and the government of any country served by the carrier. The Board may, without prior notice, direct the carrier to file a tariff covering such transportation if it finds that the law or government directive in question requires the provision of such transportation. This transportation may be provided only if:

(1) The contract or agreement is filed with the Board, and it is not disapproved by the Board; and

(2) The law or government directive does not require the furnishing of such transportation to the general public or any segment thereof.

(c) Technical representatives of companies that have been engaged in the manufacture, development or testing of a particular type of aircraft or aircraft equipment, when the transportation is provided for the purposes of in-flight observation, and subject to applicable regulations of the Federal Aviation Administration such as regulations pertaining to admission of persons to the aircraft flight deck.

(d) Any person in return for goods or services provided by such person whether the transportation is used by that person or any designee of such person;

(e) Persons engaged in promoting transportation and their immediate families, when such transportation is undertaken for a promotional purpose;

(f) Persons being transported on an inaugural flight or delivery flight of the carrier except that, in the case of delivery flights, this exemption extends only to free, and not reduced-rate, transportation;

(g) Any law-enforcement official, including any person who has the duty of guarding government officials traveling on official business against unlawful interference;

(h) As compensation to persons that file a complaint or claim against the carrier;

(i) Charitable organizations; and

(j) Any person in an aviation-related occupation when the transportation is
§ 223.23 Applications for authority to carry other persons.

(a) Any air carrier or foreign air carrier desiring special authorization to provide free or reduced-rate foreign air transportation to persons to whom the carrier would not otherwise be authorized to furnish such transportation under the previous provisions of this part may apply to the Board, by letter or other writing, for such authorization.

(b) The application shall include the following information:

1. The identity of the persons to whom the transportation is to be furnished;
2. The points between which the transportation is to be furnished;
3. The approximate time of departure; and
4. The carrier’s reasons for desiring to furnish such transportation.

(c) No transportation for which approval is required shall be furnished by the carrier until that approval is received by the carrier.

(Approved by the Office of Management and Budget under control number 3024-0002)

§ 223.24 Transportation of empty mail bags.

Any carrier authorized to engage in foreign air transportation may transport in foreign air transportation empty air mail bags from any country to the country of origin of such bags, free of charge, on a voluntary space-available basis.

§ 223.25 List of affiliates.

(a) Each carrier shall maintain at its principal office a list containing all of that carrier’s affiliates, showing the exact relationship of each affiliate to the carrier.

(b) No pass may be issued under §223.22(a) to a director, officer, employee, or members of their immediate family, of any affiliate, unless that affiliate is on the list required by paragraph (a) of this section.

(c) The list required by paragraph (a) of this section shall be furnished to the Board upon request.

(Approved by the Office of Management and Budget under control number 3024-0002)
Office of the Secretary, DOT § 232.2 

(a) Any interested person may, within not more than ten days after the filing of an application for review, serve and file with the Department an answer in opposition to, or in support of, such applications. Such answer shall set forth the economic data and other facts upon which it is based.

(b) An answer of the Postmaster General or U.S. Postal Service shall contain the following particular information, where applicable:

(1) The Postal Service's critical time frame for the movement of the mail in question together with a detailed explanation of the operational factors which support that estimate;

(2) The alternate air and surface services (including air taxi service) available in the market in question together with a statement of the costs of using such alternate services and, where appropriate, an explanation of why such services are unacceptable;

(3) An estimate of the average amount and expected actual density of mail which will be tendered to the carrier if the order in question is upheld;

(4) An estimate of the amount and type of containers which will be tendered to the carrier if the order in question is upheld;

(5) The volume (including density of mail, amount and types of containers) of mail historically carried on the flight or flights in question which could be accommodated on other flights serving the market without significant impairment of service under the mail delivery time standards of the Postal Service, together with an explanation of how that estimate was computed; and

(6) An estimate of the impact of the flight or flights in question on mail delivery time standards of the Postal Service, together with an explanation of how that estimate was computed.

[41 FR 49479, Nov. 9, 1976, as amended by Docket No. 47939, 57 FR 40102, Sept. 2, 1992]

§ 232.3 Replies to answers to applications for review.

Any interested person may, within not more than seven days after the filing of an answer to an application for review, serve and file with the Department a reply in opposition to, or in support of, such answer.

[41 FR 49479, Nov. 9, 1976, as amended by Docket No. 47939, 57 FR 40102, Sept. 2, 1992]

§ 232.4 Applications to postpone the effective date of an order of the Postmaster General; answers thereto.

(a) Any person who would be aggrieved by an order of the Postmaster
§ 232.5 Filing and service of applications, answers, and replies.

(a) An application, answer or reply filed hereunder shall be deemed to have been filed on the date on which it is actually received by the Department at its offices in Washington, D.C.

(b) At the time a written or telegraphic application, answer, or reply is filed under this part, a copy thereof shall be served by personal service, registered mail, or telegraph upon the Postmaster General and upon the air carrier operating or ordered to operate the mail service in question. Except in the case of telegraphic delivery each copy so served shall be accompanied by a letter of transmittal stating that such service is being made pursuant to this section. In the case of telegraphic delivery the copy shall be accompanied by a telegraphic statement that service is being made pursuant to this section.

(c) The execution, number of copies, and verification of a written application, answer, or reply filed under this part, and the formal specifications of papers included in such application, answer, or reply shall be in accordance with the requirements of the Rules of Practice relating to applications generally (see part 302 of this chapter).

[41 FR 49479, Nov. 9, 1976, as amended by Docket No. 47939, 57 FR 40102, Sept. 2, 1992]
§ 234.1 Purpose.

The purpose of this part is to set forth required data that certain air carriers must submit to the Department and to computer reservations system vendors in computerized form, except as otherwise provided, so that information on air carriers' quality of service can be made available to consumers of air transportation. This part also requires that service quality data be disclosed directly to consumers.

§ 234.2 Definitions.

For the purpose of this part:

Cancelled flight means a flight operation that was not operated, but was listed in a carrier's computer reservation system within seven calendar days of the scheduled departure.

Discontinued flight means a flight dropped from a carrier's computer reservation system more than seven calendar days before its scheduled departure.

Diverted flight means a flight which is operated from the scheduled origin point to a point other than the scheduled destination point in the carrier's published schedule. For example, a carrier has a published schedule for a flight from A to B to C. If the carrier were to actually fly an A to C operation, the A to B segment is a diverted flight, and the B to C segment is a cancelled flight.

Extra-section flight means a flight conducted as an integral part of scheduled passenger service, that has not been provided for in published schedules and is required for transportation of traffic that cannot be accommodated on the regularly scheduled flight.

Flight means any nonstop scheduled passenger flight segment with a specific flight number scheduled to be operated pursuant to a published schedule within a specific origin-destination city pair, other than transborder or foreign air transportation. In the case of reporting to computer reservations system vendors, flight also means one-stop or multi-stop single plane scheduled operations that include any flight segments for which performance is reported pursuant to this part.

Late or late flight means a flight that arrives at the gate 15 minutes or more after its published arrival time.

Mishandled-baggage report means a report filed with a carrier by or on behalf of a passenger that claims loss, delay, damage or pilferage of baggage.

New flight means a flight added to a carrier's schedule to operate in a specific origin-destination city pair and not scheduled to depart within 30 minutes of any discontinued flight that was contained in the carrier's published schedules for the same city pair during the previous month.

On-time means a flight that arrives less than 15 minutes after its published arrival time.

On-time performance means the percentage of scheduled operations of a specific flight that an air carrier operates on-time during a month.

On-time performance code means a single character determined in accordance with the provisions of this part that reflects the monthly on-time performance of certain nonstop flights and single plane one-stop or multi-stop flights, the schedule and availability of which are listed in a computer reservation system (CRS) regulated by 14 CFR part 255.

Reportable flight means any nonstop flight, including a mechanically delayed flight, to or from any airport within the contiguous 48 states that accounts for at least 1 percent of domestic scheduled-passenger enplanements in the previous calendar year, as reported to the Department pursuant to part 241 of this title. Qualifying airports will be specified periodically in accounting and reporting directives issued by the Office of Airline Information.

Reporting carrier means an air carrier certificated under 49 U.S.C. 41102 that accounted for at least 1 percent of domestic scheduled-passenger revenues in the 12 months ending March 31 of each year, as reported to the Department pursuant to part 241 of this title. Reporting carriers will be identified periodically in accounting and reporting directives issued by the Office of Airline Information.
§ 234.3

Wet-leased flight means a flight operated with a leased aircraft and crew.


§ 234.3 Applicability.

This part applies to certain domestic scheduled passenger flights that are held out to the public by certificated air carriers that account for at least 1 percent of domestic scheduled passenger revenues. Certain provisions also apply to voluntary reporting to on-time performance by carriers.

§ 234.4 Reporting of on-time performance.

(a) Each reporting carrier shall file BTS Form 234 “On-Time Flight Performance Report” with the Office of Airline Information on a monthly basis, setting forth the information for each of its reportable flights held out in the Official Airline Guide (OAG), in the computer reservations systems (CRS), or in other schedule publications. The reportable flights include, but are not limited to, cancelled flights, mechanically cancelled flights, diverted flights, new flights and wet-leased flights. The report shall be made in the form and manner set forth in accounting and reporting directives issued by the Director, Office of Airline Statistics, and shall contain the following information:

(1) Carrier and flight number.
(2) Aircraft tail number.
(3) Origin and Destination airport codes.
(4) Published OAG departure and arrival times for each scheduled operation of the flight.
(5) CRS scheduled arrival and departure time for each scheduled operation of the flight.
(6) Actual departure and arrival time for each operation of the flight.
(7) Difference in minutes between OAG and CRS scheduled arrival times.
(8) Difference in minutes between OAG and CRS scheduled departure times.
(9) Actual wheels-off and wheels-on times for each operation of the flight.
(10) Date and day of week of scheduled flight operation.
(11) Scheduled elapsed time, according to CRS schedule.
(12) Actual elapsed time.
(13) Amount of departure delay, if any.
(14) Amount of arrival delay, if any.
(15) Amount of elapsed time difference, if any.

(b) When reporting the information specified in paragraph (a) of this section for a diverted flight, a reporting carrier shall use the original scheduled flight number and the original scheduled origin and destination airport codes.

(c) A reporting carrier shall report the information specified in paragraph (a) of this section for a new flight beginning with the first day of the new scheduled operation.

(d) A reporting carrier shall not report the information specified in paragraph (a) of this section for any discontinued or extra-section flight.

(e) Actual arrival, departure and elapsed times shall be measured by the times at which the aircraft arrived at and departed from the gate or passenger loading area.

(f) The published arrival and departure time of a flight shall be, respectively, the scheduled arrival and departure times in effect on the date of the scheduled operation of the flight, as shown in the most recent Official Airline Guide, and in computer reservations systems. Each carrier shall designate a single computer reservations system in addition to the Official Airline Guide as the sources of scheduled arrival time and departure time data in its reports to the Department and shall report the scheduled arrival times and departure times listed in those sources for each flight. Scheduled elapsed times, amount of departure and/or arrival delay, and elapsed time difference shall be calculated using the scheduled times shown in the designated CRS source.


§ 234.5 Form of reports.

Except where otherwise noted, all reports required by this part shall be filed within 15 days of the end of the month for which data are reported. The
§ 234.8 Calculation of on-time performance codes.

(a) Each reporting carrier shall calculate an on-time performance code in accordance with this section and as provided in more detail in accounting and reporting directives issued by the Director, Office of Airline Information. The calculations shall be performed for each reportable flight, except those scheduled to operate three times or less during a month. In addition, each reporting carrier shall assign an on-time performance code to each of its single plane one-stop or multi-stop flights, or portion thereof, that the carrier holds out to the public through a CRS, the last segment of which is a reportable flight.

(b) The on-time performance code shall be calculated as follows:

(1) Based on reportable flight data provided to the Department, calculate the percentage of on-time arrivals of each nonstop flight. Calculations shall not include discontinued or extra-section flights for which data are not reported to the Department.

(2) Based upon the on-time performance percentage calculated in paragraph (b)(1) of this section, assign a single digit code to each flight that reflects the percentile of on-time performance achieved by the flight, as set forth in the following table:

<table>
<thead>
<tr>
<th>Code</th>
<th>Percentage</th>
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<tbody>
<tr>
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<tr>
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<tr>
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<td>10-19.9</td>
</tr>
<tr>
<td>0</td>
<td>0-9.9</td>
</tr>
</tbody>
</table>

(3) For a one-stop or multi-stop flight, or portion thereof, listed in a CRS, the performance code for the non-stop flight segment arriving at the destination listed in the CRS shall be used.

(4) In the case of a new flight, carriers shall assign a performance code consisting of the letter "N." A flight
14 CFR Ch. II (1-1-99 Edition)

§ 234.9 Reporting of on-time performance codes.

No later than the 15th day of each month, each reporting carrier shall deliver, or arrange to have delivered, to each system vendor, as defined in 14 CFR part 255, the on-time performance codes required to be determined above. Carriers may report the codes by insuring that they are included in basic schedule tapes provided to CRS vendors or by providing a separate tape that will permit the CRS vendors to match the performance codes with basic schedule tapes.

§ 234.10 Voluntary disclosure of on-time performance codes.

(a) Any air carrier may determine, in accordance with the provisions of § 234.8 of this part, the on-time performance codes for the flights for which it voluntarily provides flight information to the Department pursuant to § 234.7 of this part.

(b) A carrier may supply these additional on-time performance codes to system vendors at the same time and in the same manner as the required disclosures are made to system vendors, provided that voluntary disclosures must continue for a period of not less than 12 consecutive months, and must be supplied either

(1) For each of the carrier’s reportable flights and each of its single plane one-stop or multi-stop flights, or portions thereof, that it holds out to the public through a CRS, the last segment of which is a reportable flight or

(2) For each of the carrier’s domestic flights.

§ 234.11 Disclosure to consumers.

During the course of reservations or ticketing discussions or transactions, or inquiries about flights, between a carrier’s employees and the public, the carrier shall disclose upon reasonable request the on-time performance code for any flight that has been assigned a code pursuant to this part.

§ 234.12 Waivers.

Any carrier may request a waiver from the reporting requirements of this part. Such a request, at the discretion of the Director, Bureau of Transportation Statistics may be granted for good cause shown. The requesting party shall state the basis for such a waiver.


PART 240—INSPECTION OF ACCOUNTS AND PROPERTY

Sec.

240.1 Interpretation.

240.2 Obligation of air carriers, foreign air carriers, and ticket agents.

§ 240.1 Interpretation.

(a) In the exercise of the authority granted by section 407(e) of the Act, the authority of any special agent or auditor to inspect and examine lands, buildings, equipment, accounts, records, memorandums, papers or correspondence shall include the authority to make such notes and copies thereof as he deems appropriate.

(b) The term “special agent” and “auditor” are construed to mean any employee of the Bureau of Enforcement and any other employee of the Board specifically designated by it or by the Director, Office of Facilities and Operations.

(c) The issuance in the form set forth below of an identification card and credentials to any such employee shall be
Office of the Secretary, DOT

construed to be an order and direction of the Board to such individual to inspect and examine lands, buildings, equipment, accounts, records, and memorandums in accordance with the authority conferred on the Board by the Act.

UNITED STATES OF AMERICA, CIVIL AERONAUTICS BOARD, WASHINGTON, D.C.

Number
Expires

[photo]

Signature
This is to certify that , whose signature and photograph appear hereon is a duly designated of the Civil Aeronautics Board and is authorized and directed to perform the duties of said office in accordance with the laws of the United States and regulations thereunder, and his authority will be respected accordingly.

By authority of the Civil Aeronautics Board.

Secretary

CIVIL AERONAUTICS BOARD

Name
Date Issued
Number
Height
Weight
Hair
Eyes
Date of Birth

The holder hereof is authorized to investigate violations of the Federal Aviation Act, as amended, collect evidence in cases in which the regulatory authority of the Civil Aeronautics Board is or may be involved and perform other duties imposed upon him by law.

Under the Federal Aviation Act and part 240 of the Economic Regulations of the Civil Aeronautics Board (14 CFR part 240), the duly accredited special agents and auditors of the Board are empowered at all times to obtain access to all lands, buildings and equipment of any air carrier or foreign air carrier and to inspect, examine, and make notes and copies of all accounts, records, memorandums, documents, papers and correspondence kept or required to be kept by any air carrier, foreign air carrier or ticket agent.

The issuance of these credentials to the holder hereof constitutes an order and direction on the part of the Civil Aeronautics Board to such individual to carry out these duties as aforesaid and as more fully described in part 240 of the Board's Economic Regulations.

Failure to honor these credentials will result in penalties as provided by law.

UNITED STATES OF AMERICA, CIVIL AERONAUTICS BOARD, WASHINGTON, D.C.

(Secs. 204, 407, 701, 72 Stat. 743; 49 U.S.C. 1324, 1377, 1441)


§ 240.2 Obligation of air carriers, foreign air carriers, and ticket agents.

Upon the demand of a special agent or auditor of the Board, and upon the presentation of the identification card and credentials issued to him in accordance with this part: (a) Any air carrier or foreign air carrier shall forthwith permit such special agent or auditor to inspect and examine all lands, buildings and equipment; (b) any air carrier, foreign air carrier or ticket agent shall forthwith permit such special agent or auditor to inspect and examine all accounts, records, memorandums, documents, papers and correspondence now or hereafter existing, and kept or required to be kept by the air carrier, foreign air carrier, or ticket agent, and shall permit such special agent or auditor to make such notes and copies thereof as he deems appropriate.

(Sec. 204(a), Federal Aviation Act of 1958, as amended, 72 Stat. 743; 49 U.S.C. 1324)

[ER-914, 40 FR 27017, June 26, 1975]

PART 241—UNIFORM SYSTEM OF ACCOUNTS AND REPORTS FOR LARGE CERTIFICATED AIR CARRIERS

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01 Authority Under Which Accounting and Reporting Rules and Regulations are Prescribed and Administered.
02 [Reserved]
03 Definitions for Purposes of This System of Accounts and Reports.
04 Air Carrier Groupings.
Pt. 241

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1-2 Waivers from this system of accounts and reports.
1-3 General description of system of accounts and reports.
1-4 System of accounts coding.
1-5 Records.
1-6 Accounting entities.
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6 Objective Classification of Balance Sheet Elements.

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SOURCE: ER-755, 37 FR 19726, Sept. 21, 1972, unless otherwise noted.

Section 01—Authority Under Which Accounting and Reporting Rules and Regulations are Prescribed and Administered

This Uniform System of Accounts and Reports for Large Certificated Air Carriers is issued, prescribed and administered under the following provisions of the Federal Aviation Act of 1958, as amended (72 Stat. 731, 49 U.S.C. 1301):

GENERAL POWERS

SEC. 204. (a) The Board is empowered to perform such acts, to conduct such investigations, to issue and amend such orders, and to make and amend such general or special rules, regulations, and procedure, pursuant to and consistent with the provisions of this Act, as it shall deem necessary to carry out the provisions of, and to exercise and perform its powers and duties under, this Act.

FILING OF REPORTS

SEC. 407. (a) The Board is empowered to require annual, monthly, periodical, and special reports from any air carrier; to prescribe the manner and form in which such reports shall be made; and to require from any air carrier specific answers to all questions upon which the Board may deem information to be necessary. Such reports shall be under oath whenever the Board so requires. The Board may also require any air carrier to file with it a true copy of each or any contract, agreement, understanding, or arrangement, between such air carrier and any other carrier or person, in relation to any traffic affected by the provisions of this Act.
DISCLOSURE OF STOCK OWNERSHIP

SEC. 407. (b) Each air carrier shall submit annually, and at such other times as the Board shall require, a list showing the names of each of its stockholders or members holding more than $5 per centum of the entire capital stock or capital, as the case may be, of such air carrier, together with the name of any person for whose account, if other than the holder, such stock is held; and a report setting forth a description of the shares of stock, or other interest, held by such air carrier, or for its account, in persons other than itself.

FORM OF ACCOUNTS

SEC. 407. (d) The Board shall prescribe the forms of any and all accounts, records, and memoranda to be kept by air carriers, including the accounts, records, and memoranda of the movement of traffic, as well as of the receipts and expenditures of money, and the length of time such accounts, records, and memoranda shall be preserved; and it shall be unlawful for air carriers to keep any accounts, records, or memoranda other than those prescribed or approved by the Board: Provided, That any air carrier may keep additional accounts, records, or memoranda if they do not impair the integrity of the accounts, records, or memoranda prescribed or approved by the Board and do not constitute an undue financial burden on such air carrier.

INSPECTION OF ACCOUNTS AND PROPERTY

SEC. 407. (e) The Board shall at all times have access to all lands, buildings, and equipment of any carrier and to all accounts, records, and memoranda, including all documents, papers, and correspondence, now or hereafter existing, and kept or required to be kept by air carriers; and it may employ special agents or auditors, who shall have authority under the orders of the Board to inspect and examine any and all such lands, buildings, equipment, accounts, records, and memoranda. The provisions of this section shall apply, to the extent found by the Board to be reasonably necessary for the administration of this Act, to persons having control over any air carrier, or affiliated with any air carrier within the meaning of section 5(8) of the Interstate Commerce Act, as amended.

CLASSIFICATION

SEC. 416. (a) The Board may from time to time establish such just and reasonable classifications or groups of air carriers for the purposes of this title as the nature of the services performed by such air carriers shall require; and such just and reasonable rules and regulations, pursuant to and consistent with the provisions of this title, to be served by each such class or group, as the Board finds necessary in the public interest.

SAFETY, ECONOMIC AND POSTAL OFFENSES

SEC. 901. (a)(1) Any person who violates (A) any provision of Title III, IV, V, VI, VII, or XII of this Act, or any rule, regulation, or order issued thereunder, or under section 1002(i), or any term, condition or limitation of any permit or certificate issued under Title IV, or (B) any rule or regulation issued by the Postmaster General under this Act, shall be subject to a civil penalty of not to exceed $1,000 for each such violation. If such violation is a continuing one, each day of such violation shall constitute a separate offense: Provided, That this subsection shall not apply to members of the Armed Forces of the United States, or those civilian employees of the Department of Defense who are subject to the provisions of the Uniform Code of Military Justice, while engaged in the performance of their official duties; and the appropriate military authorities shall be responsible for taking any necessary disciplinary action with respect thereto and for making to the Administrator or Board, as appropriate, a timely report of any such action taken.

(2) Any such civil penalty may be compromised by the Administrator in the case of violations of Titles III, V, VI, or XII, or any rule, regulation, or order issued thereunder, or by the Board in the case of violations of Titles IV or VII, or any rule, regulation or order issued thereunder, or under section 1002(i), or any term, condition, or limitation of any permit or certificate issued under Title IV, or by the Postmaster General in the case of regulations issued by him. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the person charged.

FAILURE TO FILE REPORTS; FALSIFICATION OF RECORDS

SEC. 902. (e) Any air carrier, or any officer, agent, employee, or representative thereof, who shall, knowingly and willfully, fail or refuse to make a report to the Board or Administrator as required by this Act, or to keep or preserve accounts, records, and memoranda in the form and manner prescribed or approved by the Board or Administrator, or shall, knowingly and willfully, falsify, mutilate, or alter any such report, account, record, or memorandum, or shall knowingly and willfully file any false report, account, record, or memorandum, shall be deemed guilty of a misdemeanor and, upon conviction thereof, be subject for each offense to a fine of not less than $100 and not more than $5,000.
REFUSAL TO TESTIFY

SEC. 902. (g) Any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce books, papers, or documents, if in his power to do so, in obedience to the subpoena or lawful requirement of the Board or Administrator, shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine of not less than $100 nor more than $5,000, or imprisonment for not more than one year, or both.

FILING OF COMPLAINTS AUTHORIZED

SEC. 1002. (a) Any person may file with the Administrator or the Board, as to matters within their respective jurisdictions, a complaint in writing with respect to anything done or omitted to be done by any person in contravention of any provisions of this Act, or of any requirement established pursuant thereto. If the person complained against shall not satisfy the complaint and there shall appear to be any reasonable ground for investigating the complaint, it shall be the duty of the Administrator or the Board to investigate the matters complained of. Whenever the Administrator or the Board is of the opinion that any complaint does not state facts which warrant an investigation or action, such complaint may be dismissed without hearing. In the case of complaints against a member of the Armed Forces of the United States acting in the performance of his official duties, the Administrator or the Board, as the case may be, shall refer the complaint to the Secretary of the department concerned for action. The Secretary shall, within ninety days after receiving such a complaint, inform the Administrator or the Board of his disposition of the complaint, including a report as to any corrective or disciplinary actions taken.

INVESTIGATIONS ON INITIATIVE OF ADMINISTRATOR OR BOARD

SEC. 1002. (b) The Administrator or Board, with respect to matters within their respective jurisdictions, is empowered at any time to institute an investigation, on their own initiative, in any case and as to any matter or thing within their respective jurisdictions, concerning which complaint is authorized to be made to or before the Administrator or Board by any provision of this Act, or concerning which any question may arise under any of the provisions of this Act, or relating to the enforcement of any of the provisions of this Act. The Administrator or the Board shall have the same power to proceed with any investigation instituted on their own motion as though it had been appealed to by complaint.

ENTRY OR ORDERS FOR COMPLIANCE WITH ACT

SEC. 1002. (c) If the Administrator or the Board finds, after notice and hearing, in any investigation instituted upon complaint or upon their own initiative, with respect to matters within their jurisdiction, that any person has failed to comply with any provision of this Act or any requirement established pursuant thereto, the Administrator or the Board shall issue an appropriate order to compel such person to comply therewith.

Section 02 [Reserved]

Section 03—Definitions for Purposes of This System of Accounts and Reports

Account, clearing. An account used as a medium for the temporary accumulation of costs that are redistributed to appropriate applicable accounts.

Acquisition, date of. The date on which the title to owned property or equipment (or the right to use or control the reassignment of leased property) passes to the air carrier.


Addition, property. Additional equipment, land, structures, and other tangible property; extensions of fuel, water, and oil distribution equipment; additions to buildings and other structures; and additional safety devices applied to equipment not previously thus equipped. (See also Modification.)

Affiliated group. A combination of companies comprised of the air carrier, any person controlling the air carrier or under common control with the air carrier, and organizational divisions (as defined in sections 1-6) of and persons controlled by the air carrier.

Agency, cargo. Any person (other than the air carrier performing the direct air transportation or one of its bona fide regular employees or an indirect air carrier lawfully engaged in air transportation under authority conferred by any applicable part of the Economic Regulations of the Department) who for compensation or profit:

1. Solicits, obtains, receives or furnishes directly or indirectly property or consolidated shipments of property...
for transportation upon the aircraft of an air carrier subject to this part, or (2) procures or arranges for air transportation of property upon aircraft of an air carrier subject to this part by charter, lease, or any other arrangement.

Agent, ticket. Any person (other than the air carrier performing the direct air transportation or one of its bona fide regular employees, or an air carrier which subcontracts the performance of charter air transportation which it has contracted to perform) who for compensation or profit: (1) Solicits, obtains, receives, or furnishes directly or indirectly passengers or groups of passengers for transportation upon the aircraft of an air carrier subject to this part, or (2) procures or arranges for air transportation of passengers or groups of passengers upon aircraft of an air carrier subject to this part by charter, lease, or any other arrangement.

Agreement. Any oral or written agreement, contract, understanding, or arrangement, and any amendment, revision, modification, renewal, extension, cancellation or termination thereof.

Air carrier. Any citizen of the United States who undertakes, whether directly or indirectly or by a lease or any other arrangement, to engage in air transportation.


Air carrier, large certificated. An air carrier holding a certificate issued under 49 U.S.C. 41102, as amended, that: (1) Operates aircraft designed to have a maximum passenger capacity of more than 60 seats or a maximum payload capacity of more than 18,000 pounds; or (2) conducts operations where one or both terminals of a flight stage are outside the 50 states of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the U.S. Virgin Islands.

Air carrier, surviving. An entity (air carrier) which, as the result of a business combination, has acquired the net assets, and carries on the operations of, one or more predecessor air carriers, and which may be newly organized at the time of the combination or may be one of the predecessor air carriers.

Aircraft. Any contrivance now known or hereafter invented, used or designed for navigation of or flight in the air.

Aircraft days assigned to service—carrier’s equipment. The number of days that aircraft owned or acquired through rental or lease (but not interchange) are in the possession of the reporting air carrier and are available for service on the reporting carrier’s routes plus the number of days such aircraft are in service on routes of others under interchange agreements. Includes days in overhaul, or temporarily out of service due to schedule cancellations. Excludes days that newly acquired aircraft are on hand but not available for productive use, days rented or leased to others (for other than interchange) and days in possession but formally withdrawn from air transportation service.

Aircraft days assigned to service—carrier routes—same as aircraft days assigned to service-carrier’s equipment but excluding the number of days owned or rented equipment are in the possession of others under interchange agreements and including the number of days aircraft of others are in the possession of the air carrier under interchange agreements.

Aircraft, leased (rented). Aircraft obtained from (or furnished to) others under lease or rental arrangements. Leased and rented aircraft do not include those used under interchange agreements designed to provide oneplane service over the routes of the air carriers involved.

Aircraft type. A distinctive model as designated by the manufacturer.

Airport. A landing area regularly used by aircraft for receiving or discharging passengers or cargo.

Airport, alternate. An approved airport to which a flight may proceed if a landing at the airport to which the flight was dispatched becomes inadvisable.

Airport-to-airport distance. The great circle distance between airports, measured in statute miles in accordance with part 247 of this chapter.

Air transportation. The carriage by aircraft of persons, property, or mail.

Air transportation, charter. Air transportation authorized pursuant to section 401(d)(3).
Airworthiness (or Airworthy). When applied to a particular aircraft or component part, it denotes the ability of such aircraft or component part to perform its function satisfactorily through a range of operations determined by the Federal Aviation Administration.

Allocate. To assign an item or group of items of investment, revenue, or cost to an object, activity, process, or operation, in accordance with cost responsibilities, benefits received, or other measure of apportionment.

Allocation, bases of. Bases of distribution whereby revenues, expenses, and/or costs are equitably apportioned among revenue, expense, property and equipment, and other accounts.

Amortization. The gradual extinguishment of an amount in an account by distributing such amount over a fixed period, over the life of the asset or liability to which it applies or over the period during which it is anticipated the benefit will be realized.

Asset, contingent. An asset the existence, value, or ownership of which depend upon the occurrence or nonoccurrence of a specific event or upon the performance or nonperformance of a specified act.

Associated company. A company in which the accounting air carrier holds 5 percent or more of the outstanding proprietary interest; or a company which holds 5 percent or more of the outstanding proprietary interest of the accounting air carrier; or a company that, directly or through one or more intermediaries, controls or is controlled by, or is under common control with the accounting air carrier. Companies owned or controlled jointly with other air carriers shall be regarded as associated companies for purposes of this system of accounts. (See also Control.)

Betterment. Any improvement to property or equipment through the substitution of superior parts for inferior parts retired, the object of which is to make such property more useful or of greater capacity than at the time of acquisition or installation. (See also Modification.)

BTS. The Bureau of Transportation Statistics.

Cargo. All traffic other than passengers.

Cargo transported. Cargo on board each flight stage.

Certificated point. A city, place or population center authorized to receive scheduled air service under a Certificate of Public Convenience and Necessity or under an exemption issued to an air carrier.

Certificate of Public Convenience and Necessity. A certificate issued to an air carrier under 49 U.S.C. 41102, by the Department of Transportation authorizing the carrier to engage in air transportation.

Company, predecessor. An air carrier whose net assets and operations have been taken over by one or more other air carriers.

Compensation (of personnel). Remuneration to air carrier employees for personal services. Includes salaries, wages, overtime pay, cost-of-living differentials, bonuses, etc., as distinguished from per diem allowances or reimbursement for expenses incurred by personnel for the benefit of the air carrier.

Continental United States. The 48 contiguous States and the District of Columbia.

Control (including the terms Controlling, Controlled by, and Under common control). The possession, directly or indirectly, of the power positively to direct, or cause the direction of or negate the direction of, the management and policies of a company, whether such power is through one or more intermediary companies or alone or in conjunction with or pursuant to an agreement, and whether such power is established through a majority or minority ownership or voting of securities, common directors, officers, or stockholders, voting trusts, holding trusts, associated companies, contract, or any other direct or indirect means.

Controlling person. (See Person Controlling an air carrier)

Cost. The amount of cash (or its equivalent) actually paid for property, materials and supplies, and services, including that amount paid to put the property or materials and supplies in readiness for use. It includes such items as transportation charges, installation charges, and customs duties, less any cash or other discounts.
Cost, book. The amount at which an asset is recorded in an account without the deduction of amounts in related allowances or other accounts.

Cost, depreciated. The cost of property and equipment less the related allowances for depreciation.

Cost, removal. The cost of demolishing, dismantling, tearing down, or otherwise removing property and equipment, including the cost of related transportation and handling.

Debt, expense on. Expenses incurred by or for the air carrier in connection with the issuance and sale of evidences of debt (exclusive of the sale of reacquired securities), such as fees for drafting mortgages and trust deeds; fees and taxes for issuing or recording evidences of debt; cost of engraving and printing bonds, certificates of indebtedness, and other commercial paper; specific costs of obtaining governmental authority for issuance and filing notices thereunder; fees for legal services; fees and commissions paid underwriters, brokers, and salesmen for marketing such evidences of debt; fees and expenses of listing on exchanges; and other like costs.

Deferred taxes. Tax effects which are deferred for allocation to income tax expense of future periods.

Department. Department of Transportation.

Departures completed, percent scheduled. The percent of scheduled departures that were performed.

Departures completed, scheduled. The number of takeoffs performed at each airport pursuant to published schedules, exclusive of extra sections to scheduled departures.

Departure performed. A takeoff made at an airport.

Departure, scheduled. A takeoff scheduled at an airport, as set forth in published schedules.

Depreciation (of depreciable property and equipment). The loss in service value, not restored by current maintenance, incurred in the course of service from causes known to be in current operation, against which the carrier is not protected by insurance, and the effect of which can be forecast with reasonable accuracy. The causes of depreciation include wear and tear, decay, action of the elements, inadequacy, obsolescence, changes in the art, changes in demand, and requirements of public authorities.

Discount (of securities issued or assumed by the air carrier). The excess of (1) the par or stated value of securities over (2) the then current money value of the consideration received from their sale less the amount included for dividends or for interest accrued.

DOT. Department of Transportation. Equipment. Tangible property other than land, structures, and improvements.

Equity security. Any instrument representing ownership shares (for example, common, preferred, and other capital stock), or the right to acquire (for example, warrants, rights, and call options) or dispose of (for example, put options) ownership shares in an enterprise at fixed or determinable prices. The term does not encompass preferred stock that by its terms either must be redeemed by the issuing enterprise or is redeemable at the option of the investor, nor does it include treasury stock or convertible bonds.

Equivalent unit. A new unit substituted for an existing unit that is worn out, is damaged beyond repair, or has become inadequate in service, the substituted unit having substantially no greater capacity than the unit for which substituted.

Estimated economic life of leased property. The estimated remaining period during which the property is expected to be economically usable by one or more users, with normal repairs and maintenance, for the purpose for which it was intended at the inception of the lease, without limitation by the lease term.

Expense, capital stock. Expenses incurred by or for the air carrier in connection with the initial issuance and sale of capital stock (exclusive of the sale of reacquired capital stock), such as fees and commissions paid to promoters, underwriters, brokers, and salesmen; fees for legal services; cost of soliciting subscriptions for capital stock; including fees, commissions, and advertising; specific costs of obtaining governmental authority for issuance and filing notices thereunder; fees and taxes for issuance of capital stock and listing on exchanges; and the cost of
preparing, engraving, printing, issuing, and distributing prospectuses and stock certificates.

Flight, developmental. A flight for (1) the development of a new route either prior or subsequent to certification by the Department of Transportation; (2) the extension of an existing route; or (3) the integration of a new type of aircraft or service.

Flight, extra section. A flight, conducted as an integral part of scheduled service, that has not been provided for in published schedules and is required for transportation of traffic that cannot be accommodated on a regularly scheduled flight. Flights made in ferrying aircraft to meet schedules, or for similar operational reasons, are not extra sections and are classified as nonrevenue flights even if an occasional shipment, as a matter of special accommodation, is on board.

Flight, ferry. A flight for the purpose of returning an aircraft to base, equipment equalization, or moving an aircraft to and from a maintenance base.

Flight, paid positioning. A flight for the purpose of positioning an empty aircraft in connection with a charter flight for which a specific charge is set forth in a tariff or contract for application directly to the positioning miles operated. Such flights are considered revenue flights for Form 41 reporting purposes.

Flight, personnel training. A flight for the purpose of obtaining flying time for flight personnel or a flight in connection with a personnel training program.

Flight stage. The operation of an aircraft from takeoff to landing. For purposes of classifying flight stages as between "domestic", "territorial", and "international", technical stops are disregarded. (See Stops, technical.)

Freight. Property, other than mail, transported by air.

Generally accepted accounting principles (GAAP). The body of authoritative accounting knowledge governing the recording, presenting and disclosing of financial transactions, as incorporated in the pronouncements of the Financial Accounting Standards Board.

Group basis (in depreciation accounting). A plan under which (1) depreciation is based upon the application of a single depreciation rate to the total book cost of all property included in a given depreciable property and equipment account or class, despite differences in service life of individual items of property and equipment, (2) the full original cost, less any salvage realized, of an item of depreciable property or equipment retired is charged to the allowance for depreciation regardless of the age of the item, and (3) no gain or loss is recognized on the retirement of individual items of property or equipment.

Horsepower, maximum continuous for reciprocating engines. The brake horsepower developed in standard atmosphere at a specified altitude and under the maximum conditions of crankshaft rotational speed and engine manifold pressure, and approved for use during periods of unrestricted duration.

Horsepower, maximum continuous for turbine engines. The brake horsepower developed at specified altitudes, atmospheric temperatures, and flight speeds and under the maximum conditions of rotor shaft rotational speed and gas temperature, and approved for use during periods of unrestricted duration.

Thrust, maximum continuous for turbine engines. The jet thrust developed at specified altitudes, atmospheric temperatures, and flight speeds and under the maximum conditions of rotor shaft rotational speed and gas temperature, and approved for use during periods of unrestricted duration.

Hours, aircraft. The airborne hours of aircraft computed from the moment an aircraft leaves the ground until it touches the ground at the end of a flight.

Hours flown, revenue aircraft. The aircraft hours of flights performed in revenue service.

Hours in capitalized projects, aircraft. Aircraft hours applicable to ferrying newly acquired aircraft from the factory, to capitalized extension and development preoperating projects and to other costs which have been capitalized.

Hours per aircraft per day—carrier’s equipment, revenue. Average hours of productive use per day in revenue service of reporting carrier’s equipment determined by dividing (1) Aircraft days
assigned to service—carrier's equipment into (2) Revenue aircraft hours minus Revenue hours on other carrier's interchange equipment plus Total hours by others on the carrier's interchange equipment.

Hours per aircraft per day—carrier's routes, revenue. Average hours of productive use per day in revenue service on reporting carrier's routes determined by dividing (1) Aircraft days assigned to service-carrier's routes into (2) Revenue aircraft hours.

Aircraft hours. The aircraft hours computed from the moment the aircraft first moves under its own power for purposes of flight, until it comes to rest at the next point of landing.

Improvement. An addition or alteration to land, a building, or a unit of equipment that results in a better piece of property, in the sense of greater durability, or in increased productivity or efficiency. (See also Modification.)

Income tax expense. The amount of income taxes (whether or not currently payable or refundable) allocable to a period in the determination of net income.

Income taxes. Taxes based on income determined under provisions of the United States Internal Revenue Code and foreign, State, and other taxes (including franchise taxes) based on income.

Insurance, self. The assumption by an air carrier of a risk of loss or liability arising from an accident or other contingent event.

Interchange agreement. An agreement under which aircraft of one air carrier are utilized to provide one-plane service over its own routes and the routes of other air carriers.

Interperiod tax allocation. The process of apportioning income taxes among periods.

Inventory, perpetual. A book inventory kept in continuous agreement with stock on hand by means of a detailed record.

Investor controlled company (for purposes of applying the equity method of accounting). Any business entity in which the accounting air carrier is able to exercise significant influence over operating and financial policies of the issuing company. Significant influence will be presumed, unless established to the contrary by waiver request, with ownership of 20 percent or more of the outstanding voting capital stock. Ability to exercise influence may be indicated in several ways, such as representation on the Board of Directors, participation in policy-making processes, material intercompany transactions, interchange of managerial personnel, or technological dependency. Investor controlled companies shall also be regarded as associated companies for purposes of this system of accounts (see also Associated company).

Item, delayed. An item relating to transactions that occurred during a prior accounting period and that requires further accounting treatment for a true statement of financial condition or operating results. It includes adjustments of errors in the operating revenue, operating expense, and other income accounts for prior periods.

Liability, contingent. A possible source of obligation of an air carrier dependent upon the fulfillment of conditions regarded as uncertain.

Load, available. Represents the maximum salable load. It is the allowable gross weight less the empty weight, less all justifiable aircraft equipment, and less the operating load (consisting of minimum fuel load, oil, flight crew, steward's supplies, etc.). For passenger aircraft, the available load must not exceed the weight of the maximum number of passengers who can be accommodated in the seats installed in the aircraft plus the weight of the traffic that can be accommodated in the cargo space.

Load, average revenue. The average total revenue tons carried in revenue services, determined by dividing total revenue ton-miles by aircraft miles flown in revenue services.

Load, average revenue passenger. Average number of revenue passengers carried in passenger services, determined by dividing revenue passenger-miles by aircraft miles flown in revenue passenger services.

Load factor, over-all revenue. The percent that total revenue ton-miles (passenger plus nonpassenger) are of available ton-miles in revenue services.

Load factor, revenue passenger. The percent that revenue passenger-miles
are of available seat-miles in revenue passenger services.

Load, minimum fuel. The minimum quantity of fuel with which an aircraft may be dispatched in accordance with the safety operating needs of the air carrier.

Load, salable. (See Load, available.)

Mail, nonpriority. All mail for which transportation by air is provided on a space available basis.

Mail, priority. All mail for which transportation by air is provided on a priority basis.

Mile. A statute mile (5,280 feet).

Miles completed, percent scheduled aircraft. The percent of scheduled aircraft miles which were performed.

Miles completed, scheduled aircraft. The aircraft miles performed on scheduled flights computed between only those scheduled points actually served.

Miles flown, aircraft. The miles (computed in airport-to-airport distances) for each flight stage actually completed, whether or not performed in accordance with the scheduled pattern. For this purpose, operation to a flag stop is a stage completed even though a landing is not actually made. In cases where the interairport distances are inapplicable, aircraft miles flown are determined by multiplying the normal cruising speed for the aircraft type by the airborne hours.

Miles flown, nonrevenue aircraft. The aircraft miles flown on nonrevenue flights, such as ferry (including empty backhauls to MAC one-way charters), personnel training, extension and development, and abortive revenue flights.

Miles, revenue aircraft. The aircraft miles flown in revenue service.

Miles, scheduled aircraft. The sum of the airport-to-airport distances of all flights scheduled to be performed over the air carrier's certificated routes pursuant to published flight schedules. Flights listed in the published schedules for operation only as extra sections, when traffic warrants, are excluded.

Modification. An alteration in a structure or unit of equipment that changes its design and is made to correct an error, increase production, improve efficiency of operation, or for some other reason.

Obsolescence. The process of becoming out of date due to progress of the arts and sciences, changed economic conditions, legislation, etc., which ultimately results in the retirement or other disposition of property.

Off-Line. Installations maintained or facilities used for other than scheduled certificated air services.

On-Line. Installations maintained or facilities used in conducting scheduled certificated air services.

Domestic. Flight stages with both terminals within the 50 States of the United States and the District of Columbia.

Territorial. Flight stages with both terminals within territory under U.S. jurisdiction where at least one of the terminals is not within a State or the District of Columbia.

International. Flight stages with one or both terminals outside of territory under U.S. jurisdiction.

Operations, systems. The over-all operations of an air carrier including all of the operating entities of an air carrier having multiple operations.

Passenger-mile. One passenger transported 1 mile. Passenger-miles are computed by multiplying the aircraft miles flown on each flight stage by the number of passengers transported on that stage.

Passenger-mile, nonrevenue. One non-revenue passenger transported one mile.

Passenger-mile, revenue. One revenue passenger transported one mile.

Passenger, nonrevenue. Person receiving air transportation from the air carrier for which remuneration is not received by the air carrier. Air carrier employees or others receiving air transportation against whom token service charges are levied are considered nonrevenue passengers. Infants for whom a token fare is charged are not counted as passengers.

Passenger, revenue. Person receiving air transportation from the air carrier for which remuneration is received by the air carrier. Air carrier employees or others receiving air transportation against whom token service charges are levied are considered nonrevenue passengers. Infants for whom a token fare is charged are not counted as passengers.
Passengers transported. Passengers on board each flight stage.

Person controlling an air carrier. Any person, as defined in 49 U.S.C. 40102, whom the Department has found, in any proceeding, to control an air carrier, or who holds, directly or indirectly, the legal or beneficial ownership of more than 50 percent of the outstanding voting capital stock or capital of an air carrier, and who does not make a proper showing to the Department that he or she does not control the carrier despite such stock ownership, shall be deemed to be a person controlling the carrier for the purpose of this part. A brokerage firm which holds record ownership of securities merely for the convenience of the customer beneficially owning the stock shall not be deemed a person controlling an air carrier.

Premium (as applied to securities issued or assumed by the air carrier). The excess of (1) the then current money value of the consideration received from their sale, less the amount included therein for dividends or interest accrued, over (2) their par or stated value.

Pretax accounting income. Income or loss for a period exclusive of related income tax expense.

Property (as applied to traffic). (See Cargo.)

Replacement. Substitution of new for existing facilities that are worn out, damaged beyond repair, or have become inadequate in service.

Residual value. The predetermined portion of the cost of a unit of property or equipment excluded from depreciation. It shall represent a fair and reasonable estimate of recoverable value as at the end of the service life over which the property or equipment is depreciated and shall give due consideration to the proceeds anticipated from disposition of the property or equipment and the extent to which costs attaching to property or equipment are otherwise recoverable through charges against income.

Retirement. The permanent withdrawal of assets from services of the corporate entity through sale, abandonment, demolition, or other disposal.

Retirement, date of. The date on which property or equipment is permanently withdrawn from services of the corporate entity.

Route, certificated. The route(s) over which an air carrier is authorized to provide air transportation by a Certificate of Public Convenience and Necessity issued by the Department of Transportation pursuant to section 401(d) (1) or (2) of the Act.

Salvage value. The amount received for property retired, less the expenses incurred in connection with the sale or in the preparation of the property for sale; or, if retained, the amount at which the material recovered is charged to materials and supplies or other appropriate account.

Seats available. Installed seats in an aircraft (including seats in lounges) exclusive of any seats not offered for sale to the public by the carrier; provided that in no instance shall any seat sold be excluded from the count of available seats.

Seats, average available. The average number of seats available for passengers, determined by dividing available seat-miles by revenue aircraft miles flown in passenger service.

Seat-miles available, revenue. The aircraft miles flown on each flight stage multiplied by the number of seats available for revenue use on that stage.

Section 41103 cargo operations. The carriage, pursuant to 49 U.S.C. 41103, by aircraft of property and/or mail as a common carrier for compensation or hire in commerce between a place in any State of the United States, or the District of Columbia, or Puerto Rico, or the U.S. Virgin Islands, and a place in any other of those entities, or between places in the same State or other entity through the air-space over any place outside thereof, or between places within the District of Columbia, Puerto Rico, or the U.S. Virgin Islands. This includes commerce moving partly by aircraft and partly by other forms of transportation, as well as commerce moving wholly by aircraft.

Segment, service. A pair of points served or scheduled to be served by a single stage of at least one flight within any given time period.

Service, charter. Nonscheduled air transport service in which the party receiving transportation obtains exclusive use of an agreed upon portion of
the total capacity of an aircraft with the remuneration paid by the party receiving transportation accruing directly to, and the responsibility for providing transportation is that of, the accounting air carrier.

Service, coach (tourist). Transport service specifically established for the carriage of passengers at special reduced passenger fares that are predicated on both the operation of specifically designated aircraft space and a reduction in the quality of service regularly and ordinarily provided.

Service, first class. Transport service established for the carriage of passengers moving at either standard fares or premium fares, or at reduced fares not predicated upon the operation of specifically allocated aircraft space, and for whom standard or premium quality services are provided.

Service life. The period between the date of installation of property or equipment and its date of retirement.

Service, mixed. Transport service for the carriage of both first-class and coach passengers on the same aircraft.

Service, nonpassenger. Transport service established for the carriage of traffic other than passengers.

Service, nonscheduled. Includes transport service between points not covered by Certificates of Public Convenience and Necessity issued by the Department of Transportation to the air carrier; services pursuant to the charter or hiring of aircraft; other revenue services not constituting an integral part of the services performed pursuant to published schedules; and related nonrevenue flights.

Service, passenger-cargo. Transport service established for the carriage of passengers which may also be used jointly for the transportation of cargo.

Service, scheduled. Transport service operated pursuant to published flight schedules, including extra sections and related nonrevenue flights.

Service, transport. The operation of facilities for the carriage of traffic by air.

Services, all. The total of scheduled and nonscheduled transport services.

Stop, flag. A point on an air carrier's operating system that is scheduled to be served only when traffic is to be picked up or discharged.

Stops, technical. Aircraft landing made for purposes other than enplaning or deplaning traffic. For purposes of identifying reporting entities, landings made for stopover passengers are regarded as technical stops.

Tariff, published. A publication containing fares and rates applicable to the transportation of persons or cargo and rules relating to or affecting such fares or rates of transportation, filed with the Department of Transportation.

Taxable income. The excess of revenues over deductions or the excess of deductions over revenues to be reported for income tax purposes for a period.

Tax effects. Differentials in income taxes of a period attributable to (1) revenue or expense transactions which enter into the determination of pretax accounting income in one period and into the determination of taxable income in another period, (2) deductions or credits that may be carried backward or forward for income tax purposes, and (3) adjustments of prior periods (or of the opening balance of retained earnings) and direct entries to other stockholders' equity accounts which do not enter into the determination of pretax accounting income of that period. A permanent difference does not result in a "tax effect" as the term is used in this System of Accounts and Reports.

Ton. A short ton (2,000 pounds).

Ton-mile. One ton transported 1 mile. Ton-miles are computed by multiplying the aircraft miles flown on each flight stage by the number of tons transported on that stage.

Ton-mile, nonrevenue. One ton of nonrevenue traffic transported 1 mile.

Ton-mile, nonrevenue. One ton of nonrevenue traffic transported 1 mile.

Ton-mile, passenger. One ton of passenger weight (including all baggage) transported 1 mile. (See also Weight, passenger.)

Ton-mile, revenue. One ton of revenue traffic transported 1 mile.

Ton-miles available, revenue. The aircraft miles flown on each flight stage multiplied by the ton capacity available for use on that stage.

Traffic, deplaned. A count of the number of passengers getting off and tons
of cargo unloaded from an aircraft. For this purpose, passengers and cargo on aircraft leaving a carrier’s system on interchange flights are considered as deplaning and the interchange point; and passengers and cargo moving from one operation to another operation of the same carrier, for which separate reports are required by the Department of Transportation, are considered as deplaning at the junction point.

Traffic, enplaned. A count of the number of passengers boarding and tons of cargo loaded on an aircraft. For this purpose, passengers and cargo on aircraft entering a carrier’s system on interchange flights are considered as enplaning at the interchange point; and passengers and cargo moving from one operation to another operation of the same carrier, for which separate reports are required by the Department of Transportation, are considered as enplaning at the junction point.

Traffic, nonrevenue. Passengers and cargo transported by air for which no remuneration or token service charges are received by the air carrier. Airline employees, officers and directors, or other persons, except for ministers of religion, who are traveling under reduced-rate transportation authorized by 49 U.S.C. 41511(a) and 14 CFR part 223, as well as travel agents, cargo agents, and tour conductors traveling at reduced fares are also considered nonrevenue traffic.

Traffic office. A facility where air transportation is sold, and related processes of documentation and reservation confirmation are performed.

Traffic, revenue. Passengers and cargo transported by air for which remuneration is received by the air carrier. Airline employees, officers and directors, or other persons, except for ministers of religion, who are traveling under reduced-rate transportation authorized by 49 U.S.C. 41511(a) and 14 CFR part 223, travel agents, cargo agents, and tour conductors traveling at reduced fares, and other passengers and cargo carried for token service charges, are not considered as revenue traffic.

Transportation, free. The carriage of any person or cargo (other than cargo owned by the air carrier) without compensation.

Unit basis (in depreciation accounting). A plan under which depreciation expenses is accrued upon the basis of the book cost of the individual item of property in relation to the service life and salvage value of the particular item.

Value, service. The difference between the book cost and the residual value of property and equipment.

Weight, allowable gross. The maximum gross weight (of the aircraft and its contents) which an aircraft is licensed to carry into the air on each flight stage.

Weight, average available. The average capacity available for revenue traffic, determined by dividing available ton-miles by aircraft miles in revenue service.

Weight, empty. The weight of the airframe, engines, propellers, and fixed equipment of an aircraft. Empty weight excludes the weight of the crew and payload, but includes the weight of all fixed ballast, unusable fuel supply, undrainable oil, total quantity of engine coolant, and total quantity of hydraulic fluid.

Weight, passenger. For the purposes of this part, a standard weight of 200 pounds per passenger (including all baggage) is used for all civil operations and classes of service. Other weights may be prescribed in specific instances upon the initiative of the Department of Transportation or upon a factually supported request by an air carrier.


Editorial Note: For Federal Register citations affecting Section 03, see the List of CFR Sections Affected in the Finding Aids section of this volume.

Section 04—Air Carrier Groupings

(a) All large certificated air carriers are placed into three basic air carrier groupings based upon their level of operations and the nature of these operations. In order to determine the level of operations, total operating revenues for a twelve-month period are used. The following operating revenue ranges are used to establish air carrier groupings:
For reporting purposes, Group I air carriers are further divided into two subgroups: (1) Air carriers with total annual operating revenues from $20,000,000 to $100,000,000 and (2) Air carriers with total annual operating revenues below $20,000,000.

(b) Both the criteria for establishing air carrier groupings and the assignment of each air carrier to a specific group of carriers will be reviewed periodically by the Director, Office of Airline Information, to assure the maintenance of appropriate standards for the grouping of carriers. When an air carrier’s level of operations passes the upper or lower limit of its currently assigned carrier grouping, the carrier is not automatically transferred to a different group and a new level of reporting. The Office of Airline Statistics will issue an updated listing of the carrier groups on an annual basis. A carrier may petition for reconsideration of its assigned carrier grouping or request a waiver from the accounting and reporting requirements that are applicable to a particular group under the provisions of section 1-2 of this Uniform System of Accounts and Reports.


 Sec. 1-2 Waivers from this system of accounts and reports.

A waiver from any provision of this system of accounts or reports may be made by the BTS upon its own initiative or upon the submission of written request therefor from any air carrier, or group of air carriers, provided that such a waiver is in the public interest and each request for waiver expressly demonstrates that: existing peculiarities or unusual circumstances warrant a departure from a prescribed procedure or technique; a specifically defined alternative procedure or technique will result in a substantially equivalent or more accurate portrayal of operating results or financial condition, consistent with the principles embodied in the provisions of this system of accounts and reports; and the application of such alternative procedure will maintain or improve uniformity in substantive results as between air carriers.


 Sec. 1-3 General description of system of accounts and reports.

(a) This system of accounts and reports is designed to permit limited contraction or expansion to reflect the varying needs and capacities of different air carriers without impairing basic accounting comparability as between air carriers. In its administration three air carrier groups, designated Group I, Group II, and Group III, respectively (see section 04), are established by the BTS. This grouping will be reviewed from time to time upon petition of individual air carriers or by initiative of the BTS with the view of a possible regrouping of the air carriers.

[b] Under the system of accounts prescribed, balance sheet elements are accounted for by all air carrier groups within a fixed uniform pattern of specific accounts. All profit and loss elements are accounted for within specific objective accounts established for each air carrier group resulting from dual classifications, designated for each air carrier group, which are descriptive of both basic areas of financial activity, or functional operation, and objective served. The profit and loss elements of
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Sec. 1-5

the three air carrier groups can be reduced to broad objectives and general or functional classifications which are comparable for all air carrier groups. Both balance sheet and profit and loss accounts and account groupings are designed, in general, to embrace all activities, both air transport and other than air transport, in which the air carrier engages and provide for the separation of elements identifiable exclusively with other than air transport activities. Profit and loss elements which are recorded during the current accounting year are subclassified as between (1) those which relate to the current accounting year and adjustments of a recurrent nature applicable to prior accounting years, and (2) extraordinary items of material magnitude.

(c) In order to afford air carriers as much flexibility and freedom as possible in establishing ledger and subsidiary accounts to meet their individual needs, a minimum number of account subdivisions have been prescribed in this Uniform System of Accounts. It is intended, however, that each air carrier, in maintaining its accounting records, will provide sub-account and subsidiary account segregations of accounting elements which differ in nature of accounting characteristics, in a manner which will render individual elements readily discernible and traceable throughout the accounting system, and will provide for relating profit and loss elements to applicable balance sheet counterparts. [ER–755, 37 FR 19726, Sept. 21, 1972, as amended at 60 FR 66723, Dec. 26, 1995]

Sec. 1-4 System of accounts coding.

(a) A four digit control number is assigned for each balance sheet and profit and loss account. Each balance sheet account is numbered sequentially, within blocks, designating basic balance sheet classifications. The first two digits of the four digit code assigned to each profit and loss account denote a detailed area of financial activity or functional operation. The first two digits, thus assigned to each profit and loss account, are numbered sequentially within blocks, designating more general classifications of financial activity and functional operation. The second two digits assigned to profit and loss accounts denote objective classifications.

(b) A fifth digit, appended as a decimal, has been assigned for internal control by the BTS of prescribed subdivisions of the primary objective balance sheet and profit and loss classifications. A different fifth digit code number from that assigned by the BTS may be adopted for internal record-keeping by the air carrier provided the prescribed subclassification of objective accounts is not impaired and the code number assigned by the BTS is employed in reporting to the BTS on Form 41 Reports. [ER–755, 37 FR 19726, Sept. 21, 1972, as amended at 60 FR 66723, Dec. 26, 1995]

Sec. 1-5 Records.

(a) The general books of account and all books, records, and memoranda which support in any way the entries therein shall be kept in such manner as to provide at any time full information relating to any account. The entries in each account shall be supported by such detailed information as will render certain the identification of all facts essential to a verification of the nature and character of each entry and its proper classification under the prescribed Uniform System of Accounts. Registers, or other appropriate records, shall be maintained of the history and nature of each note receivable and each note payable.

(b) The books and records referred to herein include not only accounting records in a limited technical sense, but all other records such as organization tables and charts, internal accounting manuals and revisions thereof, minute books, stock books, reports, cost distributions and other accounting work sheets, correspondence, memoranda, etc., which may constitute necessary links in developing the history of, or facts regarding, any accounting or financial transaction.

(c) All books, records and memoranda shall be preserved and filed in such manner as to readily permit the audit and examination thereof by representatives of the DOT. All books, records, and memoranda shall be housed or stored in such manner as to afford protection from loss, theft, or damage by fire, flood or otherwise and no such
books and records shall be destroyed or otherwise disposed of, except in conformance with 14 CFR part 249 for the preservation of records.


Sec. 1–6 Accounting entities.

(a) Separate accounting records shall be maintained for each air transport entity for which separate reports to the BTS are required to be made by sections 21(g) and for each separate corporate or organizational division of the air carrier. For purposes of this Uniform System of Accounts and Reports, each nontransport entity conducting an activity which is not related to the air carrier’s transport activities and each transport-related activity or group of activities qualifying as a nontransport venture pursuant to paragraph (b) of this section, whether or not formally organized within a distinct organizational unit, shall be treated as a separately operated organizational division; except that provisions of this paragraph and paragraph (b) shall not apply to leasing activities.

(b) As a general rule, any activity or group of activities comprising a transport-related service provided for in transport-related revenue and expense accounts 09 through 18 shall be considered a separate nontransport venture under circumstances in which either: (1) A separate corporate or legal entity has been established to perform such services, (2) the aggregate annual revenue rate, as determined in section 2–1(d), during either of the prior two years exceeds the greater of $1 million per annum or one percent of the air carrier’s total annual transport revenues, or (3) the aggregate annual expense rate, as determined in section 2–1(d), during either of the prior two years exceeds the greater of $1 million or one percent of the carrier’s total annual operating expenses. Provided, That revenues and expenses from in-flight sales, and interchange sales, shall be considered related to air transportation and accounted for accordingly, regardless of the revenue or expense standard set forth above.

(c) The records for each required accounting entity shall be maintained with sufficient particularity to permit a determination that the requirements of section 2–1 have been complied with.


Sec. 1–7 Interpretation of accounts.

To the end that uniform accounting may be maintained, questions involving matters of accounting significance which are not clearly provided for should be submitted to the Director, Office of Airline Information, K–25, Bureau of Transportation Statistics, for explanation, interpretation, or resolution.


Sec. 1–8 Address for reports and correspondence.

All reports required under this part and related correspondence shall be addressed to: Office of Airline Information, K–25, Room 4125, U.S. Department of Transportation, 400 Seventh St., SW., Washington, DC 20590.


Section 2—General Accounting Policies

Sec. 2.1 Generally accepted accounting principles.

(a) The accounting provisions contained in this part are based on generally accepted accounting principles (GAAP). Persons subject to this part are authorized to implement, as prescribed by the Financial Accounting Standards Board, newly issued GAAP pronouncements until and unless the Director, Office of Airline Information (OAI), issues an Accounting Directive making an initial determination that implementation of a new pronouncement would adversely affect the Department’s programs.

(b) The Director, OAI, shall review each newly issued GAAP pronouncement to determine its affect on the Department’s regulatory programs. If adopting a specific change in GAAP would adversely affect the Department’s programs, the Director will
issue the results of the review in the form of an Accounting Directive. The directive will state the reasons why the particular change should not be incorporated in the uniform system of accounts and contain accounting guidance for maintaining the integrity of the Department’s air carrier accounting provisions.

(c) Objections and comments relating to the Department’s decision not to implement a change in generally accepted principles may be addressed to Director, Office of Airline Information, K-25, Room 4125, U.S. Department of Transportation, 400 Seventh St., SW., Washington, DC 20590. If significant objections are raised urging adoption of a particular GAAP pronouncement, the Department will institute a rulemaking.


Sec. 2-2 Basis of allocation between entities.

(a) The provisions of this section shall apply to each person controlling an air carrier, each person controlled by the air carrier, as well as each transport entity and organizational division of the air carrier for which separate records must be maintained pursuant to section 1-6.

(b) Each transaction shall be recorded and placed initially under accounting controls of the particular air transport entity or organizational division of the air carrier for which separate records must be maintained pursuant to section 1-6.

(c) Expense items contributing to more than one function shall be charged to the general overhead functions to which applicable except that where only incidental contribution is made to more than a single function an item may be included in the function to which primarily related, provided such function is not distorted by including an aggregation of amounts applicable to other functions.

Sec. 2-3 Distribution of revenues and expenses within entities.

(a) Revenues and expenses attributable to a single natural objective account or functional classification shall be assigned accordingly.

(b) Revenue and expense items which are common to two or more natural objective accounts shall be recorded in the objective accounts to which they predominantly relate.

(c) Expense items contributing to more than one function shall be assigned to the general overhead functions to which applicable except that where only incidental contribution is made to more than a single function an item may be included in the function to which primarily related, provided such function is not distorted by including an aggregation of amounts applicable to other functions.
in a fair presentation of the expenses applicable to each function, apportionment shall be made between functions based upon a study of the contribution to each function during a representative period.


Sec. 2-4 Accounting period.

(a) The accounting year of each air carrier subject to this Uniform System of Accounts shall be the calendar year unless otherwise approved by the BTS.

(b) Each air carrier shall keep its financial accounts and records on a full accrual basis for each quarter so that all transactions, as nearly as may reasonably be ascertained, shall be fully reflected in the air carrier's books for the quarter in which revenues have been earned and the costs attaching to the revenues so earned in each quarter have been incurred independently of the incidence of sales or purchases and settlement with debtors or creditors.

(c) Expenditures incurred during the current accounting year which demonstrably benefit operations to be performed during subsequent accounting years to a significant extent shall be deferred and amortized to the period in which the related operations are performed when of sufficient magnitude to distort the accounting results of the year in which incurred.

(d) Expenditures charged directly or amortized to operations within one accounting year shall not be reversed in a subsequent accounting year and re-amortized or charged directly against operations of subsequent years except that retroactive adjustments are permitted where necessary to conform with adjustments required by the DOT for ratemaking purposes.


Sec. 2-5 Revenue and accounting practices.

(a) Revenue accounting practices shall conform to the provisions of account 2160, Air Traffic Liability.

(b) Each route air carrier shall physically verify the reliability of its passenger revenue accounting practice at least once each accounting year.

(c) For those carriers who use the yield or average-fare method to determine earned revenue, the analysis supporting the verification shall include:

(1) The cutoff date for the liability to be verified; such cutoff date shall be at the end of a calendar month.

(2) The number of months after the cutoff date during which documents were examined to verify the liability; the number of months after the cutoff date during which documents are examined shall not exceed the maximums set forth below:

<table>
<thead>
<tr>
<th>Class of carrier</th>
<th>Maximum months</th>
</tr>
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<tr>
<td>TWA</td>
<td>18</td>
</tr>
<tr>
<td>Trunks (except TWA)</td>
<td>12</td>
</tr>
<tr>
<td>All other route air carriers</td>
<td>6</td>
</tr>
</tbody>
</table>

1 Applies only to carriers on a yield or average-fare basis.

(3) The nature of the documents which were examined for purposes of the verification.

(4) The totals for each of the various types of documents examined, on actual or sampling basis.

(5) A description of the sampling technique and conversion to totals, if sampling was employed.

(6) The amount and basis for all estimates employed in the verification.

(7) The amount of resulting adjustments and the quarter in which such adjustments were, or are to be, made in the accounts.

(d) For those carriers who use the sales-lift match method to determine earned revenue, the analysis supporting the physical inventory verification shall include:

(1) The cutoff date for the liability to be verified; such cutoff date shall be at the end of a calendar month.

(2) A trial balance as of the cutoff date of all subaccounts supporting the Air Traffic Liability control account; the subsidiary trial balance must agree with the Air Traffic Liability control account or a reconciliation statement furnished.

(3) A statement to the effect that a sales listing of the value of all unmatched auditor coupons has been compiled and compared to the general
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ledger control figure: the statement required by this subparagraph shall indicate whether or not the unmatched coupons is in agreement with the general ledger. If the sales listing is not in agreement with the Air Traffic Liability control account, the amount of such difference shall be shown on such statement.


BALANCE SHEET CLASSIFICATIONS

Section 3—Chart of Balance Sheet Accounts

[See footnotes at end of table]

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<thead>
<tr>
<th>Name of account</th>
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<td>Current assets:</td>
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<td>Nonoperating</td>
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<tr>
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<td>Airframe parts and assemblies</td>
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<td>Improvements to leased buildings and equipment</td>
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<td>Ground property and equipment</td>
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<td>Equipment</td>
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<td>Furniture, fixtures, and office equipment</td>
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<td>Maintenance buildings and improvements</td>
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</tr>
<tr>
<td>Other buildings and improvements</td>
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<tr>
<td>Allowance for depreciation of flight equipment and ground property and equipment, and amortization of overhaul and airworthiness</td>
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<td>Land</td>
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<td>Equipment purchase deposits and advance payments</td>
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<tr>
<td>Leased property under capital leases</td>
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<tr>
<td>Capital leases—flight equipment</td>
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<tr>
<td>Capital leases—other property and equipment</td>
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<tr>
<td>Leased property under capital leases, accumulated amortization</td>
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<tr>
<td>Accumulated amortization-capitalized flight equipment</td>
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<td>Accumulated amortization-capitalized other property and equipment</td>
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181
1010

[See footnotes at end of table]

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<tbody>
<tr>
<td>Property on operating-type lease to others and property held for lease, accumulated depreciation</td>
<td>1798</td>
</tr>
<tr>
<td>Other assets:</td>
<td></td>
</tr>
<tr>
<td>Long-term prepayments</td>
<td>1820</td>
</tr>
<tr>
<td>Unamortized developmental and preoperating costs</td>
<td>1830</td>
</tr>
<tr>
<td>Other assets and deferred charges</td>
<td>1890</td>
</tr>
<tr>
<td>Current liabilities:</td>
<td></td>
</tr>
<tr>
<td>Current maturities of long-term debt</td>
<td>2000</td>
</tr>
<tr>
<td>Notes payable:</td>
<td></td>
</tr>
<tr>
<td>Banks</td>
<td>2005</td>
</tr>
<tr>
<td>Other</td>
<td>2015</td>
</tr>
<tr>
<td>Trade accounts payable</td>
<td>2021</td>
</tr>
<tr>
<td>Accounts payable—other</td>
<td>2025</td>
</tr>
<tr>
<td>Current obligations under capital leases</td>
<td>2080</td>
</tr>
<tr>
<td>Accrued salaries, wages</td>
<td>2110</td>
</tr>
<tr>
<td>Accrued vacation liability</td>
<td>2120</td>
</tr>
<tr>
<td>Accrued interest</td>
<td>2125</td>
</tr>
<tr>
<td>Accrued taxes</td>
<td>2130</td>
</tr>
<tr>
<td>Dividends declared</td>
<td>2140</td>
</tr>
<tr>
<td>Air traffic liability</td>
<td>2160</td>
</tr>
<tr>
<td>Other current liabilities</td>
<td>2190</td>
</tr>
<tr>
<td>Noncurrent liabilities:</td>
<td></td>
</tr>
<tr>
<td>Long-term debt</td>
<td>2210</td>
</tr>
<tr>
<td>Advances from associated companies</td>
<td>2240</td>
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<tr>
<td>Pension liability</td>
<td>2250</td>
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<tr>
<td>Noncurrent obligations under capital leases</td>
<td>2280</td>
</tr>
<tr>
<td>Other noncurrent liabilities</td>
<td>2290</td>
</tr>
<tr>
<td>Deferred credits:</td>
<td></td>
</tr>
<tr>
<td>Deferred income taxes</td>
<td>2340</td>
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<tr>
<td>Deferred investment tax credits</td>
<td>2345</td>
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<tr>
<td>Other deferred credits</td>
<td>2390</td>
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<tr>
<td>Stockholders’ equity:</td>
<td></td>
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<tr>
<td>Preferred stock</td>
<td>2820</td>
</tr>
<tr>
<td>Common stock</td>
<td>2840</td>
</tr>
<tr>
<td>Additional capital invested</td>
<td>2890</td>
</tr>
<tr>
<td>Premium on capital stock</td>
<td>2890.1</td>
</tr>
<tr>
<td>Discount on capital stock</td>
<td>2890.2</td>
</tr>
<tr>
<td>Other capital stock transactions</td>
<td>2890.3</td>
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<tr>
<td>Retained earnings</td>
<td>2900</td>
</tr>
<tr>
<td>Subscribed and unissued stock</td>
<td>2860</td>
</tr>
<tr>
<td>Treasury stock</td>
<td>2990</td>
</tr>
</tbody>
</table>

(a) The balance sheet accounts are designed to show the financial condition of the air carrier as at a given date, reflecting the asset and liability balances carried forward subsequent to the closing or constructive closing of the air carrier’s books of account.

(b) The balance sheet accounts prescribed in this system of accounts for each air carrier group are set forth in Section 3, Chart of Balance Sheet Accounts. The balance sheet elements to be included in each account are presented in section 6.

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Section 5 [Reserved]

Section 6—Objective Classification of Balance Sheet Elements

SOURCE: ER–980, 42 FR 29, Jan. 3, 1977, unless otherwise noted.

CURRENT ASSETS

1010 Cash.

(a) Record here all general and working funds available on demand as of the date of the balance sheet which are not formally restricted or earmarked for specific objectives. Funds deposited for special purposes which are to be satisfied within one year shall be included in account 1100 Short-term Investments and funds restricted as to general availability, which are not offset by current liabilities, shall be included in account 1550 Special Funds.

(b) Each air carrier shall subordinate this account in such manner that the balances can be readily segregated as between balances in United States currency and the balances in each foreign currency.

1100 Short-term Investments.

(a) Record here the cost of short-term investments such as special deposits and United States Government securities, any other temporary cash investments, and the allowance for unrealized gain or loss on current marketable equity securities.

(b) Special deposits for more than one year, not offset by current liabilities, shall not be included in this account but in account 1550 Special Funds.
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(c) This account should be charged or credited for discount or premium on United States Government securities or other securities which should be amortized to profit and loss account 80 Interest Income.

1200 Notes Receivable.
(a) Record here current notes receivable including those from associated companies, company personnel, and all other sources.
(b) Balances of notes payable to associated companies shall not be offset against amounts carried in this account. Balances with associated companies which are not normally settled currently shall not be included in this account but in balance sheet account 1510.3 Advances to Associated Companies.

1270 Accounts Receivable.
(a) Record here current accounts receivable including those due from the United States Government, foreign governments, associated companies, company personnel, and other amounts due for the performance of air transportation.
(b) Amounts due from the United States Government shall be maintained in such fashion as will clearly and separately identify service mail pay receivables, subsidy receivables and other than mail transportation receivables.
(c) Amounts due for the performance of air transportation shall include gross amounts due whether settled through airline clearing houses or with individual carriers. Amounts payable collected as agent shall not be credited to this account, but should be included in account 2190 Other Current Liabilities.
(d) Balances payable to associated companies shall not be offset against amounts carried in this account. Balances with associated companies which are not normally settled currently shall not be included in this account but in balance sheet account 1510.3 Advances to Associated Companies.

1290 Allowance for Uncollectible Accounts.
(a) Record here accruals for estimated losses from uncollectible accounts.
(b) All accounts against which allowances have been established shall be examined quarterly for the purpose of redetermining the basis of accruals to be applied to subsequent accounting periods and the reasonableness of allowances already provided.

1300 Spare parts and supplies.
(a) Record here the cost of:
1. Flight equipment replacement parts of a type which ordinarily would be recurrently expended and replaced rather than repaired and reused;
2. Unissued fuel inventories for use in the overall or system operations of the carrier. Adjustments of inventories for aircraft fuel due to retroactive price increases and decreases shall not be entered in this account but in profit and loss account 45, Aircraft Fuels and Oils; and
3. Unissued and unapplied materials and supplies held in stock such as unissued shop materials, expendable tools, stationery and office supplies, passenger service supplies, and restaurant and food service supplies.
(b) Costs paid by the air carrier such as transportation charges and customs duties; excise, sales, use and other taxes; special insurance; and other charges applicable to the cost of spare parts and supplies shall be charged to this account when they can be definitely allocated to specific items or units of property. If such costs cannot be so allocated, or if of minor significance in relation to the cost of such property, such amounts may be charged to balance sheet account 1890 Other Assets and Deferred Charges and cleared either by a suitable "loading charge" as the parts are used or by current charges to appropriate expense or property accounts; so long as the method of application does not cause material distortion in operating expenses from one accounting period to another.
1311 Allowance for Obsolescence—Spare Parts and Supplies.

(a) Accruals shall be made to this account when allowances are established for losses in the value of expendable parts. The accruals to this account shall be made by charges to profit and loss account 73 Provisions for Obsolescence and Deterioration—Expendable Parts. Records shall be maintained with sufficient detail to permit association of the allowances with each class or type of expendable parts.

(b) The accruals to this account shall be based upon a predetermination by the air carrier of that portion of the total inventory of each class and type of expendable parts against which an allowance for loss is to be accrued. Expendable parts issued for use in operations shall be charged to operating expenses as issued and shall not be charged to this account. If at the end of any calendar year the amount of the allowance exceeds the product of the applicable inventory for the year determined consistently on a year-end or average basis, and the sum of the standard percentage accrual rates for all prior years including the current, the allowance shall be adjusted downward by the amount of the excess. Such adjustments shall be charged to this account and credited to profit and loss account 73 Provisions for Obsolescence and Deterioration—Expendable Parts.

(c) Where changing conditions necessitate a revision or adjustment in rates of accrual, such revision or adjustment shall be made applicable to current and subsequent accounting periods and shall not be applied retroactively to prior accounting periods. Following retirement of airframe or aircraft engine types to which related, any balance remaining in this account shall be offset against related balances carried in profit and loss account 885 Capital Gains and Losses—Operating Property.
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or 88.6 Capital Gains and Losses—Other.

1410 Prepaid Items.
Record here prepayments of obliga-
tions which if not paid in advance
would require the expenditure of work-
ing capital within one year, such as
prepaid rent, insurance, taxes, interest,
etc. Unexpired insurance and miscella-
neous prepayments applicable to peri-
ods extending beyond one year where
significant in amount shall be charged
to balance sheet account 1820 Long-
Term Prepayments.

1420 Other Current Assets.
Record here current assets not pro-
vided for in balance sheet accounts 1010
to 1410, inclusive.

INVESTMENTS AND SPECIAL FUNDS

1510 Investments in Associated Com-
panies.
(a) Record here net investments in
associated companies.
(b) [Reserved]
(c) This account shall be subdivided
by all air carrier groups as follows:
[ER–980, 42 FR 29, Jan. 3, 1977, as amended by
ER–1027, 42 FR 60128, Nov. 25, 1977; ER–1188,
45 FR 48870, July 22, 1980]

1510.1 Investments in Investor Con-
trolled Companies.
Record here the cost of investments
in investor controlled companies ex-
cept that permanent impairment in the
value of securities may be reflected
through charges to profit and loss clas-
sification 8100, Nonoperating Income or
Expense—Net. This account shall also
include the equity in undistributed
earnings or losses since acquisition. In
the event dividends are declared by
such companies, the air carrier shall
credit this account for its share in divi-
dends declared and debit balance sheet
account 1270 Accounts Receivable. This
account shall separately state: (a) The
cost of such investments at date of ac-
quision and (b) the equity in undis-
tributed earnings or losses since acqui-
sition.
[Amdt. 241–58, 54 FR 5592, Feb. 6, 1989]

1510.2 Investments in Other Associ-
ated Companies.
Record here the cost of investments
in associated companies other than in-
vester controlled companies. Cost shall
represent the amount paid at the date
of acquisition without regard to subse-
quent changes in the net assets
through earnings or losses of such asso-
ciated companies. However, permanent
impairment in the value of securities
may be reflected through charges to
profit and loss classification 8100, Non-
operating Income or Expense—Net.
[Amdt. 241–58, 54 FR 5592, Feb. 6, 1989]

1510.3 Advances to Associated Com-
panies.
(a) Record here advances, loans, and
other amounts not settled currently
with investor controlled and other as-
sociated companies and nontransport
divisions. Balances receivable from and
payable to different associated compa-
nies and different nontransport divi-
sions shall not be offset.
(b) In the case of nontransport divi-
sions three subaccounts shall be main-
tained:
(1) Net investment;
(2) current net profit or loss; and
(3) current accounts receivable or
payable between the air carrier and the
nontransport division.
(c) Each nontransport division shall
be accounted for separately in net
amounts receivable which shall be in-
cluded in this account or net amounts
payable which shall be included in
balance sheet account 2240 Advances
from Associated Companies.
by ER–1401, 50 FR 241, Jan. 3, 1985]

1530 Other Investments and Receiv-
ables.
Record here notes and accounts re-
ceivable not due within one year, in-
vestments in securities issued by oth-
ers, investments in leveraged leases,
the noncurrent net investment in di-
rect financing and sales-type leases,
and the allowance for unrealized gain
or loss on noncurrent marketable eq-
uity securities. Securities held as tem-
porary cash investments shall not be
included in this account but in balance
sheet account 1100 Short-Term Investments. Investments in and receivables from associated companies which are not settled currently shall be included in balance sheet account 1510 Investments in Associated Companies.

1550 Special Funds.

Record here special funds not of a current nature and restricted as to general availability. Include items such as sinking funds, cash and securities posted with courts of law, employee’s funds for purchase of capital stock, pension funds under the control of the air carrier and equipment purchase funds.

Operating Property and Equipment

“Operating Property and Equipment” shall encompass items used in air transportation services and services related thereto.

1601 Airframes.

(a) Record here the total cost to the air carrier of airframes of all types and classes together with the full complement of instruments, appurtenances and fixtures comprising complete airframes including accessories necessary to the installation of engines and flight control and transmission systems, except as specifically provided otherwise in accounts 1602 and 1607. Also record here in separate subaccounts the costs of airframe overhauls accounted for on a deferral and amortization basis.

(b) Airframes designed to permit multiple payload configurations shall be recorded in this account at the total cost of the maximum complement of instruments, appurtenances, and fixtures used in the air carrier’s operations.

(c) This account shall be subdivided as follows by all air carriers:

1601.1 Airframes.
1601.2 Unamortized Airframe Overhauls.


1602 Aircraft Engines.

(a) Record here the total cost to the air carrier of complete units of aircraft engines of all types and classes together with a full complement of accessories, appurtenances, parts and fixtures comprising fully assembled engines as delivered by the engine manufacturer ready for operation in test but without the accessories necessary to its installation in airframes. Also record here in separate subaccounts the costs of aircraft engine overhauls accounted for on a deferral and amortization basis.

(b) This account shall be subdivided as follows by all air carriers:

1602.1 Aircraft Engines.
1602.2 Unamortized Aircraft Engine Overhauls.


1607 Improvements to Leased Flight Equipment.

Record here the total cost incurred by the air carrier for modification, conversion or other improvements to leased flight equipment. Also record here, in separate subaccounts, the costs of airframe and aircraft engine overhauls of leased aircraft accounted for on a deferral and amortization basis.

[Amendment 241–58, 54 FR 5593, Feb. 6, 1989]

1608 Flight Equipment Rotable Parts and Assemblies.

(a) Record here the total cost to the air carrier of all spare instruments, parts, appurtenances and subassemblies related to the primary components of flight equipment units provided for in balance sheet accounts 1601 through 1607, inclusive. This account shall include all parts and assemblies of material value which are rotatable in nature, are generally reserviced or repaired, are used repeatedly and possess a service life approximating that of the property type to which they relate. Items of an expendable nature which generally may not be repaired and reused, shall not be recorded in this account but in account 1300 Spare Parts and Supplies. Except for recurrent service sales, flight equipment parts recorded in this account shall not be charged to operating expenses as retired. Profit or loss on sales of parts as a routine service to others shall be included in profit and loss account 14 General Service Sales, and parts sold shall be removed from this account at full cost irrespective of any allowance.
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for depreciation which has been pro-
vided.

(b) This account shall be subdivided
as follows by Group II and Group III air
 carriers:

1608.1 Airframe Parts and Assemblies.
1608.5 Aircraft Engine Parts and Assem-
blies.
1608.9 Other Parts and Assemblies.
[ER-980, 42 FR 29, Jan. 3, 1977, as amended by
Amdt. 241-58, 54 FR 5593, Feb. 6, 1989]

1609 Flight Equipment.

This classification is established only
for purposes of control by the BTS and
shall reflect the total cost of property and
equipment of all types and classes
used in the in-flight operations of air-
craft.
[ER-980, 42 FR 29, Jan. 3, 1977, as amended at
60 FR 66723, Dec. 26, 1995]

1629 Flight Equipment Airworthiness
Allowances.

(a) Record here accumulated provi-
sions for overhauls of flight equipment.

(b) Separate subaccounts shall be es-
stablished for recording accumulated
provisions related to each type of air-
frame and aircraft engine, respectively.

NOTE: At the option of the air carrier, the
number "1629" may be assigned to this ac-
count for accounting purposes. However, for
purposes of reporting on BTS Form 41, the
balance in this account shall be reported
under account "1629."
[ER-980, 42 FR 29, Jan. 3, 1977, as amended by
Amdt. 241-58, 54 FR 5593, Feb. 6, 1989]

1630 Equipment.

Record here the total cost to the air
carrier of ground equipment to include the fol-
lowing:

(a) Equipment assigned to aircraft or
active line operations as opposed to
items held in stock for servicing pas-
sengers such as broilers, bottlware,
dishes, food boxes, thermos jugs, blan-
kets, first aid kits, etc. Spare items
shall be carried in balance sheet ac-
count 1300 Spare Parts and Supplies and
shall be charged directly to ex-
pense upon withdrawal from stock for
replacing original complements.

(b) Equipment used in restaurants
and kitchens.

(c) Equipment of all types and classes
used in enplaning and handling traffic
and in handling aircraft while on
ramps, including motorized vehicles
used in ramp service. Classes of equip-
ment used interchangeably between
handling aircraft on ramps and in
maintaining aircraft may be classified
in accordance with normal predomi-
nant use.

(d) Nonairborne equipment of all
types and classes used in meteorolog-
ical and communication services which
is not a part of buildings.

(e) Equipment of all types and classes
including motorized vehicles used in
engineering and drafting services and
in maintaining, overhauling, repairing
and testing other classes of property
and equipment.

(f) Property and equipment of all
types and classes used in ground
and marine transportation services.

(g) Property and equipment of all
types and classes used in storing and
distributing fuel, oil and water, such as
fueling trucks, tanks, pipelines, etc.

(h) All other ground equipment of all
types and classes such as medical, pho-
tographic, employees’ training equip-
ment, and airport and airway lighting
equipment.
[ER-980, 42 FR 29, Jan. 3, 1977, as amended by
Amdt. 241-58, 54 FR 5593, Feb. 6, 1989]

1636 Furniture, Fixtures, and Office
Equipment.

Record here the total cost to the air
carrier of furniture, fixtures and office
equipment of all types and classes
wherever used or located.
[Amdt. 241-58, 54 FR 5593, Feb. 6, 1989]

1639 Improvements to Leased Build-
ings and Equipment.

Record here the total cost to the air
carrier incurred in connection with
modification, conversion, or other im-
provements to leased buildings and
equipment.

1640 Buildings.

Record here the total cost to the air
carrier of owned buildings, structures
and equipment and related improve-
ments. Each air carrier shall maintain
the following subaccounts in which the
values fairly assignable to mainte-
nance and other operations shall be
separately recorded:

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1640.9 Other Buildings and Improvements.
1640.1 Maintenance Buildings and Improvements.

This classification is established only for purposes of control by the BTS and shall reflect the total cost of property and equipment of all types and classes other than flight equipment, equipment purchase deposits and advance payments, land, and work in progress.

1649 Ground Property and Equipment.

This classification is established only for purposes of control by the BTS and shall reflect the total cost of property and equipment of all types and classes other than flight equipment, equipment purchase deposits and advance payments, land, and work in progress.

1668 Allowance for Depreciation of Flight Equipment and Ground Property and Equipment and Amortization of Overhaul and Airworthiness Costs.

(a) Record in accounts 1611 and 1618, inclusive, and 1650 through 1660, inclusive, accruals for depreciation of flight equipment and ground property and equipment.

(b) As set forth in section 3, Chart of Balance Sheet Accounts, separate accounts shall be established for deprecation allowances to parallel balance sheet accounts 1601 through 1608 established for recording the cost of flight equipment and accounts 1630 through 1640 established for recording the cost of ground property and equipment.

(c) This account shall be used as a control account and shall reflect the total amounts recorded in balance sheet accounts 1611 through 1618 and 1650 through 1660 in addition to account 1629 Flight Equipment Airworthiness Allowance.

1679 Land.

Record here the initial cost and the cost of improving land.

1685 Equipment Purchase Deposits and Advance Payments.

Record here the amount of purchase deposits and advance payments made to acquire operating property and equipment under outstanding purchase commitments. Funds set aside but not deposited or used as advance payments should not be included in this account but in Account 1550 Special Funds.

1689 Construction Work in Progress.

(a) Record here all direct and indirect costs of the air carrier that are expended for constructing and readying property and equipment of all types and classes for installation in operations. The amount reported shall reflect all such expenses that are accumulated to the balance sheet date. Where properly includable in the property and equipment classification, record here also the accumulated costs for uncompleted overhauls of airframes, aircraft engines, or other material units of property.

(b) At the option of the air carrier this account may be used as a clearing account for recording the cost of property and equipment acquisitions prior to a distribution thereof to the appropriate property accounts, whether or not conditioning or modification is necessary before placing in service.

1695 Leased Property Under Capital Leases.

(a) Record here the total costs to the air carrier for all property obtained under capital leases.

(b) This account shall be subdivided by all air carrier groups as follows:

1695.1 Capital Leases—Flight Equipment.
1695.2 Capital Leases—Other Property and Equipment.

1696 Leased Property Under Capital Leases—Accumulated Amortization.

(a) Record here accruals for amortization of leased property obtained under capital leases.

(b) This account shall be subdivided by all air carrier groups as follows:

1696.1 Accumulated Amortization—Capitalized Flight Equipment.
1696.2 Accumulated Amortization—Capitalized Other Property and Equipment.

1697 Non-operating Property and Equipment

“Non-operating Property and Equipment” includes investments in property and equipment not separately accounted for within a nontransport division but assigned to other
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than air transportation and transport-related services, and property and equipment held for future use.

1700 Non-operating Property and Equipment.

The total cost to the air carrier of nonoperating property and equipment and related allowances for depreciation shall be recorded in balance sheet accounts 1701 through 1796 which, as set forth in section 3, Chart of Balance Sheet Accounts, parallel balance sheet accounts 1601 through 1689, for recording the cost of operating property and equipment. In addition to these accounts, Account 1797 has been established for recording the cost of property on operating-type leases to others and property held for lease; any accumulated depreciation applicable to the assets contained in Account 1797 shall be recorded in Account 1798.

[ER—1013, 42 FR 37515, July 21, 1977]

1797 Property on Operating-type Lease to Others and Property Held for Lease.

Record here the total cost to the air carrier of property on operating-type lease to others and property held for lease.

[Amdt. 241—58, 54 FR 5594, Feb. 6, 1989]

1798 Property on Operating-type Lease to Others and Property Held for Lease—Accumulated Depreciation.

Record here accruals for depreciation of property on operating-type leases to others and property held for lease.

[Amdt. 241—58, 54 FR 5594, Feb. 6, 1989]

OTHER ASSETS

1820 Long-Term Prepayments.

Record here prepayments of obligations applicable to periods extending beyond one year such as payments on leased property and equipment and other payments and advances for rents, rights, or other privileges.

1830 Unamortized Developmental and Preoperating Costs.

(a) Record here costs accumulated and deferred by the air carrier pertaining to the development of new routes or extension of existing routes, preparation for operation of new routes subsequent to certification by the DOT, the integration of new types of aircraft or services, and other preparations for substantial alterations in operational characteristics. (b) Costs chargeable to this account shall include items directly related to each specific developmental or preoperating project, such as travel and incidental expenses, legal expenses, flight crew training expenses, and regulatory proceedings expenses. Expenses which would be otherwise incurred in the normal air transport operations conducted by the air carrier during the current accounting period shall not be allocated to developmental or preoperating projects and charged to this account. Nor shall this account be credited for revenues from aircraft flights of a developmental or preoperating character the operating costs of which are charged to this account. Any such revenues shall be included in the profit and loss account for the respective type of revenue. This account shall include charges for only those costs associated with projects directed at obtaining new operating authority or expanding the physical capacity of the air carrier and shall not include costs incurred for the purpose of generating revenues through rate adjustment. Accordingly, costs associated with regulatory proceedings involving route awards or amendments, whether successful or unsuccessful to the carrier, shall be included in this account whereas costs associated with regulatory proceedings involving rate or other revenue generation matters shall be charged to appropriate expense accounts.

(c) Records shall be established for new routes or extensions of existing routes to record separately: (1) Costs incurred in acquiring or applying for the routes, including all costs incurred prior to certification by the DOT and inauguration of service by the air carrier, and (2) costs incurred after revenue operations begin over the new routes or extensions.

(d) Subclassifications shall be established to record for each developmental project the period covered and the purpose of each item of expense. Each air carrier shall classify the costs of all
projects included in this account between: (1) Those related and contributing to the normal air transportation services currently conducted by the air carrier; (2) those related to services conducted by the air carrier which are extraneous to or are not otherwise related to the air transportation services currently conducted; and (3) those held in suspense pending status determination in terms of possible contribution to the air transportation services and inauguration of the service or operation to which related.

(e) Amounts included in this account which contribute to or protect the position of the normal air transportation services currently conducted by the carrier shall be amortized to profit and loss account 74 Amortization, unless otherwise approved or directed by the DOT. Other amounts included in this account shall be amortized or charged to profit and loss account 89.9 Other Miscellaneous Nonoperating Debits.


1890 Other Assets and Deferred Charges.

(a) Record here other assets and deferred charges not provided for elsewhere.

(b) Record here debits, the proper final disposition of which cannot be determined until additional information has been received. This account shall include the accumulated cost of labor, materials and outside services used in the process of manufacturing flight equipment expendable parts and materials and supplies for stock, the accumulated cost of jobs in process for others, projects to be charged to expense upon completion. This account shall also include unamortized debt expense, property acquisition adjustments and intangible assets.

(c) This account shall be charged with property loss and other costs related to casualties and credited with recoveries from purchased insurance and salvage. A debit or credit balance in this account related to property retired as a result of a casualty shall be recorded in profit and loss account 88.5 Capital Gains and Losses—Operating Property or 88.6 Capital Gains and Losses—Other; however, any balances related to property not retired or to other casualties shall be recorded in profit and loss account 58 Injuries, Loss and Damage. Proceeds from purchased insurance for property damage, received prior to repair of such damage, shall not be credited to this account but to balance sheet account 2390 Other Deferred Credits pending repair. The records for each major casualty shall be kept in such manner as to clearly disclose insurance recoveries and the total costs, which shall include charges for the depreciated cost of property damaged or destroyed, costs for clearing wrecks and damaged property and equipment, including salaries and wages for the repair thereof, and payments for damages to property of others. The cost of casualties shall not be charged directly against retained earnings or appropriations thereof, but shall be cleared through the applicable profit and loss accounts in accordance with the foregoing.

(d) Record here the unamortized debt expense related to the assumption by the air carrier of debt of all types and classes. Amounts recorded shall be amortized to profit and loss account 84 Amortization of Debt Discount, Premium and Expense.

(e) Unamortized debt expense shall not include the excess of the par value of debt securities over the cash value of consideration received. Instead, discounts shall be recorded in a sub-account of the related liability.

(f) Record here the cost of patents, copyrights and other intangible properties, rights and privileges acquired as a part of a business from other air carriers and other intangibles not provided for elsewhere. This account shall be subdivided to reflect the nature of each intangible asset included in this account.

(g) Record here the difference between the purchase price to the air carrier of property and equipment acquired as a part of a business from another air carrier through consolidation, merger, or reorganization, pursuant to a plan approved by the DOT, and the depreciated cost to the predecessor company at date of acquisition. Record here also such differences relating to purchases of property and equipment from associated companies unless other
treatment is approved by the BTS. Separate subaccounts shall be established to record the amounts applicable to each such acquisition.

(h) Balances in this account relating to property acquisition adjustments shall be amortized by charges to profit and loss account 89.9 Other Miscellaneous Nonoperating Debits unless otherwise directed or approved by the BTS.


CURRENT LIABILITIES


Record here the face value or principal amount of debt securities issued or assumed by the air carrier which is payable within 12 months of the balance sheet date unless such debt is to refinance, or where payment is to be made from assets of a type not properly classifiable as current.

2005 Notes Payable—Banks.

Record here the face value of all notes, drafts, acceptances, or other similar evidences of indebtedness payable on demand or within one year to a bank or another financial institution with the exception of current maturities of long-term debt which should be included in account 2000.

2015 Notes Payable—Other.

Record here the face value of all notes, drafts, acceptances, or other similar evidences of indebtedness payable on demand or within one year to an associated company or party other than a financial institution.

2021 Trade Accounts Payable.

Record here all accounts payable within one year which accrued from generally recognized trade practices.

2025 Accounts Payable—Other.

Record here all accounts payable within one year which are not provided for in accounts 2000 to 2021, inclusive.

2080 Current Obligations Under Capital Leases.

Record here the total current liability applicable to property obtained under capital leases.


2110 Accrued Salaries, Wages.

Record here amounts accrued for un-paid compensation to personnel, which have been charged to profit and loss or capitalized, as compensation for the period in which accrued.

2120 Accrued Vacation Liability.

(a) Record here accruals of liabilities for personnel vacations. All vacation policies, plans, or agreements whether oral or written shall be accounted for on an accrual basis whenever a lag exists between vacations earned and vacations taken, thereby resulting in a liability against the carrier under the applicable policy, plan or agreement.

(b) This account shall be credited and the applicable personnel compensation expense account concurrently charged with the cost of any lag between vacations accrued and vacations taken. Accruals may be based upon standard rates of lag, if such standard rates are verified by physical inventory and adjusted accordingly at least once each calendar year. Adjustments of balances in this account shall be cleared to applicable compensation expense accounts.


2125 Accrued Interest.

Record here interest payable within one year for all outstanding obligations.

2130 Accrued Taxes.

(a) Record here accruals for currently payable income and other forms of taxes which constitute a charge borne by the air carrier as opposed to those collected as an agent for others.
Each air carrier shall disclose in the footnotes of its BTS Form 41 for each calendar quarter whether utilized credits are accounted for by the flow-through method or the deferred method. The method selected shall be consistently followed by the carrier.

2140 Dividends Declared.

Record here in separate subdivisions for each class and series of capital stock, all dividends declared but unpaid on capital stock.

2160 Air Traffic Liability.

(a) Record here balances representing the value of unused transportation sold. Transportation sold includes both sales for transportation to be provided by the air carrier and transportation to be provided by another air carrier.

(b) Earned revenue, determined by the yield or average fare method or by the sales-lift-match method, shall be consistently and periodically cleared by debit to this account, and by credit to the appropriate profit and loss revenue account. Amounts receivable for transportation to be provided by the air carrier shall be debited to balance sheet account 1270 Accounts Receivable.

(c) Carriers who determine earned revenue on a yield or average fare method may not accrue income during the accounting year in anticipation of a favorable annual physical inventory determination, nor for unused or unpresented tickets.

(d) Subaccounts to this account shall be established to record balances pertaining to passenger and cargo transportation sold, respectively, and separately to sales in scheduled and non-scheduled services.

2190 Other Current Liabilities.

Record here current and accrued liabilities, including amounts payable collected as an agent, not provided for in accounts 2110 to 2160, inclusive.

2210 Long-Term Debt.

(a) Record here the face value of principal amount of debt securities issued or assumed by the air carrier and held by other than associated companies, which has not been retired or cancelled and is not payble within 12 months of the balance sheet date.

(b) In cases where debt coming due within 12 months is to be refunded, or where payment is to be made from assets of a type not properly classifiable as current, the amount payable shall not be removed from this account. In addition, this account shall include short-term debt obligations when both the intent to refinance the short-term obligations on a long-term basis is established and the ability to consummate this refinancing can be demonstrated.

2240 Advances from Associated Companies.

Record here net amounts due associated companies and nontransport divisions for notes, loans and advances which are not settled currently. Balances payable to and receivable from different associated companies shall not be offset.

2250 Pension Liability.

Record here the liability of the air carrier under employee pension plans, to which either or both employees and the air carrier contribute, if the plan is administered by the air carrier.

2280 Noncurrent Obligations under Capital Leases.

Record here the total noncurrent liability applicable to property obtained under capital leases.

2290 Other Noncurrent Liabilities.

Record here noncurrent liabilities not provided for in balance sheet accounts 2210 to 2280, inclusive, such as the liability for installments received on capital stock from company personnel who are not bound by legally
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enforceable subscription contracts, accruals for personnel dismissal liability, and accruals of other demonstrable miscellaneous noncurrent liabilities.

[ER-1401, 50 FR 242, Jan. 3, 1985]

2340 Deferred Income Taxes.

Record here credits and debits representing the net tax effect of material timing differences originating and reversing in the current accounting period, giving appropriate recognition to the portion of investment tax credits which would have been allowed if taxes were based on pretax accounting income by a reduction of the deferred tax provision.

[Amdt. 241-58, 54 FR 5594, Feb. 6, 1989]

2345 Deferred Investment Tax Credits.

Record here investment tax credits utilized as reduction of tax liabilities, when the carrier exercises the option to defer such credits for amortization over the service life of the related equipment.

[Amdt. 241-58, 54 FR 5594, Feb. 6, 1989]

2390 Other Deferred Credits.

Record here credits, not provided for elsewhere, the proper final disposition of which cannot be effected until additional information has been received.

STOCKHOLDERS' EQUITY

2820 Preferred Stock.

Record here in separate subdivisions for each class and series, the par or stated value of preferred capital stock issued or in the case of no-par stock without stated value, the full consideration received.

2840 Common Stock.

Record here in separate subdivisions for each class and series, the par or stated value of common stock issued or in case of no-par stock without stated value, the full consideration received.

2860 Subscribed and Unissued Stock.

Record here in separate subdivisions for each class and series, the par or stated value, or the subscription price in the case of stock without par or stated value, of legally enforceable subscriptions to the capital stock of the air carrier.

2890 Additional Capital Invested.

(a) Record herein separate subdivisions for each class and series, the difference between the price at which capital stock is sold and the par or stated value of the stock; gains or losses arising from the reacquisition and resale or retirement of each class and series of capital stock; donations; the excess of retained earnings capitalized over par or stated value of capital stock issued; adjustments in capital resulting from reorganization or recapitalization; and proceeds attributable to detachable stock purchase warrants related to debt issues. This account shall also include balances of contributions to the business enterprise of individual proprietors or partners.

(b) Each air carrier shall maintain the following subaccounts:

2890.1 Premium on capital stock. Record here in separate subdivisions for each class and series of capital stock issued the excess of the cash value of consideration received over the par or stated value and accrued dividends of stock issued together with assessments against stockholders representing payments required in excess of par or stated value.

2890.2 Discount on capital stock. Record here in separate subdivisions for each class and series of capital stock issued, the excess of the par or stated value over the cash value of consideration received, less accrued dividends. Discounts applicable to a particular class and series of capital stock may be offset against premiums from the same class and series of capital stock. Discounts and premiums on different classes and series of capital stock shall not be offset. The air carrier may, at its option, record in this subaccount commissions and expenses incurred in the issuance of capital stock and may charge balance sheet account 2900 Retained Earnings to the extent capital stock expense may exceed any existing balance of paid-in capital over the par or stated value of capital stock.

2890.3 Other Capital Stock Transactions. Record here in separate subdivisions for each class and series, the balance of credits arising from the reacquisition and resale or cancellation of capital stock, credits arising from a reduction in the par or stated value of capital stock or the net balance of credits or debits resulting from other paid-in capital transactions such as proceeds attributable to detachable stock purchase warrants related to debt issues, not provided for elsewhere.
which is identified with a particular class and series of capital stock.

2900 Retained Earnings.

(a) Record here the net income or loss from operations of the air carrier and dividends declared on capital stock.

(b) This account shall not be charged with dividends on treasury stock. If a dividend is not payable in cash, the values entered in this account shall be completely described.

(c) Delayed credits or charges to income shall not be entered in this account directly but in appropriate profit and loss accounts.

(d) Net income or loss accounted for during the current fiscal year shall not be entered in this account until the close of the fiscal year. Individual proprietorships or partnerships may clear the balance in this subaccount representing a net unrealized loss as of the current balance sheet date.

2990 Treasury Stock.

(a) Record here the cost of capital stock issued by the air carrier reacquired by it and not retired or canceled.

(b) Separate records shall be established for each class and series of capital stock held in this account.

PROFIT AND LOSS CLASSIFICATION

SECTION 7—CHART OF PROFIT AND LOSS ACCOUNTS

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### Objective classification of profit and loss elements

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10 Restaurant and food service (ground):

| 10.1 Gross revenues | 48 | 48 | 48 |
| 10.2 Depreciation expense | 71 | 71 | 71 |
| 10.3 Other expenses | 71 | 71 | 71 |

11 Rents:

| 11.1 Gross revenues | 48 | 48 | 48 |
| 11.2 Depreciation expense | 71 | 71 | 71 |
| 11.3 Other expenses | 71 | 71 | 71 |

12 Limousine service:

| 12.1 Gross revenues | 48 | 48 | 48 |
| 12.2 Depreciation expense | 71 | 71 | 71 |
| 12.3 Other expenses | 71 | 71 | 71 |

13 Interchange sales:

| 13.1 Associated companies—gross revenues | 48 | 48 | 48 |
| 13.2 Outside—gross revenues | 48 | 48 | 48 |
| 13.3 Associated companies—depreciation expense | 71 | 71 | 71 |
| 13.4 Associated companies—other expense | 71 | 71 | 71 |
| 13.5 Outside—depreciation expense | 71 | 71 | 71 |
| 13.6 Outside—other expense | 71 | 71 | 71 |

14 General service sales:

| 14.1 Associated companies—gross revenues | 48 | 48 | 48 |
| 14.2 Outside—gross revenues | 48 | 48 | 48 |
| 14.3 Associated companies—depreciation expense | 71 | 71 | 71 |
| 14.4 Associated companies—other expense | 71 | 71 | 71 |
| 14.5 Outside—depreciation expense | 71 | 71 | 71 |
| 14.6 Outside—other expense | 71 | 71 | 71 |

16 Substitute (replacement) service:

| 16.1 Gross revenues | 48 | 48 | 48 |
| 16.2 Expense | 71 | 71 | 71 |

17 Air cargo service:

| 17.1 Gross revenues | 48 | 48 | 48 |
| 17.2 Depreciation expense | 71 | 71 | 71 |
| 17.3 Other expense | 71 | 71 | 71 |

18 Other transport related items:

| 18.1 Gross revenues | 48 | 48 | 48 |
| 18.2 Depreciation expense | 71 | 71 | 71 |
| 18.3 Other expense | 71 | 71 | 71 |

19 Other operating revenues:

| 19.1 Reservations cancellation fees | 31, 32 | 31, 32 | 31, 32 |
| 19.2 Miscellaneous operating revenues | 31, 32, 41 | 31, 32, 41 | 31, 32, 41 |

Transport expenses:

| 21 General management personnel | 53, 69 | 53, 55, 61, 62, 68, 69, 63, 65, 66, 68 |
| 23 Pilots and copilots | 51 | 51 | 51 |
| 24 Other flight personnel | 51, 69 | 51, 55 | 51, 55 |

Maintenance labor:

| 25.1 Labor—airframes and other flight equipment | 52 | 52 | 52 |
| 25.2 Labor—aircraft engines | 52 | 52 | 52 |
| 25.6 Labor—flight equipment | 52 | 52 | 52 |
| 25.9 Labor—ground property and equipment | 52, 53 | 52, 53 | 52, 53 |

26 Aircraft and traffic handling personnel:

| 26.1 General aircraft and traffic handling personnel | 64, 67 | 61, 62, 63, 65 | 61, 62, 63, 65 |
| 26.2 Aircraft control personnel | 64 | 61 | 61 |
| 26.3 Passenger handling personnel | 64, 67 | 62, 65 | 62, 65 |
| 26.4 Cargo handling personnel | 64, 67 | 62, 65 | 62, 65 |

28 Trainees, instructors and unallocated shop labor:

| 28.1 Trainees and instructors | 51, 53, 69 | 51, 53, 55, 64, 67, 68 | 51, 53, 55, 61, 62, 64, 67, 68, 69, 66, 68 |
| 28.2 Unallocated shop labor | 53 | 53 | 53 |

30 Communications personnel:

| 30 Communications personnel | 53, 69 | 53, 55, 64, 67, 68 | 53, 55, 61, 62, 63, 65, 66, 68 |

31 Recordkeeping and statistical personnel:

<p>| 31 Recordkeeping and statistical personnel | 53, 69 | 53, 55, 64, 67, 68 | 53, 55, 61, 62, 63, 65, 66, 68 |</p>
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Section 8—General

(a) The profit and loss accounts are designed to reflect, through natural groupings, the elements entering into the derivation of income or loss accruing to the proprietary interests during each accounting period.

(b) The prescribed system of accounts provides for the co-ordinate grouping of all revenues and expenses in terms of both major natural objectives and functional activities and for subdivision of both to provide varying degrees of detail for air carriers of differing accounting capacities and/or requirements.

(c) The detailed objective accounts established for each air carrier group, by the dual subdivision of profit and loss elements in terms of both natural objectives and functional activities, are set forth in section 7, Chart of Profit and Loss Accounts.

(d) The prescribed system of accounts provides generally that profit and loss elements shall be grouped in accordance with their inherent characteristics within the following primary classifications:

   (1) Operating revenues. (i) This primary classification shall include revenues of a character usually and ordinarily derived from the performance of...
air transportation and air transportation-related services, which relate to services performed during the current accounting year, and adjustments of a recurrent nature attributable to services performed in prior accounting years.

(ii) Operating revenues shall be subclassified in terms of functional activities as provided in section 9.

(2) Operating expenses. (i) This primary classification shall include expenses of a character usually and ordinarily incurred in the performance of air transportation and air transportation-related services, which relate to services performed during the current accounting year, and adjustments of a recurring nature attributable to services performed in prior accounting years.

(ii) Operating expenses shall be subclassified in terms of functional activities as provided in sections 10 and 11.

(3) Nonoperating income and expense—net. This primary classification (8100) shall include income and loss incident to commercial ventures not inherently related to the performance of the common carrier air transportation services of the accounting entity; other revenues and expenses attributable to financing or other activities which are extra-neous to and not an integral part of air transportation or its incidental services; and special recurrent items of a nonperiod nature.

(4) Income taxes for current period. This primary classification (9100) shall include provisions for Federal, state, local, and foreign taxes which are based upon the net income of the air carrier for the current period together with refunds for excess profits credits or carryback of losses and increases or reductions of income taxes of prior years of a magnitude which will not distort net income of the current accounting year. Income taxes applicable to special income credits or debits recorded in profit and loss classification 9700 Extraordinary items, and other material income tax items not allocable to income of the current accounting year, shall not be included in this classification but in profit and loss classification 9700 Extraordinary items.

(5) Discontinued operations. This primary classification (9600) shall include earnings and losses of discontinued nontransport operations and gains or losses from the disposal of nontransport operations the result of which are customarily accounted for through profit and loss objective accounts 86, 87 and 88.2.

(6) Extraordinary items. This primary classification (9700) shall include material items characterized by their unusual nature and infrequent occurrence.

(7) Cumulative effect of changes in accounting principles. This primary classification (9800) shall include the cumulative effect of material changes in accounting principles.

Section 9—Functional Classification—Operating Revenues

3900 Transport Revenues.

This classification is prescribed for all air carrier groups and shall include all revenues from the air transportation of traffic of all classes. It shall consist of the following subclassifications:

3100 Scheduled Services.

This subclassification shall include revenues from the transportation by air of individual passengers or cargo shipments (as opposed to charter flights) pursuant to published schedules, including extra sections and other flights performed as an integral part of published flight schedules.

3200 Nonscheduled Services.

This subclassification shall include revenues from the transportation by air of traffic applicable to the performance of aircraft charters, and other transportation services not part of services performed pursuant to published flight schedules (but shall not include data applicable to flights performed as extra sections to published flight schedules, which shall be reported in the subclassification 3100 Scheduled Services).


4800 Transport-Related Revenues.

(a) This classification is prescribed for all air carrier groups and shall include all revenues from the United States Government as direct grants or aids for providing air transportation operations
facilities and all revenues from services which grow from and are incidental to the air transportation services performed by the air carrier.

(b) Revenues related to services of a magnitude or scope beyond an incidental adjunct to air transportation services shall not be included in this classification (see section 1-6(b)). Revenues applicable to such services shall be included in profit and loss classification 8100, Nonoperating Income and Expense-Net, and the accounting modified to conform with that of a nontransport division when the service is organized as a nontransport division.

[ER-841, 39 FR 11997, Apr. 2, 1974]

Section 10—Functional Classification—Operating Expenses of Group I Air Carriers

5100 Flying Operations.

(a) This function shall include expenses incurred directly in the in-flight operation of aircraft and expenses attaching to the holding of aircraft and aircraft operational personnel in readiness for assignment to an in-flight status.

(b) This function shall not include expenses incurred in repairing, servicing or storing aircraft, expenses incurred on the ground in protecting and controlling the in-flight movement of aircraft, or the compensation of ground personnel and other expenses incurred in scheduling or preparing aircraft or aircraft operational personnel for flight assignment. Such expenses shall be included in function 5400 Maintenance or function 6900 General Services and Administration.

5400 Maintenance.

(a) This function shall include all expenses, both direct and indirect, specifically identifiable with the repair and upkeep of property and equipment as may be required for the operation and safety standards; in inspecting or checking property and equipment in accordance with prescribed operational standards; and in polishing or cleaning property and equipment when such polishing or cleaning is not an incidental routine in connection with the normal productive use of property and equipment.

(b) This function shall include the cost of direct labor, materials, and outside services and maintenance overhead or other costs specifically associated with maintenance operations regardless of the location at which incurred.

(c) This function shall not include costs incurred in the construction, improvement, or modification of property and equipment even when necessitated to meet new or changed operating or safety standards. Such costs shall be charged to appropriate property and equipment accounts.

(d) Costs incurred by aircraft handling personnel in visual inspection, minor check and servicing of aircraft, while in line service, shall not be included in this function when performed as an incidental routine during the normal productive use of aircraft but shall be included in function 6900 General Services and Administration.

(e) Each Group I air carrier shall maintain the following subfunctions:

5200 Direct Maintenance.

a. This subfunction shall include the costs of labor, materials and supplies, as well as outside repairs, used in the maintenance and repair of property and equipment, of all types and classes, regardless of the location at which incurred, exclusive of costs specifically identified with maintenance property and equipment expenses in balance sheet accounts 1630 Equipment, 1639 Improvements to Leased Buildings and Equipment, and 1640.1 Maintenance Buildings and Improvements which shall be included in subfunction 5300 Maintenance Burden.

b. The cost of direct labor, materials and supplies, as well as outside repairs, used in the maintenance and repair of property and equipment shall be recorded on running job orders or tickets covering repairs and periodic inspections except servicing. Where a number of like items are maintained on a group basis, it will be necessary to maintain only one job order for each group.

c. When supervisory personnel such as crew chiefs, inspectors and foremen are engaged in direct labor in connection with equipment maintenance, a proportionate part of their salaries and wages shall be charged to the appropriate direct labor accounts. The cost of transporting property to and from shops for repair and maintenance shall be included as a part of the cost of the materials and supplies used in the repair or maintenance of
such property and equipment. Transportation charges, customs and duties, etc.; shall be included in the cost of repairs and maintenance operations when made by outside parties.

5300 Maintenance Burden.

a. This subfunction shall include all over- head or general expenses which are specifically identified with activities involved in periodic maintenance operations and the maintenance and repair of property and equipment of all types and classes, including the cost of direct labor, materials and outside services identified with the maintenance and repair of maintenance property and equipment included in balance sheet accounts 1630 Equipment, 1639 Improvements to Leased Buildings and Equipment, and 1604.1 Maintenance Buildings and Improvements. It shall include expenses specifically related to the administration of maintenance stocks and stores, the keeping of pertinent maintenance operations records, and the scheduling, controlling, planning and supervision of maintenance operations.

b. This subfunction shall not include expenses related to financial accounting, purchasing or other overhead activities which are of general applicability to all operating functions. Such expenses shall be included in function 6900 General Services and Administration.

c. This subfunction shall include only those expenses attributable to the current air transport operations of the air carrier. Maintenance burden associated with capital projects of the air carrier, other than overhauls of airframes and aircraft engines shall be allocated to such projects. Maintenance burden incurred in common with services to other companies and operating entities shall be allocated to such services on a pro rata basis unless the services are so infrequent in performance or small in volume as to result in no appreciable demands upon the air carrier’s maintenance facilities. When overhauls of airframes or aircraft engines are as a consistent practice accounted for on an accrual basis instead of being expensed directly, maintenance burden shall be allocated to such overhauls on a pro rata basis. Standard burden rates may be employed for quarterly allocations of maintenance burden provided the rates are reviewed at the close of each calendar year. When the actual burden rate for the year differs materially from the standard burden rate applied, adjustment shall be made to reflect the actual cost incurred for the full accounting year. Allocations of maintenance burden to capital projects, and service sales to others shall be made through the individual maintenance burden objective accounts, except that the air carrier may make such allocations by credits to profit and loss subaccounts 5372.1 or 5372.6 Airworthiness Allowance Provisions.

6900 General Services and Administration.

This function shall include expenses incurred on the ground in controlling and protecting the in-flight movement of aircraft; landing, handling, or servicing aircraft on the ground; selling transportation; servicing and handling traffic of all classes; promoting the development of traffic; administering operations generally; and all other expenses not otherwise provided for in functions 5100 Flying Operations, 5400 Maintenance and 7000 Depreciation and Amortization.

7000 Depreciation and Amortization.

This function shall include all charges to expense to record losses suffered through current exhaustion of the serviceability of property and equipment due to wear and tear from use and the action of time and the elements, which are not replaced by current repairs, as well as losses in serviceability caused by obsolescence, supersession, discoveries, change in demand or actions by public authority. It shall also include charges for the amortization of capitalized developmental and preoperating costs, leased property under capital leases and other intangible assets applicable to the performance of air transportation. (See sections 6-1696, 1830 and 1890.)

7100 Transport-Related Expenses.

a. This function shall include all expense items applicable to the generation of transport-related revenues included in section 9, Function 4800.

b. Such expense related to services of a magnitude or scope beyond an incidental adjunct to air transportation services shall not be included in this
function (see section 1-6(b)). Expenses applicable to the generation of such revenues shall be included in profit and loss classification B100, Nonoperating Income and Expense-Net, and the accounting modified to conform with that of a nontransport division whether or not the service is organized as a nontransport division.

(c) This function shall also include expenses representing increases in costs incurred in common with the air transport service, to the extent such increases result from the added transport-related services, as well as a pro rata share of the costs incurred by the air carrier in operating facilities which are used jointly with others. As a general rule, this function shall not include those expenses, other than joint facilities costs, which would remain as an essential part of the air transport services if the transport-related services were terminated.


Section 11—Functional Classification— Operating Expenses of Group II and Group III Air Carriers

5100 Flying Operations.

(a) This function shall include expenses incurred directly in the in-flight operation of aircraft and expenses attaching to the holding of aircraft and aircraft operational personnel in readiness for assignment to an in-flight status.

(b) This function shall not include expenses incurred in repairing, servicing or storing aircraft, expenses incurred on the ground in protecting and controlling the in-flight movement of aircraft, or compensation of ground personnel and other expenses incurred in scheduling or preparing aircraft or aircraft operational personnel for flight assignment. Such expenses shall be included in function 5400 Maintenance, or function 6400 Aircraft and Traffic Servicing.

5400 Maintenance.

(a) This function shall include all expenses, both direct and indirect, incurred in the repair and upkeep of property and equipment as may be required to meet operating and safety standards; in inspecting or checking property and equipment in accordance with prescribed operational standards; and in polishing or cleaning property and equipment when such polishing or cleaning is not an incidental routine in connection with the normal productive use of property and equipment.

(b) This function shall include the cost of direct labor, materials, and outside services and maintenance overhead or other costs associated with maintenance operations regardless of the location at which incurred.

(c) This function shall not include costs incurred in the construction, improvement, or modification of property and equipment even when necessitated to meet new or changed operating or safety standards. Such costs shall be charged to appropriate property and equipment accounts.

(d) Costs incurred by aircraft handling personnel in visual inspection, minor check and servicing of aircraft, while in line service, shall not be included in this function when performed as an incidental routine during the normal productive use of aircraft but shall be included in function 6400 Aircraft and Tariff Servicing.

(e) Both Group II air carriers and Group III air carriers shall maintain the following subfunctions:

5200 Direct Maintenance.

a. This subfunction shall include the costs of labor, materials and outside services consumed directly in periodic maintenance operations and the maintenance and repair of property and equipment of all types and classes, regardless of the location at which incurred, exclusive of maintenance property and equipment included in balance sheet accounts 1630 Equipment, 1639 Improvements to Leased Buildings and Equipment, and 1640.1 Maintenance Buildings and Improvements, which shall be included in subfunction 5300 Maintenance Burden.

b. The cost of direct labor, materials and supplies, as well as outside repairs, used in the maintenance and repair of property and equipment shall be recorded on running job orders or tickets covering repairs and periodic inspections except servicing. Where a number of like items are maintained on a group basis, it will be necessary to maintain only one job order for each group.

c. When supervisory personnel such as crew chiefs, inspectors and foremen are engaged in direct labor in connection with equipment
maintenance, a proportionate part of their salaries and wages shall be charged to the appropriate direct labor accounts. The cost of transporting property to and from shops for repair or maintenance shall be included as a part of the cost of the materials and supplies used in the repair or maintenance of such property and equipment. Transportation charges, customs and duties, etc., shall be included in the cost of repairs and maintenance operations when made by outside parties.

5300 Maintenance Burden.
   a. This subfunction shall include all overhead or general expenses used directly in the activities involved in periodic maintenance operations and the maintenance and repair of property and equipment of all types and classes, including the cost of direct labor, materials and outside services used in the maintenance and repair of maintenance property and equipment included in balance sheet accounts 1630 Equipment, 1639 Improvements to Leased Buildings and Equipment, and 1640.1 Maintenance Buildings and Improvements. It shall include expenses related to the administration of maintenance records, the scheduling, controlling, planning and supervision of maintenance operations.
   b. This subfunction shall not include expenses related to financial accounting, purchasing or other overhead activities which are of general applicability to all operating functions. Such expenses shall be included in function 6800 General and Administrative.
   c. This subfunction shall include only those expenses attributable to the current air transport operations of the air carrier. Maintenance burden associated with capital projects of the air carrier, other than overhauls of airframes and aircraft engines, shall be allocated to such projects. Maintenance burden incurred in common with services to other companies and operating entities shall be allocated to such services on a pro rata basis unless the services are so infrequent in performance or small in volume as to result in no appreciable demands upon the air carrier's maintenance facilities. When overhauls of airframes or aircraft engines are as a consistent practice accounted for on an accrual basis instead of being expensed directly, maintenance burden shall be allocated to such overhauls on a pro rata basis. Standard burden rates may be employed for quarterly allocations of maintenance burden provided the rates are reviewed at the close of each calendar year. When the actual burden rate for the year differs materially from the standard burden rate applied, adjustment shall be made to reflect the actual costs incurred for the full accounting year. Allocations of maintenance burden to capital projects, and service sales to others shall be made through the individual maintenance burden objective accounts, except that the air carrier may make such allocations by credits to profit and loss account 77 Uncleared Expense Credits under such circumstances in which the use of that account will not undermine the significance of the individual maintenance burden objective accounts in terms of the expense levels associated with the air carrier's air transport services. Maintenance burden allocated to overhauls shall be credited to profit and loss subaccounts 5372.1 or 5372.6 Airworthiness Allowance Provisions.

5500 Passenger Service.
   This function shall include all expenses chargeable directly to activities contributing to the comfort, safety and convenience of passengers while in flight and when flights are interrupted. It shall not include expenses incurred in enplaning or deplaning passengers, or in securing and selling passenger transportation and caring for passengers prior to entering a flight status. Such expenses shall be included in functions 6400 Aircraft and Traffic Servicing and 6700 Promotion and Sales, respectively.

6400 Aircraft and Traffic Servicing.
   (a) This function shall include the compensation of ground personnel and other expenses incurred on the ground incident to the protection and control of the in-flight movement of aircraft, scheduling and preparing aircraft operational crews for flight assignment, handling and servicing aircraft while in line operation, servicing and handling traffic on the ground, subsequent to the issuance of documents establishing the air carrier's responsibility to provide air transportation, and in-flight expenses of handling and protecting all nonpassenger traffic including passenger baggage.
   (b) This function shall include only those aircraft servicing and cleaning expenses which are incurred as an incidental routine during the normal productive use of aircraft in line operations. It shall not include expenses incurred in the repair and maintenance of property and equipment, or in checking or inspecting property and
equipment in accordance with prescribed operational standards when such activities are not an incidental routine during the normal productive use of aircraft. Such expenses shall be included in function 5400 Maintenance.

(c) This function shall not include expenses incurred in securing traffic, arranging aircraft space for traffic sold or in issuing documents confirming traffic sales and establishing the air carrier's responsibilities to provide air transportation. Such expenses shall be included in function 6700 Promotion and Sales. However, for purposes of this system of accounts, expenses attributable to the operation of airport traffic offices, excluding reservation centers, shall be included in this function. Expenses attributable to the operation of reservation or aircraft space control centers shall be included in function 6700 Promotion and Sales regardless of the location at which incurred.

(d) Group III air carriers shall further subdivide this function as follows:

6100 Aircraft Servicing

(a) This subfunction shall include the compensation of ground personnel and other expenses incurred on the ground incident to the protection and control of the in-flight movement of aircraft; scheduling or preparing aircraft operational crews for flight assignment; landing and parking aircraft; visual inspection, routine checking, servicing and fueling of aircraft; and other expenses incurred on the ground incident to readying for arrival and takeoff of aircraft.

6200 Traffic Servicing

(a) This subfunction shall include the compensation of ground personnel and other expenses incurred on the ground incident to handling traffic of all types and classes on the ground subsequent to the issuance of documents establishing the air carrier's responsibility to provide air transportation. Expenses attributable to the operation of airport traffic offices shall also be included in this subfunction; expenses attributable to reservations centers shall be excluded. It shall include expenses incurred in both enplaning and deplaning traffic as well as expenses incurred in preparation for enplanement and all expenses subsequent to deplanment.

(b) This subfunction shall also include costs incurred in handling and protecting all non-pasenger traffic while in flight. It shall not include expenses incurred in contributing to the comfort, safety and convenience of passengers while in flight or when flights are interrupted. Such expenses shall be included in function 5500 Passenger Service.

6300 Servicing Administration

(a) This subfunction shall include expenses of a general nature incurred in performing supervisory or administrative activities relating solely and in common to subfunctions 6100 Aircraft Servicing and 6200 Traffic Servicing. Nor shall this subfunction include expenses attributable to the operation of reservation or aircraft space control centers shall be included in function 6700 Promotion and Sales regardless of the location at which incurred.

6700 Promotion and Sales

(a) This function shall include expenses incurred in creating public preference for the air carrier and its services; stimulating the development of the air transport market; and promoting the air carrier or developing air transportation generally.

(b) It shall also include the compensation of personnel and other expenses incident to documenting sales; expenses incident to controlling and arranging or confirming aircraft space for traffic sold; expenses incurred in direct sales solicitation and selling of aircraft space; and expenses incurred in developing tariffs and schedules for publication.

(c) This function shall not include expenses incurred in handling traffic subsequent to the issuance of documents establishing the air carrier's responsibility to provide air transportation which shall be included in functions 5500 Passenger Service and 6400 Aircraft and Traffic Servicing. However, for purposes of this system of accounts, expenses attributable to the operation of airport traffic offices, excluding reservation centers, shall be included in function 6400 Aircraft and Traffic Servicing. Expenses attributable to the operation of reservation or aircraft space control centers shall be included in function 6700 Promotion and Sales regardless of the location at which incurred.

(d) Group III air carriers shall subdivide this function as follows:
6500 Reservations and Sales.
This subfunction shall include expenses incident to direct sales solicitation, documenting sales, controlling and arranging or confirming aircraft space sold, and in developing tariffs and schedules for publication. It shall also include expenses attributable to the operation of city traffic offices. Expenses incurred in stimulating traffic and promoting the air carrier or air transportation generally shall not be included in this subfunction but in subfunction 6600 Advertising and Publicity.

6600 Advertising and Publicity.
(a) This subfunction shall include expenses incurred in creating public preference for the air carrier and its services; stimulating development of the air transport market; and promoting the air carrier or developing air transportation generally.
(b) This subfunction shall not include expenses incurred in direct sales solicitation and selling of aircraft space. Such costs shall be included in subfunction 6500 Reservations and Sales.

6800 General and Administrative.
(a) This function shall include expenses of a general corporate nature and expenses incurred in performing activities which contribute to more than a single operating function such as general financial accounting activities, purchasing activities, representation at law, and other general operational administration, which are not directly applicable to a particular function.
(b) This function shall not include expenses incurred directly in promoting traffic or in promoting relations of the air carrier generally with the public which shall be included in function 6700 Promotion and Sales. Nor shall this function include expenses, regularly applicable in large part to a specific function, which contribute only incidentally, or in small amount, to various other functions. Such expenses when of such size as will not distort the function to which predominantly related, shall be included in the specific function to which regularly related. However, expenses of a general administrative character and of significant amount regularly contributing to operating functions generally shall be included in this function.

7000 Depreciation and Amortization.
This function shall include all charges to expense to record losses suffered through current exhaustion of the serviceability of property and equipment due to wear and tear from use and the action of time and the elements, which are not replaced by current repairs, as well as losses in serviceability occasioned by obsolescence, supersession, discoveries, change in popular demand or action by public authority. It shall also include charges for the amortization of capitalized developmental and preoperating costs, leased property under capital leases, and other intangible assets applicable to the performance of air transportation. (See sections 6-1696, 1830 and 1890.)

7100 Transport-Related Expenses.
(a) This function shall include all expense items applicable to the generation of transport-related revenues included in section 9, Function 4800.
(b) Such expense related to services of a magnitude or scope beyond an incidental adjunct to air transportation services shall not be included in this function (see section 1-6(b)). Expenses applicable to the generation of such revenues shall be included in profit and loss classification 8100, Nonoperating Income and Expense-Net, and the accounting modified to conform with that of a nontransport division whether or not the service is organized as a nontransport division.
(c) This function shall also include expenses representing increases in costs incurred in common with the air transport service, to the extent such increases result from the added transport-related services, as well as a pro rata share of the costs incurred by the air carrier in operating facilities which are used jointly with others. As a general rule, this function shall not include those expenses, other than joint facilities, costs, which would remain as an essential part of the air transport services if the transport-related services were terminated.

[ER-841, 39 FR 11997, Apr. 2, 1974, as amended by ER-1401, 50 FR 244, Jan. 3, 1985]
General Instructions.

(a) Basic objective accounts, applicable to all air carrier groups, are established for recording all revenue and expense elements. These basic accounts are in certain areas subdivided to provide greater detail for indicated air carrier groups.

(b) Each air carrier shall credit the gross revenues accruing from services ordinarily associated with air transportation and transportation-related services to the appropriate account established for each revenue source. Expenses incident to transport and transport-related services shall be charged to the accounts established in this section in accordance with the objectives served by each expenditure. However, direct costs of forwarding traffic as a result of interrupted trips, and refunds of sales, shall be charged to the applicable revenue account.

(c) To the end that the integrity of the prescribed objective accounts shall not be impaired, each air carrier shall:

(1) Charge the appropriate account prescribed for each service purchased or expense element incurred expressly for the benefit of the air carrier regardless of whether incurred directly by the air carrier or through an agent or other intermediary, and (2) except as provided in objective account 77, Uncleared Expense Credits, credit or charge, as appropriate, the account prescribed for each expense element which may be involved in distributions of expenses between (i) separate operating entities of the air carrier, (ii) transport-related services and transport services, or transport functions, (iii) balance sheet and profit and loss elements, and (iv) the air carrier and others, when the expenses are incurred initially by or for the benefit of the air carrier. At the option of the air carrier, standard rates applicable to each objective account comprising a particular pool of expenses subject to assignment between two or more activities, may be established for proration purposes, provided the rates established are predicated upon the experience of the air carrier and are reviewed and modified as appropriate at least once each year.

Transport Revenues

01 Passenger.

(a) Record here revenue from the transportation of passengers by air, including infants transported at reduced fares, berth charges, surcharges for premium services and other similar charges. Revenue from airline employees, officers and directors, or other persons, except for ministers of religion, who are traveling under reduced-rate transportation authorized by 49 U.S.C. 41511(a) and 14 CFR part 223, as well as revenue from travel agents, cargo agents and tour conductors traveling at reduced fares, and revenues from service charges for passengers traveling on a nonrevenue basis shall be recorded in objective account 19 Air Transport—Other.

(b) This account shall be subdivided as follows by all air carrier groups:

01.1 Passenger—First Class.

Record here revenue from the air transportation of passengers moving at either standard fares or premium fares, or at reduced fares not predicated upon the use of aircraft space specifically separated from first class, and for whom standard or premium quality services are provided.

01.2 Passenger—Coach.

Record here revenue from the air transportation of passengers moving at special fares reduced from the first class or premium fares which are predicated upon both the operation of specifically designated aircraft space and a reduction in the quality of service regularly and ordinarily provided.


05 Mail.

(a) Record here revenue from the transportation by air of both United States and foreign mail.

(b) Fines and penalties imposed by the United States Government and foreign governments in connection with the carriage of mail shall not be charged to this account but to profit and loss account 89.9 Other Miscellaneous Nonoperating Debits.

(c) This account shall be subdivided as follows by all air carrier groups:

05.1 Priority.
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Record here revenue from United States mail for which transportation by air is provided on a priority basis.

05.2 Nonpriority.

Record here revenue from United States mail for which transportation by air is provided on a space available basis.

05.3 Foreign.

Record here revenue from the transportation by air of mail other than United States mail.


06 Property.

(a) Record here revenue from the transportation by air of property including excess passenger baggage.

(b) Revenues resulting from services incidental to the transportation services such as collection of shipper’s interest insurance premiums and charges and fees for service such as pick-up and delivery, assembly and distribution, storage and handling, and C.O.D. collection shall not be credited to this account but to profit and loss account 17 Air Cargo Services.

(c) This account shall be subdivided as follows by all air carrier groups:

- **06.1 Freight.**
  - Record here revenue from the transportation by air of property other than passenger baggage.

- **06.2 Excess Passenger Baggage.**
  - Record here revenue from the transportation by air of passenger baggage in excess of fixed free allowance.

[ER–755, 37 FR 19726, Sept. 21, 1972, as amended by ER–1401, 50 FR 244, Jan. 3, 1985]

07 Charter.

(a) Record here the revenue from nonscheduled air transport services (except as otherwise required by profit and loss Account 86 Income from Non-transport Ventures) where the party receiving the transportation obtains exclusive use of an aircraft at either published tariff or other contractual rates and the remuneration paid by the party receiving transportation accrues directly to, and the responsibility for providing transportation is that of, the accounting air carrier. This account shall also include revenues from air transport services other than inter-airport services, whether scheduled or nonscheduled, where each passenger or shipment receiving transportation is individually documented and does not obtain exclusive use of an aircraft.

(b) This account shall not include revenues or fees received from other air carriers for flight facilities furnished or operated by the accounting air carrier where the remuneration paid by the party receiving transportation accrues directly to, and the responsibility for providing transportation is that of other air carriers. Such revenues and related expenses shall be included in profit and loss accounts 11, Rents; 13, Interchange Sales; or 18, Other Transport-Related Revenues and Expenses.

(c) This account shall be subdivided as follows by all air carrier groups:

- **07.1 Passenger.**
  - Record here revenue from the transportation of passengers and their personal baggage.

- **07.2 Property.**
  - Record here revenue from the transportation of property.


TRANSPORT RELATED REVENUES AND EXPENSES

08 Public Service Revenues (Subsidy).

Record here amounts of compensation received pursuant to the provisions of 49 U.S.C. 41733 under rates established by the Department of Transportation for the provision of essential air service to small communities.


09 In-Flight Sales.

(a) Record here revenues from and expenses related to transport-related services performed while in flight.

(b) This account shall be subdivided as follows by all air carrier groups:

- **09.1 Liquor and food—gross revenues.**
- **09.2 Movies and stereo—gross revenues.**
- **09.3 Other—gross revenues.**
- **09.4 Liquor and food—depreciation expense.**
- **09.5 Liquor and food—other expense.**
- **09.6 Movies and stereo—depreciation expense.**
- **09.7 Movies and stereo—other expense.**
- **09.8 Other—depreciation expense.**
- **09.9 Other—expense.**
10 Restaurant and Food Service (Ground).
(a) Record here revenues from and expenses related to the operation of restaurants and similar facilities, and from sales of food. (See section 12-51.)
(b) This account shall be subdivided as follows by all air carrier groups:
10.1 Gross revenues.
10.2 Depreciation expense.
10.3 Other expense.

11 Rents.
(a) Record here revenues from and expenses related to property and equipment owned or leased which has been rented or subleased to others exclusive of associated companies. This account shall not include fees from the use by others of air carrier aircraft under aircraft interchange agreements.
(b) This account shall be subdivided as follows by all air carrier groups:
11.1 Gross Revenues.
11.2 Depreciation Expense.
11.3 Other Expenses.

12 Limousine Service.
(a) Record here revenues from and expenses related to the operation of passenger limousine surface transportation services.
(b) This account shall be subdivided as follows by all air carrier groups:
12.1 Gross Revenues.
12.2 Depreciation Expense.
12.3 Other Expenses.

13 Interchange Sales.
(a) Record here the revenues or fees from and expenses related to other than air transportation and aircraft interchange services provided to associated and outside companies by the air carrier. This account shall include the contractual fees or other revenues from and expenses related to services provided to associated and other companies in the operation of facilities which are used jointly with associated and other companies as well as revenues from and the costs related to the sale of supplies, parts and repairs sold directly or furnished as a part of services to associated and other companies.
(b) This account shall not include consideration received from sales of property, equipment, materials or supplies when disposed of as a part of a program involving retirement of property and equipment as opposed to routine sales and services to associated and other companies unless such disposition is conducted as a normal part of the incidental sales activity. Such retirement gain or loss shall be included in capital gains and losses accounts. Maintenance parts, materials or supplies sold as a service to others shall be charged to this account at cost without adjustment of related obsolescence or depreciation allowances.
(c) This account shall be subdivided as follows by all air carrier groups:
13.1 Associated companies—gross revenues.
13.2 Outside—gross revenues.
13.3 Associated companies—depreciation expense.
13.4 Associated companies—other expense.
13.5 Outside—depreciation expense.
13.6 Outside—other expense.

14 General Service Sales.
(a) Record here the revenues, commissions or fees from and expenses related to other than air transportation and aircraft interchange services provided to associated and outside companies by the air carrier. This account shall include the contractual fees or other revenues from and expenses related to services provided to associated and other companies in the operation of facilities which are used jointly with associated and other companies as well as revenues from and the costs related to the sale of supplies, parts and repairs sold directly or furnished as a part of services to associated and other companies.
(b) This account shall not include consideration received from sales of property, equipment, materials or supplies when disposed of as a part of a program involving retirement of property and equipment as opposed to routine sales and services to associated and other companies unless such disposition is conducted as a normal part of the incidental sales activity. Such retirement gain or loss shall be included in capital gains and losses accounts. Maintenance parts, materials or supplies sold as a service to others shall be charged to this account at cost without adjustment of related obsolescence or depreciation allowances.
(c) This account shall be subdivided as follows by all air carrier groups:
14.1 Associated companies—gross revenues.
14.2 Outside—gross revenues.
14.3 Associated companies—depreciation expense.
14.4 Associated companies—other expense.
14.5 Outside—depreciation expense.
14.6 Outside—other expense.
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16 Substitute (replacement) Service.
(a) Record here revenues from and expenses related to substitute service. This account shall include as revenues all monies received from substitute carriers and as expense all monies paid to substitute carriers.
(b) This account shall be subdivided as follows by all air carrier groups:
16.1 Gross revenue.
16.2 Expense.

17 Air Cargo Services.
(a) Record here fees and other revenues from and expenses related to incidental services performed in connection with cargo shipments such as pickup and delivery fees, shipper’s interest insurance charges, storage and handling fees, etc.
(b) This account shall be subdivided as follows by all air carrier groups:
17.1 Gross Revenues.
17.2 Depreciation Expense.
17.3 Other Expenses.

18 Other Transport-Related Revenues and Expenses.
(a) Record here revenues from and expenses related to transport-related services not provided for in profit and loss accounts 10 through 17, inclusive, such as revenue from (1) airline employees, officers and directors, or other persons, except for ministers of religion, who are traveling under reduced-rate transportation authorized by 49 U.S.C. 41511(a) and 14 CFR part 223, as well as travel agents, cargo agents and tour conductors traveling at reduced fares, (2) service charges for failure to cancel or for late cancellation of air transportation reservations, and (3) nontransportation service charges collected on both revenue and nonrevenue flights.
(b) Revenues derived from sightseeing, aerial photography, advertising, or other special flights shall not be included in this account but in account 07 Charter.
(c) This account shall be subdivided as follows by all air carrier groups:
19.1 Reservations Cancellation Fees.
19.9 Miscellaneous Operating Revenue.

19 Air Transport—Other.
(a) Record here revenues associated with air transportation conducted by the air carrier, not provided for in profit and loss accounts 01 through 09, inclusive, such as revenue from (1) airline employees, officers and directors, or other persons, except for ministers of religion, who are traveling under reduced-rate transportation authorized by 49 U.S.C. 41511(a) and 14 CFR part 223, as well as travel agents, cargo agents and tour conductors traveling at reduced fares, (2) service charges for failure to cancel or for late cancellation of air transportation reservations, and (3) nontransportation service charges collected on both revenue and nonrevenue flights.
(b) Revenues derived from sightseeing, aerial photography, advertising, or other special flights shall not be included in this account but in account 07 Charter.
(c) This account shall be subdivided as follows by all air carrier groups:
19.1 Reservations Cancellation Fees.
19.9 Miscellaneous Operating Revenue.


TRANSPORT EXPENSES

20 General Instructions.
(a) Each element of expense ordinarily associated with air transportation services shall be charged to the accounts established in this section in accordance with the objectives served by each expenditure. Basic objective accounts, applicable to all air carrier groups, are established for recording all expense elements. These basic accounts are in certain areas subdivided to provide greater detail for indicated air carrier groups.
(b) To the end that the integrity of the prescribed objective accounts shall not be impaired, each air carrier shall:
(1) Charge the appropriate account prescribed for each service purchased or expense element incurred expressly for the benefit of the air carrier regardless of whether incurred directly by the air carrier or through an agent or other intermediary, and (2) except as provided in objective account 77 Uncleared Expense Credits, credit or charge, as appropriate, the account prescribed for
each expense element which may be involved in distributions of expenses between (i) separate operating entities of the air carrier, (ii) incidental and transport services or transport functions, (iii) balance sheet and profit and loss elements and (iv) the air carrier and others, when the expenses are incurred initially by or for the benefit of the air carrier. At the option of the air carrier, standard rates applicable to each objective account comprising a particular pool of expenses subject to assignment between two or more activities, may be established for proration purposes, provided the rates established are predicated upon the experience of the air carrier and are reviewed and modified as appropriate at least once each year.

21 General Management Personnel.

Record here the compensation, including vacation and sick leave pay, of general officers and supervisors, and immediate assistants regardless of locality at which based, responsible for an activity not provided for in profit and loss accounts 25 through 35, inclusive, or an activity involving two or more such accounts.

23 Pilots and Copilots.

Record here the compensation, including vacation and sick leave pay, of pilots and copilots assigned or held inactive awaiting assignment to flight duty.

24 Other Flight Personnel.

Record here the compensation, including vacation and sick leave pay, of other flight personnel assigned or held inactive awaiting assignment to flight status, not responsible for the in-flight management of aircraft, such as engineers, navigation officers and cabin attendants.

25 Maintenance Labor.

(a) Record here the compensation for time of personnel spent directly on specific property and equipment maintenance projects. (See sections 10 and 11-5200.) Vacation and sick leave pay shall be charged to profit and loss account 28 Trainees, Instructors and Unallocated Shop Labor.

(b) This account shall be subdivided as follows:

GROUP II AND GROUP III AIR CARRIERS

25.1 Labor—Airframes and Other Flight Equipment.

Record here the direct labor expended upon airframes, spare parts related to airframes, and other flight equipment (Other than aircraft engines and spare parts related to aircraft engines). Other flight equipment shall include instruments, which encompass all gauges, meters, measuring devices, and indicators, together with appurtenances thereto for installation in aircraft and aircraft engines which are maintained separately from airframes and aircraft engines.

25.2 Labor—Aircraft Engines.

Record here the direct labor expended upon aircraft engines and spare parts related to aircraft engines.

GROUP I AIR CARRIERS

25.6 Labor—Flight Equipment.

Record here the direct labor expended upon flight equipment of all types and classes.

ALL AIR CARRIER GROUPS

25.9 Labor—Ground Property and Equipment.

Record here the direct labor expended upon ground property and equipment of all types and classes. Direct labor expended upon general ground properties shall be charged to subfunction 5200 Direct Maintenance; and direct labor expended upon maintenance buildings and equipment shall be charged to subfunction 5300 Maintenance Burden.

[ER-755, 37 FR 19726, Sept. 21, 1972, as amended by ER-1401, 50 FR 244, Jan. 3, 1985]

26 Aircraft and Traffic Handling Personnel.

(a) Record here the compensation, including vacation and sick leave pay, of personnel of all types and classes, including direct supervisory personnel, assigned to ground activities, engaged directly in protecting and controlling aircraft in flight, scheduling and preparing flight crews for flight assignment, parking and servicing aircraft incidental to line operations, and of personnel of all types and classes engaged in servicing and handling traffic of all types and classes on the ground.

(b) This account shall be subdivided as follows by Group II and Group III air carriers:

26.1 General Aircraft and Traffic Handling Personnel.
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Record here compensation of personnel handling or controlling aircraft and generally servicing or handling traffic of all types and classes whose activities are not identifiable with the particular activities provided for in subaccounts 26.2, 26.3, or 26.4, inclusive.

26.2 Aircraft Control Personnel.
Record here compensation of personnel whose activities are identifiable with the protection and control of aircraft in flight and in scheduling or preparing flight crews for flight assignment.

26.3 Passenger Handling Personnel.
Record here compensation of personnel whose activities are identifiable with the handling of passengers.

26.4 Cargo Handling Personnel.
Record here compensation of personnel whose activities are identifiable with the handling of passenger baggage, mail, express, or freight.

28 Trainees, Instructors, and Unallocated Shop Labor.

(a) Record here the compensation, including vacation and sick leave pay, of instructors and personnel in an off-the-job training status; direct maintenance personnel compensation not assigned to specific projects; and vacation or sick leave pay of direct maintenance personnel.

(b) This account shall be subdivided as follows by all air carrier groups:

28.1 Trainees and Instructors.
Record here the compensation of instructors and personnel in a training status.

28.2 Unallocated Shop Labor.
Record here the pay of direct maintenance personnel which has not been assigned to profit and loss account 25 Maintenance Labor for time spent on specific maintenance projects, and vacation or sick leave pay of direct maintenance personnel.

30 Communications Personnel.
Record here the compensation, including vacation and sick leave pay, of personnel of all types and classes, including direct supervisory personnel, engaged in local, interstation, or groundair communication activities. This account shall include compensation of personnel such as radio operators, telephone operators, switchboard operators, teletype operators, messengers, etc.

31 Recordkeeping and Statistical Personnel.
Record here the compensation, including vacation and sick leave pay, of personnel including supervisory personnel, whose primary duties relate to maintaining records or conducting economic or other analyses required for general management controls, such as accountants, economists, statisticians, maintenance record clerks, stores record clerks, stores receiving and issuing clerks and file clerks. The account shall not include personnel engaged in documentation or other activities constituting an integral part of activities encompassed by other objective accounts.

32 Lawyers and Law Clerks.
Record here the compensation, including vacation and sick leave pay, of air carrier personnel engaged in law research or representing the air carrier in matters of law.

33 Traffic Solicitors.
Record here the compensation, including vacation and sick leave pay, of personnel engaged directly in solicitation of traffic of all types and classes. This account shall not include compensation of traffic office personnel engaged in soliciting activities incidental to the documenting of sales and assigning aircraft space which shall be included in profit and loss account 26 Aircraft and Traffic Handling Personnel.

34 Purchasing Personnel.

(a) Record here the compensation, including vacation and sick leave pay, of personnel, including direct supervisory personnel, engaged in purchasing activities.

(b) This account shall include compensation of personnel engaged in maintaining purchasing records but shall not include compensation of personnel responsible for the control of inventories or stores which shall be included in objective account 31 Record Keeping and Statistical Personnel. In cases where the responsibility for maintaining purchasing and stores records are inseparable, the related compensation may be accounted for in accordance with dominant responsibilities.
35 Other Personnel.
Record here the compensation, including vacation and sick leave pay, of personnel whose activities are not identifiable with activities provided for in profit and loss accounts 21 through 34, inclusive.

36 Personnel Expenses.
(a) Record here expenses incurred by officers, executives, directors and other personnel, whether for the benefit of the air carrier or for the private benefit of such persons, which are directly or indirectly borne by the air carrier.
(b) This account shall include allowances in lieu of expenses as well as expenses incurred for travel, lodgings, meals, entertainment of individuals or groups of individuals, and membership fees and dues in professional or social clubs and associations.
(c) Records shall be maintained in a conveniently accessible form which will separately and clearly document each charge to this account in terms of its natural characteristics and contribution to the performance of the air carrier’s transport operations. The records shall be maintained in such manner as will identify specifically the persons incurring the cost. Costs for standby hotel or other facilities maintained for the air carrier’s personnel generally need not be allocated among the individuals using such facilities; however, sufficiently detailed records are required to identify the use made of such facilities by each individual.

37 Communications Purchased.
Record here expenses, including related taxes, incurred for rental of communication services and for communication services of all types and classes not provided by personnel of the air carrier, such as telegraph, telephone, teletype, private line services, and charges for communication services from organizations operated jointly with associated companies or others.

38 Light, Heat, Power and Water.
Record here charges related to the provision of light, heat, power and water including related taxes.

39 Traffic Commissions.
(a) Record here charges by others, including associated companies, for commissions arising from sales of transportation. Commissions, fees or other charges incurred for general agency services, as opposed to commissions arising from sales of transportation, shall not be included in this account but in profit and loss account 43 General Services Purchased.
(b) This account shall be subdivided as follows by Group II and Group III air carriers.

39.1 Commissions—Passenger.
Record here charges for commissions arising from sales of passenger transportation.

39.2 Commissions—Property.
Record here charges for commissions arising from sales of nonpassenger transportation.

40 Legal Fees and Expenses.
Record here expenditures incurred for legal services by counsel retained on a fee basis and related expenses reimbursed or borne directly by the air carrier and other expenses incurred directly by the air carrier for legal supplies not obtainable from the air carrier’s general stationery stock. This account shall not be charged with legal fees or expenses incurred in connection with claims occasioned by accidents or other casualties. Such charges shall be accumulated in balance sheet account 1890 Other Assets and cleared to profit and loss account 58 Injuries, Loss and Damage upon settlement of insurance claims. Nor should this account include fees or expenses related to developmental projects. Such expenses shall be included, as appropriate, in profit and loss account 89.9 Other Miscellaneous Nonoperating Debits or balance sheet account 1830 Unamortized Developmental and Preoperating Costs.

41 Professional and Technical Fees and Expenses.
Record here fees and expenses, other than legal fees and expenses, incurred for outside professional and technical services which are reimbursed or borne directly by the air carrier. This account shall not include fees or expenses related to developmental projects.
Such expenses shall be included, as appropriate, in profit and loss account 89.9 Other Miscellaneous Nonoperating Debits or balance sheet account 1830 Unamortized Developmental and Preoperating Costs.

[ER-980, 42 FR 37, Jan. 3, 1977]

43 General Services Purchased.

(a) Record here charges for services performed for the air carrier by outside and associated companies which are not identifiable with services provided for in profit and loss accounts 37 through 41, inclusive, or which are not expressly identified with other objective expense accounts.

(b) Charges from outside and associated companies for services provided the air carrier under aircraft interchange agreements or other agreements embracing a complete activity or service, such as the operating of jointly used ground facilities, shall be included in this account for each operating function to which the services contribute. Charges for providing aircraft capacity, including charges for depreciation and interest on the capital related to the flight equipment provided, shall be included in function 5100 Flying Operations.

(c) This account shall be subdivided by each air carrier group, as follows:

GROUP II AND GROUP III AIR CARRIERS

43.1 Airframe and Other Flight Equipment Repairs.

Record here charges for maintenance or repair of airframes and spare parts related to airframes owned or leased by the air carrier, including aircraft engines and spare parts related to aircraft engines, shall also be recorded here. Instruments shall include all gauges, meters, measuring devices, and indicators, together with appurtenances thereto for installation in aircraft and aircraft engines, which are maintained separately from airframes and aircraft engines. Charges by outside and associated companies for maintenance of flight equipment provided under aircraft interchange agreements shall not be included in this subaccount but in subaccount 43.7 Aircraft Interchange Charges.

43.2 Aircraft Engine Repairs.

Record here charges for maintenance of repair or aircraft engines, including spare parts related to aircraft engines owned or leased by the air carrier. Charges by outside and associated companies for maintenance of aircraft engines provided under aircraft interchange agreements shall not be included in this subaccount but in subaccount 43.7 Aircraft Interchange Charges.

GROUP I AIR CARRIERS

43.6 Flight Equipment Repairs.

Record here charges for maintenance or repair of flight equipment of all types and classes owned or leased by the air carrier. Charges by outside and associated companies for maintenance of flight equipment provided under aircraft interchange agreements shall not be included in this subaccount but in subaccount 43.7 Aircraft Interchange Charges.

ALL AIR CARRIER GROUPS

43.7 Aircraft Interchange Charges.

Record here charges by outside and associated companies for services provided the air carrier under aircraft interchange agreements, other than charges related to the direct operation or maintenance of flight equipment, including all charges for maintenance and repair of group properties, as well as fees or charges for traffic solicitation and sales, or supervision and administration covered by the aircraft interchange agreements. Charges for depreciation or interest on capital related to flight equipment provided under interchange agreements shall not be included in this subaccount but in subaccount 43.7 Aircraft Interchange Charges.

43.8 General Interchange Service Charges.

Record here charges by outside and associated companies for services provided the air carrier under aircraft interchange agreements, other than charges related to the direct operation or maintenance of flight equipment, including all charges for maintenance and repair of group properties, as well as fees or charges for traffic solicitation and sales, or supervision and administration covered by the aircraft interchange agreements. Charges for depreciation or interest on capital related to flight equipment provided under interchange agreements shall not be included in this subaccount but in subaccount 43.7 Aircraft Interchange Charges.

43.9 Other Services.

Record here charges for maintenance and repair of ground property and equipment of all types and classes and other charges for services performed by outside and associated companies not provided for elsewhere. This subaccount shall include only those charges for services not provided for elsewhere in profit and loss accounts 37 to 41, inclusive, and subaccounts 43.1 to 43.8, inclusive, embracing a complete activity or service provided by outside and associated companies such as the operation of traffic offices or other facilities used jointly with the air carrier which do not represent reimbursement of specific expense elements incurred expressly for the benefit of the air carrier. Reimbursement of expenses incurred expressly
for the benefit of the air carrier shall be entered in appropriate personnel compensation or other objective expense accounts. The cost of services received in the repair of general ground properties shall be charged to subfunction 5200 Direct Maintenance; and services received in the repair of maintenance buildings and equipment shall be charged to subfunction 5300 Maintenance Burden.

[Amdt. 241-56, 52 FR 9129, Mar. 23, 1987]

44 Landing Fees.
Record here the charges and fees incurred for landing of aircraft while in line operation.

45 Aircraft Fuels and Oils.
(a) Record here the cost of fuels and oils issued from stocks of the air carrier, or delivery directly by others, to aircraft for use in flight operations. Adjustments of inventories of aircraft fuel and oil shall also be entered in this account. The cost of fuels and oils used in repairs and maintenance services and nonrefundable fuel and oil taxes shall not be included in this account but in profit and loss accounts 49 Shop and Servicing Supplies and 69 Taxes—Other than Payroll, respectively.
(b) This account shall be subdivided as follows by Group II and Group III air carriers:
45.1 Aircraft Fuels.
Record here the cost of fuels used in flight operations.
45.2 Aircraft Oils.
Record here the cost of oils used in flight operations.

46 Maintenance Materials.
(a) Record here the cost of materials and supplies consumed directly in specific property and equipment maintenance projects.
(b) This account shall be subdivided as follows:

GROUP I AND GROUP III AIR CARRIERS
46.1 Materials—Airframes and Other Flight Equipment.
Record here the cost of materials and supplies consumed directly in maintenance of airframes and spare parts related to airframes. Other flight equipment (including instruments), excluding aircraft engines and spare parts related to aircraft engines, shall also be recorded here. Instruments shall include all gauges, meters, measuring devices, and indicators, together with appurtenances thereto for installation in aircraft and aircraft engines, which are maintained separately from airframes and aircraft engines.

GROUP I AIR CARRIERS
46.6 Materials—Flight Equipment.
Record here the cost of materials and supplies consumed directly in the maintenance of flight equipment of all types and classes.

ALL AIR CARRIER GROUPS
46.9 Materials—Ground Property and Equipment.
Record here the cost of materials and supplies consumed directly in the maintenance of ground property and equipment of all types and classes. The cost of materials and supplies consumed in the repair of general ground properties shall be charged to subfunction 5200 Direct Maintenance and materials and supplies consumed in the repair of maintenance buildings and equipment shall be charged to subfunction 5300 Maintenance Burden.

[ER-755, 37 FR 19726, Sept. 21, 1972, as amended by ER-1401, 50 FR 245, Jan. 3, 1985]

47 Rentals.
Record here rentals, fee, or charges incurred in the use of property and equipment provided by others. When a lease arrangement provides that the amounts paid include charges for maintenance, insurance, or taxes, the amounts related thereto shall not be recorded in this account but in the appropriate expense account to which related.

49 Shop and Servicing Supplies.
Record here the cost of supplies and expendable small tools and equipment used in maintaining, servicing and cleaning property or equipment the cost of which cannot be directly assigned to a specific job or type of work.

50 Stationery, Printing and Office Supplies.
Record here the cost of stationery and forms used by the air carrier including the cost of engineering and shipping supplies.

51 Passenger Food Expense.
(a) Record here the cost of food and refreshments served passengers except
food costs arising from interrupted trips.

(b) If the air carrier prepares its own food, the initial cost and expenses incurred in the preparation thereof shall be accumulated in a clearly identified clearing account through which the cost of food shall be cleared to this account, to profit and loss account 36 Personnel Expenses, and to profit and loss account 10 Hotel, Restaurant and Food Service on bases which appropriately allocate the cost of food served passengers, the cost of food provided employees without charge and the cost of food sold.

53 Other Supplies.

Record here the cost of supplies consumed and not provided for otherwise.

54 Inventory Adjustments.

Record here adjustments for overage, shortage or shrinkage of inventories carried in balance sheet account 1300 Spare Parts and Supplies. Adjustment of aircraft fuel and oil inventories due to retroactive price increases and decreases shall not be included in this account but in profit and loss account 45 Aircraft Fuels and Oils. Gains or losses from retirements of materials and supplies shall not be recorded in this account but in profit and loss account 88.5 Capital Gains and Losses—Operating Property.

[ER–980, 42 FR 37, J an. 3, 1977]

55 Insurance—General.

Record here the cost of public liability and property damage insurance and all other general insurance except insurance covering liability for injuries, loss, and damage to passengers and cargo, and insurance carried for the protection or welfare of employees.

[ER–980, 42 FR 37, J an. 3, 1977]

56 Insurance—Traffic Liability.

Record here the cost of purchased insurance covering liability for injuries, loss and damage to passengers and cargo.

[ER–980, 42 FR 37, J an. 3, 1977]

57 Employee Benefits and Pensions.

(a) Record here all costs for the benefit or protection of employees including all pension expenses whether for payments to or on behalf of retired employees or for accruals or annuity payments to provide for pensions; and all expenses for accident, sickness, hospital, and death benefits to employees or the cost of insurance to provide these benefits. Include, also, expenses incurred in medical, educational, or recreational activities for the benefit of employees. Do not include vacation and sick leave pay, or salaries of doctors, nurses, trainees, or instructors, which shall be recorded in the regular salary accounts.

(b) [Reserved]


58 Injuries, Loss and Damage.

Record here the remainder of gains, losses or costs resulting from accidents, casualties or mishandlings, after offsetting insurance recoveries, as accumulated until finally determined in balance sheet account 1890 Other Assets and Deferred Charges. This account shall not include gains or losses from retirement of property and equipment resulting from casualties. Such gains or losses shall be recorded in appropriate capital gains or losses accounts.

[Amdt. 241–58, 54 FR 5996, Feb. 6, 1989]

59 Schedules and Timetables.

Record here the production and distribution cost, excluding compensation of air carrier personnel, of all operating schedules, timetables, circulars and related quick reference charts.

[ER–1401, 50 FR 245, J an. 3, 1985]

60 Advertising.

Record here the cost, excluding compensation of air carrier personnel, of all space, direct mail, spot and other advertising for the purpose of increasing air travel, disseminating air travel information and publicizing services offered by the air carrier.
61 Foreign Exchange Gains and Losses.

Record here gains or losses from transactions involving currency translations resulting from normal, routine, current fluctuations in rates of foreign exchange. Gains or losses of a nonroutine abnormal character and gains or losses which arise from long-term debt principal and interest transactions shall not be entered in this account but in profit and loss account 85, Foreign Exchange Gains and Losses.

[Amendment 241-58, 54 F.R. 5596, Feb. 6, 1989]

62 Other Promotional and Publicity Expenses.

Record here the costs, excluding compensation of air carrier personnel, of producing and distributing publicity releases and other expenses, not chargeable to profit and loss accounts 59 and 60, incurred for the purpose of publicizing or improving the public relations of the air carrier generally.

63 Interrupted Trips Expense.

Record here expenses allowed or paid for the care and serving of passengers because of unscheduled interruptions in passenger journeys. Transportation refunds and the cost of forwarding traffic by surface common carrier or otherwise as a result of such interruptions shall not be charged to this account but to the appropriate operating revenue account.

64 Memberships.

Record here the cost of membership dues in trade associations, chambers of commerce, or other business associations and organizations together with special assessments related thereto.

65 Corporate and Fiscal Expenses.

Record here corporate and fiscal fees and expenses of the air carrier and all expenses in connection with exchange and transfer of capital stock excluding expenses in connection with original issuance of capital stock.

66 Uncollectible Accounts.

Record here losses from uncollectible accounts and allowance provisions and adjustments thereto, for such losses. When allowances for uncollectible accounts are established, losses as realized shall be charged against such allowances and shall not be charged to this account.

[ER-980, 42 F.R. 37, Jan. 3, 1977]

67 Clearance, Customs and Duties.

Record here clearance, customs, duties and brokerage fees and charges applicable to clearing aircraft and traffic.

68 Taxes—Payroll.

Record here all taxes levied against the air carrier based upon or directly relating to compensation of personnel.

69 Taxes—Other Than Payroll.

(a) Record here all taxes levied against the air carrier not otherwise provided for including nonrefundable aircraft fuel and oil taxes. Interest and penalties on delinquent taxes shall not be charged to this account but to profit and loss accounts 82 Other Interest and 89.9 Other Miscellaneous Nonoperating Debits, respectively.

(b) Entries to this account shall clearly reveal each kind of tax and the governmental agency to which paid or payable.

[ER-755, 37 F.R. 19726, Sept. 21, 1972, as amended by ER-980, 42 F.R. 37, Jan. 3, 1977]

71 Other Expenses.

Record here all expenses ordinarily associated with air transportation and its incidental services not provided for otherwise.

72 Aircraft Overhauls.

(a) Record here airframe and aircraft engine overhauls of the current period which are transferred to balance sheet subaccounts 1601.2 Unamortized Airframe Overhauls or 1602.2 Unamortized Aircraft Engine Overhauls. This account shall also include the amount of deferred overhauls costs being amortized for the current period. For carriers which elect to continue accruing for aircraft overhauls for aircraft types acquired before January 1, 1976, as well as for other aircraft of the same type acquired after January 1, 1976, the related provisions and charges shall be recorded in the appropriate subaccounts of this account.

[ER-980, 42 F.R. 37, Jan. 3, 1977]
(b) This account shall be subdivided as follows by all carrier groups:

72.1 Airworthiness Allowance Provisions—Airframes.

Record here current provisions for effecting an equitable distribution of airframe overhaul costs between different accounting periods. Record here also credits for airframe overhaul costs incurred in the current period which have been charged against related airworthiness allowances.

72.3 Airframe Overhauls Deferred.

Record here airframe overhauls of the current period transferred to subaccount 1601.2, Unamortized Airframe Overhauls, and the amount of deferred airframe overhaul costs amortized for the current period.

72.6 Airworthiness Allowance Provisions—Aircraft Engines.

Record here current provisions for effecting an equitable distribution of aircraft engine overhauls costs between different accounting periods. Record here also credits for aircraft engine overhaul costs incurred in the current period which have been charged against related airworthiness allowances.

72.8 Aircraft Engine Overhauls Deferred.

Record here aircraft overhauls of the current period transferred to subaccount 1602.2, Unamortized Aircraft Engine Overhauls, and the amount of deferred aircraft engine overhaul costs amortized for the current period.


73 Provisions for Obsolescence and Deterioration—Expendable Parts.

(a) Where allowances for loss in value of flight equipment expendable parts are established, provisions for accruals to such allowances shall be charged to this account and credited to balance sheet account 1311 Allowance for Obsolescence in accordance with the provisions of that account.

(b) This account shall be subdivided as follows by all air carrier groups:

73.1 Current provisions. Record here provisions during the current period for losses in value of expendable parts.

73.2 Inventory decline credits. Record here credits applicable to the current period for any adjustments for excess inventory allowance levels determined pursuant to section 6-1311.

[ER–980, 42 FR 37, J. 3, 1977]

74 Amortization.

(a) Record here amortization of deferred changes attaching to the air transportation services conducted by the air carrier which are not prepayments of recurrent expenses ordinarily requiring expenditures of working capital within one year.

(b) This account shall be subdivided as follows by all air carrier groups:

74.1 Developmental and Preoperating Expenses.

Record here amortization of the cost of projects carried in balance sheet account 1830 Unamortized Developmental and Preoperating Costs.

74.2 Other Intangibles.

Record here amortization of the cost of intangibles not provided for otherwise.


75 Depreciation.

(a) Record here provisions for depreciation of property and equipment carried in balance sheet accounts 1601 through 1640, inclusive.

(b) This account shall be subdivided as follows:

All Air Carrier Groups

75.1 Depreciation—Airframes.

Record here provisions for depreciation of property and equipment carried in balance subaccount 1601.1 Airframes.

75.2 Depreciation—Aircraft Engines.

Record here provisions for depreciation of property and equipment carried in balance subaccount 1602.1 Aircraft Engines.

Group II and Group III Air Carriers

75.3 Depreciation—Airframe Parts.

Record here provisions for depreciation of spare airframe instruments and parts carried in balance sheet subaccount 1608.1 Airframe Parts and Assemblies.

75.4 Depreciation—Aircraft Engine Parts.

Record here provisions for depreciation of spare aircraft engine instruments and parts carried in balance sheet subaccount 1608.5 Aircraft Engine Parts and Assemblies.

All Air Carrier Groups

75.5 Depreciation—Other Flight Equipment.

Record here provisions for depreciation of property carried in balance sheet account 1607 Improvements to Leased Flight Equipment (exclusive of capitalized overhauls accounted for on a deferral and amortization basis) and balance sheet subaccount 1608.9 Other Parts and Assemblies. Group I air carriers shall also include in this subaccount provisions for depreciation of property carried in balance sheet account 1608 Flight Equipment Rotatable Parts and Assemblies.

75.6 Depreciation—Flight Equipment.
This classification is established only for purposes of control by the BTS and shall include all charges to operating expenses for depreciation of flight equipment of all types and classes.

75.8 Depreciation—Maintenance Equipment and Hangars.

Record here provisions for depreciation of maintenance property and equipment included in balance sheet accounts 1630 Equipment, 1639 Improvements to Leased Buildings and Equipment, and 1640.1 Maintenance Buildings and Improvements.

75.9 Depreciation—General Ground Property.

Record here provisions for depreciation of property and equipment included in balance sheet accounts 1630 through 1640, exclusive of provision for depreciation of maintenance property and equipment included in account 75.8.


76 Amortization Expense—Capital Leases.

(a) Record here amortization charges applicable to assets recorded under capital leases in Account 1695—Leased Property under Capital Leases.

(b) This account shall be subdivided as follows by all air carrier groups:

76.1 Amortization—Capitalized Flight Equipment.

Record here amortization charges applicable to flight equipment acquired under capital leases.

76.2 Amortization—Capitalized Other Property and Equipment.

Record here the amortization charges applicable to property and equipment, other than flight equipment, acquired under capital leases.

[ER—1401, 50 FR 245, Jan. 3, 1985]

77 Uncleared Expense Credits.

(a) Record here credits to operating expenses, which have not been cleared to the objective accounts to which applicable.

(b) Each air carrier shall credit, or charge as appropriate, the objective accounts prescribed for each expense element which may be involved in distribution of expenses between separate reporting entities or nontransport divisions of the air carrier. At the option of the air carrier, either the individual applicable objective accounts or this account may be credited with amounts capitalized, charged against incidental services, or otherwise assigned to other than separate operating entities of the air carrier provided the aggregate credits to this account in each function do not, for any accounting year, distort the individual objective accounts of the function to which related and all expense credits applicable to complete individual transactions are consistently credited either to this account or the individual objective accounts to which related. Each air carrier using this account shall establish such standard practices as may be prescribed by the BTS or, in the absence of such action by the Civil Aeronautics Board, such standard practices as will prevent credits to this account from significantly distorting the individual objective accounts of each function to which related.

(c) This account shall not be credited with amounts applicable to objective accounts of the Flying Operations, Depreciation, and Direct Maintenance functions. Credits applicable to such functions shall be carried to the individual objective accounts to which applicable.

(d) This account shall be subdivided as follows by all air carrier groups:

77.8 Uncleared Interchange Expense Credits.

Record here credits to operating expenses, from operations performed for others under aircraft interchange agreements, which have not been cleared to the objective accounts to which applicable.

77.9 Other Uncleared Expense Credits.

Record here credits to operating expenses, from other than operations under aircraft interchange agreements, which have not been cleared to the objective accounts to which applicable.


78 Direct Maintenance—Flight Equipment.

This classification is established for purposes of control by the BTS and shall include all charges to operating expenses for maintenance of flight equipment of all types and classes.


79 Applied Burden Debit/Credit.

(a) This classification is established only for purposes of control by the BTS.
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and reporting on Form 41 by air carriers, and shall reflect all maintenance burden applied in accordance with the provisions of section 24, schedule P-5 of this system of accounts and reports.

(b) This classification shall be subdivided as follows by all air carrier groups:

79.6 Applied Burden—Flight Equipment.
79.8 Applied Burden—General Ground Property.


Section 14—Objective Classification—Nonoperating Income and Expense

80 Interest Income.

Included under account 89 Other Nonoperating Income and Expense—Net.

[ER-1401, 50 FR 245, Jan. 3, 1985]

81 Interest on Long-term Debt and Capital Leases.

(a) Record here interest expense applicable to long-term debt and capitalized leases.

(b) This account shall be subdivided as follows by all air carrier groups:

81.1 Interest expense—long-term debt.

Record here interest on all classes of long-term debt. This includes interest expense applicable to all portions of long-term debt which are classified as either current (Account 2000) or long-term (Account 2210) for balance sheet classification purposes.

81.2 Interest expense—capital leases.

Record here for all capitalized leases, that portion of each lease payment which represents interest expense.

[ER-1013, 42 FR 37516, July 21, 1977]

82 Other Interest.

(a) This account shall be subdivided as follows by all air carrier groups:

82.1 Interest Expense—Short-Term Debt.

Record here interest on all classes of short-term debt.

83.1 Imputed Interest Capitalized—Credit.

Record here credits related to imputed interest capitalized and recorded in asset accounts.

83.2 Imputed Interest Deferred—Debit.

Record here debits related to imputed interest deferred in balance sheet account 2300, Other deferred credits.

83.3 Imputed Interest Deferred—Credit.

Record here periodic credits for imputed interest, cleared to this account as the amount of such interest in the asset accounts is amortized.

83.4 Interest Capitalized—Credit.

Record here interest which is capitalized and recorded in asset accounts.

84.1 Amortization of discount and expense on debt.

Record here for all classes of debt the amortizations of discount and expense on short-term and long-term obligations.

84.2 Amortization of premium on debt.

Record here for all classes of debt the amortizations of premium on short-term and long-term obligations.

(b) [Reserved]


83 Capitalized Interest.

Included under account 82 Other Interest.

[ER-1401, 50 FR 245, Jan. 3, 1985]

84 Amortization of Debt Discount, Premium and Expense.

Included under account 82 Other Interest.

[ER-1401, 50 FR 245, Jan. 3, 1985]

85 Foreign exchange gains and losses.

Record here gains and losses from transactions involving currency translations resulting from nonroutine abnormal changes in rates of foreign exchange and gains or losses which arise from translations of long-term debt principal and interest transactions.

[Amdt. 241-58, 54 FR 5596, Feb. 6, 1989]

86 Income from Nontransport Ventures.

Included under account 89 Other Nonoperating Income and Expense—Net.

[ER-980, 42 FR 38, Jan. 3, 1977]

87 Equity in Income of Investor Controlled Companies.

Included under account 89 Other Nonoperating Income and Expense—Net.

[ER-1401, 50 FR 245, Jan. 3, 1985]

89 Other Nonoperating Income and Expense—Net.

(a) Record here all debits and credits of a nonoperating character which are not otherwise provided for in this section.
89

(b) This account shall be subdivided as follows by all air carrier groups:

88.0 Interest Income.
   (a) Record here interest income from all sources. This account shall include as an in-
   crease or reduction of interest received the proportionate amortization of any discount
   or premium on the purchase price of securities of others held by the air carrier.
   (b) This account shall not include interest on securities issued or assumed by the air
   carrier and subsequently reacquired.

86.0 Income from Nontransport Ventures.
   (a) Record here the gross revenues and expenses applicable to operations not reason-
   ably considered as incidental to the commercial air transport services of the accounting
   entity; rents from nonoperating properties used by others; income or loss from non-
   transport divisions; and other income or loss from activities of the air carrier which are
   extraneous to the air transport and incidental services of the accounting entity.
   (b) This account shall include revenues and expenses applicable to nonscheduled trans-
   port services performed for the defense establishment when separate reports for such
   services are required in accordance with section 21 "Introduction to System of Reports."
   Where the foregoing transport services are not required to be separately reported, gross
   revenues from such services shall be included in profit and loss account 07 Charter, or
   other appropriate revenue account, and gross expenses shall be included in the appropriate
   operating expense functions.

87.0 Equity in Income of Investor Controlled
   Companies.
   Record here the equity in the current earn-
   ings or losses of investor controlled compa-
   nies. Dividends declared on the stock of such
   companies shall not be included in this ac-
   count as income but shall be entered in bal-
   ance sheet subaccount 1510.1 Investments
   in Investor Controlled Companies as a return
   on investment.

88.1 Intercompany Transaction Adjustment—
   Debit.
   Record here all intercompany credits for
   any differences between amounts at which
   transactions between the air carrier and its
   nontransport divisions or associated compa-
   nies are initially recorded and are to be set-
   tled.

88.2 Dividend income.
   Record here income from dividends de-
   clared on stocks of other than investor con-
   trolled companies. Dividends declared on
   stock of investor controlled companies shall
   not be included in this account but shall be
   entered in balance sheet subaccount 1510.1
   Investments in Investor Controlled Compa-
   nies.

88.3 Net Unrealized Gain or Loss on Market-
   able Equity Securities.
   Record here the net unrealized gain or loss
   on the valuation of marketable equity securi-
   ties.

88.4 Net Realized Gain or Loss on Marketable
   Equity Securities.
   Record here the net realized gain or loss on
   the valuation of marketable equity securi-
   ties.

88.5 Capital gains and losses—operating prop-
   erty.
   Record here gains or losses on retirements
   of operating property and equipment, flight
   equipment expendable parts, or miscellaneous
   materials and supplies sold or otherwise retired in connection with a general re-
   tirement program as opposed to incidental sales performed as a service to others.

88.6 Capital gains and losses—other.
   Record here gains or losses not required to be
   reported in accounts 88.3, 88.4 and 88.5
   such as gains or losses on retirement of non-
   operating property and equipment, invest-
   ments in other than marketable equity securi-
   ties, and the transfer of assets in a troubled debt restructuring.

88.7 Unapplied cash discounts.
   Record here all debits of a nonoperating
   character not provided for otherwise, such as
   cash discounts on classes of assets included
   in property and equipment accounts shall
   not be recorded in this account but shall be
   applied as a reduction of the cost of such ac-
   counts.

88.8 Other miscellaneous nonoperating credits.
   Record here all credits of a nonoperating
   character not provided for otherwise, such as
   royalties from patents, gains from reacquisi-
   tion and retirement or resale of debt securi-
   ties issued by the air carrier, and gains re-
   sulring from troubled debt restructurings.

88.9 Other Miscellaneous Nonoperating Debits.
   Record here all credits of a nonoperating
   character not provided for otherwise, such as
   cash discounts on routine pur-
   chases of materials, repair parts or supplies.
   Cash discounts on classes of assets 220
   included
   in property and equipment accounts shall
   not be recorded in this account but shall be
   applied as a reduction of the cost of such ac-
   counts.

88.9 Other Miscellaneous Nonoperating Debits.
   Record here all debits of a nonoperating
   character not provided for otherwise, such as
   the following:
   (a) Fines or penalties imposed by govern-
       mental authorities;
   (b) Costs associated with employment dis-
       crimination that include the following:
       (1) Fines or penalties paid by the carrier as
           a result of a judicial or administrative de-
           cree, or the amount paid to the complainant
           in settling or securing a consent decree;
       (2) Back pay awards as a result of a judi-
           cial or administrative decree or a com-
           promise settlement regardless of admission
           of guilt;
(3) Attorneys’ fees or court costs awarded to the complainant by a judicial or administrative decree or as a result of a compromise settlement regardless of admission of guilt;
(4) The fees of outside legal counsel or of experts retained in the unsuccessful defense of a discrimination suit or in securing a compromise settlement or consent decree, unless the amounts attributable to the discrimination are not reasonably identifiable; or
(5) Any other expenses, such as employee salaries, resulting from employment practices that were found to be discriminatory or that were the subject of a compromise settlement or consent decree where the amounts attributable to discrimination are reasonably identifiable.

(c) Amortization expense attributable to capital leases recorded in balance sheet Account 1795, Leased Property under Capital Leases;
(d) Costs related to property held for future use;
(e) Donations for charitable, social or community welfare purposes;
(f) Losses on reacquired and retired or resold debt securities of the air carrier;
(g) Losses resulting from troubled debt restructurings;
(h) Losses on uncollectible nonoperating receivables; or
(i) Accruals to allowance for uncollectible nonoperating receivables.


Section 15—Objective Classification—Income Taxes for Current Period

91 Provision for Income Taxes.
(a) Record here quarterly provisions for accruals of Federal, State, local, and foreign taxes based upon net income, computed at the normal tax and surtax rates in effect during the current accounting year. In general, this account shall reflect provisions within each period for currently accruing tax liabilities as actually or constructively computed on tax returns, and any subsequent adjustments. This account shall include credits for refund claims arising from the carryback of losses in the year in which the loss occurs, credits for the carry-forward of losses in the year to which the loss is carried, and investment tax credits in the year in which each credit is utilized to reduce the liability for income taxes.
(b) Income taxes shall be allocated among the transport entities of the air carrier, its nontransport divisions, and members of an affiliated group. Under circumstances in which income taxes are determined on a consolidated basis by an air carrier and other members of an affiliated group, the income tax expense to be recorded by the air carrier shall be the same as would result if determined for the air carrier separately for all time periods, except that the tax effect of carryback and carryforward operating losses, investment tax credits, or other tax credits generated by operations of the air carrier shall be recorded by the air carrier during the period in which applied in settlement of the taxes otherwise attributable to any member, or combination of members, of the affiliated group. Any difference between the income tax so recorded and the amount at which settlement is to be made shall be recorded in subaccount 88.1 Intercompany Transaction Adjustment—Credit or in subaccount 89.1 Intercompany Transaction Adjustment—Debit, as is appropriate.
(c) This account shall be subdivided as follows by all carrier groups:
91.1 Income Taxes Before Investment Tax Credits.
Record here accruals of income taxes based upon taxable income of the period.
91.2 Investment Tax Credits Utilized.
Record here application of taxes deferred utilized to reduce the accrued liability for income taxes.
(a) Record here income tax debits and credits deferred in accordance with the provisions of balance sheet account 2340 Deferred Income Taxes for all material timing differences.
(b) This account shall be subdivided as follows by all air carrier groups:
92.2 Application of Taxes Deferred.
92.3 Adjustments of Deferred Taxes.

[ER–948, 41 FR 12296, Mar. 25, 1976]
93 Investment Tax Credits Deferred and Amortized.

(a) Record here investment tax credits of the current period which are transferred to balance sheet account 2345 Deferred Investment Tax Credits in accordance with the provisions of balance sheet account 2130 Accrued Taxes. This account shall also include amounts for previously deferred investment tax credits amortized during the current period.

(b) This account shall be subdivided as follows by all carrier groups:

93.1 Investment Tax Credits Deferred.

93.2 Amortization of Deferred Investment Tax Credits.

[ER-755, 37 FR 19726, Sept. 21, 1972, as amended by ER-980, 42 FR 39, Jan. 3, 1977]

Section 16—Objective Classification—Discontinued Operations

95 Discontinued Operations.

(a) Record here the earnings (losses) of discontinued nontransport operations. For the purposes of this system of accounts and reports discontinued operations shall refer to the disposal of investor controlled companies and nontransport ventures whether sold, abandoned, spun off, or otherwise disposed of. This account shall not include earnings or losses from discontinued transport or transport-related operations.

(b) This account shall be subdivided as follows by all air carrier groups:

95.1 Income from Discontinued Operations.

Record here the results of operations of the discontinued operations.

95.2 Loss of Disposal of Discontinued Operations.

Record here the gain or loss on the disposal of an operation. If loss is anticipated it should be provided for at the measurement date. If gain is anticipated it should be recognized when realized.

[ER-948, 41 FR 12296, Mar. 25, 1976]

Section 17—Objective Classification—Extraordinary Items

96 Extraordinary Items.

Record here material items characterized by their unusual nature and infrequent occurrence. Events or transactions which are material and either unusual or nonrecurring, but not both, shall be recorded in the profit and loss accounts to which they relate and disclosed on BTS Form 41 Schedule P-2 with identification as to their nature and financial effects.


97 Income Taxes Applicable to Extraordinary Items.

Record here income taxes allocable to items of income included in profit and loss account 96 Extraordinary Items and income tax assessments that do not constitute ordinary adjustments of a recurrent nature. Records supporting entries to this account shall be maintained with sufficient particularity to identify the nature and gross amount of each extraordinary credit and each extraordinary debit.

[ER-948, 41 FR 12296, Mar. 25, 1976]
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Part 19—Accessibility and transmittal of data.

Sec. 19-2  Maintenance of data.

(a) Each air carrier required to file Form 41 Schedule T-100 data shall maintain its prescribed operating statistics in a manner and at such locations as will permit ready accessibility for examination by representatives of the Department. The record retention requirements are prescribed in part 249 of this chapter.

(b) Individual nonstop segment and on-flight market data for section 418 domestic all-cargo, domestic charter and military charter operations are not required to be reported on the Schedule T-100, but summary data for such operations shall be included in the T-1, T-2 and T-3 schedules that each U.S. air carrier shall transmit to the Department on a monthly or quarterly basis as prescribed in sections 22 and 25. For international military charters, only the U.S. airports are reported on Schedule T-3, and the foreign airports are combined and reported on a single line, as Airport “NON.” International civilian charter and civilian all-cargo operations shall be reported in the T-100 data format, by nonstop segment and on-flight market.

(c) Form 41 Schedule T-100 reports shall be transmitted in accordance with the standard practices established by the Department, and must be received by the Department within 30 days following the end of each reporting month.

Sec. 19-3  Accessibility and transmittal of data.

(a) Each reporting air carrier shall maintain its prescribed operating statistics in a manner and at such locations as will permit ready accessibility for examination by representatives of the Department. The record retention requirements are prescribed in part 249 of this chapter.

(b) Individual nonstop segment and on-flight market data for section 418 domestic all-cargo, domestic charter and military charter operations are not required to be reported on the Schedule T-100, but summary data for such operations shall be included in the T-1, T-2 and T-3 schedules that each U.S. air carrier shall transmit to the Department on a monthly or quarterly basis as prescribed in sections 22 and 25. For international military charters, only the U.S. airports are reported on Schedule T-3, and the foreign airports are combined and reported on a single line, as Airport “NON.” International civilian charter and civilian all-cargo operations shall be reported in the T-100 data format, by nonstop segment and on-flight market.

(c) Form 41 Schedule T-100 reports shall be transmitted in accordance with the standard practices established by the Department, and must be received by the Department within 30 days following the end of each reporting month.

Sec. 19-4  Service classes.

The statistical classifications are designed to reflect the operating elements attributable to each distinctive class of service offered. The operating elements shall be grouped in accordance with their inherent characteristics as follows:

(a) Scheduled services. Scheduled services shall include traffic and capacity elements applicable to air transportation provided pursuant to published schedules and extra sections to scheduled flights. Scheduled Passenger/Cargo (Service Class F) is a composite of first class, coach, and mixed passenger/cargo service. The following
Sec. 19-5

classifications shall be reported, as applicable:

U.S. Air Carriers:
K—Scheduled Services (F + G)
F—Scheduled Passenger/Cargo
G—Scheduled All-Cargo

Foreign Air Carriers:
F—Scheduled Passenger/Cargo
G—Scheduled All-Cargo

(b) Non-scheduled services. Non-scheduled services shall include all traffic and capacity elements applicable to the performance of non-scheduled aircraft charters, and other air transportation services not constituting an integral part of services performed pursuant to published flight schedules. The following classifications shall be reported, as applicable:

U.S. Air Carriers:
V—Non-scheduled Services (L+N+P+R)
L—Non-scheduled Civilian Passenger/Cargo
P—Non-scheduled Civilian Cargo
N—Non-scheduled Military Passenger/Cargo

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<td>Interairport distance</td>
<td>S</td>
<td>M</td>
</tr>
</tbody>
</table>

Sec. 19-5 Air transport traffic and capacity elements.

(a) Within each of the service classifications prescribed in section 19-4, data shall be reported as applicable to specified air transport traffic and capacity elements.

(b) These reported items are as follows:

Foreign Air Carriers:
L—Non-scheduled Civilian Passenger Cargo
P—Non-scheduled Civilian All-Cargo Charters
Q—Non-scheduled Services (Other than Charter)

U.S. Air Carriers:
Z—All Services (V+K)
<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
<th>Type of Record</th>
<th>Applicable Form 41 Schedule Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>610</td>
<td>Revenue aircraft hours (airborne)</td>
<td>S</td>
<td>T-100 1,2</td>
</tr>
<tr>
<td>630</td>
<td>Aircraft hours (ramp-to-ramp)</td>
<td>S</td>
<td>T-100 1,2</td>
</tr>
<tr>
<td>650</td>
<td>Total aircraft hours (airborne)</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>810</td>
<td>Aircraft days assigned to service-equip.</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>820</td>
<td>Aircraft days assigned to service-routes</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>921</td>
<td>Aircraft fuels issued (U.S. gallons)</td>
<td>2</td>
<td></td>
</tr>
</tbody>
</table>

*CFD = Computed by DOT from detail Schedule T-100 and T-100(f) data.
T-100 = Form 41 Schedule T-100 for U.S. air carriers
(f) = Form 41 Schedule T-100(f) for foreign air carriers
1 = Form 41 Schedule T-1; 2 = Schedule T-2; 3 = Schedule T-3

(c) These reported items are further described as follows:
(1) Reporting period date. The year and month or quarter to which the reported data are applicable.
(2) Carrier, Carrier entity code. Each foreign air carrier shall report its name and code (assigned by DOT). Each U.S. air carrier shall report its name and entity code (a five digit code assigned by DOT that identifies both the carrier and its entity) for its particular operations. The Office of Airline Information (OAI) will assign or confirm codes upon request; OAI’s address is in the Appendix to section 25 of this part and the Appendix to §217.10 of this chapter.
(3) Service class code. The service class codes are prescribed in section 19-4 of this part. In general, classes are divided into two broad categories, either K (scheduled) or V (nonscheduled), where K=F+G for all carriers and V=L+N+P+R for U.S. air carriers and comprises L+P and Q for foreign air carriers. Refer to section 19-4 for the more information on service class codes F, G, L, N, P, R and Q.
(4) Record type code. This code indicates whether the data pertain to non-stop segment (record type S) or on-flight market (record type M).
(5) Aircraft type code. This code represents the aircraft types, as described in the Appendix to section 25 of this part.
(6) Origin, Destination airport code(s). These codes represent the industry designators described in the Appendix to section 25 of this part. A common private industry source of these industry designator codes is the Official Airline Guides (OAG). OAI will assign codes upon request if not listed in the OAG.
(7) 110 Revenue passengers enplaned. The total number of revenue passengers enplaned at the origin point of a flight, boarding the flight for the first time; an unduplicated count of passengers in a market. Under the T-100 system of reporting, these enplaned passengers are the sum of the passengers in the individual on-flight markets. Report only the total revenue passengers enplaned in item 110. For all air carriers and all entities, item 110 revenue passengers enplaned is reported on Form 41 Schedule T-100 in column C-1, as follows:

<table>
<thead>
<tr>
<th>Col</th>
<th>All carrier groups and entities</th>
</tr>
</thead>
<tbody>
<tr>
<td>C-1</td>
<td>110 Revenue passengers enplaned.</td>
</tr>
</tbody>
</table>

(8) 130 Revenue passengers transported. The total number of revenue passengers transported over single flight stage, including those already on board the aircraft from a previous flight stage. Report only the total revenue passengers transported in item 130. For all air carriers and all entities, item 130 revenue passengers transported is reported on Form 41 Schedule T-100 in column B-7, as follows:

<table>
<thead>
<tr>
<th>Col</th>
<th>All carrier groups and entities</th>
</tr>
</thead>
<tbody>
<tr>
<td>B-7</td>
<td>130 Revenue passengers transported.</td>
</tr>
</tbody>
</table>

(9) 140 Revenue passenger-miles. Computed by multiplying the interairport distance of each flight stage by the number of passengers transported on that flight stage.
(10) 210 Revenue cargo tons enplaned. The total number of cargo tons enplaned. This data element is a sum of the individual on-flight market figures for each of the following categories: 217
Freight and 219 mail. This element represents an unduplicated count of the revenue traffic in a market.

(11) 230 Revenue tons transported. The number of tons of revenue traffic transported. This element is the sum of the following elements: 231 Passengers transported-total, 237 Freight, and 239 Mail.

(12) 240 Revenue ton-miles—total. Ton-miles are computed by multiplying the revenue aircraft miles flown (410) on each flight stage by the number of tons transported on that stage. This element is the sum of 241 through 249.

(13) 241 Revenue ton-miles—passenger. Equals the number of passengers times 200, times interairport distance, divided by 2000. A standard weight of 200 pounds per passenger, including baggage, is used for all operations and service classes.

(14) 247 Revenue ton-miles—freight. Equals the volume of freight in whole tons times the interairport distance.

(15) 249 Revenue ton-miles—mail. Equals the volume of mail in whole tons times the interairport distance.

(16) 270 Available capacity-payload. The available capacity is collected in pounds. This figure shall reflect the payload or total available capacity for passengers, mail and freight applicable to the aircraft with which each flight stage is performed.

(17) 280 Available ton-miles. The aircraft miles flown on each flight stage multiplied by the available capacity on the aircraft in tons.

(18) 310 Available seats. The number of seats available for sale. This figure reflects the actual number of seats available, excluding those blocked for safety or operational reasons. Report the total available seats in item 310. For all air carriers and all entities, item 310 available seats, total is reported on Form 41 Schedule T-100 in column B-4, as follows.

<table>
<thead>
<tr>
<th>Col.</th>
<th>All carrier groups and entities</th>
</tr>
</thead>
<tbody>
<tr>
<td>B-4</td>
<td>310 Available seats, total.</td>
</tr>
</tbody>
</table>

(19) 320 Available seat-miles. The aircraft miles flown on each flight stage multiplied by the seat capacity available for sale.

(20) 410 Revenue aircraft miles flown. Revenue aircraft miles flown are computed in accordance with the airport pairs between which service is actually performed; miles are generated from the data for scheduled aircraft departures (Code 520) times the interairport distances (Code 501).

(21) 430 Revenue aircraft miles scheduled. The number of revenue aircraft miles scheduled. All such data shall be maintained in conformity with the airport pairs between which service is scheduled, whether or not in accordance with actual performance.

(22) 501 Interairport distance. The great circle distance, in official statute miles as prescribed in part 247 of this chapter, between airports served by each flight stage. Official interairport mileage may be obtained from the Office of Airline Information at the address included in section 25 of this part.

(23) Revenue aircraft departures performed. The number of revenue aircraft departures performed.

(24) 520 Revenue aircraft departures scheduled. The number of revenue aircraft departures scheduled, whether or not actually performed.

(25) 610 Revenue aircraft hours (airborne). The elapsed time, computed from the moment the aircraft leaves the ground until its next landing.

(26) 630 Aircraft hours (ramp-to-ramp). The elapsed time, computed from the moment the aircraft first moves under its own power from the boarding ramp at one airport to the time it comes to rest at the ramp for the next point of landing. This data element is also referred to as “block” and block-to-block aircraft hours.

(27) 650 Total aircraft hours (airborne). The elapsed time, computed from the moment the aircraft leaves the ground until it touches down at the next landing. This includes flight training, testing, and ferry flights.

(28) 810 Aircraft days assigned to service—carrier’s equipment. The number of days that aircraft owned or acquired through rental or lease (but not interchange) are in the possession of the reporting air carrier and are available for service on the reporting carrier’s routes plus the number of days such aircraft are in service on routes of others under interchange agreements. Includes days in overhaul, or temporarily
out of service due to schedule cancellations. Excludes days that newly acquired aircraft are on hand, but not available for productive use, days rented or leased to others (for other than interchange) and days in possession but formally withdrawn from air transportation service.

(29) **820 Aircraft days assigned to service—carrier's routes.** The same as "aircraft days assigned to service—carrier's equipment," but excluding the number of days that the reporting carrier's owned or rented equipment are in the possession of others under interchange agreements and including the number of days aircraft of others are in the possession of the reporting air carrier under interchange agreements.

(30) **921 Aircraft fuels issued (gallons).** The amount of aircraft fuels issued, in U.S. gallons, during the reporting period for both revenue and nonrevenue flights.

Section 19–6 Public disclosure of traffic data.

(a) Detailed domestic on-flight market and nonstop segment data in Schedule T–100 shall be made publicly available after processing. Domestic data are defined as data from air transportation operations from a place in any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the Virgin Islands, or a U.S. territory or possession to a place in any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the Virgin Islands, or a U.S. territory or possession.

(b) Detailed international on-flight market and nonstop segment data in Schedule T–100 and Schedule T–100(1) reports shall be publicly available immediately following the Department's determination that the database is complete, but no earlier than six months after the date of the data. Data for on-flight markets and nonstop segments involving no U.S. points shall not be made publicly available for three years. Industry and carrier summary data may be made public before the end of six months or the end of three years, as applicable, provided there are three or more carriers in the summary data disclosed. The Department may, at any time, publish international summary statistics without carrier detail. Further, the Department may release nonstop segment and on-flight market detail data by carrier before the end of the confidentiality periods as follows:

(1) To foreign governments as provided in reciprocal arrangements between the foreign country and U.S. Government for exchange of on-flight market and/or nonstop segment data submitted by air carriers of that foreign country and U.S. carriers serving that foreign country;

(2) To parties to any proceeding before the Department under Title IV of the Federal Aviation Act of 1958, as amended, as required by the Administrative Law Judge or other decision-maker of the Department. Parties may designate agents or consultants to receive the data in their behalf, provided the agents or consultants agree to abide by the disclosure restrictions. Any data to which access is granted pursuant to this provision may be introduced into evidence, subject to the normal rules of admissibility of evidence.

(3) To agencies and other components of the U.S. Government for their internal use only.

Section 19–7 Passenger origin-destination survey.

(a) All U.S. large certificated air carriers conducting scheduled passenger operations (except helicopter carriers) shall participate in a Passenger Origin-Destination (O & D) Survey covering domestic and international operations, as described in the instructions manual entitled, Instructions to Air Carriers for Collecting and Reporting Passenger Origin-Destination Survey Statistics (Appendix A to this section), and in Passenger Origin-Destination Directives issued by the Department's Bureau of Transportation Statistics (BTS), Office of Airline Information (OAI). Copies of these instructions and Directives are provided to each large carrier participating in
Sec. 19-7

the Survey. Copies are also available from the Office of Airline Information, K-25, Room 4125, U.S. Department of Transportation, 400 Seventh St., SW., Washington, DC 20590.

(b) Those participating air carriers that have access to automatic data processing (ADP) services shall utilize magnetic tape, cartridge, floppy diskette or other ADP media for transmitting the prescribed data. Those carriers without ADP capability should contact the Office of Airline Information for further instructions ((202) 366-4373).

(c) A statistically valid sample of light coupons shall be selected for reporting purposes. The sample shall consist of at least 1 percent of the total lifted ticket flight coupons for all large domestic markets listed in the Instructions and 10 percent for all others—including domestic and international markets. The sample shall be selected and reported in accordance with the requirements of paragraph (a) of their section, except that the participating O & D carriers with nonstandard ticketing procedures, or other special operating characteristics, may propose alternative procedures. Such departures from standard O & D Survey practices shall not be authorized unless approved in writing by the Director, Office of Airline Information under the procedures in Sec. 1-2 of 14 CFR part 241. The data to be recorded and reported from selected lifted ticket flight coupons, as stipulated in the Instructions and Directives shall include the following data elements: Point of origin, carrier on each flight-coupon stage, fare-basis code for each flight-coupon stage, points of stopover or connection (interline and intraline), point of destination, number of passengers, and total dollar value of ticket (fare plus tax).

(d) Data covering the operations of foreign air carriers that are similar to the information collected in the Passenger Origin-Destination Survey are generally not available to the Department, the U.S. carriers, or U.S. interests. Therefore, because of the damaging competitive impact on U.S. carriers and the adverse effect upon the public interest that would result from unilateral disclosure of the U.S. survey data, the Department has determined its policy to be that the international data in the Passenger Origin-Destination Survey shall be disclosed only as follows:

(1) To an air carrier directly participating in and contributing input data to the Survey or to a legal or consulting firm designated by an air carrier to use on its behalf O & D data in connection with a specific assignment by such carrier.

(2) To parties to any proceeding before the Department to the extent that such data are relevant and material to the issues in the proceeding upon a determination to this effect by the Administrative Law Judge or by the Department’s decision-maker. Any data to which access is granted pursuant to this section may be introduced into evidence subject to the normal rules of admissibility of evidence.

(3) To agencies and other components of the U.S. Government.

(4) To other persons upon a showing that the release of the data will serve specifically identified needs of U.S. users which are consistent with U.S. interests.

(5) To foreign governments and foreign users as provided in formal reciprocal arrangements between the foreign and U.S. governments for the exchange of comparable O & D data.

(e) The Department reserves the right to make such other disclosures of the O & D data as is consistent with its regulatory functions and responsibilities.

APPENDIX A TO SEC. 19-7—INSTRUCTIONS TO AIR CARRIERS FOR COLLECTING AND REPORTING PASSENGER ORIGIN-DESTINATION SURVEY STATISTICS

All questions, comments, extension and waiver requests should be addressed to: Office of Airline Information, K-25, Room 4125, U.S. Department of Transportation, 400 Seventh St., SW., Washington, DC 20590, Telephone (202) 366-9059.
B. Narrative Description

A single O&D Survey is conducted continuously by the large U.S. certificated air carriers. Foreign air carriers do not directly participate in the Survey, although some of their data are captured in the Survey, since passengers who share a ticketed itinerary between a U.S. carrier and a foreign carrier may be sampled by the U.S. carrier. The authority for these instructions is found in 14 CFR part 241, section 19-7, and in the CAB Sunset Act of 1984 (Pub. L. 94-443).

The Survey samples revenue passenger trips moving in whole or in part on domestic and/or international scheduled services of the carriers participating in the Survey. In general, these requirements do not apply to small certificated, all-cargo and all charter carriers.

The source documents for the Survey data are passenger tickets. These data are collected from the "lifted" flight coupons of tickets (a portion of a multi-part ticket booklet of three or more coupons, including one for each stage of the passenger's trip itinerary which is lifted by the carrier as the passenger boards a particular flight segment).

The Survey data are taken from the coupon that is lifted by a participating carrier, unless it is apparent from the lifted coupon that another participating carrier has already recorded and reported the data, in which instance the ticket coupon is non-reportable for the second honoring/participating carrier. The complete passenger itinerary, and related data on type of fare and dollar value of the ticket, is recorded as

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1 Each ticket booklet is comprised of one or more flight coupons for passenger travel in a city-pair market, plus a passenger coupon (the traveler's receipt) and the auditor coupon (for the carrier's internal controls).
one entry from the sampled, reportable flight coupon.

The recording of data from the sampled flight coupon normally consists of transcribing the information exactly as indicated on the ticket. The detail recorded for each flight coupon shows the complete routing from the origin city (airport code) to the destination city (airport code) including, in sequence from the origin, each point of transfer and stopover (intraline and interline), the summarized fare-basis code shown for each flight coupon stage of the itinerary, and the total dollar value of the fare and tax for the entire ticket.

Prior to 1987, the Survey was generally based on a 10-percent sample of passenger tickets. Beginning July 1, 1987, the Survey is collected primarily on the basis of a stratified random sample of at least 1 percent of tickets in domestic major markets and 10 percent of tickets in all other domestic and in all international city-pair markets. The Survey data are taken from the selected flight coupons of the tickets sampled: single-coupon or double-coupon round trips in domestic major markets where the ticket serial number ends in double zero (00) and all other ticket coupons ending in zero (0). This procedure yields a “two-tiered” stratified sample.

Group tickets are included on the basis of a 10-percent sample when the number of passengers on such a group ticket is 10 or less. Group tickets with more than 10 passengers on each ticket are included on the basis of a 100 percent census, i.e., all such tickets are sampled, regardless of serial number, and the total data listed are conformed to a 10 percent sample for inclusion in the O&D Survey.

Following the selection of reportable flight coupons and the recording of data, each participating carrier shall edit and summarize the data in a quarterly report to the Department.

II. EFFECTIVE DATE OF INSTRUCTIONS

These data collection and reporting instructions are effective on and after July 1, 1987 and apply to all flight coupons lifted on or after July 1, 1987.

III. CARRIERS PARTICIPATING IN SURVEY

A. Participating carriers. As defined in section 19-7 of the Department’s Economic Regulations (14 CFR part 241), the participants in the O&D Survey include all certificated air carriers conducting scheduled passenger services (except helicopter carriers). These participating carriers collect and report data in accordance with these Instructions, and supplemental Passenger Origin-Destination Directives that may be issued periodically. The list of participating carriers will be issued by reporting directive under the authority in 14 CFR 365.27(b).

B. Amendments to list of participating carriers. As new carriers begin service, they will be required to file O&D Survey Data. These carriers will not be added to the participating carrier list automatically, but will be added when the next annual review is made.

IV. SUBMISSION OF REPORTS

A. Period covered by reports. Reports are to be filed for each calendar quarter of the year as shown below:

<table>
<thead>
<tr>
<th>Report</th>
<th>Time period covered</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st quarter</td>
<td>Jan. 1 through Mar. 31</td>
</tr>
<tr>
<td>2nd quarter</td>
<td>Apr. 1 through June 30</td>
</tr>
<tr>
<td>3rd quarter</td>
<td>July 1 through Sept. 30</td>
</tr>
<tr>
<td>4th quarter</td>
<td>Oct. 1 through Dec. 31</td>
</tr>
</tbody>
</table>

B. Filing date for reports. Reports are to be filed with the Department on or before the dates listed below. The mailing address is on the inside cover to these instructions.

<table>
<thead>
<tr>
<th>Report</th>
<th>Due date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st quarter</td>
<td>May 15</td>
</tr>
<tr>
<td>2nd quarter</td>
<td>Aug. 15</td>
</tr>
<tr>
<td>3rd quarter</td>
<td>Nov. 15</td>
</tr>
<tr>
<td>4th quarter</td>
<td>Feb. 15</td>
</tr>
</tbody>
</table>

1 Due dates falling on Saturday, Sunday or national holiday will become effective the first following work day.

C. Format of report. The report may be submitted in any one of the following formats:

1. ADP media including magnetic tapes and floppy discs.

2. Hard copy BTS Form 2787, in typewritten form, for carriers that lack computer capability. Sample formats of the required data appear in Sections IX and XII. Supplies of blank Form 2787 are available, upon request, from the Director, Office of Airline Information (address on inside cover). Any reasonable facsimile of Form 2787 will be acceptable in lieu of Form 2787, if approved in advance by the Director.

D. Number of copies of report to be filed. A participating carrier shall file with the Department a single copy of its quarterly O&D data report. When ADP submissions are transmitted, the package is to contain a transmittal letter describing the contents, and stating the overall record and passenger media will be returned to the carriers, upon request, following completion of the processing cycle by the Department.
counts included in the submission. Each submission is to be labeled externally as to submitting carrier and time period of the O&D Survey data.

E. Address for filing reports. Reports should be submitted to the Director, Office of Airline Information (address on inside cover).

V. Selection of Sample and Recording of Data

A. Sampling Basis. Each participating carrier in the O&D Survey shall search all listed flight coupons, whether the coupons are its own ticket stock or on the ticket stock of another U.S. or foreign carrier (either standard IATA and ARC ticket stock or non-standard ticket stock), and is to select for reporting purposes the following flight coupons:

(1) Major domestic markets. All single-passenger flight coupons that are either a single flight coupon ticket or part of a round trip, two coupon ticket where the ticket serial number ends in the digits double-zero (00).

(2) International markets and all other domestic markets. (a) All single-passenger flight coupons with ticket serial numbers ending with the digit zero (0);

(b) Those group-ticket flight coupons with 10 or fewer passengers with ticket serial numbers ending with the digit zero (0); and

(c) Those group-ticket flight coupons with 11 or more passengers without regard to serial number.

(d) Itineraries in major domestic markets that comprise more than two coupons are sampled on a uniform 10 percent basis, by selecting all ticket serial numbers ending with the digit zero (0).

B. Selection of Reportable Flight Coupons. The flight coupons identified above are to be examined to isolate the reportable flight coupons, i.e., coupons from which data are to be recorded. Flight coupon data are reported only by the first honoring and participating carrier (operating carrier). Such carriers shall report the required data for the entire ticketed itinerary.

If a participating carrier has preceded an examining carrier on any stage in the trip itinerary, including any stage in a conjunction itinerary and any stage in a reissued ticket (either before or after reissue) that coupon is not reportable.

For conjunction tickets, the ticket number for the first ticket booklet determines if the conjunction tickets should be reported in the Survey. Otherwise, conjunction tickets do not require special treatment and are governed by the rules for regular tickets.

No adjustment is made in the Survey for alterations or changes in the trip itinerary subsequent to the stage covered by the reportable certificate.

C. Optional Use of Other Sampling Procedures.

(1) Alternative sampling procedures or alternative O&D data systems may be proposed by participating carriers with non-standard ticketing procedures, or other special operating characteristics. Data reported under proposed alternative procedures must approximate the usefulness and statistical validity of the O&D Survey.

(2) Such departures from the prescribed O&D Survey practices shall not be authorized unless approved in writing by the Director, Office of Airline Information (address inside front cover). The proposed alternative O&D Survey procedures must be described in detail in the letter requesting the waiver.

D. Recording of Data from Reportable Flight Coupons. (1) The following items are to be reported from the reportable flight coupons:

(a) Point of origin,

(b) Operating carrier on each flight stage (if unknown, identify ticketed carrier),

(c) Ticketed carrier on each flight stage,

(d) Fare-basis on each flight coupon, C, D, F, G, X or Y,

(e) Points of stopover or connection (interline and intraline),

(f) Point of destination,

(g) Number of passengers, and

(h) Total dollar value of ticket (fare plus tax and other charges, such as Passenger Facility Charges).

(2) The individual items are to be recorded in the sequence of occurrence in the itinerary as follows:

(a) All entries for points (airport codes) in an itinerary are to be recorded in three-letter airport code data to fit into the stage-length limitation (seven or twenty-three stages at the carrier’s option), all airport codes are to be reported, including data on

4Upon approval of the Director, Office of Airline Information, carriers may continue current reporting procedures (up to twenty-three stages of a passenger flight) and may report a uniform 10 percent sample of tickets lifted (each zero ending lifted coupon) without reducing the sample size from 10 percent to 1 percent for domestic major markets.

5Codes to be used are those appearing in the Official Airline Guide at the time the data are being recorded. If a code is not found in the OAG, contact the Director, Office of Airline Information (address inside front cover).
commuter, foreign, intra-state and other carriers' portions of itineraries. Normally codes are recorded as they appear on the ticket. However, if a code is obviously incorrect, record the correct code. For instance, if a ticket is coded DCA-NYC or Washington/National to New York when the flight stage actually operated from Washington, Dulles to Newark (EWR), record the correct airport code. When only name spellings of a city appear on the ticket for multi-airport cities (such as Washington, New York, San Francisco, or Los Angeles), record the specific three letter airport code. In cases where two airport codes are shown on the ticket for a point, such as when the passenger arrives at an airport such as San Francisco and departs from another local airport such as Oakland, record the code for the arrival airport, enter a surface segment indicator (—) to the departure airport, and record the departure airport code. (When the surface portion is at the beginning or end of an itinerary, the surface indicator is to be omitted). For example:
<table>
<thead>
<tr>
<th></th>
<th>UCA</th>
<th>YY</th>
<th>UA</th>
<th>Y</th>
<th>JFK</th>
<th>TW</th>
<th>TW</th>
<th>X</th>
</tr>
</thead>
<tbody>
<tr>
<td>Passenger(s)</td>
<td>Utica</td>
<td>Mesa Operating Carrier</td>
<td>United Ticketed Carrier</td>
<td>Fare Code</td>
<td>New York Kennedy Airport</td>
<td>TWA Operating Carrier</td>
<td>TWA Ticketed Carrier</td>
<td>Fare Code</td>
</tr>
<tr>
<td>Surface Transportation</td>
<td>SFO</td>
<td>Operating Carrier</td>
<td>Ticketed Carrier</td>
<td>(Blank space)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>San Francisco</td>
<td>Operating Carrier</td>
<td>Ticketed Carrier</td>
<td>Fare Code</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>OAK</td>
<td>UA</td>
<td>UA</td>
<td>G</td>
<td>LAX</td>
<td>DL</td>
<td>DL</td>
<td>F</td>
</tr>
<tr>
<td>Oakland</td>
<td>United Operating Carrier</td>
<td>United Ticketed Carrier</td>
<td>Fare</td>
<td>Los Angeles</td>
<td>Delta Operating Carrier</td>
<td>Delta Operating Carrier</td>
<td>Fare Code</td>
<td></td>
</tr>
<tr>
<td>SLC</td>
<td>NW</td>
<td>NW</td>
<td>D</td>
<td>PHX</td>
<td>AA</td>
<td>AA</td>
<td>C</td>
<td>LAX</td>
</tr>
<tr>
<td>Salt Lake City</td>
<td>Northwest Operating Carrier</td>
<td>Northwest Ticketed Carrier</td>
<td>Fare Code</td>
<td>Phoenix</td>
<td>American Operating Carrier</td>
<td>American Ticketed Carrier</td>
<td>Fare Code</td>
<td>Los Angeles</td>
</tr>
<tr>
<td>JL</td>
<td>JL</td>
<td>C</td>
<td>NRT</td>
<td>04596</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Japan Air Lines Operating Carrier</td>
<td>Japan Air Lines Ticketed Carrier</td>
<td>Fare Code</td>
<td>Tokyo Naita</td>
<td>Dollars of Fare + Tax</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
In the above example, the passenger trip stages or segments are compressed into the maximum of 7 stages so that several intermediate city-pairs (Los Angeles to Seattle to Anchorage, or LAX—SEA—Anc) and the related carriers have not been recorded, as prescribed below in this Section V.D.(3)(e). In addition, after the fourth city-pair (Los Angeles—Seattle—Anchorage), the passenger trip itinerary moves from the initial four-part ticket booklet onto another “conjunction” ticket, and the summary fare code data are not recorded beyond the initial four-part ticket.

(b) All entries for operating and ticketed carriers for a coupon stage of an itinerary are to be recorded using two character IATA-assigned or DOT codes, as in the above example. Note that the fare code summary was properly inserted after the ticketed carrier’s code, i.e., UA for United Air Lines and Y for unrestricted coach class service. When a two-character carrier code is shown on the ticket, record that code for the ticketed carrier. However, if a code is obviously incorrect, record the correct carrier code. If the reporting carrier does not know the operating carrier on a downline code-share segment, it would use the ticketed carrier’s code for both the operating and ticketed carriers. The reporting carrier is not responsible for knowing the operating carrier of a downline code-share where it is not a party to the code-share segment. Except for the infrequent compression of data to fit into the stage-length limitation (7 or 23 stages at the carrier’s option), all carrier codes are to be recorded, including data on air taxis, commuters, intra-state, and other carrier portions of itineraries. On tickets involving interchange service or other cooperative carrier arrangements, the juncture point(s) where the passenger moves from one carrier system to another is to be recorded as an intermediate point in the itinerary, even when not shown on the ticket and even though the flight may overfly the juncture point.

(c) Entries for fare-basis codes are to be taken from the “fare basis” and “fare description” portions of the ticket and simplified into the appropriate category, as shown below. No attempt shall be made to determine and record fare-basis codes for that portion of a conjunction ticket appearing in the ticket. Fare-basis codes are to be recorded in one-character alphabetic codes. The fare-basis codes are recorded as follows:

C—Unrestricted Business Class
D—Restricted Business Class
F—Unrestricted First Class
G—Restricted First Class
X—Restricted Coach/Economy Class
Y—Unrestricted Coach/Economy Class
U—Unknown (This fare category is used when none is shown on a ticket coupon, or when a fare category is not discernible, or when two or more carrier fare codes are compressed into a single stage of a passenger trip).

(d) In recording the number of passengers, each single-passenger ticket is to be recorded as one passenger. Tickets for infants under two years of age not occupying a seat are not to be counted. A revenue passenger is defined in Section X.

For group tickets of 10 or fewer passengers per ticket record the actual number of passengers on each ticket, i.e., either 2, 3, 4, 5, 6, 7, 8, 9 or 10. For group tickets with 11 or more passengers (those sampled at a 100-percent rate) record the actual number of passengers traveling on each ticket, but keep these entries separate from the group ticket records with 10 or fewer passengers and from the single-passenger ticket records. Group tickets with 11 or more passengers are to be sorted and summarized to combine all passengers for all itineraries which are identical in every respect, i.e., points, carriers, fare basis codes, and average dollar value (as defined in paragraph (e), below). The total number of passengers on each summarized record is to be divided by 10, rounding to the nearest whole passenger. If the quotient ends in 0.5 or more, raise to the next whole passenger. If the quotient ends in less than 0.5, drop the fraction. These large group-ticket records, after division by 10 for compatibility with the other data, are to be merged with the single-passenger records and with the group-ticket entries from tickets of 10 or fewer passengers for the quarterly O&D Survey report.

(e) The total dollar value shall be taken from the “Total” box on each ticket and shall be the sum of the fare plus tax for the entire ticket. Record this amount in whole U.S. dollars, with the cents dropped. Do not round cents to nearest whole dollar.

Amounts on tickets stated in foreign currency are to be converted to U.S. dollar equivalents. For all group tickets, the dollar value to be recorded shall be the average amount per passenger, determined by dividing the total dollar value for the entire group by the number of passengers on the group ticket, dropping cents in the average amount.

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(3) The length of the itineraries to be recorded is limited to a maximum of seven stages or twenty-three stages, at the carrier’s option. This recognizes that the vast majority of tickets sampled have seven stages or fewer and that the rare occurrences of extremely lengthy itineraries do not impact the overall Survey results enough to justify their reporting burden. Therefore, trips longer than these limits are compressed to fall within the stated maximums. The ticketed origin and destination are retained, but the intermediate routing is compressed by applying the following rules, in sequence:

(a) Combine any contiguous open, unknown carrier, or surface stages eliminating the connecting point, and ignoring the fare-basis codes, if different;

(b) Combine any contiguous stages via the same non-U.S. carrier, eliminating the connecting point, and ignoring the fare-basis codes, if different;

(c) Combine any contiguous stages via different non-U.S. carrier, making the carrier “UK”, eliminating the connecting point, and ignoring fare-basis codes, if different;

(d) Combine any contiguous stages via the same U.S. carrier, eliminating the connecting point, and ignoring the fare-basis codes, if different, and;

(e) If the trip, after applying the four steps above, is still too long, record the compressed routing through to the stage length limitation city (seventh or twenty-third city), enter UK as the final carrier, and then record the ticketed destination as the next (the 8th or 24th) city.

VI. SUMMARIZATION OF RECORDED DATA

A. General. Prior to the submission of each quarterly report to the Department, each carrier is to summarize the data in accordance with the rules in Section VI.B. In special hardship cases, carriers may submit a waiver request (with justification under Section 1-2 of 14 CFR part 241) requesting permission to report their flight coupon records exactly as represented on their lifted tickets. Waiver requests must provide the documentation described in Section VI.C. so that the Department can develop the necessary procedures and edit routines to ensure the accuracy and reliability of the overall O&D Survey results. The granting of such waivers will depend upon the availability of resources for the Department to assume this additional burden, which can only be determined on a case by case basis, after evaluating each carrier’s need.

B. Rules for Summarization. Sort the recorded entries into sequence by the entire record (excluding the passenger field), i.e., by origin, complete routing (including fare-basis codes), tickets destination, and dollars value of ticket. All identical records are then to be combined into one summary record. The number of passengers on the summary record is to be the sum of the passenger amounts of all the individual records combined. Passengers are only summarized where records are identical in all respects except in number of passengers including dollar value of ticket. NOTE: DO NOT SUMMARIZE DOLLARS OVER IDENTICAL RECORDS. This summarization is to include the entries from group tickets, but only after the entries for group tickets with 11 or more passengers have been summarized and divided by 10, as stated in Section V.D.(2)(d). Carriers submitting quarterly O&D Survey reports on magnetic tapes or similar formats such as “floppy discs” will follow the ADP INSTRUCTIONS in Section IX. Carriers filing reports on hardcopy BTS Forms 2787 are to enter, on the last page of the report, the overall total of the number of passengers in the report.

C. Waiver Requests. Requests for permission to depart from the required O&D Survey procedures should include a procedural statement describing the process the carrier proposed to employ in examining, selecting and editing the data from reportable flight coupons for the O&D Survey, as well as a flow chart diagramming the proposed procedures.

D. Quantity and Quality Controls. Carriers are expected to establish and maintain continuous quantity and quality controls on the flow of all lifted flight coupons through their system processes to determine the total number of coupons handled and the number of reportable coupons selected. Such data controls and tests have not been
specified by the Department, and necessarily must be developed by each carrier. Each participating carrier shall develop and use on a continuous basis such control tests as are necessary to ensure that all reportable coupons are being selected, recorded and reported as intended by these O&D Survey Instructions. Such controls should extend from all ADP processing, both in-house and that from external service bureaus.

VII. EDITING OF RECORDED DATA

A. City and Airport Codes. Prior to submission of O&D Survey reports, each carrier is to edit the recorded data to validate city and airport codes. This edit is to verify that the codes recorded are valid official codes, and it is independent of whether or not the carriers shown actually operated into or out of the airport shown. Any questions about airport codes should be addressed to the Director, Office of Airline Information (see inside of cover).

B. Edit Responsibility of Carriers. Each carrier is responsible for developing edit procedures and internal controls over its data entry and processing procedures so that valid and reliable data are captured in the O&D Survey inputs and are properly summarized in the outputs. Since the carriers have many different statistical systems, it is not practicable for the Department of Transportation to prescribe specific controls in this area, and each carrier is responsible for developing the appropriate internal control procedures to edit the O&D Survey data and ensure the integrity of these data. The Department will control the accuracy of its processing of the sampled data upon receipt from the carriers.

C. System Documentation of Edits. Carriers are required to maintain written O&D Survey procedural statements and flow charts. As provided in Section VIII, these must be established, or recertified as of July 1, 1987, and thereafter when significant procedural revisions occur.

VIII. CONTROL OF SAMPLE SELECTION AND DATA RECORDING

A. Sample Accuracy and Reliability. In order to maximize the accuracy and reliability of the sample selection and data recording, each carrier is to:

(1) Develop a written statement describing the procedures it will employ in examining and selecting reportable flight coupons and in recording, summarizing, editing, and testing the Survey data.

(2) Submit any proposed changes in the above procedures to the Department's Office of Airline Information, prior to implementation of such changes.

(3) Establish continuous quantity controls on the flow of all lifted flight coupons through the carrier's accounting processing to determine the total number of coupons handled, and the number of reportable coupons selected. Tests are to be made continuously to assure that all reportable coupons are being selected and the data recorded. Such tests should be completed while the "lifted" flight coupons (representing earned passenger revenues for flight segments operated) remain in the possession of the carrier. Establish such other internal control procedures as are necessary for supervising and monitoring the accuracy of the recording of data from reportable flight coupons.

B. Staff Review. The OAI staff will review the carrier procedures and practices and may request modifications or the use of special procedures necessary to improve the sample or to bolster the controls for accuracy and reliability.

IX. ADP INSTRUCTIONS

Each carrier electing to submit its Survey reports in machine listing form or magnetic media in lieu of hardcopy BTS Form 2787 is to be governed by the following instructions:

A. Instructions for Submitting Records on Magnetic Media

(1) Identification record. This identification record is to include the reporting carrier and the reporting period. It

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6Each reel of tape will be returned to the individual carrier upon request.
is designed to fall at the beginning of each file when sorted on columns 7 through 200. The record is to be in the format shown as follows:6

<table>
<thead>
<tr>
<th>Field</th>
<th>Tape positions (from-to)</th>
<th>Tape record layout</th>
</tr>
</thead>
<tbody>
<tr>
<td>Passenger Count</td>
<td>1-6</td>
<td>1. Passenger field must contain leading zeros, and no blanks.</td>
</tr>
<tr>
<td>1st City Code</td>
<td>7-9</td>
<td>2. City field contains the 3-letter alpha code for the airport in the first 3 positions.</td>
</tr>
<tr>
<td>1ST Operating Carrier</td>
<td>10-11</td>
<td></td>
</tr>
<tr>
<td>1ST Ticketed Carrier</td>
<td>12-13</td>
<td></td>
</tr>
<tr>
<td>Fare Basis Code</td>
<td>14</td>
<td></td>
</tr>
<tr>
<td>2ND City Code</td>
<td>15-17</td>
<td></td>
</tr>
<tr>
<td>2nd Operating Carrier</td>
<td>18-19</td>
<td></td>
</tr>
<tr>
<td>2nd Ticketed Carrier</td>
<td>20-21</td>
<td></td>
</tr>
<tr>
<td>Fare Basis Code</td>
<td>22</td>
<td></td>
</tr>
<tr>
<td>3rd City Code</td>
<td>23-25</td>
<td></td>
</tr>
<tr>
<td>3rd Operating Carrier</td>
<td>26-27</td>
<td></td>
</tr>
<tr>
<td>3rd Ticketed Carrier</td>
<td>28-29</td>
<td></td>
</tr>
<tr>
<td>Fare Basis Code</td>
<td>30</td>
<td></td>
</tr>
<tr>
<td>4th City Code</td>
<td>31-33</td>
<td></td>
</tr>
<tr>
<td>4th Operating Carrier</td>
<td>34-35</td>
<td></td>
</tr>
<tr>
<td>4th Ticketed Carrier</td>
<td>36-37</td>
<td></td>
</tr>
<tr>
<td>Fare Basis Code</td>
<td>38</td>
<td></td>
</tr>
<tr>
<td>5th City Code</td>
<td>39-41</td>
<td></td>
</tr>
<tr>
<td>5th Operating Carrier</td>
<td>42-43</td>
<td></td>
</tr>
<tr>
<td>5th Ticketed Carrier</td>
<td>44-45</td>
<td></td>
</tr>
<tr>
<td>Fare Basis Code</td>
<td>46</td>
<td></td>
</tr>
<tr>
<td>6th City Code</td>
<td>47-49</td>
<td></td>
</tr>
<tr>
<td>6th Operating Carrier</td>
<td>50-51</td>
<td></td>
</tr>
<tr>
<td>6th Ticketed Carrier</td>
<td>52-53</td>
<td></td>
</tr>
<tr>
<td>Fare Basis Code</td>
<td>54</td>
<td></td>
</tr>
<tr>
<td>7th City Code</td>
<td>55-57</td>
<td></td>
</tr>
<tr>
<td>7th Operating Carrier</td>
<td>58-59</td>
<td></td>
</tr>
<tr>
<td>7th Ticketed Carrier</td>
<td>60-61</td>
<td></td>
</tr>
<tr>
<td>Fare Basis Code</td>
<td>62</td>
<td></td>
</tr>
<tr>
<td>8th City Code</td>
<td>63-65</td>
<td></td>
</tr>
<tr>
<td>8th Operating Carrier</td>
<td>66-67</td>
<td></td>
</tr>
<tr>
<td>8th Ticketed Carrier</td>
<td>68-69</td>
<td></td>
</tr>
<tr>
<td>Fare Basis Code</td>
<td>70</td>
<td></td>
</tr>
<tr>
<td>9th City Code</td>
<td>71-73</td>
<td></td>
</tr>
<tr>
<td>9th Operating Carrier</td>
<td>74-75</td>
<td></td>
</tr>
<tr>
<td>9th Ticketed Carrier</td>
<td>76-77</td>
<td></td>
</tr>
<tr>
<td>Fare Basis Code</td>
<td>78</td>
<td></td>
</tr>
<tr>
<td>10th City Code</td>
<td>79-81</td>
<td></td>
</tr>
<tr>
<td>10th Operating Carrier</td>
<td>82-83</td>
<td></td>
</tr>
<tr>
<td>10th Ticketed Carrier</td>
<td>84-85</td>
<td></td>
</tr>
<tr>
<td>Fare Basis Code</td>
<td>86</td>
<td></td>
</tr>
<tr>
<td>11th City Code</td>
<td>87-89</td>
<td></td>
</tr>
<tr>
<td>11th Operating Carrier</td>
<td>90-91</td>
<td></td>
</tr>
<tr>
<td>11th Ticketed Carrier</td>
<td>92-93</td>
<td></td>
</tr>
<tr>
<td>Fare Basis Code</td>
<td>94</td>
<td></td>
</tr>
<tr>
<td>12th City Code</td>
<td>95-97</td>
<td></td>
</tr>
<tr>
<td>12th Operating Carrier</td>
<td>98-99</td>
<td></td>
</tr>
<tr>
<td>12th Ticketed Carrier</td>
<td>100-101</td>
<td></td>
</tr>
<tr>
<td>Fare Basis Code</td>
<td>102</td>
<td></td>
</tr>
<tr>
<td>13th City Code</td>
<td>103-105</td>
<td></td>
</tr>
<tr>
<td>13th Operating Carrier</td>
<td>106-107</td>
<td></td>
</tr>
<tr>
<td>13th Ticketed Carrier</td>
<td>108-109</td>
<td></td>
</tr>
<tr>
<td>Fare Basis Code</td>
<td>110</td>
<td></td>
</tr>
<tr>
<td>14th City Code</td>
<td>111-113</td>
<td></td>
</tr>
<tr>
<td>14th Operating Carrier</td>
<td>114-115</td>
<td></td>
</tr>
<tr>
<td>14th Ticketed Carrier</td>
<td>116-117</td>
<td></td>
</tr>
</tbody>
</table>

6Each reel of tape will be returned to the individual carrier upon request.
(2) Detail record. (a) All records are to be summarized on the complete itinerary? (columns 7 through 200) and the summary record only for each itinerary is to be submitted. The tape file, including the identification record, is to be in sequence by complete itinerary.

(b) The tape record layout is shown on the following page.

(3) Magnetic Tape Instructions: (a) All tapes are to be written using the standard IBM extended binary coded decimal interchange code (EBCDIC).

(b) The recording density can be either 6250 or 1600 B.P.I.

(c) All tape will contain standard IBM volume header, and trailer records.

(d) External labels will contain the carrier, name, the report date, file identification, and an address for returning the tapes.

(4) Transmittal letter. The tape shall be accompanied by a transmittal letter which shows the number of records reported and the total number of passengers contained in the report.

B. Editing of Tape Records. Prior to submission of data, each carrier is requested to edit and correct its data so that its O&D Survey report may be as error-free as is reasonably practicable. The methods to be used in editing are left to the carriers’ discretion, but with

<table>
<thead>
<tr>
<th>Field</th>
<th>Columns</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fare Basis Code</td>
<td>1-2</td>
<td>Alpha code.</td>
</tr>
<tr>
<td>15th City Code</td>
<td>3-4</td>
<td>Tens and units position.</td>
</tr>
<tr>
<td>15th Ticketed Carrier</td>
<td>5</td>
<td>1, 2, 3, or 4.</td>
</tr>
<tr>
<td>15th Operating Carrier</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>17th City Code</td>
<td>6-200</td>
<td></td>
</tr>
<tr>
<td>17th Ticketed Carrier</td>
<td></td>
<td></td>
</tr>
<tr>
<td>17th Operating Carrier</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Tape record layout

<table>
<thead>
<tr>
<th>Field</th>
<th>Tape positions (from-to)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fare Basis Code</td>
<td>118-120</td>
</tr>
<tr>
<td>15th City Code</td>
<td>119-121</td>
</tr>
<tr>
<td>15th Ticketed Carrier</td>
<td>122-123</td>
</tr>
<tr>
<td>15th Operating Carrier</td>
<td>124-125</td>
</tr>
<tr>
<td>17th City Code</td>
<td>131-132</td>
</tr>
<tr>
<td>17th Ticketed Carrier</td>
<td>133-134</td>
</tr>
<tr>
<td>17th Operating Carrier</td>
<td>135-137</td>
</tr>
<tr>
<td>17th City Code</td>
<td>138-139</td>
</tr>
<tr>
<td>17th Ticketed Carrier</td>
<td>140-141</td>
</tr>
<tr>
<td>17th Operating Carrier</td>
<td>142-143</td>
</tr>
<tr>
<td>18th City Code</td>
<td>144-145</td>
</tr>
<tr>
<td>18th Ticketed Carrier</td>
<td>146-147</td>
</tr>
<tr>
<td>18th Operating Carrier</td>
<td>148-149</td>
</tr>
<tr>
<td>18th City Code</td>
<td>150-151</td>
</tr>
<tr>
<td>19th Ticketed Carrier</td>
<td>152-153</td>
</tr>
<tr>
<td>19th Operating Carrier</td>
<td>154-155</td>
</tr>
<tr>
<td>19th City Code</td>
<td>156-157</td>
</tr>
<tr>
<td>20th Ticketed Carrier</td>
<td>158-159</td>
</tr>
<tr>
<td>20th Operating Carrier</td>
<td>160-161</td>
</tr>
<tr>
<td>20th City Code</td>
<td>162-163</td>
</tr>
<tr>
<td>21st Ticketed Carrier</td>
<td>164-165</td>
</tr>
<tr>
<td>21st Operating Carrier</td>
<td>166-167</td>
</tr>
<tr>
<td>21st City Code</td>
<td>168-169</td>
</tr>
<tr>
<td>22nd Ticketed Carrier</td>
<td>170-171</td>
</tr>
<tr>
<td>22nd Operating Carrier</td>
<td>172-173</td>
</tr>
<tr>
<td>22nd City Code</td>
<td>174-175</td>
</tr>
<tr>
<td>23rd Ticketed Carrier</td>
<td>176-177</td>
</tr>
<tr>
<td>23rd Operating Carrier</td>
<td>178-179</td>
</tr>
<tr>
<td>23rd City Code</td>
<td>180-181</td>
</tr>
<tr>
<td>24th Ticketed Carrier</td>
<td>182-183</td>
</tr>
<tr>
<td>24th Operating Carrier</td>
<td>184-185</td>
</tr>
<tr>
<td>24th City Code</td>
<td>186-187</td>
</tr>
<tr>
<td>Blank</td>
<td>188-189</td>
</tr>
<tr>
<td>US Value of Ticket in $</td>
<td>190-191</td>
</tr>
<tr>
<td></td>
<td>192-193</td>
</tr>
<tr>
<td></td>
<td>194-195</td>
</tr>
<tr>
<td></td>
<td>196-200</td>
</tr>
</tbody>
</table>
assistance available upon request from the Department’s Office of Airline Information (OAI). To aid the carriers in maintaining a current file of editing criteria, OAI will re-issure, as needed, the city/airport-carrier file to each participating carrier. There will be a five-position field to denote the city/airport-carrier. The first three positions denote the airport and the last two positions denote the air carrier.

C. Standard Formats for Floppy Disk or Cartridge Submissions. Carriers should use the 200 position format with the standard length fields prescribed for magnetic media submissions. The record layout is detailed in subsection A(1) of this section. However, to simplify the PC submissions, the submitter may report the dollar value of the ticket in the field immediately after the last reported city code, rather than in positions 196-200. Submitters may separate fields by using commas or tabs (comma delimited ASCII or tab delimited ASCII format).

X. GLOSSARY OF TERMS

Selected terms used in the foregoing instructions are here defined and explained in the context of the O&D Survey.

ADP. An abbreviation for automated data processing, which is the term applied to all forms of machine processed data.

Carrier. Any scheduled air carrier, U.S. or foreign, that appears on a coupon stage in a ticketed itinerary, including helicopter, air taxi, commuter, intra-Alaska carriers, and intra-state carriers.

City or origin. (See origin.)

Conjunction ticket. Two or more tickets concurrently issued to a passenger and which together constitute a single contract of carriage.

Connecting point. An intermediate point in an itinerary at which the passenger deplanes from one flight and boards another flight, either on the same carrier or from the flight of one carrier to a flight of another carrier, for continuation of the journey.

Coupon stage. (See flight-coupon stage.)

Destination. The last point in the itinerary and the last point at which the passenger is to deplane at the completion of the journey. (In roundtrip itineraries, the destination and the origin are the same.)

Dollar value of ticket. (See total dollar value of ticket.)

Domestic. Itineraries within or between the 50 U.S. States and the District of Columbia are considered domestic for this Survey.

Fare basis code. The alphabetic code(s) or combination of alphabetic and numeric codes appearing in the “Fare basis” box on the flight coupon which describe the applicable service and discount to which the passenger is entitled. All fare basis codes are summarized into basic categories; namely C—Unrestricted Business Class, D—Restricted Business Class, F—Unrestricted First Class, G—Restricted First Class, X—Restricted Coach/Economy Class, Y—Unrestricted Coach/Economy Class, and U—Unknown (This fare category is used when none is shown on a ticket coupon, or when a fare category is not discernible, or when two or more carrier fare codes are compressed into a single stage of a passenger trip).

Fare ladder. The “For-issuing-office-only” box of a ticket.

Flight-coupon stage. The portion of an itinerary which lies between two contiguous points in the itinerary and between which points the passenger is to travel on a single flight.

Group ticket. A single ticket valid for the transportation of two or more passengers over the same itinerary.

Interline transfer. An occurrence at an intermediate point in an itinerary where a passenger changes from one carrier to another carrier, with or without a stopover.

Intermediate point. Any point in an itinerary, other than the origin or destination, at which the passenger makes an interline or intraline connection or stopover.

International. The world area outside the 50 U.S. States and the District of Columbia. Itineraries between points outside the 50 States are considered as international for this Survey, as well as itineraries between the 50 States and U.S. possessions, and between or within U.S. possessions.

Intraline transfer. An occurrence at an intermediate point in an itinerary
where a passenger changes from a flight of one carrier to another flight of that same carrier, with or without stopover, or where the passenger changes from one class of service to another class of service on the same flight.

Itinerary. All points in the passenger journey, beginning with the origin, followed by the routing, and ending with the destination, in the sequence shown on the ticket.

Operating air carrier. Under a code-share arrangement, the air carrier whose aircraft and flight crew are used to perform a flight segment.

Origin. The first point in the itinerary and the point where the passenger first boards a carrier at the beginning of the itinerary.

Participating carrier. A carrier which is governed by the Survey data collection and reporting instructions contained herein and which is required to file Survey reports with the Department of Transportation.

Point. A city or airport (always identified by its airport code).

Reissued ticket. A ticket issued in exchange for all or part of the unused portion of a previously issued ticket.

Reportable flight coupon. A flight coupon in an itinerary in which the carrier examining the coupon is the first participating carrier to lift a flight coupon in the itinerary and from which coupon the examining carrier records the Survey data.

Reporting carrier. The carrier in a given itinerary which has lifted the reportable flight coupon in that itinerary and which carrier is required to record the Survey data for that itinerary for the report to the Department.

Revenue passenger. A passenger transported for which more than a service charge or nominal remuneration is received by the air carrier. Passengers traveling for a zero fare, because of the frequent flyer or mileage programs are considered revenue passengers, since the revenue considerations for passenger travel were included in their previously purchased tickets.

Routing. The carrier on each flight-coupon stage in an itinerary and the intermediate points of routing stopover or connection (interline or intraline) in the sequence of occurrence in the movement of the passenger from origin to destination. The routing also includes fare-basis summary codes on each flight-coupon stage, to the extent these are available from the ticket.

Scheduled service. Transport service operated on a certificated large air carrier's routes pursuant to published flight schedules, including extra sections of scheduled flights.

Stage. (See flight-coupon stage.)

Ticketed air carrier. Under a code-share arrangement, the air carrier whose two-character air carrier code is used for a flight segment, whether or not it actually operates the flight segment.

Total dollar value of ticket. The sum of the fare plus tax for the entire ticketed itinerary, in whole U.S. dollars with cents dropped. For a group ticket, the amount is the average per passenger. For fares stated in foreign currency, it is the equivalent in U.S. dollars.

Transfer. (See interline transfer and intraline transfer.)
## GENERAL REPORTING PROVISIONS—LARGE CERTIFICATED AIR CARRIERS

### Section 21—Introduction to System of Reports

(a) Each large certificated air carrier subject to the Federal Aviation Act of 1958, as amended, shall file with the BTS, monthly, quarterly, semiannually, and annually BTS Form 41 Reports of financial and operating statistics as prescribed herein unless waiver has been made by the Civil Aeronautics Board.

(b) The system prescribed provides for the submission by each air carrier of four classes of financial and operating statistics, on individual schedules of the BTS Form 41 Report, grouped as follows:

- A. Certification
- B. Balance Sheet Elements
- P. Profit and Loss Elements
- T. Traffic and Capacity Elements

### Table: PASSENGER ORIGIN-DESTINATION SURVEY REPORT

<table>
<thead>
<tr>
<th>Number of Passengers</th>
<th>City Code 1</th>
<th>Car. Fare Code</th>
<th>City Code 2</th>
<th>Car. Fare Code</th>
<th>City Code 3</th>
<th>Car. Fare Code</th>
<th>City Code 4</th>
<th>Car. Fare Code</th>
<th>City Code 5</th>
<th>Car. Fare Code</th>
<th>City Code 6</th>
<th>Car. Fare Code</th>
<th>City Code 7</th>
<th>Car. Fare Code</th>
<th>City Code 8</th>
<th>Car. Fare Code</th>
<th>City Code 9</th>
<th>Fare plus Tax in U.S. Dollars</th>
</tr>
</thead>
<tbody>
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</tr>
</tbody>
</table>

*Car. Fare Code* = Two character alphabetic carrier code followed by fare basis code, such as NFM, indicating Trans World as the carrier and coach discount as the fare basis summary group code.

*City Code* = Three character alphabetic airport code, such as EWR for Newark, OAK for Oakland, and SJC for San Jose.

*Amount* = Dollar amount of ticket, stated in whole U.S. dollars.

*No. of passengers* = Tickets sampled at one-percent are to be multiplied by 10 for reporting on this form. Note that all passenger data are presented as a ten-percent sample.
(c) The prescribed system of reports provides that the frequency of reporting shall be monthly for some schedules, quarterly for some, semiannually for some and annually for others. It also provides in some areas for the classification of large certificated air carriers into Group I, Group II, and Group III with the form and content differentiated as between groups.

(d) Each schedule of the prescribed BTS Form 41 Report has been assigned a specific code. The prefix alphabetical codes A, B, P, and T, respectively, have been employed to denote certification, balance sheet, profit and loss, and traffic and capacity. The digits immediately following the alphabetical prefix designate the particular schedule.

(e) Upon approval by the Director, Office of Airline Information, a carrier may:

1. Supply its own computer prepared formats provided each schedule conforms with the size and format of the forms prescribed in this part.
2. Use telefacsimile, or fax, equipment to submit the forms prescribed by this part; however, forms transmitted by fax must conform to an 8 1/2 x 14 inch size. With prior approval, larger forms may be reduced in size of 8 1/2 x 14 for transmission to the Department.

(f) In submitting each schedule prescribed by this part to the Department, each reporting air carrier shall adhere to the following guidelines:

1. A good quality black ribbon shall be used in preparing the original copy of each schedule.
2. In no event shall any information be typed on the reverse side of copies submitted to the Department.
3. Except as provided for in paragraph (e) of this section, no photocopy or similar process shall be used.

(g) Four separate air carrier entities shall be established for large certificated air carriers conducting scheduled service for the purpose of submitting the prescribed reports. They are as follows:

1. Domestic operations;
2. Operations via the Atlantic Ocean;
3. Operations via the Pacific Ocean; and
4. Operations in Latin American areas. With respect to the first classification, the domestic entity shall embrace all operations within and between the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the U.S. Virgin Islands, and shall also include Canadian transborder operations. The reports to be submitted by each entity shall be comparable to those required of a distinct legal entity whether the reporting entity constitutes such an entity, a semiautonomous physically separated operating division of the carrier, or an entity established for reporting purposes only.

(h) Two separate entities shall be established for large certificated air carriers predominantly engaged in conducting charter activities for the purpose of submitting the prescribed reports: (1) Domestic operations; and (2) international operations. The domestic entity includes all operations within and between the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands. All other operations will be in the international entity.

(i) The entities for which separate reports shall be made by the different route and charter air carriers will be set semiannually by the Office of Airline Information.

(j) As a general rule separate reports shall be filed for the air carrier and for each associated company air carriers as defined in section 03 which is an air carrier. However, transactions of associated companies in which 100 percent equity control resides in the reporting air carrier shall be consolidated with transactions of the reporting air carrier when such associated companies perform services related to the transport operations of the reporting air carrier almost exclusively and are not engaged in air transportation for their own account.

(k) Generally, route air carriers' nonscheduled services shall be treated as an integral part of the reporting entity to which most closely related without regard to the geographic area in which such nonscheduled services may actually be performed. However, supplemental reports shall be made of nonscheduled services (including service for the Department of Defense) in areas not encompassed by the prescribed reporting entity in any month in which
Office of the Secretary, DOT

the available ton-miles of such nonscheduled services exceed 5 percent of the available ton-miles of the reporting entity. Such supplemental reports shall continue until waived by the BTS upon a showing that such nonscheduled operations will not in the subsequent 12-month period exceed the 5-percent limit. The supplemental reports to be filed each month or calendar quarter, as applicable, shall be comprised of report Schedules P-5, T-1, and T-2. Transport and nontransport revenues pertaining to such separately reported nonscheduled services shall be reported on Schedule P-2 each quarter.

(I) When and as required in the national interest, any air carrier which performs nonscheduled transport services for the Department of Defense shall, when directed by the Department, make separate reports for such services as if they were conducted by a physically separate transport entity, such reports shall consist of Schedules P-1 through P-7, T-1, and T-2. The letter "D" shall be inserted on such reports, following the schedule number of each P and T schedule. When a carrier has more than one reporting entity, nonscheduled transport and nonscheduled Defense services shall be assigned to the reporting entity to which more closely related.

Section 22—General Reporting Instructions

(a) One copy of each schedule in the BTS Form 41 report shall be filed with the BTS and shall be received on or before the due date indicated for each such schedule in the list titled "Due Dates of Schedules in BTS Form 41 Report."

LIST OF SCHEDULES IN BTS FORM 41 REPORT

[See footnotes at end of table]

<table>
<thead>
<tr>
<th>Schedule No.</th>
<th>Title</th>
<th>Filing frequency</th>
<th>Applicability by carrier group</th>
</tr>
</thead>
<tbody>
<tr>
<td>A ............</td>
<td>Certification</td>
<td>Q</td>
<td>I (1) X X</td>
</tr>
<tr>
<td>B-1 ...........</td>
<td>Balance sheet</td>
<td>Q</td>
<td>(1) X X</td>
</tr>
<tr>
<td>B-1.1 ..........</td>
<td>Balance sheet</td>
<td>SA</td>
<td>(2) NA NA</td>
</tr>
<tr>
<td>B-7 ...........</td>
<td>Airframe and aircraft engine acquisitions and retirements</td>
<td>Q</td>
<td>NA X X</td>
</tr>
<tr>
<td>B-12 ..........</td>
<td>Statement of changes in financial position</td>
<td>Q</td>
<td>(1) X X</td>
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<tr>
<td>B-43 ..........</td>
<td>Inventory of airframes and aircraft engines</td>
<td>A</td>
<td>X X X</td>
</tr>
<tr>
<td>P-1-1 ..........</td>
<td>Statement of operations</td>
<td>SA</td>
<td>(2) NA NA</td>
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<td>P-1-2 ..........</td>
<td>Statement of operations</td>
<td>Q</td>
<td>(1) X X</td>
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<td>Notes to RSPA Form 41 report</td>
<td>Q</td>
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<tr>
<td>P-5.1 ..........</td>
<td>Aircraft operating expenses</td>
<td>Q(1), SA(2)</td>
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<td>P-5.2 ..........</td>
<td>Aircraft operating expenses</td>
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<td>P-6 ..........</td>
<td>Operating expenses by objective groupings</td>
<td>Q</td>
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<tr>
<td>P-7 ..........</td>
<td>Operating expenses by functional groupings—Group III air carriers</td>
<td>Q</td>
<td>NA NA X</td>
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<td>P-10 ..........</td>
<td>Employment statistics by labor category</td>
<td>A</td>
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<tr>
<td>P-12(a) ........</td>
<td>Fuel consumption by type of service and entity</td>
<td>M</td>
<td>(1) X X</td>
</tr>
<tr>
<td>T-100 ..........</td>
<td>U.S. air carrier traffic and capacity data by nonstop segment and on-flight market.</td>
<td>M</td>
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<tr>
<td>T-100(f) ......</td>
<td>Foreign air carrier traffic data by nonstop segment and on-flight market.</td>
<td>(see 14 CFR 217)</td>
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<td>T-1 ..........</td>
<td>U.S. air carrier traffic and capacity summary by service class</td>
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<td>U.S. air carrier traffic and capacity by aircraft type</td>
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<td>T-3 ..........</td>
<td>U.S. air carrier airport activity statistics</td>
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<tr>
<td>T-8 ..........</td>
<td>Report of all-cargo operations</td>
<td>A</td>
<td>(3) (3) (3)</td>
</tr>
</tbody>
</table>

M=Monthly, Q=Quarterly, SA=Semiannually, A=Annually, NA=Not Applicable, X=All Carriers.
(1) Applicable to Group I Air Carriers with annual operating revenues of $20 million or more.
(2) Applicable to Group I Air Carriers with annual operating revenues below $20 million.
(3) Applicable to Air Carriers conducting 49 U.S.C. 41103 all-cargo operations.
<table>
<thead>
<tr>
<th>Due dates</th>
<th>Financial data on schedule No.</th>
<th>Traffic and capacity data on schedule No.</th>
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<tbody>
<tr>
<td>January 20</td>
<td>P-12(a)</td>
<td>T-100, T-100(f) T-1, T-2, T-3</td>
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<td>January 30</td>
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<td>February 10</td>
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<td>P-6, P-7, P-10.</td>
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<td>December 20</td>
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<tr>
<td>December 30</td>
<td>P-1(a)</td>
<td>T-100, T-100(f), T-1</td>
</tr>
</tbody>
</table>

1 Due dates falling on a Saturday, Sunday or national holiday will become effective the first following work day.

2 Reporting due dates on Form 41 Schedules B and P are extended to March 30 if preliminary schedules are filed at the Department by February 10.

(b) Each large certificated air carrier shall file the applicable schedules of the BTS Form 41 Report with the BTS in accordance with the above instructions with the following exceptions:

1 The time for filing B and P report schedules for the final quarter or semi-annual period of each calendar year may be extended to the following March 30 if the preliminary Schedules B-1 or B-1.1 and P-1.1 or P-1.2 are submitted, as applicable, and are received on or before their respective due dates.

2 For the third month of any calendar quarter, Schedule P-1(a) need not be filed if Schedule P-1.1 or P-1.2 for the quarter or semiannual period, as applicable, is received on the due date prescribed for Schedule P-1(a).

3 Income and expense data on Schedule P-1(a) for each month will be withheld by the BTS from public disclosure, until such time as (i) the semi-annual or quarterly financial reports are due, (ii) the semiannual or quarterly financial reports are filed, or (iii) information covered by monthly reports is publicly released by the carrier concerned, whichever occurs first. Before that time, income and expense data reported on Schedule P-1(a) will be disclosed to parties to any proceeding before the DOT to the extent that such data are relevant and material to the issues in the proceeding upon a determination to this effect by the administrative law judge assigned to the case or by the DOT. Any data to which access is granted may be introduced into evidence, subject to the normal rules of admissibility of evidence. The DOT will make other disclosure of these data upon its own motion or upon application of any interested person, when the DOT finds the public interest so requires. The BTS may, from time to time, publish summary information compiled from Schedule P-1(a) in a form which will not identify the individual carrier. At the request of an air carrier, and upon a showing by such air carriers that public disclosure of its preliminary year-end report would adversely affect its interests and would not be in the public interest, the BTS will withhold such preliminary year-end report from public disclosure until such time as (i) the final report is filed, (ii) the final report is due, or (iii) information covered by the preliminary report is publicly released by the carrier concerned, whichever occurs first.
(c) If circumstances prevent the filing of a report on or before the prescribed due date, consideration will be given to the granting of an extension upon receipt of a written request therefor. To provide ample time for consideration and communication to the air carrier of the action taken, such a request must be delivered to the Board in writing at least three (3) days in advance of the due date, setting forth good and sufficient reason to justify the granting of the extension and the date when the report can be filed. Except in cases of emergency, no such request will be entertained which is not in writing and received by the BTS at least three (3) days before the prescribed due date. If a request is denied, the air carrier remains subject to the filing requirements to the same extent as if no request for extension of time had been made.

(d) [Reserved]

(e) All financial data reported on B, P and G schedules shall reflect the status of the air carrier's books of account for the period for which the report is being made and shall conform to the instructions contained in this Uniform System of Accounts and Reports. At the option of the air carrier, Group III air carriers may round reported financial data to the nearest thousands of dollars by typing "$(000)" at the top of each amount column. All Group I and Group II air carriers may, at their option, round reported financial data to the nearest whole dollars by dropping the cents. All rounded amounts must be balanced within and between schedules. This option applies only to the submission of hardcopy reports. Instructions for the submission of data in ADP format are contained in the Accounting and Reporting Directives, which are available from OAI.

(f) Traffic and other operational statistics included in schedules of the BTS Form 41 reports shall reflect data pertaining to the month, quarter or 12-months-to-date period for which the report is being made.

(g) Adjustments correcting errors in previously reported traffic and other operational statistics shall not be included in data reported in schedules for the current period but shall be effected by submission of corrected schedules for the period to which applicable or, if only a few items are involved, by written notice and authorization to the BTS to correct previously filed reports except that any correction which amounts to less than one-half of one percent (0.5%) of the corrected amount for the month to which related may be included in the report for the current month provided the amount of the correction is clearly noted on the Form 41 Report.

(h) All letters and statements of correction or revision of reported data shall be a part of the BTS Form 41 reports.

(i) All changes in accounting methods having a material impact upon the particular financial elements involved, and all changes in methods of computing and reporting traffic and capacity statistics having a material impact upon the particular statistic involved shall be adequately explained and identified in the report first reflecting such changes. Such explanations related to financial position or financial results shall be made on BTS Form 41 Schedule P-2. Changes in methods for computing or reporting traffic and capacity statistics shall be identified and explained on a separate sheet attached to the first report affected. (See sec. 2-16.) The reporting requirements shall not be construed, in any sense, as relieving the air carrier of the responsibility for conforming its procedures to those otherwise prescribed in this system of accounts and reports.

(j) All financial statements released by carriers to the public reflecting a financial position or operating results for dates or reporting periods not covered by reports on file with the Board shall be filed with the Board simultaneously with their public release.

(Approved by the Office of Management and Budget under control number 2138-0013)

[ER-755, 37 FR 19726, Sept. 21, 1972]

EDITORIAL NOTE: For Federal Register citations affecting part 241, section 22, see the List of CFR Sections Affected in the Finding Aids section of this volume.
FINANCIAL REPORTING REQUIREMENTS

Section 23—Certification and Balance Sheet Elements

Schedule A—Certification

(a) The certification of the BTS Form 41 Report shall be signed by an elective corporate officer, executive, or director. Other persons may be authorized by the carrier to sign the certification provided a written authorization disclosing the individual’s name and title is forwarded to the Department of Transportation. Since corrections or revisions of reported data are a part of the BTS Form 41 Report, all correspondence relating to such matters shall be signed only by the person(s) authorized to sign the certification.

(b) The certification of the Form 41 reports, embodied in Schedule A thereof, shall read as follows:

I, the undersigned (Title of officer in charge of accounts) of the (Full name of the reporting company)
do certify that this report and all schedules, ADP-media submissions, Passenger Origin-Destination Survey submissions and supporting documents which are submitted herewith or have been submitted heretofore as parts of this report filed for the above indicated period have been prepared under my direction; that I have carefully examined them and declare that they correctly reflect the accounts and records of the company, and to the best of my knowledge and belief are a complete and accurate statement, after adjustments to reflect full accruals, of the operating revenues and expenses, income items, assets, liabilities, capital, retained earnings, and operating statistics for the periods reported in the several schedules, the Schedule T-100 ADP-media submissions, and the Passenger Origin-Destination Survey; that the various items herein reported were determined in accordance with the Uniform System of Accounts and Reports for Large Certificated Air Carriers prescribed by the Department of Transportation; and that the data contained herein are reported on a basis consistent with that of the preceding report except as specifically noted in the financial and statistical statements.

Schedule B-1 Balance Sheet

(a) This schedule shall be filed by all Group II and Group III air carriers and Group I air carriers that have annual operating revenues of $20 million or more.

(b) This schedule shall reflect the balances at the close of business on the last day of each calendar quarter for the overall or system operations of each air carrier in conformance with the provisions of sections 4, 5 and 6.

(c) Individual proprietors or partners shall report the aggregate capital contributed by the proprietor or partners in account 2890 Additional Capital Invested.

Schedule B-1.1—Balance Sheet

(a) This schedule shall be filed semi-annually by Group I air carriers with annual operating revenues below $20 million.

(b) Each carrier shall insert in the space provided for “OAG Code” its carrier code as contained in the Official Airlines Guide (OAG). If the OAG does not contain a carrier code for the reporting carrier, a code will be provided by the Office of Airline Information upon request. This code will then be inserted in the space provided for “carrier code.”

(c) This schedule shall show the account balances at the close of business on June 30 or December 31, as applicable, of each semiannual reporting period.

(d) “Current Assets” shall include all resources that may reasonably be expected to be realized in cash or sold or consumed within one year. This group of assets is classified into three basic accounts:

1. “Cash and Equivalents” shall include cash on hand and on deposit, U.S. Government securities, and other temporary cash investments.

2. “Notes and Accounts Receivable-Net” shall include general traffic accounts receivable, government receivables, notes and receivables from associated companies, officers, employees and others, and a deduction for a reasonable allowance for bad debts.
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(3) “Other Current Assets” shall contain all other current assets not provided for in the above classifications. This account shall include, but is not limited to, short-term prepayments, expendable spare parts, supplies and other inventories of flight equipment replacement parts that are usually replaced rather than repaired, and materials and supplies held in stock, such as fuel and oil, expendable tools, office supplies and food service supplies. Spare parts may be reduced by an allowance for obsolescence to provide for losses in value.

(e) “Property and Equipment” shall be segregated into that which is owned and that which is leased under capital leases. All property and equipment, with the exception of land, shall be reported net of accumulated depreciation or amortization.

(f) “Other Assets” shall include all assets not included in the above categories, such as long-term investments, long-term prepayments, long-term receivables, deferred charges, intangible assets, equipment purchase deposits, and construction work in progress.

(g) “Current Liabilities” shall include all obligations, the liquidation of which is reasonably expected to require the use of existing resources within one year. This group of liabilities is classified into three basic accounts:

1. “Notes and Accounts Payable” shall include any payments on long-term debt, short-term notes and accounts payable, and accrued expenses that are payable within one year.

2. “Accrued Taxes” shall include tax liabilities, such as those imposed on income, property and payroll, which are reasonably expected to be liquidated within one year.

3. “Other Current Liabilities” shall include all current liabilities which are not provided for elsewhere, such as air traffic liabilities for unused transportation sold (includes sales of transportation on both the reporting carrier and other carriers).

(i) “Other Liabilities” shall include any debts or obligations which are not properly listed in the “Current Liabilities” or “Long-Term Debt” sections.

(j) “Deferred Credits” shall include all credit balances of a general clearing nature, including credits held in suspense pending receipt of further information necessary for final disposition. Included in this account are deferred income taxes and deferred investment tax credits.

(k) “Stockholder’s Equity” shall be reported as follows:

1. “Capital Stock” shall be segregated as between common and preferred. The number of shares outstanding, along with the par or stated value of the stock, shall be reported. In the case of no-par stock without stated value, the full consideration received shall be reported.

2. “Other Paid-In Capital” shall include the difference between the price at which the capital stock is sold and the par or stated value of the stock.

3. “Retained Earnings” shall represent the net income or loss from all operations of the corporate entity less dividends.

4. “Treasury Stock” shall represent the cost of stock issued by the carrier and reacquired by it but not retired or cancelled.

(l) The statement of certification shall be signed by the carrier’s chief accounting officer.

(m) All substantive matters that may materially influence interpretations or conclusions in regard to the financial condition or the earnings position of the air carrier which are not clearly identified in the body of the schedule or which represent information that cannot be expressed adequately in monetary terms shall be completely and clearly stated in a note attached to this schedule and cross-referenced to the affected account or accounts.

Schedule B-7 Airframe and Aircraft Engine Acquisitions and Retirements

(a) This schedule shall be filed by all Group II and Group III air carriers.

(b) Data applicable to acquisitions and data applicable to retirements shall be grouped and reported separately. The data reported within each group (acquisitions; retirements) shall
be further subgrouped and reported as follows:

(1) Acquisitions: the indicated data shall be reported for each individual airframe, identified by type, model, and design of cabin as to use for passengers exclusively, cargo exclusively, or both passengers and cargo in combination. Data pertaining to aircraft engines shall be reported in aggregate for each type or model; however, leased aircraft engines shall be separately reported under captions entitled: Capital Leases—Aircraft Engines; and Operating Leases—Aircraft Engines. Airframe units leased from others for a period of more than 90 days shall be reported in a separate subsection of this schedule, captioned as follows: Capital Leases—Airframe Units; and Operating Leases—Airframe Units. In addition, a notation shall be made by license number of airframe units of the air carrier returned after lease to others for a period of more than 90 days; moreover, airframe units leased to others under sales-type or direct financing leases shall be separately captioned and reported on this schedule. Aircraft engines leased under interchange arrangements shall not be reported. Aircraft engines leased from others for a period of more than 90 days shall be reported, upon return to the lessor, in a separate subsection of this schedule and captioned as follows: Capital Leases—Aircraft Engines; and Operating Leases—Aircraft Engines. In addition, a notation shall be made by model number, number of units, and name of lessee of aircraft engines leased to others for a period of more than 90 days; moreover, aircraft engines leased to others under sales-type or direct financing leases shall be separately captioned and reported on this schedule. Aircraft engines leased under interchange arrangements shall not be so reported.

(c) All dates shall indicate the day, the month and the year; shall be provided on a unit basis for airframes only, and, shall be reported for each aircraft engine group by date of transaction.

(d) Column 1, “Year of First Delivery—Airframe,” shall reflect, for each reported airframe, the year that the airframe was first delivered by its manufacturer.

(e) Column 2, “Airframe Manufacturer’s Serial Number,” shall reflect the serial number assigned to each reported airframe by its manufacturer.

(f) Column 4, “Acquisitions or Retirements,” shall be used to indicate, for each item entered, whether it represents an acquisition or retirement. This shall be indicated by inserting in Column 4 an “A” for acquisition or an “R” for retirement.

(g) Column 8, “Maximum Seating Capacity,” shall reflect the number of passenger seats installed in each airframe acquired. When airframes are designed for multiple adjustable seating configurations, the maximum number of seats for which designed shall be reported. When the seating configuration of airframes is modified subsequent to original acquisition, the revised passenger capacity of each airframe shall be reported in the quarter in which modified and referenced to identify original capacity reported.

(h) Column 9, “Cost,” shall reflect the book cost of reported airframe and aircraft engine acquisitions and retirements.
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(i) Column 10, "Amortization/Depreciated Cost," shall reflect the book cost, less amortization or depreciation expense, for airframes and aircraft engines that have been retired.

(j) Column 11, "Realization," shall reflect the proceeds from the disposition of airframes and aircraft engines, including any insurance proceeds.

(k) Column 12, "Acquired From/Disposition," shall reflect: (1) for acquisitions: the name of the person or organization from which airframes and aircraft engines are acquired and (2) for disposions (retirements): the name of the person or organization to which airframes and aircraft engines are sold or a notation as to the nature of the retirement and the account to which any depreciated cost has been charged, if not sold. Items included in accounts 1607, 1608, 1707, and 1708, sold as a part of an airframe or aircraft sales transaction, shall also be identified by the name of the buyer. Other sales of items included in these accounts shall be reported in a separate group in aggregate for each property account affected.

Schedule B-12—Statement of Cash Flows

(a) This Schedule shall be filed quarterly by all Group II and Group III air carriers and Group I air carriers that have annual operating revenues of $20 million or more.

(b) This schedule shall be filed for the overall or system operations of the air carrier.

(c) The statement of cash flows shall separately disclose the amount of net cash provided or used during the reporting period from the carrier’s operating activities, investing activities and financing activities. The effect on cash and cash equivalents of the total amount of net cash provided or used during the quarter from each of the above activities shall be clearly disclosed so as to reconcile beginning and ending cash and cash equivalents.

(d) Carriers may use either the direct or indirect method of reporting cash flows. Under either method, the reporting of cash flows from investing and financing activities will remain the same. However, the reporting of cash flows from operating activities does differ between the two methods.

(e) For carriers electing to use the direct method, cash flows from operating activities are reported as gross amounts of the principal components of cash receipts and cash payments from operating activities, such as cash received from passengers and shippers, cash paid to suppliers, and cash paid to employees. Each carrier using the direct method shall provide as part of its statement of cash flows, a separate schedule that reconciles net income (as reported on Schedule P-1.2 in Account 9899) to cash flow from operating activities.

(f) For carriers electing to use the indirect method, cash flows from operating activities shall reflect net income (as reported on Schedule P-1.2 in Account 9899) along with the adjustments necessary to reconcile net income (Account 9899) to net cash for the period (Net Cash Provided or Used By Operating Activities).

(g) Regardless of the method used, the statement of cash flows shall reflect the amount of net cash flow provided or used by operating activities during the reporting period.

(h) The balance of "Cash and Cash Equivalents," at the beginning and ending of the quarterly period covered by the report, should equal the sum of Accounts 1010, "Cash," and 1100, "Short-term Investments," as reported on the immediately preceding and current quarterly Schedule B-1, "Balance Sheet." If the sum of these two accounts does not equal the total "Cash and Cash Equivalents" reported on the statement of cash flows, then a footnote explaining the difference shall be provided as part of the statement of cash flows.

Schedule B-43—Inventory of Airframes and Aircraft Engines

(a) This schedule shall be filed by all Group I, Group II and Group III air carriers.

(b) The indicated data shall be reported for each individual airframe, identified by type, model and design of cabin (main deck) as to use for passengers exclusively, cargo exclusively, or both passengers and cargo in combination. Type and model refers to aircraft models such as B-707-100, B-707-200, DC-10-40, Beech-18, Piper PA-32.
etc. Aircraft type designations are prescribed in Accounting and Reporting Directive No. 178, “List of Aircraft Type Numeric Codes.” Copies of this directive and subsequent updates to the list of aircraft type codes are available from the Department’s Office of Airline Information. Airframes that are authorized for operation over water under FAA regulation FAR 121 shall be so indicated by asterisk.

(c) Data pertaining to aircraft engines shall be reported on a group basis by type of engine and by type of aircraft to which related.

(d) Data in this schedule shall be grouped and subtotaled as data pertaining to airframes and data pertaining to aircraft engines. Data pertaining to nonoperating airframes and aircraft engines shall be reported in a group below the data for operating equipment. Data pertaining to airframes and aircraft engines obtained under operating and capital leases shall be reported, by type of lease, in a separately captioned grouping below nonoperating airframes and aircraft engines and subgrouped within those groups according to operating and nonoperating equipment.

(e) Column 1, “Year of First Delivery—Airframe,” shall reflect, for each reported airframe, the year that the airframe was first delivered by its manufacturer.

(f) Column 2, “Airframe Manufacturer’s Serial Number,” shall reflect the serial number assigned to each reported airframe by its manufacturer.

(g) Data pertaining to airframes and aircraft engines obtained under operating leases shall be listed in Columns 1 through 9; the cost of improvements to equipment under operating leases shall be reported in Columns 10 through 12.

(h) Column 9, “Available Capacity (Weight),” shall reflect, for each reported aircraft type, the available capacity (stated in pounds) that is used in computing the available ton-miles reported on Schedules T-100, T-1, and T-2.

(i) Column 10, “Acquired Cost or Capitalized Value,” shall include (1) the acquisition cost of owned airframes and aircraft engines; (2) the total capitalized cost of obtaining airframes and engines under capital leases; and (3) the cost of improvements to airframes and engines obtained under operating leases.

(j) Column 11, “Allowance for Depreciation or Amortization,” shall include (1) the accumulations of all provisions for losses due to use and obsolescence that are applicable to owned airframes and aircraft engines, (2) the amount of amortization recorded for amortizing the value of airframes and engines obtained under capital leases, and (3) the amount of amortization recorded for amortizing the value of improvements to airframes and aircraft engines obtained under operating leases.

(k) Column 12, “Depreciated Cost or Amortized Value,” shall be calculated as either (1) Acquired Cost (Column 10) less the Allowance for Depreciation (Column 11) or (2) Capitalized Value (Column 10) less Amortization (Column 11).

(l) Column 13, “Estimated Residual Value,” shall state, in dollars, the residual value assigned to owned and capital-leased airframes and aircraft engines, including any overhaul value not subject to depreciation.

(m) Column 14, “Estimated Depreciable or Amortizable Life (Months),” shall state the estimated depreciable or amortizable life from the date of acquisition of each airframe and each group of aircraft engines.

[ER-755, 37 FR 19726, Sept. 21, 1972]

EDITORIAL NOTE: For Federal Register citations affecting part 241, section 23, see the List of CFR Sections Affected in the Finding Aids section of this volume.

Section 24—Profit and Loss Elements

Schedule P-1.1—Statement of Operations

(a) This schedule shall be filed semiannually by Group I air carriers with annual operating revenues below $20 million. Data reported on this schedule shall be for the overall or system operations of the air carrier.

(b) This schedule shall show the results of operations for six-month periods ending June 30 and December 31. Data reported in the “12 Months-to-Date” column shall represent for each individual item the sum of the amount
(c) Each carrier shall insert in the space provided for "OAG Code" its carrier code as contained in the Official Airlines Guide (OAG). If the OAG does not contain a carrier code for the reporting carrier, a code will be provided by the Office of Airline Information upon request. This code will then be placed in the space provided for "carrier code."

(d) "Operating Revenue" shall be put in categories as follows:
(1) "Transport Revenue" shall include the revenue generated by the performance of air transportation services. This category shall be subdivided as follows:
   (i) "Scheduled Service" shall include all transport revenue derived from operations between pairs of points which are served on a regularly scheduled basis. Transport revenue received from scheduled service operations shall be subdivided as follows:
      (A) Passengers. Revenue generated from the transportation of passengers shall be included in this category.
      (B) Other. Revenue generated by the transportation of property and mail shall be included in this category.
   (ii) "Nonscheduled Service" shall include all transport revenue derived from operations between pairs of points which are not served on a regularly scheduled basis.

(2) "Transport-Related Revenue" shall include monies received for providing air transportation facilities associated with the performance of services which flow from and are incidental to air transportation services performed by the air carrier. This category shall be subdivided as follows:
   (i) Public Service Revenue. This category shall include amounts of compensation paid to the carrier under 49 U.S.C. 41733.
   (ii) Other. This category shall include other transport-related revenue such as in-flight sales, restaurant and food service (ground), rental of property or equipment, limousine service, interchange sales, and cargo pick-up and delivery charges.

(e) "Operating Expense" shall be segregated as follows:
(1) "Flying Operations" shall include expenses incurred directly in the inflight operation of aircraft and expenses incurred in the holding of aircraft and aircraft operation personnel in readiness for assignment to an inflight status.

(2) "Maintenance" shall include all expenses which are specifically identifiable with the repair and upkeep of property and equipment used in the performance of air transportation.

(3) "General and Administrative" shall include that portion of all expenses of a general corporate nature and all other expenses not provided for elsewhere which are related to air transport operations either directly or indirectly.

(4) "Depreciation and Amortization" shall include all depreciation and amortization expenses applicable to property and equipment used in providing air transportation services. These expenses shall be segregated between those applicable to owned property and equipment and those applicable to property and equipment which is leased.

(5) "Transport-Related Expense" shall include all expenses associated with the transport-related revenues reported on line 5 of this schedule.

(f) "Operating Profit (Loss)" shall be computed by subtracting the total operating expenses from the total operating revenues.

(g) "Nonoperating Income and Expense" shall include all revenues and expenses resulting from commercial ventures which are not inherently related to the performance of air transport services. For example, the revenues and expenses related to operating a hotel or motel would be reported under this category. This category shall also include the total interest expense incurred from all sources and shall be subdivided as follows:
   (1) Interest Expense.
   (2) Other Nonoperating (Net).

(h) "Income Tax" shall reflect the provisions for accruals of Federal, State, local, and foreign taxes based upon taxable income, and computed at the normal and surtax rates in effect during the current accounting year.

(i) "Discontinued Operations, Extraordinary Items or Accounting
Changes’ shall reflect any earnings or losses from discontinued operations, the net of the tax amount of extraordinary items, and the cumulative effect of any changes in accounting principles.

(j) Any air carrier that does not file Schedule P-1(a) in accordance with the filing option described in section 22—General Reporting Instructions shall, for the sixth month of any semi-annual period during which the option is exercised, type in the bottom margin of this statement of operations the total number of full-time and part-time employees to be labeled as such and calculated in accordance with paragraph (d) of the reporting instructions for Schedule P-1(a).

Schedule P-1.2—Statement of Operations

(a) This schedule shall be filed quarterly by all Group II and Group III air carriers and Group I air carriers that have annual operating revenues of $20 million or more.

(b) Route and charter carriers shall file separate statements of operations for each separate operating entity and for the overall, or system operations.

(c) Data reported on this schedule shall conform with the instructions pertaining to profit and loss classifications within this Uniform System of Accounts and Reports.

(d) Data reported in the “12 Months-to-Date” column shall represent for each item the sum of amounts reported in the “Quarter” column for the current and next previous three quarters.

(e) Group III air carriers shall subdivide total Transport Revenues-Passenger (Account 3901) between Accounts 3901.1, Passenger-Flight Class and Account 3901.2 Passenger-Coach, only for operations that are reported in the international entity (Atlantic, Pacific and Latin American). First class and coach passenger revenues associated with transport operations reported in the domestic entity shall be reported as a combined total in Account 3901 Transport Revenues-Passenger.

(f) All Group I and Group II air carriers shall report first class and coach passenger revenues as a combined total in Account 3901 Transport Revenues-Passenger, for both domestic and international entity operations. However, U.S. air carriers in any carrier group that elect to do so may continue to report first class and coach revenue data, if they consider such voluntary reporting to be less burdensome than changing their existing financial reporting system.

(g) Any air carrier that does not file Schedule P-1(a) in accordance with the filing option described in section 22—General Reporting Instructions shall, for the third month of any calendar quarter during which the option is exercised, type in the bottom margin of the system statement of operations the total number of full-time and part-time employees to be labeled as such and calculated in accordance with paragraph (d) of the reporting instructions for Schedule P-1(a).

Schedule P-1(a) Interim Income Statement

(a) This schedule shall be filed by all air carriers.

(b) This schedule shall be filed for the overall or system operations of the air carrier.

(c) Data reported on this schedule shall reflect the results of operations for the month covered by the report and shall conform to the instructions pertaining to profit and loss classifications within this Uniform System of Accounts and Reports.

(d) Air carriers shall report on this schedule:

1. Total operating revenues,
2. Total operating expenses,
3. Operating profit or loss,
4. Net income,
5. Passenger revenues—scheduled service,
6. Public service revenues (subsidy) and other information on
7. The total number of full-time and
8. Part-time employees. Total number of full-time employees and total number of part-time employees shall reflect for the overall or system operations of the air carrier the total number of full-time and part-time employees, respectively, who worked or received pay for any part of the pay period(s) ending nearest the 15th day of the month. For the purposes of this part, “part-time employees” means those employees hired to work less
than the number of hours that is customary or standard for their occupational specialty.

(e) In the event of a labor strike, the “number of employees” to be reported on this schedule shall be determined on and actual payroll basis. Actual payroll shall be determined in accordance with paragraph (d) of these reporting instructions. An air carrier that on October 24, 1978, held a certificate issued under 49 U.S.C. 41102 shall also report in a footnote on this schedule the number of full-time employees who were deprived of employment because of a strike (i.e., the number of full-time employees who, but for a strike, would have been included in the number reported in accordance with paragraph (d)(7)).

Schedule P-2—Notes to BTS Form 41 Report

(a) This schedule shall be filed quarterly by all Group II and Group III air carriers and Group I air carriers that have annual operating revenues of $20 million or more.

(b) Route and charter air carriers shall file this schedule for each separate operating entity and for the overall, or system operations of the carrier.

(c) All substantive matters which may influence materially interpretations or conclusions in regard to the financial condition or the earnings position of the air carrier which are not clearly identified in the body of the Form 41 report or which represent information that cannot be expressed adequately in monetary terms shall be completely and clearly stated in this schedule and cross-referenced to the affected account or accounts. The informative disclosure on this schedule for the system operations of the air carrier shall conform, at the end of each carrier’s fiscal or calendar year, with the footnotes prepared for audited financial statements.

(d) The amounts and estimated delivery dates of any purchase commitments of material size and not of a recurrent routine character shall be explained on this schedule. In the case of commitments involving flight equipment, the amount for each equipment type may be given in total, including any engines, airframes and spares; but the number of airframes and the number of engines by type shall be given, as well as the estimated delivery date for each complete aircraft. Reports on commitments other than for flight equipment are required only in the December 31 report of each calendar year.

(e) Each scheduled air carrier shall include on this schedule a description of each interruption in air transport operations, the aggregate effect of which is ten (10) percent or more of the scheduled revenue plane-miles which, except for the interruption, would have been operated during the month or either of 2 consecutive months affected. The information to be reported for each such interruption in operations shall consist of:

(1) For the report period in which partial or complete interruption first occurs, the nature of the interruption and dates of partial and/or complete cessation of operations, as applicable;

(2) For each report period until full resumption of operations, an estimate of the revenue plane-miles canceled in each month of the quarter because of the interruption; and

(3) For the report period in which scheduled operations are resumed, dates of partial and/or complete resumption, as applicable.

Schedule P-5.1—Aircraft Operating Expenses

(a) This schedule shall be filed by all Group I air carriers. Group I air carriers that have annual operating revenues of $20 million or more shall file this schedule quarterly and only report direct operating expense data (lines 1 thru 9). Group I air carriers with annual operating revenues below $20 million shall file this schedule semiannually and report both direct and indirect operating expense data (lines 1 thru 16).

(b) Subject to the provisions of Section 22(a), quarterly reports are due on May 10, August 10, November 10 and February 10 for the first, second, third and fourth calendar quarters, respectively. Semiannual reports are due on August 10 and February 10.

(c) Each carrier shall indicate in the space provided its full corporate name and an “X” shall be inserted in the appropriate box to indicate whether the data being reported are quarterly or six
months data. The period-ending data shall be indicated in the space provided.

(d) Route and charter air carriers subject to the quarterly filing requirement shall file this schedule for each operating entity of the air carrier. Air carriers subject to the semiannual filing requirement shall file this schedule for the overall or system operations of the air carrier.

(e) This schedule shall show the direct and indirect expenses incurred in aircraft operations. Direct expense data applicable to each aircraft type operated by the carrier shall be reported in separate columns of this schedule. Each aircraft type reported shall be identified at the head of each column in the space provided. "Aircraft Type" refers to aircraft models such as B-707-100, B-707-200, DC-10-40, Beech-18, Piper PA-32, etc. Aircraft Type designations are prescribed in the Accounting and Reporting Directives, which is available from the Board's Information Management Division. In the space provided for "Aircraft Code" carriers shall insert the four digit code which is prescribed in the Accounting and Reporting Directives for the reported aircraft type.

(f) Direct aircraft operating expenses shall be reported in the following categories:

1. Line 2 "Flying Operations (Less Rental)" shall be subdivided as follows:
   i. Line 3 "Pilot and Copilot" expense shall include pilots' and copilots' salaries, and related employee benefits, pensions, payroll taxes and personnel expenses.
   ii. Line 4 "Aircraft Fuel and Oil" expense shall include the cost of fuel and oil expenses in flight operations and non-refundable aircraft fuel and oil taxes.
   iii. Line 5 "Other" expenses shall include general (hull) insurance, and all other expenses incurred in the in-flight operation of aircraft and holding of aircraft and aircraft operational personnel in readiness for assignment to an in-flight status that are not provided for otherwise on this schedule.

2. Line 6 "Total Flying Operations (Less Rentals)" shall equal the sum of lines 3, 4 and 5.

3. Line 7 "Maintenance-Flight Equipment" shall include the cost of labor, material and related overhead expended by the carrier to maintain flight equipment, general services purchased for flight equipment maintenance from associated or other outside companies, and provisions for flight equipment overhauls.

4. Line 8 "Depreciation and Rental-Flight Equipment" expense shall include depreciation of flight equipment, amortization of capitalized leases for flight equipment, provision for obsolescence and deterioration of spare parts, and rental expense of flight equipment.

5. Line 9 "Total Direct Expense" shall equal the sum of lines 6, 7 and 8.

(g) Line 10 Indirect aircraft operating expenses shall be reported only in total for all aircraft types and shall be segregated according to the following categories:

1. Line 11 "Flight Attendant Expense" shall include flight attendants' salaries, and related employee benefits, pensions, payroll taxes and personnel expenses.

2. Line 12 "Traffic Related Expense" shall include traffic solicitor salaries, traffic commissions, passenger food expense, traffic liability insurance, advertising and other promotion and publicity expenses, and the fringe benefit expenses related to all salaries in this classification.

3. Line 13 "Departure Related (Station) Expense" shall include salaries and fringe benefits for general management personnel, recordkeeping and statistical personnel, lawyers, and law clerks, and purchasing personnel; legal fees and expenses; stationery; printing; uncollectable accounts; insurance purchased: general; memberships; corporate and fiscal expenses; and all other expenses which cannot be identified or allocated to some other specifically identified indirect cost category.

4. Line 14 "Capacity Related Expense" shall include salaries and fringe benefits for general management personnel, recordkeeping and statistical personnel, lawyers, and law clerks, and purchasing personnel; legal fees and expenses; stationery; printing; uncollectable accounts; insurance purchased: general; memberships; corporate and fiscal expenses; and all other expenses which cannot be identified or allocated to some other specifically identified indirect cost category.

5. Line 15 "Total Indirect Expense" shall equal the sum of lines 11, 12, 13 and 14.
(i) Line 15 “Total Operating Expense” shall equal the sum of lines 9 and 15.

Schedule P-5.2—Aircraft Operating Expenses

(a) This schedule shall be filed by all Group II and Group III air carriers.

(b) Route and charter air carriers shall file this schedule for each operating entity of the air carrier.

(c) Data applicable to each aircraft type operated by the air carrier shall be reported in separate columns of this schedule. “Aircraft Type” refers to aircraft models (such as B-707-100, B-707-300, DC-9-30, etc.) that are prescribed in the Accounting and Reporting Directives, which is available from the Office of Airline Information. In the space provided for “Aircraft Code” carriers shall insert the four digit code which is prescribed in the Accounting and Reporting Directives for the reported aircraft type. For route air carriers, expenses of operating aircraft provided by other carriers under interchange agreements shall be separately reported in total for all such aircraft as if for a distinct aircraft type. Interchange expenses applicable to aircraft of the same type as those owned or operated by the air carrier shall be distributed in summary memo form as item 98.1 and 98.2 to each aircraft type owned or operated by that air carrier. Aircraft types not generally used in revenue service shall be separately reported. If more than one type of aircraft is involved, a separation of data relating to each type of aircraft shall not be required.

(d) Each aircraft type for which a report is being made shall be identified at the head of each column in the space provided. Data applicable to aircraft designed primarily for cargo services and only incidentally used for passenger services shall be reported in separate columns, and the word “cargo” shall be inserted after the aircraft type at the head of the column. The prescribed reporting by aircraft types may be reviewed from time to time upon request by individual air carriers, or upon the initiative of the BTS, and groupings of aircraft types for reporting purposes may be prescribed or amended in specific instances.

(e) I talicized codes and item titles do not constitute accounts or account numbers prescribed for air carrier accounting, but shall be used for reporting purposes only.

(f) Item 79.6 “Applied Maintenance Burden” shall reflect a memorandum allocation by each air carrier of the total expenses included in subfunction 5300 “Maintenance Burden” between maintenance of flight equipment, by aircraft type, and maintenance of ground property and equipment. The allocation of subfunction 5300 (maintenance burden) shall include the net effect of charges and credits to profit and loss account 5272 Flight Equipment Airworthiness Provisions.

(g) Item 73 “Obsolescence and Deterioration—Expendable Parts” shall reflect (for obsolescence and deterioration of flight equipment expendable parts) the gross provisions for losses in value of expendable parts during the current accounting period offset by any credits applicable to the current period for adjustments for excess inventory levels determined pursuant to section 6-1311.

(h) The total of function 5100 “Flying Operations” reported on this schedule shall agree with corresponding amounts reported on Schedule P-1.

Schedule P-6—Operating Expenses by Objective Groupings

(a) This schedule shall be filed quarterly by all Group II and Group III air carriers and Group I air carriers that have annual operating revenues of $20 million or more.

(b) Route and charter air carriers shall file this schedule for each separate operating entity.

(c) Line 36 “Total Operating Expenses” shall agree with the corresponding amount reported on Schedule P-1.

Schedule P-7—Operating Expenses by Functional Groupings—Group III Air Carriers

(a) This schedule shall be filed by all Group III air carriers.

(b) Route and charter air carriers shall file this schedule for each operating entity of the air carrier.
(c) Line 38 "Total Operating Expenses" shall agree with the corresponding amount reported on Schedule P-12.

Schedule P-10—Employment Statistics by Labor Category

(a) This schedule shall be filed annually by all Group II and Group III air carriers and Group I air carriers that have annual operating revenues of $20 million or more.

(b) Separate sets of this schedule shall be filed for each operating entity of the air carrier. Employees will be allocated to the reporting entities on a basis consistent with that used in the allocation of salaries for Form 41 financial reporting purposes.

(c) Column 3, "Number of Employees," shall reflect, for each category in column 1, the weighted average number of full-time employees who received pay for any part of the calendar year. In determining the weighted average, all temporary or part-time employees shall be restated, based on their hours paid, as an equivalent number of full-time employees. The calculation shall be based on a standard full-time 2,080-hour year with overtime hours excluded from the computation.

(d) Labor category description—"Other personnel" shall include all employees whose salary is chargeable to accounts 30, 32, 34 and 35 in this Uniform System of Accounts and Reports.

(e) Labor category description—"Transport-related" shall include all employees whose salary is not chargeable to one of the various salary accounts contained in the Uniform System of Accounts and Reports. For example, this category would include those employees who work in transport-related operations and other activities for which a separate payroll account is not prescribed. The number of employees reported as transport-related shall be calculated in accordance with paragraph (c) of these reporting instructions.

Schedule P-12(a)—Fuel Consumption by Type of Service and Entity

(a) This schedule shall be filed monthly by all Group II and Group III air carriers and Group I air carriers that have annual operating revenues of $20 million or more.

(b) A single copy (original only) of this schedule shall be filed to report monthly fuel consumption data by type of service and entity.

(c) For the purposes of this schedule, type of service shall be either scheduled service or nonscheduled service as those terms are defined in section 03 of part 241.

(d) For the purpose of this schedule, scheduled service shall be reported separately for: (1) Intra-Alaskan operations; (2) domestic operations, which shall include all operations within and between the 50 States of the United States (except Intra-Alaska), the District of Columbia, the Commonwealth of Puerto Rico and the United States Virgin Islands and Canadian transborder operations; (3) Atlantic operations (excluding Bermuda); (4) Pacific operations which shall include the North/Central Pacific, South Pacific (including Australia) and the Trust Territories; and (5) Latin American operations which shall include the Caribbean (including Bermuda and the Guianas), Mexico and South/Central America.

(e) For the purpose of this schedule, nonscheduled service shall be reported separately for domestic operations and international operations as defined in paragraph (d) above, except that domestic and international MAC operations shall be reported on separate lines.

(f) The cost data reported on each line shall represent the average cost of fuel, as determined at the station level, consumed in that entity.

(g) The cost of fuel shall include shrinkage but exclude (1) "through-put" and "in to plane" fees, i.e., service charges or gallonage levies assessed by or against the fuel vendor or concessionaire and passed on to the carrier in a separately identifiable form and (2) nonrefundable Federal and State excise taxes. However, "through-put" and "in to plane" charges that cannot be identified or segregated from the cost of fuel shall remain a part of the cost of fuel as reported on this schedule.

(h) Each air carrier shall maintain records for each station showing the computation of fuel inventories and...
Office of the Secretary, DOT

consumption for each fuel type. The periodic average cost method shall be used in computing fuel inventories and consumption. Under this method, an average unit cost for each fuel type shall be computed by dividing the total cost of fuel available (Beginning Inventory plus Purchases) by the total gallons available. The resulting unit cost shall then be used to determine the ending inventory and the total consumption costs to be reported on this schedule.

Where amounts reported for a specific entity include other than Jet A fuel, a footnote shall be added indicating the number of gallons and applicable costs of such other fuel included in amounts reported for that entity.

Where any adjustment(s) recorded on the books of the carrier results in a material distortion of the current month's schedule, carriers shall file a revised schedule P-12(a) for the month(s) affected.

Data reported on this schedule shall be withheld from public release until the quarterly Form 41 P schedules for the calendar quarter to which the monthly schedules relate are due at the BTS. However, aggregate data may be released before that time without identifying individual carriers. Provisions governing the due dates for submitting the quarterly P schedules are contained in paragraphs (a) and (b) of section 22 of this part. Individual carrier fuel data withheld from public disclosure may be disclosed by the BTS to:

(1) Parties to any proceeding before the DOT to the extent such material is relevant and material to the issues in the proceeding upon a determination to this effect by the administrative law judge assigned to the case or by the DOT;

(2) Agencies and other components of the Federal Government for their internal use only; and

Such persons and in such circumstances as the BTS determines to be in the public interest or consistent with its regulatory functions and responsibilities.

(Approved by the Office of Management and Budget under control number 2138-0013)

EDITORIAL NOTE: For Federal Register citations affecting part 241 section 24, see the List of CFR Sections Affected in the Finding Aids section of this volume.

TRAFFIC REPORTING REQUIREMENTS

Section 25—Traffic and Capacity Elements

General Instructions. (a) All prescribed reporting for traffic and capacity elements shall conform with the data compilation standards set forth in section 19—Uniform Classification of Operating Statistics.

(b) Schedules T-1, T-2, T-3 and T-100 for U.S. air carriers shall be submitted in magnetic computer tape or floppy disc as provided in section 19-1(c) of this part. As prescribed in section 1-02 of this part, air carriers may request a waiver from the Director, Office of Airline Information, BTS, to allow the submission of hardcopy reports.

Schedule T-1 U.S. Air Carrier Traffic and Capacity Summary-By Service Class

(a) Schedule T-1 collects summary statistics to supplement the detail Schedule T-100 data. This schedule shall be filed monthly by each large certificated U.S. air carrier conducting domestic charter, or domestic cargo operations, or military charters in each applicable entity. Traffic and capacity data are reported on this schedule for the following service classes.

(1) G—Scheduled All-Cargo.

(2) L—Nonscheduled Civilian Passenger/Cargo.

(3) P—Nonscheduled Civilian Cargo.

(4) N—Nonscheduled Military Passenger/Cargo.

(5) R—Nonscheduled Military Cargo.

(b) Separate schedules shall be filed for each operating entity.

(c) Detailed instructions for preparing Schedule T-1 are included in the Appendix to this section.

(d) The reported data shall be compiled as aggregates of the basic data prescribed in section 19, Uniform Classification of Operating Statistics.

(e) The schedule shall include the following items:
Schedule T-2 U.S. Air Carrier Traffic and Capacity Statistics-By Aircraft Type

(a) Schedule T-2 collects summary statistics to supplement the detail Schedule T-100 data. This schedule shall be filed for each calendar quarter by each large certificated U.S. air carrier.

(b) Separate schedules shall be filed for each operating entity of the air carrier.

(c) Detailed instructions for preparing Schedule T-2 are included in the Appendix to this section.

(d) The reported data shall be compiled as aggregates of the data prescribed under section 19-5(c)(2) of this part.

(e) This schedule shall include the following items:

<table>
<thead>
<tr>
<th>Code</th>
<th>Service class/Code</th>
<th>Elements</th>
</tr>
</thead>
<tbody>
<tr>
<td>.......</td>
<td>.......</td>
<td>Air carrier, Operating entity, Report date (quarter ended), Aircraft type code, Service class code.</td>
</tr>
<tr>
<td>110 ...</td>
<td>G,L,N,P,R</td>
<td>Revenue passenger-miles (000).</td>
</tr>
<tr>
<td>140 ...</td>
<td>L,N</td>
<td>Revenue ton-miles.</td>
</tr>
<tr>
<td>240 ...</td>
<td>G,L,N,P,R</td>
<td>Revenue passenger-miles flown.</td>
</tr>
<tr>
<td>247 ...</td>
<td>Z</td>
<td>Revenue aircraft miles scheduled.</td>
</tr>
<tr>
<td>410 ...</td>
<td>G,L,N,P,R</td>
<td>Revenue aircraft departures performed.</td>
</tr>
<tr>
<td>610 ...</td>
<td>G,L,N,P,R</td>
<td>Revenue aircraft hours (airborne).</td>
</tr>
</tbody>
</table>

Schedule T-3 U.S. Air Carrier Airport Activity Statistics

(a) This schedule supplements the detail Schedule T-100 data. Schedule T-3 collects supplementary airport activity statistics as follows: The domestic entity report covers summary statistics on domestic all-cargo operations and both civilian and military charters. The international entity report covers summary information on military charter operations only. Further, only the U.S. airport is identified for international military charter operations, and airports outside the U.S. are summarized as a one-line total, coded “NON” in lieu of the airport code; these data are collected only on this schedule, not in the detail Schedule T-100.

(b) Separate schedules shall be filed for each air carrier entity, as prescribed under section 19-5(c)(2) of this part.

(c) In addition to the following general information, more detailed instructions for completing schedule T-3 are included in the Appendix to this section.

(d) The data shall be compiled as aggregates of the basic data prescribed in section 19, Uniform Classification of Operating Statistics.

(e) This schedule shall include the following items:

<table>
<thead>
<tr>
<th>Code</th>
<th>Service class</th>
<th>Elements</th>
</tr>
</thead>
<tbody>
<tr>
<td>630 ...</td>
<td>Z</td>
<td>Revenue aircraft hours (ramp-to-ramp).</td>
</tr>
<tr>
<td>660 ...</td>
<td>Z</td>
<td>Total aircraft hours airborne.</td>
</tr>
<tr>
<td>810 ...</td>
<td>Z</td>
<td>Aircraft days assigned to service—carrier’s equipment.</td>
</tr>
<tr>
<td>820 ...</td>
<td>Z</td>
<td>Aircraft days assigned to service—carrier’s routes.</td>
</tr>
<tr>
<td>921 ...</td>
<td>Z</td>
<td>Aircraft fuels issued (gallons).</td>
</tr>
</tbody>
</table>
Schedule T-8—Report of all-cargo operations.

(a) This schedule shall be filed annually by all air carriers that conduct all-cargo operations under certificates issued under 49 U.S.C. 41103.

(b) Data reported on this schedule shall include only results of operations conducted in all-cargo aircraft. Data shall be segregated between domestic all-cargo operations conducted within the geographic limitations of section 418 certificates and all other all-cargo operations.

(c) Statement of operations. This statement shall include the following elements:

1. Total operating revenue, categorized as follows:
   i. Transport revenues from the carriage of property in scheduled and nonscheduled service;
   ii. Transport revenues from the carriage of mail in scheduled and nonscheduled service; and
   iii. Transport-related revenues.

2. Total operating expenses; and

3. Operating profit or loss, computed by subtracting the total operating expenses from the total operating revenues.

(d) Summary of traffic and capacity statistics. This summary shall include the following elements:

1. Total revenue ton-miles, which are the aircraft miles flown on each flight stage times the number of tons of revenue traffic carried on that stage. They shall be categorized as follows:
   i. Property; and
   ii. Mail.

2. Revenue tons enplaned, reflecting the total revenue tons of cargo loaded on aircraft during the annual period.

3. Available ton-miles, reflecting the total revenue ton-miles available for all-cargo service during the annual period, and computed by multiplying aircraft miles flown on each flight stage by the number of tons of aircraft capacity available for that stage.

4. Aircraft miles flown, reflecting the total number of aircraft miles flown in cargo service during the annual period:

5. Aircraft departures performed, reflecting the total number of take-offs performed in cargo service during the annual period; and

6. Aircraft hours airborne, reflecting the aircraft hours of flight (from takeoff to landing) performed in cargo service during the annual period.

Schedule T-100 U.S. Air Carrier Traffic and Capacity Data By Nonstop Segment and On-Flight Market

(a) This Schedule T-100 collects detail on-flight market and nonstop segment data. This schedule shall be filed monthly by each large certificated U.S. air carrier except for a charter air carrier or an all-cargo carrier with only domestic operations. Separate data shall be reported on Schedule T-100 for each operating entity (Latin America, Atlantic, Pacific, International or Domestic) of the air carrier in the five digit entity code prescribed under section 19-5(c)(2) of this part. Domestic scheduled passenger/cargo operations and all international operations of scheduled and nonscheduled passenger/cargo and all cargo services shall be reported on Schedule T-100, except that international military charters shall not be reported on Schedule T-100.

(b) Guidelines for reporting the automated monthly Schedule T-100 are included in the Appendix to this section.

(c) Reported data shall be compiled as aggregates of the basic data elements and service classes contained in sections 19-4 and 19-5 of this part.

Schedule T-100(f) Foreign Air Carrier Traffic Data by Nonstop Segment and On-Flight Market

(a) This Schedule T-100(f) collects detail on-flight market and nonstop segment data. This schedule shall be filed monthly by each foreign (non-U.S.) air carrier conducting operations to or from the United States with large aircraft pursuant to Section 41302 permits or exemption authority. Reported traffic data shall include all services affecting the United States, as prescribed in this part.

(b) Guidelines for reporting the monthly Schedule T-100(f) are included
in the Appendix to §217.10 of this chapter. Copies of these instructions are provided to each foreign air carrier submitting the traffic data. Copies are also available from the Office of Airline Information, K–25, Room 4125, U.S. Department of Transportation, 400 Seventh St., SW., Washington, DC 20590.

(c) The reported data shall be compiled as aggregates of the basic data elements and service classes prescribed in sections 19-4 and 19-5 of this part.

APPENDIX TO SECTION 241.25 OF CFR PART 241—INSTRUCTIONS TO U.S. AIR CARRIERS FOR REPORTING TRAFFIC AND CAPACITY DATA ON FORM 41 SCHEDULES T–100, T–1, T–2, AND T–3

(a) Applicability. Each large U.S. air carrier that holds a 49 U.S.C. 41102 certificate and operates aircraft designed with a maximum capacity of more than 60 seats or a maximum payload capacity of more than 18,000 pounds must file these schedules. A carrier that conducts all of its operations under 49 U.S.C. 41103 (all-cargo certificates) does not file. Each air carrier will be advised of its reporting requirements by letters of instruction from the Office of Airline Information (OAI).

(b) Schedules, frequency, and entity:

(1) Schedule T–100, Monthly. Schedule T–100 collects summarized flight stage data by reporting entity as follows: International entity reports cover scheduled and nonscheduled passenger/cargo and all cargo services. Domestic entity reports cover passenger/cargo operations in scheduled services only. The term entity refers to the geographic location/designator prescribed by the Department in section 19-5(c)(2) of this part, such as, for instance, domestic entity air transport operations as distinguished from international entity air transport operations.

(2) Schedule T–1, Monthly. For the domestic entity, Schedule T–1 collects summary statistics on domestic all-cargo operations, and on both civilian and military charters. For international entities, it collects summary information on military charter operations only. Further, only the U.S. airport must be identified for international military charter operations, and airports outside the U.S. are summarized as a one-line total. Further, international military charters are not reported in the detail international Schedule T–100 data.

(c) Format of reports:

(1) Automatic Data Processing (ADP) magnetic tape. Refer to paragraph (f) below for instructions pertaining to mainframe and microcomputer reporting. The Department will issue "Reporting Directives" to make necessary technical changes to these T–100 instructions, where no policy issues are involved that would require a new rulemaking, or where only a few air carriers are affected.

(2) Microcomputer diskette.

(i) Optional specification. If an air carrier desires to use its personal computers (PC's), rather than mainframe or minicomputers to prepare its data submissions, the following specifications for filing data on diskette media apply:

(ii) Reporting medium. Microcomputer ADP data submission of T–100 information must be on IBM compatible floppy disk, including diskettes, floppy disks, or flexible disks. The particular type of acceptable minidisk is on 5 1⁄4 inch, double-sided/double-density, with a capacity of approximately 360,000 characters of data (360K). Carriers wishing to use a different ADP procedure must obtain written approval to do so from the Director, OAI, under the waiver provisions in section 1-2 of this part. Requests for approval to use alternate methods must disclose the proposed data transmission methodology. Refer to paragraph (k) for microcomputer record layouts.

(iii) Microcomputer file characteristics. The files will be created in ASCII delimited format, sometimes called Data Interchange Format (DIFF). This form of recording data provides for variable length fields (data elements) which, in the case of alphabetic data, are enclosed by quotation marks (""") and separated by a comma (,) and numeric data elements that are recorded without editing symbols are also separated by a comma. The data is identified by its juxtaposition within a given record. Therefore, each record must contain the exact number of data elements, all of which must be juxtapositionally correct. Personal computer software including most spreadsheets, data base management programs, and BASIC are capable of producing files in this format.

(d) Filing data for reports. The reports must be received at DOT within 30 days following the end of each reporting period. Refer to §241.22 of this part for more information on filing requirements.

(e) Address for filing: Office of Airline Information, K–25, Room 4125, U.S. Department
of Transportation, 400 Seventh St., SW.,
Washington, DC 20590.

(f) ADP format for magnetic tape:
(i) Magnetic tape specifications. IBM com-
patible 9-track EBCDIC recording. Recording
density of 6250 or 1600 bpi. The order of re-
corded information is:
Volume label.
Header label.
Data records.
Trailer label.

(g) External tape label information.
Carrier name.
Report date.
File identification.
Carrier address for return of tape reel.

(h) Standards. It is the policy of the De-
partment to be consistent with the American
National Standards Institute and the Fed-
eral Standards activity in all data processing
and telecommunications matters. It is our
intention that all specifications in this ap-
lication are in compliance with standards
promulgated by these organizations.
(i) Volume, header, and trailer label for-
mats:
(1) Use standard IBM label formats. The
file identifier field of the header labels
should be "T-100 SYSTEM".

(j) Magnetic tape record layouts for T-100,
T-1, T-2, and T-3.

(1) Nonstop segment record layout:

<table>
<thead>
<tr>
<th>Field No.</th>
<th>Positions</th>
<th>Mode</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1 A</td>
<td></td>
<td>Record type code (S=nonstop segment).</td>
</tr>
<tr>
<td>2</td>
<td>2–6 5A/N</td>
<td></td>
<td>Carrier entity code.</td>
</tr>
<tr>
<td>3</td>
<td>7–10 4N</td>
<td></td>
<td>Report date (YYMM).</td>
</tr>
<tr>
<td>4</td>
<td>11–13 3A</td>
<td></td>
<td>Origin airport code.</td>
</tr>
<tr>
<td>5</td>
<td>14–16 3A</td>
<td></td>
<td>Destination airport code.</td>
</tr>
<tr>
<td>6</td>
<td>17 1A</td>
<td></td>
<td>Service class code (F.G.L or P).</td>
</tr>
<tr>
<td>7</td>
<td>18–21 4N</td>
<td></td>
<td>Aircraft type code.</td>
</tr>
<tr>
<td>8</td>
<td>22–26 5N</td>
<td></td>
<td>Revenue aircraft departures performed (F.G.L,P510).</td>
</tr>
<tr>
<td>9</td>
<td>27–36 7N</td>
<td></td>
<td>Available seats—first cabin (F310, F311, L310).</td>
</tr>
<tr>
<td>10 †</td>
<td>37–43 7N</td>
<td></td>
<td>Available seats—middle cabin (F312).</td>
</tr>
<tr>
<td>11 †</td>
<td>44–50 7N</td>
<td></td>
<td>Available seats—coach cabin (F313).</td>
</tr>
<tr>
<td>12 †</td>
<td>51–57 7N</td>
<td></td>
<td>Passengers transported—first cabin (F130, F131, L130).</td>
</tr>
<tr>
<td>13 †</td>
<td>58–64 7N</td>
<td></td>
<td>Passengers transported—middle cabin (F132).</td>
</tr>
<tr>
<td>14 †</td>
<td>65–71 7N</td>
<td></td>
<td>Passengers transported—coach cabin (F133).</td>
</tr>
<tr>
<td>15 †</td>
<td>72–78 7N</td>
<td></td>
<td>Total passengers enplaned in market—first cabin (F110, F111, L110).</td>
</tr>
<tr>
<td>16 †</td>
<td>79–88 7N</td>
<td></td>
<td>Total passengers enplaned in market—middle cabin (F112).</td>
</tr>
<tr>
<td>17 †</td>
<td>89–98 7N</td>
<td></td>
<td>Total passengers enplaned in market—coach cabin (F113).</td>
</tr>
<tr>
<td>18 †</td>
<td>99–103 7N</td>
<td></td>
<td>Revenue freight in market (F,G,L, P217) (in pounds).</td>
</tr>
<tr>
<td>19 †</td>
<td>104–113 7N</td>
<td></td>
<td>Revenue mail in market (F,G,L, P219) (in pounds).</td>
</tr>
<tr>
<td>20 †</td>
<td>114–123 7N</td>
<td></td>
<td>Revenue aircraft ramp hours, ramp-to-ramp (F,G,L,P630) (in minutes).</td>
</tr>
</tbody>
</table>

* Cabin data (First, Coach, and Middle) are not reported by any carrier group in the domestic entity, where total available seats are reported in 310 and total passengers transported are included in 130; these totals are also used for the international oper-
ations of Group I and II carriers; cabin data are reported only for Group III international operations. All carrier groups will report total nonscheduled passengers enplaned in the summary data item L130, and nonscheduled available seats in L310.

(2) On-flight market record layout:

<table>
<thead>
<tr>
<th>Field No.</th>
<th>Positions</th>
<th>Mode</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1 A</td>
<td></td>
<td>Record type indicator: M = on-flight market record.</td>
</tr>
<tr>
<td>2</td>
<td>2–6 5A/N</td>
<td></td>
<td>Carrier entity code.</td>
</tr>
<tr>
<td>3</td>
<td>7–10 4N</td>
<td></td>
<td>Report data (YYMM).</td>
</tr>
<tr>
<td>4</td>
<td>11–13 3A</td>
<td></td>
<td>Origin airport code.</td>
</tr>
<tr>
<td>5</td>
<td>14–16 3A</td>
<td></td>
<td>Destination airport code.</td>
</tr>
<tr>
<td>6 †</td>
<td>17 1A</td>
<td></td>
<td>Service class code (F.G.L or P).</td>
</tr>
<tr>
<td>7 †</td>
<td>18–24 7N</td>
<td></td>
<td>Total passengers in market—first cabin (F110, F111, L110).</td>
</tr>
<tr>
<td>8 †</td>
<td>25–31 7N</td>
<td></td>
<td>Total passengers in market—middle cabin (F112).</td>
</tr>
<tr>
<td>9 †</td>
<td>32–38 7N</td>
<td></td>
<td>Total passengers in market—coach cabin (F113).</td>
</tr>
<tr>
<td>11</td>
<td>49–58 10N</td>
<td></td>
<td>Revenue mail in market (F,G,L, P219) (in pounds).</td>
</tr>
</tbody>
</table>

* Cabin data (First, Coach, and Middle) are not reported by any carrier Group in the domestic entity, where total passengers enplaned in a market are included in F110; cabin data are reported only for international operations of Group III air carriers; in international entity operations of Group I and Group II air carriers, total passengers enplaned are included in 110. All carrier groups will include nonscheduled passengers enplaned in L110.

(3) T-1, T-2, and T-3 Summary record layout:

<table>
<thead>
<tr>
<th>Field No.</th>
<th>Positions</th>
<th>Mode</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1 A</td>
<td></td>
<td>Record Type Code:</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>1 = T-1 data</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>2 = T-2 data</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>3 = T-3 data.</td>
</tr>
</tbody>
</table>
(4) T-1 data elements:

1. Revenue passengers enplaned ............................................. L110 N110
2. Revenue passenger-miles (000) ........................................ G140 N140
3. Revenue ton-miles total ...................................................... G240 L240 P240 N240 R240
4. Revenue ton-miles passenger ............................................ G241 N241
5. Revenue ton-miles mail ...................................................... G249 L249 P249
6. Revenue ton-miles freight .................................................. G247 L247 P247 N247 R247
7. Available ton-miles .......................................................... L280 N280
8. Available seat-miles (000) ................................................... L320 N320
9. Revenue aircraft miles flown .......................................... G410 L410 P410 N410 R410
10. Revenue departures performed ...................................... G510 L510 P510 N510 R510
11. Revenue aircraft miles scheduled ................................. G430
12. Revenue aircraft hours airborne ..................................... G510
13. Revenue aircraft hours ramp-to-ramp ............................. G520
14. Revenue aircraft miles ramp-to-ramp .............................. G530
15. Carrier code ............................................................... G510
16. Report date ...................................................................... G510
17. Operating entity ............................................................ G510
18. Aircraft type code (Military charters) ............................... G510

(5) T-2 Data elements (by aircraft type):

1. Revenue ton-miles ......................................................... G240
2. Available ton-miles ....................................................... G280
3. Revenue aircraft miles flown ......................................... G410
4. Revenue aircraft departures performed .................. G510
5. Revenue aircraft departures ramp-to-ramp ............... G520
6. Revenue passenger-miles (000) ................................. G510
7. Available seat-miles (000) ............................................. G510
8. Revenue ton-miles total ................................................ G510
9. Revenue ton-miles mail ................................................ G510
10. Revenue ton-miles freight ........................................... G510
11. Available ton-miles ..................................................... G510
12. Revenue aircraft miles flown .................................. G510
13. Revenue aircraft departures performed ................ G510
14. Revenue aircraft hours airborne ............................... G510
15. Revenue aircraft hours ramp-to-ramp ...................... G510
16. Total aircraft hours (airborne) ................................. G510
17. Aircraft days assigned to service equipment .......... G510
18. Aircraft days assigned to service routes .................. G510
19. Aircraft fuel issued .................................................... G510
20. Aircraft type code ...................................................... G510
21. Carrier code ........................................................... G510
22. Report date ............................................................. G510
23. Operating entity ........................................................... G510

(6) T-3 Data elements (by origin airport):

1. Airport code ............................................................... V110
2. Revenue passengers enplaned ................................ V219
3. Revenue tons enplaned mail ....................................... G219 V219

(k) Record layouts for microcomputer diskettes. The record layouts for diskette are generally identical to those shown for magnetic tape, with the exception that delimiters (quotation marks and commas) are used to separate fields. It is necessary that the order of fields be maintained in all records.

(3) File characteristics. The files will be created in ASCII delimited format, sometimes called Data Interchange Format (DIF). This form of recording data provides for variable length fields (data elements) which, in the case of alphabetic data, are enclosed by quotation marks (‘‘) and separated by a comma (,) and numeric data elements that are recorded without editing symbols are also separated by a comma. The data is identified by its juxtaposition within a given record. Therefore it is critical that each record contain the exact number of data elements, all of which data must be juxtapositionally correct. PC software including most spreadsheets, data base management programs, and BASIC produce minidisk files in this format.
(2) File naming conventions for diskettes. For microcomputer reports, each record type should be contained in a separate DOS file on the same physical diskette. The following DOS naming conventions should be followed:

- Record type S = SEGMENT.DAT
- Record type M = MARKET.DAT
- Record type 1 = T-1.DAT
- Record type 2 = T-2.DAT
- Record type 3 = T-3.DAT

(1) Discussion of reporting concept.

(1) The detail T-100 data shall be maintained in such a manner as to permit monthly summarization and organization into two basic groupings. First, the nonstop segment information which is to be summarized by equipment type, within class of service, within pair-of-points, without regard to individual flight number. The second grouping requires that the enplanement/deplanement information be broken out into separate units called on-flight market records, which shall be summarized by class of service, within pair-of-points, without regard for equipment type of flight number.

(2) The Schedules T-1 and T-3 information is applicable only to operations that are not required in the detail T-100 report. The Department will derive other necessary summary data directly from the detail T-100. The T-1 and T-3 data pertaining to domestic entities is for scheduled all-cargo service and charter operations. The T-1 for international entities contains data on military charter operations only.

(3) The Schedule T-2 information is required from each carrier and for each reporting entity. It contains some data elements for which there is no corresponding detail in T-100.

(4) A single tape file shall be submitted containing nonstop segment and on-flight market records for all applicable entities. The summary data pertaining to schedules T-L, T-2, and T-3 should be submitted on a second tape reel. A carrier reporting on diskette should create separate files for each record type, using DOS file naming conventions to identify them.

(5) An air carrier who submits middle cabin data may be confronted by a situation resulting from a change of gauge or other considerations wherein a given leg of a flight may not offer the same classes of service that is available on the remainder of the legs. When preparing on-flight market records applicable to this situation, the carrier should consider passengers transported as though the entire trip was configured as the first segment. The passenger cabin where the passenger is seated at the beginning of the flight determines the classification for the whole trip.

(m) Joint Service.

(1) The Department may authorize joint service operations between two direct air carriers. Examples of these joint service operations are: blocked-space agreements; part-character agreements; code-sharing agreements; wet-lease agreements, and similar arrangements.

(2) Joint service operations shall be reported in Form 41 Schedule T-100 and T-100(f) within the following guidelines:

(i) Blocked space, part-charters and code-sharing arrangements shall be reported by the carrier in operational control of the flight. The traffic moving under those agreements is reported the same as any other traffic on board the aircraft.

(ii) Wet lease agreements shall be reported by the lessee as though the leased aircraft and crew were a part of the lessee's own fleet.

(iii) If there are questions about reporting a joint service operation, contact the Director, Office of Airline Information at the address in paragraph (d) of this Appendix.

(iv) The Department may require information pertaining to joint service operations in addition to that reported by in Schedules T-100 and T-100(f) by U.S. and foreign air carriers. If additional information is needed, ad hoc reporting will be used by the Director, Office of Airline Information (OAI), under authority delegated in §385.27(b) and (d) of this chapter. Ad hoc reporting requirements will be communicated to the applicable carriers by letter.

(m) Glossary of data elements. Sections 19-5 and 03 of 14 CFR part 241.

(n) Schedules.
<table>
<thead>
<tr>
<th>A. SERVICE PATTERNS</th>
<th>B. NONSTOP SEGMENT INFORMATION</th>
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<tbody>
<tr>
<td>No.</td>
<td>8-3 Airport Code</td>
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Note: The multiple cabi (First, Middle and Coach Class) data for revenue passengers transported and Revenue passengers embarked are reported only for the International entity operations of Group III U.S. air carriers. In all other instances, air carriers will report total available seats. Revenue passengers transported and Revenue passengers embarked.
<table>
<thead>
<tr>
<th>C. ON-FLIGHT MARKET</th>
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<tbody>
<tr>
<td>B-10 Revenue</td>
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<tr>
<td>Freight (Pounds)</td>
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<tr>
<td>B-15 Revenue</td>
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<tr>
<td>Freight (Pounds)</td>
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<tr>
<td>F, L21</td>
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<tr>
<td>C-3 Revenue</td>
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<tr>
<td>Freight (Pounds)</td>
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<td>F, L23</td>
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</tbody>
</table>

-- Total for all aircraft types in market --
## Form 41 Schedule T-1
### Traffic and Capacity Summary
#### By Service Class

<table>
<thead>
<tr>
<th>Air Carrier Name</th>
<th>Codes</th>
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<tbody>
<tr>
<td>Entity Code</td>
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<tr>
<td>Report Date (Year)</td>
<td>(Month)</td>
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</tbody>
</table>

This schedule is used to report only:
1. Domestic all cargo scheduled service.
2. Domestic civilian charters.
3. International and domestic military charters.

<table>
<thead>
<tr>
<th>Scheduled</th>
<th>Nonscheduled Civilian</th>
<th>Nonscheduled Military</th>
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<tr>
<td>All Cargo</td>
<td>All Cargo</td>
<td>All Cargo</td>
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<td>Service</td>
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<td>(L)</td>
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<tr>
<td>All Cargo</td>
<td>By Aircraft Type</td>
<td>All Cargo</td>
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<td>By Aircraft Type</td>
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<td>Aircraft Type</td>
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<tr>
<td>Aircraft Type</td>
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</table>

### Traffic on Revenue Flights

| Revenue passengers enplaned | 110 | xxxx | xxxx | xxxx |
| Revenue passenger-miles (000) | 140 | xxxx | xxxx | xxxx |
| Revenue ton-miles | 240 | |
| Passenger | 241 | xxxx | xxxx | xxxx |
| Freight | 247 | |
| Mail | 249 | xxxx | xxxx | |

### Aircraft Capacity Operated

| Available ton-miles | 280 | |
| Available seat-miles | 320 | xxxx | xxxx | xxxx |
| Revenue aircraft-miles flown | 410 | |
| Revenue aircraft miles scheduled | 430 | xxxx | xxxx | xxxx |
| Revenue aircraft departures performed | 510 | |
| Revenue aircraft hours (airborne) | 610 | |
| Revenue aircraft hours (ramp-to-ramp) | 630 | |
Office of the Secretary, DOT  
Pt. 241

[Form 41 Schedule T-2]

Provides data QUARTERLY to supplement detail T-100.

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<th>Aircraft Type</th>
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SCHEDULED ALL-CARGO SERVICES:
Revenue ton-miles
Available ton-miles
Revenue aircraft miles flown
Aircraft departures performed

NON SCHEDULED SERVICES:
Aircraft departures performed

ALL SERVICES:
Revenue passenger-miles (000)
Available seat-miles (000)
Revenue ton-miles
Mail revenue ton-miles
Freight revenue ton-miles
Available ton-miles
Revenue aircraft miles flown
Aircraft departures performed
Revenue aircraft hours (airborne)
Revenue aircraft hours (ramp)
Total aircraft hours (airborne)
Aircraft days - equipment
Aircraft days - routes
Aircraft fuels issued
### FORM A SCHEDULE 1-3

**U.S. AIR CARRIER**

**AIRPORT ACTIVITY STATISTICS**

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RSPA Form 41 Schedule 1-3
PART 243—PASSenger MANIFEST INFORMATION

Sec. 243.1 Purpose.
243.3 Definitions.
243.5 Applicability.
243.7 Information collection requirements.

243.9 Procedures for collecting and maintaining the information.
243.11 Transmission of information after an aviation disaster.
243.13 Filing requirements.
243.15 Conflicts with foreign law.
243.17 Enforcement.


SOURCE: Docket No. OST-95-950, 63 FR 8280, Feb. 18, 1998, unless otherwise noted.
§ 243.1 Purpose.

The purpose of this part is to ensure that the U.S. government has prompt and adequate information in case of an aviation disaster on covered flight segments.

§ 243.3 Definitions.

Air piracy means any seizure of or exercise of control over an aircraft, by force or violence or threat of force or violence, or by any other form of intimidation, and with wrongful intent.

Aviation disaster means:

(1) An occurrence associated with the operation of an aircraft that takes place between the time any passengers have boarded the aircraft with the intention of flight and the time all such persons have disembarked or have been removed from the aircraft, and in which any person suffers death or serious injury, and in which the death or injury was caused by a crash, fire, collision, sabotage or accident;

(2) A missing aircraft; or

(3) An act of air piracy.

Contact means a person not on the covered flight or an entity that should be contacted in case of an aviation disaster. The contact need not have any particular relationship to a passenger.

Covered airline means:

(1) certificated air carriers, and

(2) foreign air carriers, except those that hold Department of Transportation authority to conduct operations in foreign air transportation using only small aircraft (i.e., aircraft designed to have a maximum passenger capacity of not more than 60 seats or a maximum payload capacity of not more than 18,000 pounds).

Covered flight segment means a passenger-carrying flight segment operating to or from the United States (i.e., the flight segment where the last point of departure or the first point of arrival is in the United States). A covered flight segment does not include a flight segment in which both the point of departure and point of arrival are in the United States.

Full name means the given name, middle initial or middle name, if any, and family name or surname as provided by the passenger.

Passenger means every person aboard a covered flight segment regardless of whether he or she paid for the transportation, had a reservation, or occupied a seat, except the crew. For the purposes of this part, passenger includes, but is not limited to, a revenue and non-revenue passenger, a person holding a confirmed reservation, a standby or walkup, a person rerouted from another flight or airline, an infant held upon a person's lap and a person occupying a jump seat. Airline personnel who are on board but not working on that particular flight segment would be considered passengers for the purpose of this part.

United States means the States comprising the United States of America, the District of Columbia, and the territories and possessions of the United States, including the territorial sea and the overlying airspace.


§ 243.5 Applicability.

This part applies to covered flight segments operated by covered airlines. (See § 243.3 of this part)

§ 243.7 Information collection requirements.

(a) For covered flight segments, each covered airline shall:

(1) Collect, or cause to be collected, the full name for each passenger who is a U.S. citizen. U.S.-citizen passengers for whom this information is not obtained shall not be boarded;

(2) Solicit, or cause to be solicited, a name and telephone number of a contact from each passenger who is a U.S. citizen; and

(3) Maintain a record of the information collected pursuant to this section. (b) The covered airline operating the flight segment shall be responsible for ensuring compliance with paragraph (a) of this section.

§ 243.9 Procedures for collecting and maintaining the information.

Covered airlines may use any method or procedure to collect, store and transmit the required information, subject to the following conditions:

(a) Information on individual passengers shall be collected before each passenger boards the aircraft on a covered flight segment.
§ 243.15 Conflict with foreign laws.

(a) If a covered airline obtains a waiver in the manner described in this section, it will not be required to solicit, collect, or transmit information under this part in countries where such solicitation or collection would violate applicable foreign law, but only to the extent it is established by the carrier that such solicitation or collection would violate applicable foreign law.

(b) Covered airlines that claim that such solicitation, collection or transmission would violate applicable foreign law in certain foreign countries shall file a petition requesting a waiver in the Docket Facility, on or before October 1, 1998, or on or before beginning service between that country and United States. Such petition shall include copies of the pertinent foreign law, as well as a certified translation, and shall include opinions of appropriate legal experts setting forth the basis for the conclusion that collection would violate such foreign law. Statements from foreign governments on the application of their laws will also be accepted.

(c) The U.S. Department of Transportation will notify the covered airline of
§ 243.17 Enforcement.

The U.S. Department of Transportation may at any time require a covered airline to produce a passenger manifest including emergency contacts and phone numbers for a specified covered flight segment to ascertain the effectiveness of the carrier’s system. In addition, it may require from any covered airline further information about collection, storage and transmission procedures at any time. If the Department finds a covered airline’s system to be deficient, it will require appropriate modifications, which must be implemented within the period specified by the Department. In addition, a covered airline not in compliance with this part may be subject to enforcement action by the Department.

PART 247—DIRECT AIRPORT-TO-AIRPORT MILEAGE RECORDS


§ 247.1 Official mileage record of the Department of Transportation.

The direct airport-to-airport mileage record now maintained, and as hereafter amended or revised from time to time by the Office of Airline Information of the Bureau of Transportation Statistics of the Department of Transportation in the regular performance of its duties, is hereby adopted as the official mileage record of the Department and the mileages set forth therein shall be used in all instances where it shall be necessary to determine direct airport-to-airport mileages pursuant to the provisions of Titles IV and X of the Federal Aviation Act of 1958, as amended, or any rule, regulation, or order of the Department pursuant thereto.


PART 248—SUBMISSION OF AUDIT REPORTS

Sec.
248.1 Applicability.
248.2 Filing of audit reports.
248.4 Time for filing reports.
248.5 Withholding from public disclosure.


SOURCE: ER-420, 29 FR 13799, Oct. 7, 1964, unless otherwise noted.

§ 248.1 Applicability.

The requirements of this part shall be applicable to all air carriers subject to the requirements of part 241 of this subchapter.

§ 248.2 Filing of audit reports.

(a) Whenever any air carrier subject to §248.1 shall have caused an annual audit of its books, records, and accounts to be made by independent public accountants, such air carrier shall file with the Office of Airline Information, in duplicate, a special report consisting of a true and complete copy of the audit report submitted by such independent public accountants, including all schedules, exhibits, and certificates included in, attached to, or submitted with or separately as a part of, the audit report.

(b) Each air carrier subject to §248.1 that does not cause an annual audit to be made of its books, records, and accounts for any fiscal year shall, at the close of such fiscal year file with the Board’s Office of the Comptroller, as a part of its periodic reports, a statement that no such audit has been performed.

(Approved by the Office of Management and Budget under control number 2138-0004)

§ 248.4 Time for filing reports.

The report required by this part shall be filed with the Office of Airline Information within 15 days after the due date of the appropriate periodic BTS Form 41 Report, filed for the 12-month period covered by the audit report, or the date the accountant submits its audit report to the air carrier, whichever is later.


§ 248.5 Withholding from public disclosure.

The special reports required to be filed by § 248.2 shall be withheld from public disclosure, until further order of the BTS, if such treatment is requested by the air carrier at the time of filing.


PART 249—PRESERVATION OF AIR CARRIER RECORDS

Subpart A—General Instructions

Sec.

249.1 Applicability.

249.2 Definitions.

249.3 Preservation of records.

249.4 Photographic copies.

249.5 Storage of records.

249.6 Destruction of records.

249.7 Restrictions on record destruction.

249.8 Premature loss or destruction of records.

249.9 Carriers going out of business.

249.10 Waiver of requirements.

Subpart B—Preservation of Records by Carrier

249.20 Preservation of records by certificated air carriers.

249.21 Preservation of records by public charter operators and overseas military personnel charter operators.

Subpart C—Regulations Relating to the Truth-in-Lending Act

249.30 Applicability.

249.31 Preservation and inspection of evidence of compliance.


Source: ER-1214, 46 FR 25415, May 6, 1981, unless otherwise noted.
§ 249.3 Preservation of records.

(a) All records listed in §§ 249.20 and 249.21 may be preserved on either paper or nonerasable microfilm (see §249.4). However, a paper or microfilm record need not be created to satisfy the requirements of this part if the record is initially prepared in a machine-readable medium such as punched cards, magnetic tapes, and disks. The records maintained in machine-readable media and the underlying data used in their preparation shall be preserved for the periods prescribed in §§ 249.20 and 249.21. A paper or microfilm record shall not be destroyed after transfer to a machine-readable medium before expiration of the prescribed period; however, a waiver permitting the early destruction of paper or microfilm records transferred to a machine-readable medium may be granted by the Director, Office of Airlne Information, when it is demonstrated by the requesting carrier that the substantive purpose of the retention requirement will be met by retention of the information in machine-readable form (see §249.10).

(b) Each record kept in a machine-readable medium shall be accompanied by a statement clearly indicating the type of data included in the record and certifying that the information contained in it is complete and accurate. This statement shall be executed by a person having personal knowledge of the facts contained in the records. The records shall be indexed and retained in such a manner so that they are easily accessible, and the carrier shall have the facilities available to locate, identify and reproduce the records in readable form without loss of clarity. Authorized representatives of the DOT shall be given immediate access to the carrier’s facilities upon request.

(c) If any record which must be retained under the provisions of §§ 249.20 and 249.21 is included as an exhibit to another document which must also be retained, the carrier need only keep in its files one copy of the record to satisfy these record retention requirements. In these cases, the carrier shall establish adequate cross-references to assist in locating the record.

(d) The provisions in this part do not excuse noncompliance with requirements of any other governmental body, Federal or State, prescribing longer retention periods for any records.


§ 249.4 Photographic copies.

(a) Any record may be transferred to nonerasable microfilm (including microfiche, computer output microfilm, and aperture cards) at any time. Records so maintained on microfilm shall satisfy the minimum requirements listed in paragraphs (b) through (f) of this section.

(b) The microfilm shall be of a quality that can be easily read and that can be reproduced in paper similar in size to an original without loss of clarity or detail during the periods the records are required to be retained in §§ 249.20 and 249.21.

(c) Microfilm records shall be indexed and retained in such a manner as will render them readily accessible, and the
company shall have facilities available to locate, identify and read the microfilm and reproduce in paper form. Authorized representatives of the DOT shall be given immediate access to these facilities upon request.  
(d) Any significant characteristic, feature, or other attribute which microfilm will not preserve shall be clearly indicated at the beginning of each roll of film or series of microfilm records if applicable to all records on the roll or series, or on the individual record, as appropriate.  
(e) The printed side of printed forms need not be microfilmed for each record if nothing has been added to the printed matter common to all such forms, but an identified specimen of the form shall be on the film for reference.  
(f) Each roll of film or series of microfilm records shall include a microfilm of a certificate stating that the photographs are direct and facsimile reproductions of the original records and they have been made in accordance with prescribed regulations. Such a certificate shall be executed by a person having personal knowledge of these facts. Where the microfilm is computer output, the microfilm certificate shall state that the information is complete and accurate. [ER-1214, 46 FR 25415, May 6, 1981, as amended at 60 FR 66725, Dec. 26, 1995]

§ 249.5 Storage of records.
Each carrier shall provide reasonable protection from damage by fire, floods, and other hazards for records subject to the provisions of this part.

§ 249.6 Destruction of records.
(a) Upon the expiration of the period of preservation prescribed in this regulation, records may be destroyed at the option of the carrier.  
(b) Unless otherwise specified, duplicate copies of records may be destroyed at any time if they contain no significant information not shown on the originals.

§ 249.7 Restrictions on record destruction.
(a) Each carrier that has been named a party to a pending mail rate case shall retain all records remaining in its custody as of the beginning of an “open mail rate period” until the occurrence of one of the following contingencies, whichever is first:
(1) Final adjudication of a DOT order fixing the final mail compensation payable for services rendered during an “open mail rate period.”
(2) Receipt of a notice issued by the Director, Office of Airline Information in response to a written application filed by the carrier, authorizing the destruction of specifically identified categories of records. An application should be filed when the carrier believes that certain categories of records are not relevant to the proper processing of a pending mail proceeding. The application should list those categories of records which the carrier wants to destroy and its reasons for believing that the records are not necessary or useful in determining its statutory mail pay.  
(b) Each carrier shall preserve records supporting the computation of subsidy mail pay in accordance with the provisions of §249.20 unless the carrier has been advised that these computations are subject to further review and disposition by the Board. When the DOT is still reviewing the compensation amount after expiration of the normal retention period specified in §249.20, these records must be retained until the carrier is notified by the Director, Office of Airline Information, that the records may be destroyed.  
(c) Each carrier that has been named a party to an enforcement proceeding or against whom a third-party complaint has been filed shall retain all records relating to the case until the receipt of formal notification from the Director, Office of Airline Information, following a written application from the carrier, which authorizes the destruction of these records.  
(d) Each carrier that has been named a party to a pending case which is not of a type discussed in paragraphs (a), (b), and (c) of this section, shall preserve all records according to the provisions of §249.20 unless the Director, Office of Airline Information, notifies the carrier in writing that specific records shall be preserved until final adjudication of the pending case.

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§ 249.8 Premature loss or destruction of records.

If records are destroyed or lost before the expiration of the prescribed retention period, a statement shall be prepared and submitted to the Director, Office of Airline Information, which lists, as accurately as possible, the unavailable records and describes the circumstances under which they became unavailable.


§ 249.9 Carriers going out of business.

The records referred to in these regulations may be destroyed after the business is discontinued and the carrier is completely liquidated. The records may not be destroyed until dissolution is final and all transactions and litigations are completed. When a carrier is merged with another company which is regulated by the DOT, the successor company shall preserve records of the merged company in accordance with these regulations.


§ 249.10 Waiver of requirements.

A waiver from any provision of this regulation may be made by the Director, Office of Airline Information, upon the Director’s own initiative or upon submission of a written request by a carrier or group of carriers. Each request for waiver shall demonstrate that unusual circumstances warrant a departure from prescribed retention periods, procedures, or techniques, or that compliance with the prescribed requirements would impose an unreasonable burden on the carrier, and that granting the waiver would be in the public interest.


Subpart B—Preservation of Records by Carrier

§ 249.20 Preservation of records by certificated air carriers.

Each certificated air carrier shall retain its records according to the provisions of this section. Unless otherwise specified in the “Schedule of Records,” each retention period shall begin on the date when the records are created or otherwise come into the possession of the carrier.

SCHEDULE OF RECORDS

[See footnote at end of table]
### Office of the Secretary, DOT § 249.21

**SCHEDULE OF RECORDS—Continued**

[See footnote at end of table]

<table>
<thead>
<tr>
<th>Category of records</th>
<th>Retention period</th>
</tr>
</thead>
<tbody>
<tr>
<td>5. Subsidy records:</td>
<td></td>
</tr>
<tr>
<td>(a) For each calendar year, all monthly records of operations, such as tabulations and summaries of miles flown and passenger-miles flown, pertaining to or part of operational records relevant to computation of subsidy mail pay.</td>
<td>3 years.</td>
</tr>
<tr>
<td>(b) For each calendar year, all basic original documents, such as pilots' flight logs and passenger lists relevant to a determination of the validity of a carrier's operations described in item (a) above.</td>
<td>Do.</td>
</tr>
<tr>
<td>6. The papers, records, or other evidence supporting financial and statistical reports to the BTS. These should include among others the following specific records: Internal administrative or operating reports; system reports of aircraft movements by trip number, showing arrivals, departures, flight delays and related information; bonds and other long-term debt records; stock records; corporate organization records; financial data in support of subsidy claims; minutes of meetings; carrier internal reports on internal controls and other internal audits and procedural studies; operational, management, accounting, financial, and legal service contracts and agreements; records and agreements relating to the lease or purchase and sale of company assets, including title papers, deeds, and similar records; insurance records; property and equipment records; tax records; accountants' and auditors' reports; records of receipts and disbursements including bank statements, check registers and cancelled checks, payroll registers of salaries and wages paid; cost accounting records for work orders; inventories of materials and supplies; and other source documents.</td>
<td>Do.</td>
</tr>
<tr>
<td>7. Funds reports and estimates of funds</td>
<td>1 year.</td>
</tr>
<tr>
<td>8. Consumer complaints:</td>
<td></td>
</tr>
<tr>
<td>(a) Initial correspondence and record of action taken</td>
<td>3 years.</td>
</tr>
<tr>
<td>(b) Initial trip reports:</td>
<td></td>
</tr>
<tr>
<td>(1) Traffic Data: Basic documents showing the number of passengers, and pounds of mail and property carried.</td>
<td>1 year.</td>
</tr>
<tr>
<td>(c) Reservations reports and records:</td>
<td></td>
</tr>
<tr>
<td>(1) Cards and charts constituting original source of passengers' names, telephone numbers, etc.</td>
<td>2 months.</td>
</tr>
<tr>
<td>(2) Telegrams and radio messages relating to the clearance of space, passenger dispatching, etc.</td>
<td>1 month.</td>
</tr>
<tr>
<td>(d) System report of airplane movements by trip number showing arrivals, departures, delays and related information.</td>
<td>3 years.</td>
</tr>
<tr>
<td>(e) Sales reports:</td>
<td></td>
</tr>
<tr>
<td>(1) Sales ticket or other similar reports from stations, offices and agents</td>
<td>2 years.</td>
</tr>
<tr>
<td>(f) Auditors' coupons</td>
<td>1 year.</td>
</tr>
<tr>
<td>(g) Air waybills</td>
<td>Do.</td>
</tr>
<tr>
<td>(h) Flight coupons</td>
<td>Do.</td>
</tr>
<tr>
<td>(i) Ticket refund claims records and reports</td>
<td>Do.</td>
</tr>
<tr>
<td>(j) Records and reports relating to errors, oversales, irregularities and delays in handling passengers.</td>
<td>Do.</td>
</tr>
<tr>
<td>9. All documents which relate to the furnishing of transportation to candidates for political office or persons acting on their behalf which are required to be maintained following § 374a.7 of the subchapter.</td>
<td>2 years.</td>
</tr>
<tr>
<td>10. Correspondence and working papers relating to rate and route proceedings</td>
<td>3 years.</td>
</tr>
</tbody>
</table>

1 One year-mail property; 2 years-passengers.


§ 249.21 Preservation of records by public charter operators and overseas military personnel charter operators.

Each operator authorized under parts 372 and 380 of this chapter shall retain the following records for 6 months after completion or cancellation of the flight or series of flights. The records shall be made available upon request of an authorized representative of the DOT:

(a) All receipts and statements of travel agents and all other documents which show deposits made by each charter participant or which show refunds to charter participants.
§ 249.30

(b) All receipts and statements of travel agents and all other documents which show or reflect commissions received, paid to, or deducted by travel agents in connection with the flight or series of flights.

c) All statements, invoices, bills, and receipts from suppliers for furnishing of goods or services in connection with the tour or series of tours.

d) All customer reservations records for each flight.

e) All contracts with individual tour participants.

(f) All bank statements and reconciliations for escrow bank accounts opened and maintained in accordance with DOT regulations.


Subpart C—Regulations Relating to the Truth-in-Lending Act

§ 249.30 Applicability.

This subpart is applicable to all air carriers and foreign air carriers as defined in 49 U.S.C. 40102, including, without limitation, direct carriers, air taxi operators registered under part 298 of this chapter, indirect air carriers registered under part 296 of this chapter, charter operators authorized under parts 372 and 380 of this chapter, and foreign air carriers holding permits to engage in indirect foreign air transportation issued under 49 U.S.C. 41302.


§ 249.31 Preservation and inspection of evidence of compliance.

Air carriers and foreign air carriers shall preserve evidence of compliance with the requirements imposed under Regulation Z of the Board of Governors of the Federal Reserve System (12 CFR part 226), implementing the provisions of Title I (Truth in Lending) and Title V (General Provisions) of the Consumer Credit Protection Act, as amended (15 U.S.C. 1601 et seq.) other than the advertising requirements under §226.10 of regulation Z. This evidence shall be preserved for no less than 2 years after the date each disclosure is required to be made and shall be made available for inspection by authorized representatives of the DOT.

Confirmed reserved space, means space on a specific date and on a specific flight and class of service of a carrier which has been requested by a passenger and which the carrier or its agent has verified, by appropriate notation on the ticket or in any other manner provided therefor by the carrier, as being reserved for the accommodation of the passenger.

Large aircraft means any aircraft that has a passenger capacity of more than 60 seats.

Stopover means a deliberate interruption of a journey by the passenger, scheduled to exceed 4 hours, at a point between the place of departure and the final destination.

Sum of the values of the remaining flight coupons means the sum of the applicable one-way fares, including any surcharges and air transportation taxes, less any applicable discounts.

§ 250.2 Applicability.
This part applies to every carrier, as defined in § 250.1, with respect to flight segments with large aircraft in (1) interstate or overseas air transportation and (2) foreign air transportation originating at a point within the United States.

§ 250.2a Policy regarding denied boarding.
In the event of an oversold flight, every carrier shall ensure that the smallest practicable number of persons holding confirmed reserved space on that flight are denied boarding involuntarily.

§ 250.2b Carriers to request volunteers for denied boarding.
(a) In the event of an oversold flight, every carrier shall request volunteers for denied boarding before using any other boarding priority. A "volunteer" is a person who responds to the carrier's request for volunteers and who willingly accepts the carriers' offer of compensation, in any amount, in exchange for relinquishing the confirmed reserved space. Any other passenger denied boarding is considered for purposes of this part to have been denied boarding involuntarily, even if that passenger accepts the denied boarding compensation.
(b) If an insufficient number of volunteers come forward, the carrier may deny boarding to other passengers in accordance with its boarding priority rules. However, the carrier may not deny boarding to any passenger involuntarily who was earlier asked to volunteer without having been informed about the danger of being denied boarding involuntarily and the amount of Board-mandated compensation.

§ 250.3 Boarding priority rules.
(a) Every carrier shall establish priority rules and criteria for determining which passengers holding confirmed reserved space shall be denied boarding on an oversold flight in the event that an insufficient number of volunteers come forward. Such rules and criteria shall reflect the obligations of the carrier set forth in §§ 250.2a and 250.2b to minimize involuntary denied boarding and to request volunteers, and shall be written in such manner as to be understandable and meaningful to the average passenger. Such rules and criteria shall not make, give, or cause any undue or unreasonable preference or advantage to any particular person or subject any particular person to any unjust or unreasonable prejudice or disadvantage in any respect whatsoever.
(b) [Reserved]

§ 250.4 Denied boarding compensation tariffs for foreign air transportation.
(a) Every carrier operating flights in foreign air transportation departing from the United States shall file tariffs governing such transportation that provide compensation for passengers holding confirmed reserved space who are denied boarding involuntarily from an oversold flight that departs without those passengers. The tariffs shall incorporate the amount of compensation described in § 250.5 and the exceptions to eligibility for compensation described in § 250.6. Carriers subject to this section that offer free or reduced
§ 250.5 Rate air transportation in lieu of the cash payment as provided in § 250.5(b) shall file a tariff stating that acceptance by the passenger of the alternative compensation is voluntary and that the value of the transportation benefit offered is equal to or greater than the cash payment otherwise required.

(b) The tariffs shall specify that the carrier will tender the appropriate compensation on the day and the place the involuntary denied boarding occurs.

(c) A carrier that does not provide the protections of this part on its inbound foreign flights may not file tariffs with the Board concerning its oversales practices for those flights.

[ER-1337, 48 FR 29680, June 28, 1983]

§ 250.5 Amount of denied boarding compensation for passengers denied boarding involuntarily.

(a) Subject to the exceptions provided in § 250.6, a carrier as defined in § 250.1, shall pay compensation to passengers denied boarding involuntarily from an oversold flight at the rate of 200 percent of the sum of the values of the passenger’s remaining flight coupons up to the passenger’s next stopover, or if none, to the passenger’s final destination, with a maximum of $400. However, the compensation shall be one-half the amount described above, with a $200 maximum, if the carrier arranges for comparable air transportation, or other transportation used by the passenger that, at the time either such arrangement is made, is planned to arrive at the airport of the passenger’s next stopover or if none, at the airport of the final destination not later than 1 hour after the time the direct or connecting flight on which confirmed space is held is planned to arrive in the case of interstate and overseas air transportation, or 4 hours after such time in the case of foreign air transportation.

(b) Carriers may offer free or reduced rate air transportation in lieu of the cash due under paragraph (a) of this section, if (1) the value of the transportation benefit offered is equal to or greater than the cash payment otherwise required, and (2) the carrier informs the passenger of the amount of cash compensation that would otherwise be due and that the passenger may decline the transportation benefit and receive the cash payment.

[ER-1337, 48 FR 29680, June 28, 1983]

§ 250.6 Exceptions to eligibility for denied boarding compensation.

A passenger denied boarding involuntarily from an oversold flight shall not be eligible for denied boarding compensation if:

(a) The passenger does not comply fully with the carrier’s contract of carriage or tariff provisions regarding ticketing, reconfirmation, check-in, and acceptability for transportation;

(b) The flight for which the passenger holds confirmed reserved space is unable to accommodate that passenger because of substitution of equipment of lesser capacity when required by operational or safety reasons;

(c) The passenger is offered accommodations or is seated in a section of the aircraft other than that specified on the ticket at no extra charge, except that a passenger seated in a section for which a lower fare is charged shall be entitled to an appropriate refund; or

(d) The carrier arranges comparable air transportation, or other transportation used by the passenger at no extra cost to the passenger, that at the time such arrangements are made is planned to arrive at the airport of the passenger’s next stopover or, if none, at the airport of the final destination not later than 1 hour after the planned arrival time of the passenger’s original flight or flights.

[ER-1337, 48 FR 29680, June 28, 1983]

§ 250.7 [Reserved]

§ 250.8 Denied boarding compensation.

(a) Every carrier shall tender to a passenger eligible for denied boarding compensation, on the day and place the denied boarding occurs, except as provided in paragraph (b), cash or an immediately negotiable check for the appropriate amount of compensation provided in § 250.5.

(b) Where a carrier arranges, for the passenger’s convenience, alternate means of transportation that departs
before the payment can be prepared and given to the passenger, tender shall be made by mail or other means within 24 hours after the time the denied boarding occurs.

[ER -1394, 49 FR 43625, Oct. 31, 1984]

§ 250.9 Written explanation of denied boarding compensation and boarding priorities.

(a) Every carrier shall furnish passengers who are denied boarding involuntarily from flights on which they hold confirmed reserved space immediately after the denied boarding occurs, a written statement explaining the terms, conditions, and limitations of denied boarding compensation, and describing the carriers' boarding priority rules and criteria. The carrier shall also furnish the statement to any person upon request at all airport ticket selling positions which are in the charge of a person employed exclusively by the carrier, or by it jointly with another person or persons, and at all boarding locations being used by the carrier.

(b) The statement shall read as follows:

COMPENSATION FOR DENIED BOARDING

If you have been denied a reserved seat on (name of air carrier), you are probably entitled to monetary compensation. This notice explains the airline's obligation and the passenger's rights in the case of an oversold flight, in accordance with regulations of the U.S. Civil Aeronautics Board.

VOLUNTEERS AND BOARDING PRIORITIES

If a flight is oversold (more passengers hold confirmed reservations than there are seats available), no one may be denied boarding against his or her will until airline personnel first ask for volunteers who will give up their reservation willingly, in exchange for a payment of the airline's choosing. If there are not enough volunteers, other passengers may be denied boarding voluntarily in accordance with the following boarding priority of (name of air carrier): (in this space carrier inserts its boarding priority rules or a summary thereof, in a manner to be understandable to the average passenger.)

COMPENSATION OF INVOLUNTARY DENIED BOARDING

If you are denied boarding involuntarily, you are entitled to a payment of "denied boarding compensation" from the airline unless:

(1) YOU have not fully complied with the airline's ticketing, check-in, and reconfirmation requirements, or you are not acceptable for transportation under the airline's usual rules and practices, or (2) you are denied boarding because the flight is canceled; or (3) you are denied boarding because a smaller capacity aircraft was substituted for safety or operational reasons; or (4) you are offered accommodations in a section of the aircraft other than specified in your ticket, at no extra charge, (a passenger seated in a section for which a lower fare is charged must be given an appropriate refund); or (5) the airline is able to place you on another flight or flights that are planned to reach your final destination within one hour of the scheduled arrival of your original flight.

AMOUNT OF DENIED BOARDING COMPENSATION

Passengers who are eligible for denied boarding compensation must be offered a payment equal to the sum of the face values of their ticket coupons, with a $200 maximum. However, if the airline cannot arrange "alternate transportation" (see below) for the passenger, the compensation is doubled ($400 maximum). The "value" of a ticket coupon is the one-way fare for the flight shown on the coupon including any surcharge and air transportation tax, minus any applicable discount. All flight coupons, including connecting flights, to the passenger's final destination or first 4-hour stopover are used to compute the compensation.

"Alternate transportation" is air transportation (by an airline licensed by the CAB) or other transportation used by the passenger which, at the time the arrangement is made, is planned to arrive at the passenger's next scheduled stopover (of 4 hours or longer) or final destination no later than 2 hours (for flights within U.S. points, including territories and possessions) or 4 hours (for international flights) after the passenger's originally scheduled arrival time.

METHOD OF PAYMENT

The airline must give each passenger who qualifies for denied boarding compensation a payment by cash or check for the amount specified above, on the day and place the involuntary denied boarding occurs. However, if the airline arranges alternate transportation for the passenger's convenience that departs before the payment can be made, the payment will be sent to the passenger within 24 hours. The air carrier may offer free tickets in place of the cash payment. The passenger may, however, insist on the cash payment, or refuse all compensation and bring private legal action.
§ 250.10 Passenger’s Options

Acceptance of the compensation may relieve (name of air carrier) from any further liability to the passenger caused by its failure to honor the confirmed reservation. However, the passenger may decline the payment and seek to recover damages in a court of law or in some other manner.


§ 250.10 Report of passengers denied confirmed space.

Every carrier shall file, on a quarterly basis, the information specified in BTS Form 251. The reporting basis shall be flights originating or terminating at, or servicing, a point within the United States. The reports are to be submitted within 30 days after the quarter covered by the report. The calendar quarters end March 31, June 30, September 30 and December 31. “Total Boardings” on line 7 of Form 251 shall include only passengers on flights for which confirmed reservations are offered. No reports need be filed for inbound international flights on which the protections of this part do not apply.


§ 250.11 Public disclosure of deliberate overbooking and boarding procedures.

(a) Every carrier shall cause to be displayed continuously in a conspicuous public place at each desk, station, and position in the United States which is in the charge of a person employed exclusively by it, or by it jointly with another person, or by any agent employed by such air carrier or foreign air carrier to sell tickets to passengers, a sign located so as to be clearly visible and clearly readable to the traveling public, which shall have printed thereon the following statement in boldface type at least one-fourth of an inch high:

(B) Airline flights may be overbooked, and there is a slight chance that a seat will not be available on a flight for which a person has a confirmed reservation. If the flight is overbooked, no one will be denied a seat until airline personnel first ask for volunteers willing to give up their reservation in exchange for a payment of the airline’s choosing. If there are not enough volunteers the airline will deny boarding to other persons in accordance with its particular boarding priority. With few exceptions persons denied boarding involuntarily are entitled to compensation. The complete rules for the payment of compensation and each airline’s boarding priorities are available at all airport ticket counters and boarding locations. Some airlines do not apply these consumer protections to travel from some foreign countries, although other consumer protections may be available. Check with your airline or your travel agent.

(b) Every carrier shall include with each ticket sold in the United States the notices set forth in paragraph (a) of this section, printed in at least 12-point type. The notice may be printed on a separate piece of paper, on the ticket stock, or on the ticket envelope. The last two sentences of the notice shall be printed in a type face contrasting with that of the rest of the notice.

(c) It shall be the responsibility of each carrier to ensure that travel agents authorized to sell air transportation for that carrier comply with the notice provisions of paragraphs (a) and (b) of this section.

(d) [Reserved]

(e) Any air carrier or foreign air carrier engaged in foreign air transportation that complies fully with this part for inbound traffic to the United States need not use the last two sentences of the notices required by paragraph (a) of this subsection.

(Approved by the Office of Management and Budget under control number 3024-0003) (ER-1306, 47 FR 52985, Nov. 24, 1982, as amended by ER-1392, 49 FR 40401, Oct. 16, 1984)

PART 252—SMOKING ABOARD AIRCRAFT

Sec. 252.1 Purpose.
252.2 Applicability.
252.5 Smoking ban on U.S. segments.
252.7 No-smoking sections.
252.9 Ventilation systems.
252.11 Aircraft on the ground.
Office of the Secretary, DOT

§ 252.13 Small aircraft.

§ 252.15 Cigars and pipes.

§ 252.17 Enforcement.

§ 252.19 Single-entity charters.


Cross Reference: For smoking rules of the Federal Aviation Administration, see 14 CFR 121.317(c), 121.571(a)(1)(i), 129.29, 135.117(a)(1), and 135.127(a).

Source: 55 FR 4993, Feb. 13, 1990, unless otherwise noted.

§ 252.1 Purpose.

This part implements a ban on smoking of tobacco on flight segments between most U.S. points as required by section 335 of Public Law 101-164. It also continues smoking restrictions on other flights. Nothing in this regulation shall be deemed to require U.S. or foreign air carriers to permit the smoking of tobacco aboard aircraft.

§ 252.3 Applicability.

Section 252.5 applies to scheduled-service flight segments operated by U.S. and foreign direct air carriers between the U.S. points specified in that section. The remainder of this part applies to all operations of U.S. direct air carriers, except on-demand services of air taxi operators.

§ 252.5 Smoking ban on U.S. segments.

U.S. and foreign direct air carriers shall prohibit smoking in the passenger cabin and lavatories on any nonstop flight segment that is listed in the current Official Airline Guide, or is part of a longer flight that is listed in that publication, and that is:

(a) Between any two points within an area composed of Puerto Rico, the U.S. Virgin Islands, the District of Columbia, and the 48 contiguous states of the United States;

(b) Between any two points within the State of Alaska or within the State of Hawaii; or

(c) Scheduled in the current Official Airline Guide to be six hours or less in duration and that is:

(1) Between any point in paragraph (a) of this section and any point in Alaska or Hawaii; or

(2) Between any point in Alaska and any point in Hawaii.

§ 252.7 No-smoking sections.

(a) Except as provided in paragraph (b) of this section, U.S. air carriers operating nonstop flight segments to which §§252.5 and 252.13 do not apply shall provide, at a minimum:

(1) A no-smoking section for each class of service;

(2) A sufficient number of seats in each no-smoking section to accommodate all persons in that class of service who wish to be seated there;

(3) Expansion of no-smoking sections to meet passenger demand; and

(4) Special provisions to ensure that if a no-smoking section is placed between smoking sections, the non-smoking passengers are not unreasonably burdened.

(b) On flights for which passengers may make confirmed reservations and on which seats are assigned before boarding, a U.S. air carrier need not provide a seat in a no-smoking section to a passenger who has not met the carrier’s requirements as to time and method of obtaining a seat on the flight, or who does not have a confirmed reservation. If a seat is available in the established no-smoking section, however, a U.S. air carrier shall seat there any enplaning passenger who so requests, regardless of boarding time or reservation status.

§ 252.9 Ventilation systems.

U.S. air carriers shall prohibit smoking whenever the ventilation system is not fully functioning. Fully functioning for this purpose means operating so as to provide the level and quality of ventilation specified and designed by the manufacturer for the number of persons currently in the passenger compartment.

§ 252.11 Aircraft on the ground.

U.S. air carriers shall prohibit smoking whenever the aircraft is on the ground.

§ 252.13 Small aircraft.

U.S. air carriers shall prohibit smoking on aircraft designed to have a passenger capacity of less than 30 seats.
§ 252.15

NOTE.—This section, like the rest of this part, does not apply to on-demand services of air taxi operators; see §252.3 in this part.

§ 252.15 Cigars and pipes.

U.S. air carriers shall prohibit the smoking of cigars and pipes aboard aircraft.

§ 252.17 Enforcement.

U.S. and foreign air carriers shall take such action as is necessary to ensure that smoking by passengers or crew is not permitted in the passenger cabin or lavatories on no-smoking flight segments. U.S. air carriers shall take such action as is necessary to ensure that smoking by passengers or crew is not permitted in no-smoking sections or at other times or places where smoking is prohibited by this part, and to maintain required separation of passengers in smoking and no-smoking areas.

§ 252.19 Single-entity charters.

On single-entity charters operated pursuant to §§207.50 or 208.300 of this title, U.S. air carriers need not comply with the procedures of part 252 if such a request is made by the charterer, provided that each passenger on such flights is given notice of the smoking procedures for the flight at the time he or she first makes arrangements to take the flight.

PART 253—NOTICE OF TERMS OF CONTRACT OF CARRIAGE

§ 253.1 Purpose.

The purpose of this rule is to set uniform disclosure requirements, which preempt any State requirements on the same subject, for terms incorporated by reference into contracts of carriage for scheduled service in interstate and overseas passenger air transportation.

§ 253.2 Applicability.

This rule applies to all scheduled direct air carrier operations in interstate and overseas air transportation. It applies to all contracts with passengers, for those operations, that incorporate terms by reference.

[ER-1323, 48 FR 6318, Feb. 11, 1983]

§ 253.3 Definitions.

Large aircraft means any aircraft designed to have a maximum passenger capacity of more than 60 seats.

Passenger means any person who purchases, or who contacts a ticket office or travel agent for the purpose of purchasing, or considering the purchase of, air transportation.

Ticket office means station, office, or other location where tickets are sold that is under the charge of a person employed exclusively by the carrier, or by it jointly with another person.

§ 253.4 Incorporation by reference in the contract of carriage.

(a) A ticket or other written instrument that embodies the contract of carriage may incorporate contract terms by reference (i.e., without stating their full text), and if it does so shall contain or be accompanied by notice to the passenger as required by this part. In addition to other remedies at law, an air carrier may not claim the benefit as against the passenger of, and the passenger shall not be bound by, any contract term incorporated by reference if notice of the term has not been provided to that passenger in accordance with this part.

(b) Each air carrier shall make the full text of each term that it incorporates by reference in a contract of carriage available for public inspection at each of its airport and city ticket offices.

(c) Each air carrier shall provide free of charge by mail or other delivery service to passengers, upon their request, a copy of the full text of its terms incorporated by reference in the contract. Each carrier shall keep available at all times, free of charge, at all
§ 253.5 Notice of incorporated terms.

Except as provided in §253.8, each air carrier shall include on or with a ticket, or other written instrument given to a passenger, that embodies the contract of carriage and incorporates terms by reference in that contract, a conspicuous notice that:

(a) Any terms incorporated by reference are part of the contract, passengers may inspect the full text of each term incorporated by reference at the carrier’s airport or city ticket offices, and passengers have the right, upon request at any location where the carrier’s tickets are sold within the United States, to receive free of charge by mail or other delivery service the full text of each such incorporated term;

(b) The incorporated terms may include and passengers may obtain from any location where the carrier’s tickets are sold within the United States, further information concerning:

(1) Limits on the air carrier’s liability for personal injury or death of passengers, and for loss, damage, or delay of goods and baggage, including fragile or perishable goods;

(2) Claim restrictions, including time periods within which passengers must file a claim or bring an action against the carrier for its acts or omissions or those of its agents;

(3) Rights of the carrier to change terms of the contract. (Rights to change the price, however, are governed by §253.7);

(4) Rules about reconfirmation of reservations, check-in times, and refusal to carry;

(5) Rights of the carrier and limitations concerning delay or failure to perform service, including schedule changes, substitution of alternate air carrier or aircraft, and rerouting.

(Approved by the Office of Management and Budget under control number 3024-0061)


§ 253.6 Explanation of incorporated terms.

Each air carrier shall ensure that any passenger can obtain from any location where its tickets are sold within the United States a concise and immediate explanation of any terms incorporated by reference, concerning the subjects listed in §253.5(b).

(Approved by the Office of Management and Budget under control number 3024-0061)

[ER-1302, 47 FR 52134, Nov. 19, 1982, as amended by ER-1309, 47 FR 54764, Dec. 6, 1982]

§ 253.7 Direct notice of certain terms.

A passenger shall not be bound by any terms restricting refunds of the ticket price, imposing monetary penalties on passengers, or permitting the carrier to raise the price, unless the passenger receives conspicuous written notice of the salient features of those terms on or with the ticket.

(Approved by the Office of Management and Budget under control number 3024-0061)

[ER-1302, 47 FR 52134, Nov. 19, 1982, as amended by ER-1309, 47 FR 54764, Dec. 6, 1982]

§ 253.8 Qualifications to notice requirements.

(a) If notice is not provided in accordance with §253.5 at a ticket sales location outside of the United States that is not a U.S. air carrier ticket office, the price paid for the portion of such ticket that is for interstate and overseas air transportation shall be refundable without penalty if the passenger refuses transportation by the carrier.

Each air carrier shall ensure that passengers who have bought tickets at those locations without the notice required in §253.5 are given that notice not later than check-in for the travel in interstate or overseas air transportation, and that conspicuous notice is included on or with the ticket stating that the price for that travel is refundable without penalty.
(b) An air taxi operator (including a commuter air carrier) not operating under subpart I of part 298 of this chapter shall not be considered to have incorporated terms by reference into its contract of carriage merely because a passenger has purchased a flight segment on that carrier that appears on ticket stock that contains a statement that terms have been incorporated by reference. However, such an air taxi operator may not claim the benefit as against the passenger of, and the passenger shall not be bound by, any contract term incorporated by reference if notice of the term has not been provided to the passenger in accordance with this part.

[ER-1370, 48 FR 54591, Dec. 6, 1983]

PART 254—DOMESTIC BAGGAGE LIABILITY

Sec. 254.1 Purpose.
254.2 Applicability.
254.3 Definitions.
254.4 Carrier liability.
254.5 Notice requirement.


SOURCE: ER-1374, 49 FR 5071, Feb. 10, 1984, unless otherwise noted.

§ 254.1 Purpose.

The purpose of this part is to establish rules for the carriage of baggage in interstate and overseas air transportation. The part sets permissible limitations of air carrier liability for loss, damage, or delay in the carriage of passenger baggage and requires air carriers to provide certain types of notice to passengers.

§ 254.2 Applicability.

This part applies to any air carrier that provides charter or scheduled passenger service in interstate or overseas air transportation.

§ 254.3 Definitions.

Large aircraft means any aircraft designed to have a maximum passenger capacity of more than 60 seats.

§ 254.4 Carrier liability.

In any flight segment using large aircraft, or on any flight segment that is included on the same ticket as another flight segment that uses large aircraft, an air carrier shall not limit its liability for provable direct or consequential damages resulting from the disappearance of, damage to, or delay in delivery of a passenger’s personal property, including baggage, in its custody to an amount less than $1250 for each passenger.

§ 254.5 Notice requirement.

In any flight segment using large aircraft, or on any flight segment that is included on the same ticket as another flight segment that uses large aircraft, an air carrier shall provide to passengers, by conspicuous written material included on or with its ticket, either:

(a) Notice of any monetary limitation on its baggage liability to passengers; or

(b) The following notice: “Federal rules require any limit on an airline’s baggage liability to be at least $1250 per passenger.”

PART 255—CARRIER-OWNED COMPUTER RESERVATIONS SYSTEMS

255.1 Purpose.
255.2 Applicability.
255.3 Definitions.
255.4 Display of information.
255.5 Defaults and service enhancements.
255.6 Contracts with participating carriers.
255.7 System owner participation in other systems.
255.8 Contracts with subscribers.
255.9 Use of third-party hardware, software and databases.
255.10 Marketing and booking information.
255.11 Exceptions.
255.12 Termination.

Authority: 49 U.S.C. 40101, 40102, 40105, 40113, 41712.

SOURCE: Amdt. 255-9, 57 FR 43834, Sept. 22, 1992, unless otherwise noted.


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§ 255.1 Purpose.

(a) The purpose of this part is to set forth requirements for the operation by air carriers and their affiliates of computer reservations systems used by travel agents so as to prevent unfair, deceptive, predatory, and anticompetitive practices in air transportation.

(b) Nothing in this part operates to exempt any person from the operation of the antitrust laws set forth in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12).

§ 255.2 Applicability.

This rule applies to air carriers and foreign air carriers that themselves or through an affiliate own, control, operate, or market computerized reservations systems for travel agents in the United States, and to the sale in the United States of interstate, overseas, and foreign air transportation and of other airline services through such systems. Each carrier that owns, controls, operates, or markets a system shall ensure that the system’s operations comply with the requirements of this part.

§ 255.3 Definitions.

Affiliate means any person controlling, owned by, controlled by, or under common control with a carrier.

Availability means information provided in displays with respect to the seats carrier holds out as available for sale on a particular flight.

Carrier means any air carrier, any foreign air carrier, and any commuter air carrier, as defined in 49 U.S.C. 1301(3), 49 U.S.C. 1301(22), and 14 CFR 296.2(f), respectively, that is engaged directly in the operation of aircraft in passenger air transportation.

Discriminate, discrimination, and discriminatory mean, respectively, to discriminate unjustly, unjust discrimination, and unjustly discriminatory.

Display means that system’s presentation of carrier schedules, fares, rules or availability to a subscriber by means of a computer terminal.

Integrating display means any display that includes the schedules, fares, rules, or availability of all or a significant proportion of the system’s participating carriers.

On-time performance code means a single-character code supplied by a carrier to the vendor in accordance with the provisions of 14 CFR part 234 that reflects the monthly on-time performance history of a nonstop flight or one-stop or multi-stop single plane operation held out by the carrier in a CRS.

Participating carrier means a carrier, including a system owner, that has an agreement with a system for display of its schedules, fares, or seat availability, or for the making of reservations or issuance of tickets through a system.

Service enhancement means any product or service offered to subscribers or participating carriers in conjunction with a system other than the basic display of information on schedules, fares, rules, and availability, and the basic ability to make reservations or issue tickets for air transportation.

Subscriber means a ticket agent, as defined in 49 U.S.C. 1301(40), that holds itself out as a neutral source of information about, or tickets for, the air transportation industry and that uses a system.

System means a computerized reservations system offered by a carrier or its affiliate to subscribers for use in the United States that contains information about schedules, fares, rules or availability of other carriers and provides subscribers with the ability to make reservations and to issue tickets, if it charges any other carrier a fee for system services.

System owner means a carrier that holds five percent or more of the equity of a system, that has one or more affiliates that hold such an equity interest, or that together with affiliates holds such an interest.

§ 255.4 Display of information.

(a) All systems shall provide at least one integrated display that includes the schedules, fares, rules and availability of all participating carriers in accordance with the provisions of this section. This display shall be at least as useful for subscribers, in terms of functions or enhancements offered and the ease with which such functions or enhancements can be performed or implemented, as any other displays maintained by the system vendor. No system shall make available to subscribers any integrated display unless
that display complies with the requirements of this section.

(1) Each system must offer an integrated display that uses the same editing and ranking criteria for both on-line and interline connections and does not give on-line connections a system-imposed preference over interline connections. This display shall be at least as useful for subscribers, in terms of functions or enhancements offered and the ease with which such functions or enhancements can be performed or implemented, as any other display maintained by the system vendor.

(2) Each integrated display offered by a system must either use elapsed time as a significant factor in selecting service options from the database or give single-plane flights a preference over connecting services in displays.

(b) In ordering the information contained in an integrated display, systems shall not use any factors directly or indirectly relating to carrier identity.

(1) Systems may order the display of information on the basis of any service criteria that do not reflect carrier identity and that are consistently applied to all carriers, including each system owner, and to all markets.

(2) When a flight involves a change of aircraft at a point before the final destination, the display shall indicate that passengers on the flight will change from one aircraft to another.

(3) Each system shall provide to any person upon request the current criteria used in editing and ordering flights for the display of service in a market. The system may require participating carriers to use specified procedures for such requests, but no such procedures may be unreasonably burdensome, and any procedures required of participating carriers also must be used by any system owner when it requests or causes its system to use specific points as connect points (or double connect points).

(4) Participating carriers shall be entitled to request that a system use up to five connect points (and double connect points) in constructing connecting flights for the display of service in a market. The system may require participating carriers to use specified procedures for such requests, but no such procedures may be unreasonably burdensome, and any procedures required of participating carriers also must be used by any system owner when it requests or causes its system to use specific points as connect points (or double connect points).

(5) When a system selects connecting points and double connect points for use in constructing connecting flights it shall use at least fifteen points and, after September 15, 1993, six double connect points, for each city-pair, except that a system may select fewer such connect or double connect points for a city-pair where:

(i) Fewer than fifteen connecting points and six double connect points meet the service criteria described in paragraph (c)(1) of this section; and

(ii) The system has used all the points that meet those criteria, along with all additional connecting points and double connect points requested by participating carriers.

(6) If a system selects connecting points and double connect points for use in constructing connecting flights it shall use every point requested by itself or a participating carrier up to
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the maximum number of points that the system can use. The system may use fewer than all the connect points requested by itself and participating carriers to the extent that:

(i) Points requested by the system and participating carriers do not meet the service criteria described in paragraph (c)(1) of this section; and

(ii) The system has used all the points that meet those criteria.

(d) Each system shall apply the same standards of care and timeliness to loading information concerning participating carriers as it applies to the loading of its own information or the information of a system owner. No system owner may use procedures for providing information on its own services to its system that are not available to participating carriers. Each system shall provide to any person upon request all current data base update procedures and data formats.

(e) Systems shall use or display information concerning on-time performance of flights as follows.

(1) Within 10 days after receiving the information from participating carriers or third parties, each system shall include in all integrated schedule and availability displays the on-time performance code for each nonstop flight segment and one-stop or multi-stop single plane flight, for which a participating carrier provides a code.

(2) A system shall not use on-time flight performance as a ranking factor in ordering information contained in an integrated display.

(f) Each participating carrier shall ensure that complete and accurate information is provided each system in a form such that the system is able to display its flights in accordance with this section.

(g) A system may make available to subscribers the internal reservations system display of a system owner or other participating carrier, provided that all participating carriers are offered the ability to make their internal reservations displays available to subscribers, and provided further that a subscriber and its employees may see any such display only by requesting it for a specific transaction.


§ 255.5 Defaults and service enhancements.

(a) In the event that a system offers a service enhancement to a system owner or other participating carrier, it shall offer the enhancement to all participating carriers on nondiscriminatory terms, except to the extent that such service enhancement is still in the development stage or that participation is not immediately feasible for technical reasons, in which event the system shall make it available to all participating carriers as soon as possible.

(b) After October 1, 1993, no system may create or maintain a default in any system feature that automatically prefers one or more system owners over other participating carriers.

§ 255.6 Contracts with participating carriers.

(a) No system may discriminate among participating carriers in the fees for participation in its system, or for system-related services. Differing fees to participating carriers for the same or similar levels of service shall be presumed to be discriminatory.

(b) No system may condition participation in its system on the purchase or sale of any other goods or services.

(c) Notwithstanding paragraph (b) of this section, a system may condition participation in its system in the United States on a participating carrier’s agreement to participate in the system or affiliated systems in other countries, if the system and such affiliates agree that:

(1) The display of services in such system and its affiliates will not use any factors related to carrier identity and

(2) Any fees charged the carrier shall not be discriminatory.

(d) A system shall provide upon request to carriers current information on its fee levels and fee arrangements with other participating carriers. A system’s bill to a participating carrier for any fee must contain adequate information and be on magnetic media so that the participating carrier can determine whether the bill is accurate. At a minimum, booking fee bills must include the following information for each segment: PNR record locator...
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number, passenger name, booking status, agency ARC number, pseudo-city code, CRS transaction date, city-pair information, flight number, flight date, class of service, and type of CRS booking.
(e) No system may require a carrier (other than a carrier that owns or markets, or is an affiliate of a person that owns or markets, a foreign or domestic computerized reservations system) to maintain any particular level of participation or buy any enhancements in its system on the basis of participation levels or enhancements selected by that carrier in any other foreign or domestic computerized reservations system. A system may not compel a carrier that owns or markets, or is an affiliate of a person that owns or markets, a foreign or domestic computerized reservations system, to maintain a particular level of participation or buy an enhancements in its system on the basis of participation levels or enhancements selected by that carrier in another foreign or domestic computerized reservations system, until 14 days after it has given the Department and such carrier written notice of its intent to take such action.


§ 255.7 System owner participation in other systems.

(a) Each system owner shall participate in each other system and each of its enhancements (to the extent that such owner participates in such an enhancement in its own system) if the other system offers commercially reasonable terms for such participation. Fees shall be presumed commercially reasonable if:
(1) They do not exceed the fees charged by the system of such system owner in the United States or
(2) They do not exceed the fees being paid by such system owner to another system in the United States.
(b) Each system owner shall provide complete, timely, and accurate information on its airline schedules, fares, and seat availability to each other system in which it participates on the same basis and at the same time that it provides such information to the system that it owns, controls, markets, or is affiliated with. If a system owner offers a fare or service that is commonly available to subscribers to its own system, it must make that fare or service equally available for sale through each other system in which it participates.

§ 255.8 Contracts with subscribers.

(a) No subscriber contract may have a term in excess of five years. No system may offer a subscriber or potential subscriber a subscriber contract with a term in excess of three years unless the system simultaneously offers such subscriber or potential subscriber a subscriber contract with a term no longer than three years. No contract may contain any provision that automatically extends the contract beyond its stated date of termination, whether because of the addition or deletion of equipment or because of some other event.
(b) No system may directly or indirectly impede a subscriber from obtaining or using any other system. Among other things, no subscriber contract or contract offer may require the subscriber to use a system for a minimum volume of transactions, and no subscriber contract or contract offer may require the subscriber to lease a minimum number or ratio of system components based upon or related to:
(1) The number of system components leased from another system vendor or
(2) The volume of transactions conducted on any other system.
(c) No system owner may require use of its system by the subscriber in any sale of its air transportation services.
(d) No system owner may require that a travel agent use or subscribe to its system as a condition for the receipt of any commission for the sale of its air transportation services.
(e) No system may charge prices to subscribers conditioned in whole or in part on the identity of carriers whose flights are sold by the subscriber.

§ 255.9 Use of third-party hardware, software and databases.

(a) No system may prohibit or restrict, directly or indirectly, the use of:
(1) Third-party computer hardware or software in conjunction with CRS services, except as necessary to protect the integrity of the system, or
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(2) A CRS terminal to access directly any other system or database providing information on airline services, unless the terminal is owned by the system.

(b) This section prohibits, among other things, a system’s:

(1) Imposition of fees in excess of commercially reasonable levels to certify third-party equipment;
(2) Undue delays or redundant or unnecessary testing before certifying such equipment;
(3) Refusal to provide any services normally provided subscribers because of a subscriber’s use of third-party equipment or because of the subscriber’s using the same equipment (unless owned by the system) for access to both the system and to another system or database; and
(4) Termination of a subscriber contract because of the subscriber’s use of third-party equipment or use of the same equipment for access to the system and to another system or database.

(c) A system shall make available to developers of third-party hardware and software on commercially reasonable terms the nonproprietary system architecture specifications and other nonproprietary technical information needed to enable such developers to create products that will be compatible with the system.

(d) Nothing in this section shall be construed to require any system or system owner to:

(1) Develop or supply any particular product, device, hardware or software to enable a subscriber to use another system, or
(2) Provide service or support with respect to any product, device, hardware, software, or service not provided to a subscriber by the system or system owner.

§ 255.10 Marketing and booking information.

(a) Each system shall make available to all U.S. participating carriers on nondiscriminatory terms all marketing, booking, and sales data relating to bookings on international services that it elects to generate from its system, provided that no system may impose such data to a foreign carrier if the foreign carrier or an affiliate owns, operates, or controls a system in a foreign country, unless such carrier or system provides comparable data to all U.S. carriers on nondiscriminatory terms. Before a system provides such data to a foreign carrier, it shall give written notice to each of the U.S. participating carriers in its system that it will provide such data to such foreign carrier. The data made available by a system shall be as complete and accurate as the data provided a system owner.

(c) Any U.S. or foreign carrier receiving data on international bookings from a system must ensure that no one has access to the data except its own personnel and the personnel of any outside firm used for processing the data on its behalf, except to the extent that the system or a system owner provides such access to other persons.

§ 255.11 Exceptions.

(a) The obligations of a system under § 255.4 shall not apply with respect to a carrier that refuses to enter into a contract that complies with this part or fails to pay a nondiscriminatory fee. A system shall apply its policy concerning treatment of non-paying carriers on a uniform basis to all such carriers, and shall not receive payment from any carrier for system-related services unless such payments are made pursuant to a contract complying with this part.

(b) The obligations of a system under this part shall not apply to any foreign carrier that operates or whose affiliate operates an airline computer reservations system for travel agents outside the United States, if that system discriminates against the display of flights of any United States carrier or imposes discriminatory terms for participation by any United States carrier in its computer reservations system, provided that a system must continue complying with its obligations under
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this part until 14 days after it has given the Department and such foreign carrier written notice of its intent to deny such foreign carrier any or all of the protections of this part.

§ 255.12 Termination.

Unless extended, these rules on carrier-owned computer reservation systems shall terminate on March 31, 1999.


PART 256—DISPLAY OF JOINT OPERATIONS IN CARRIER-OWNED COMPUTER RESERVATIONS SYSTEMS

Sec.
256.1 Purpose.
256.2 Applicability.
256.3 Definitions.
256.4 Display of information.


SOURCE: ER-1377, 49 FR 12677, Mar. 30, 1984, unless otherwise noted.

§ 256.1 Purpose.

The purpose of this part is to set forth a requirement for operation by air carriers of computer reservation systems used by travel agents so as to prevent unfair, predatory, and anti-competitive practices in air transportation.

§ 256.2 Applicability.

This rule applies to air carriers or foreign air carriers that own, control, or operate computerized reservation systems for travel agent subscribers in the United States, and the sale in the United States of interstate, overseas, and foreign passenger air transportation through such systems.

§ 256.3 Definitions.

Carrier means any air carrier, any foreign air carrier, and any commuter air carrier, as defined in 49 U.S.C. 1301(3), 1301(22), and §298.2(f) of this chapter, respectively that is engaged directly in the operation of aircraft in passenger air transportation.

Display means the system’s presentation of carrier schedules, fares, rules or availability to a subscriber by means of computer terminal.

Subscriber means a ticket agent, as defined in 49 U.S.C. 1301(40) of the Act, that holds itself out as a neutral source of information about, or tickets for, the air transportation industry in general, and that has entered into an agreement for the use of a system.

System means a computerized airline reservation system offered by a carrier to subscribers, for use in the United States that contains information about schedules, fares, rules or availability of other carriers and that provides subscribers with the ability to issue tickets.

System vendor means a carrier that owns, controls or operates a system.

Designator code means the airline designations allotted and administered pursuant to Agreements CAB 24606 and 26056.

§ 256.4 Display of information.

(a) A system vendor shall not deny access to its system to two or more carriers whose flights share a single designator code, absent a determination by the Board that the use of the code constitutes a violation of 49 U.S.C. 1381.

(b) A system vendor shall not discriminate against any carrier on the basis of that carrier’s using the same designator code as another carrier, either by display bias, or any other means relating to providing the system.

PART 271—GUIDELINES FOR SUBSIDIZING AIR CARRIERS PROVIDING ESSENTIAL AIR TRANSPORTATION

Sec.
271.1 Purpose.
271.2 Definitions.
271.3 Carrier subsidy need.
271.4 Carrier costs.
271.5 Carrier revenues.
271.6 Profit element.
271.7 Subsidy payout formula.
271.8 Rate period.
271.9 Discrimination prohibited.


SOURCE: ER-1398, 49 FR 49846, Dec. 24, 1984, unless otherwise noted.
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§ 271.1 Purpose.

This part establishes the guidelines required by 49 U.S.C. 41736 to be used by the Department in establishing the fair and reasonable amount of compensation needed to ensure the continuation of essential air service to an eligible place under 49 U.S.C. 41731 and 41734. These guidelines are intended to cover normal carrier selection cases and rate renewal cases, and not necessarily emergency carrier selection cases.

[60 FR 43524, Aug. 22, 1995]

§ 271.2 Definitions.

As used in this part:

Eligible place means a place in the United States that—

(1) Was an eligible point under section 419 of the Federal Aviation Act of 1958 as in effect before October 1, 1988;

(2) Received scheduled air transportation at any time between January 1, 1990, and November 4, 1990; and

(3) Is not listed in Department of Transportation Orders 89±9±37 and 89±12±52 as a place ineligible for compensation under Subchapter II of Chapter 417 of the Statute.

Essential air service is that air transportation which the Department has found to be essential under Subchapter II of Chapter 417 of the Statute.

[60 FR 43524, Aug. 22, 1995]

§ 271.3 Carrier subsidy need.

In establishing the subsidy for an air carrier providing essential air service at an eligible place, the Department will consider the following:

(a) The reasonable projected costs of a carrier in serving that place;

(b) The carrier's reasonable projected revenues for serving that place;

(c) The appropriate size of aircraft for providing essential air service at that place; and

(d) A reasonable profit for a carrier serving that place.


§ 271.4 Carrier costs.

(a) The reasonable costs projected for a carrier providing essential air service at an eligible place will be evaluated:

(1) For costs attributable to the carrier's flying operations (direct expenses), by comparing the projected costs submitted by the carrier with the following:

(i) The carrier's historical direct operating costs with the same or similar aircraft types;

(ii) The direct operating unit costs of similar carriers using the same or similar equipment; and

(iii) Data supplied by the manufacturer of the carrier's aircraft.

(2) For other costs, by one or more of the following methods:

(i) By direct assignment where the indirect costs are attributable to the carrier's operations at the eligible place;

(ii) By comparing the carrier's systemwide indirect operating expenses to those submitted by the carrier for the eligible place; or

(iii) By comparing the indirect operating expenses submitted by the carrier with the ratio of indirect to direct costs that have been experienced by the carrier in other markets or to costs that are representative of the industry.

(3) By considering the unique circumstances of the carrier or the community being served that justify deviations from the costs that would otherwise be established for that carrier under this paragraph.

(4) By determining whether the aircraft to be used by the carrier at the eligible place, and on which its costs are derived, are appropriate for providing essential air service there. The appropriateness of the aircraft to be used is based on the following characteristics of the eligible place:

(i) Traffic levels;

(ii) The level of air service that the Department has decided is essential for the eligible place;

(iii) Distance to the designated hub;

(iv) The altitude at which the carrier must fly to the designated hub; and

(v) Other operational elements involved.

(b) When the essential air service would be made part of the carrier's linear system, the Department might, instead of the factors in paragraph (a) of
§ 271.5 Carrier revenues.

(a) The projected passenger revenue for a carrier providing essential air service at an eligible place will be calculated by multiplying the following:

(1) A reasonable projected net fare, which is the standard fare expected to be charged for service between the eligible place and the designated hub less any dilution caused by joint fare arrangements, discount fares that it offers, or prorates of fares for through one-line passengers; and

(2) The traffic (including both local and beyond traffic) projected to flow between the eligible place and the designated hub or hubs, which is based on the carrier’s own estimates, Department estimates, and on traffic levels in the market at issue when such data are available.

(b) The reasonableness of a carrier’s passenger revenue projections will be evaluated by:

(1) Comparing the carrier’s proposed fare with the fare charged in other city-pair markets of similar distances and traffic densities; and

(2) Comparing the carrier’s proposed pricing structure with historical pricing practices in the market at issue, with the pricing practices of that carrier in other markets, and with any standard industry pricing guidelines that may be available.

(c) An estimate of freight and other transport-related revenue will be included as a component of projected revenues and will be based on recent experience in the market involved and on the experience of the carrier involved in other markets.

[ER-1398, 49 FR 48946, Dec. 24, 1984, as amended at 60 FR 43524, 43525, Aug. 22, 1995]

§ 271.6 Profit element.

The reasonable return for a carrier for providing essential air service at an eligible place generally will be set at a flat percentage, typically 5 percent of that carrier’s projected operating costs as established under §271.4, plus any applicable interest expenses on flight equipment.

[ER-1398, 49 FR 48946, Dec. 24, 1984, as amended at 60 FR 43524, 43525, Aug. 22, 1995]

§ 271.7 Subsidy payout formula.

(a) Subsidy will be paid by the Department to the air carrier monthly, based on the subsidy rate established by the Department for the carrier under this part. Payments will not vary except as provided in this section.

(b) While a carrier’s subsidy rate will not vary even if actual revenues or costs differ from projections, the actual amount of each payment may vary depending on the following factors:

(1) Seasonal characteristics of the carrier’s operations at the eligible place;

(2) The actual number of flights completed, aircraft miles flown, available seat-miles flown, or variations in other operational elements upon which the subsidy rate is based; or

(3) Adjustments to the carrier’s subsidy required by §271.8(b).

(c) Payments will continue for the duration of the rate term established under §271.8 provided that the carrier continues to provide the required service.

[ER-1398, 49 FR 48946, Dec. 24, 1984, as amended at 60 FR 43524, 43525, Aug. 22, 1995]

§ 271.8 Rate period.

(a) The subsidy rate generally will be set for a 2-year period, or two consecutive 1-year periods. The Department may set the rate for a shorter period in the following situations:

(1) A commuter air carrier is replacing a larger certificated carrier at the eligible place;

(2) Traffic at the eligible place has substantially decreased;

(3) The Department considers the cost or revenue projections of the carrier for the second year to be unrealistic;

(4) It is likely that there will be changes in the eligible place essential air service level; or

(5) The uncertainties of the market or other circumstances warrant a shorter rate period.

(b) The subsidy rate established for a carrier under this part will not be
changed during the rate period unless an adjustment is required in the public interest.

(c) At the end of the rate period, the carrier will not have a continuing right to receive subsidy for providing essential air service at the eligible place.


§ 272.3 Discrimination prohibited.

(a) All air carriers receiving subsidy under this part shall comply with the following:

(1) The Age Discrimination Act of 1975;

(2) The Civil Rights Act of 1964 and 49 CFR part 21; and

(3) The Rehabilitation Act of 1973, 49 CFR part 27, and part 382 of this chapter.

(b) Within 1 year after it first receives a subsidy under this part, the carrier shall evaluate its practices and procedures for accommodating the handicapped in accordance with § 382.23 of this chapter.

(c) All air carriers seeking a subsidy under this part shall include in their subsidy application the assurances required by 49 CFR parts 20, 21, 27 and 29, and § 382.21 of this chapter.


PART 272—ESSENTIAL AIR SERVICE TO THE FREELY ASSOCIATED STATES

Sec. 272.1 Purpose.

272.2 Applicability.

272.3 Places eligible for guaranteed essential air service.

272.4 Applicability of procedures and policies under 49 U.S.C. 41731–42.

272.5 Determination of essential air service.

272.6 Considerations in the determination of essential air service.

272.7 Notice of discontinuance of service.

272.8 Obligation to continue service.

272.9 Selection of a carrier to provide essential air service and payment of compensation.

272.10 Conditions applicable to carriers serving a subsidized market.

272.11 Effective date of provisions.

272.12 Termination.


SOURCE: Amdt. No. 272–1, 52 FR 5443, Feb. 23, 1987, unless otherwise noted.

§ 272.2 Applicability.

This part establishes the provisions applicable to the Department’s guarantee of essential air service to places in the Federated States of Micronesia, the Marshall Islands and Palau, and the payment of compensation for such services. The rule applies to U.S. air carriers and Freely Associated State Air Carriers providing essential air service to these places.


§ 272.3 Places eligible for guaranteed essential air service.

(a) Subject to the provisions of this part, and paragraph 5 of Article IX of the Federal Programs and Services Agreement, the Department will make
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provision for the operation of essential air service, with compensation if necessary, to the following places in the Freely Associated States:
In the Federated States of Micronesia:
Ponape, Truk and Yap.
In the Marshall Islands: Majuro and Kwajalein.
In Palau: Koror.
(b) The places specified herein in the Federated States of Micronesia, the Marshall Islands or Palau, respectively, shall cease to be eligible places under this part if any of those Governments withdraw from the subsidy provisions of Article IX of the Federal Programs and Services Agreement in accordance with paragraph 8 of Article IX or Article XII of that Agreement.


§ 272.5 Determination of essential air service.

(a) The determination of essential air service to an eligible Freely Associated State place, the Department shall consider, among other factors, the following:

(1) The demonstrated level of traffic demand;

(2) The amount of compensation necessary to maintain a level of service sufficient to meet that demand;

(3) The extent to which the demand may be accommodated by connecting or other services of U.S., Freely Associated State, or foreign carriers by air—through U.S., Freely Associated State, or foreign places—that provide access to the U.S. air transportation system;

(4) Alternative modes of transportation that may be available; and

(5) The peculiar needs of the Freely Associated States for air transportation services.

(b) The Guidelines for Individual Determinations of essential air service set forth in Part 398 of this chapter shall be applied only to the extent the Department concludes that they are applicable to the special circumstances affecting transportation to the Freely Associated States and reflective of the provisions of this part.

(c) Nothing in this part shall be construed as providing for a level of essential air service that would exceed the level of service justified by the considerations set forth in paragraph (a) of this section.


§ 272.6 Notice of discontinuance of service.

(a) An air carrier or Freely Associated State Air Carrier shall not terminate, suspend, or reduce air service to any eligible Freely Associated State place, unless it has given notice as specified in this section, if as a result of the reduction of such service the aggregate of the remaining air service provided to such place would be below:

(1) If the Department has not made a determination of essential air service for such place, the level of service specified in Order 80-9-63; and

(2) If the Department has made a determination of essential air service for
such place, that level of essential air service.

(b) An air carrier or Freely Associated State Air Carrier wishing to terminate, suspend or reduce air service under paragraph (a) shall file a notice of such proposed reduction in service at least 90 days prior to such service reduction, in accordance with the procedures specified in §§323.4, 323.6, and 323.7 of this chapter.

(c) The notice shall be served on the President and the designated Authorities of the Freely Associated State concerned, in addition to the persons specified in §323.7.

(d) The procedures specified in §§323.9-323.18, to the extent applicable to 90-day notices filed by certificated air carriers, shall also be applicable to notices of terminations, suspensions or reductions in service filed under this section.


§ 272.9 Selection of a carrier to provide essential air service and payment of compensation.

(a) If the Department finds that essential air service will not be maintained to an eligible Freely Associated State place, the Department shall invite applications to provide the service required to maintain essential air service to such place. During any period the Department requires an air carrier or Freely Associated State Air Carrier to maintain a level of service proposed to be terminated, suspended or reduced, following the filing of a 90 day notice in accordance with §272.7, the Department will provide for the payment of compensation to such carrier for any losses incurred by that carrier as a result of such required continuation of service in accordance with the procedures set forth in part 271 of this chapter. If the carrier is already receiving compensation pursuant to §272.9 of this part, the Department will continue to direct payment of such compensation during any period the carrier is required to maintain service. Such payments shall be made by the Department of Interior from funds appropriated for this purpose.

(b) The Department will review its order from time to time and will revise the level of required service as necessary to maintain only the level of essential air service determined by the Department for that place, considering all other service to such place in accordance with §272.6(a)(3).

(c) During the period any such air carrier or Freely Associated State Air Carrier is required to maintain service under this section, the Department will make every effort to obtain alternative service, with compensation if necessary, as required to maintain essential air service to such place.


§ 272.8 Obligation to continue service.

(a) If the Department finds that a proposed termination, suspension, or reduction in service by an air carrier or Freely Associated State Air Carrier will, or may, reduce service to an eligible Freely Associated State place below the level of essential air service to such place, whether or not the Department has previously determined the level of essential air service to such place, the Department may direct the air carrier or Freely Associated State Air Carrier concerned to maintain service to such place at a level the Department determines will ensure essential air service to such place, pending the commencement of alternative service as required to maintain the level of essential air service previously, or thereafter, determined by the Department.

(b) During any period the Department requires an air carrier or Freely Associated State Air Carrier to maintain a level of service proposed to be terminated, suspended or reduced, following the filing of a 90 day notice in accordance with §272.7, the Department will provide for the payment of compensation to such carrier for any losses incurred by that carrier as a result of such required continuation of service.
§ 272.10 Conditions applicable to carriers serving a subsidized market.

(a) The Department may, after providing an opportunity for comment by the carrier or carriers affected, impose service, fare or rate conditions on any U.S., Freely Associated State, foreign air carrier, or foreign carrier by air as a precondition to the payment of compensation necessary to maintain essential air service, whether or not the affected carrier is itself receiving subsidy compensation in the market, if it finds that:

(1) Essential air service in a Freely Associated State market or markets will not be provided in the absence of the payment of compensation;

(2) Specified service, rate or fare conditions are or will be necessary or desirable to minimize the required subsidy compensation; and

(3) The imposition of such conditions will not unduly impair the service provided in the market.

To the extent the carrier or carriers upon whom the conditions are imposed pursuant to paragraph (a) of this section do not hold a certificate, permit, or other authority from the Department that may be amended to effectively implement the specified conditions, the Department may notify the Government(s) of the Freely Associated States concerned that the imposition of such conditions on those carriers by those Governments shall be a precondition to the payment of the subsidy compensation required to maintain essential air service in the market in question.

The Department may withhold or suspend its provision for the payment of subsidy compensation required to maintain essential air service unless and until the Freely Associated State(s) concerned take the necessary action to impose the specified conditions on the carriers referred to in paragraph (b) of this section, and those carriers have complied with the specified conditions.

Any order of the Department imposing conditions, or requiring the imposition of conditions, pursuant to this paragraph shall be submitted to the President for review not less than 10 days prior to its effective date, and shall be subject to stay or disapproval by the President.

The provisions of this part shall not become effective for Palau until the Compact of Free Association and Article IX of the Federal Programs and Services Agreement become effective for Palau.

These provisions shall terminate on October 1, 1998, unless the program of essential air service to the Federated States of Micronesia, the Marshall Islands, and Palau is specifically extended by Congress.

This amendment is issued under the authority of 49 CFR 1.57(l).

The provisions of this part shall not become effective for Palau until the Compact of Free Association and Article IX of the Federal Programs and Services Agreement become effective for Palau.

These provisions shall terminate on October 1, 1998, unless the program of essential air service to the Federated States of Micronesia, the Marshall Islands, and Palau is specifically extended by Congress.

This amendment is issued under the authority of 49 CFR 1.57(l).
§ 291.10

Air transportation of only property or only mail, or both.

Interstate air transportation means the transportation of passengers or property by aircraft as a common carrier for compensation, or the transportation of mail by aircraft—

(1) Between a place in—

(i) A State, territory, or possession of the United States and a place in the District of Columbia or another State, territory, or possession of the United States;

(ii) Hawaii and another place in Hawaii through the airspace over a place outside Hawaii;

(iii) The District of Columbia and another place in the District of Columbia; or

(iv) A territory or possession of the United States and another place in the same territory or possession; and

(2) When any part of the transportation is by aircraft.

Section 41102 carrier means an air carrier certificated under section 41102 of the Statute to transport persons, property and mail or property and mail only.

Section 41103 carrier means an air carrier holding a certificate issued under section 41103 of the Statute to provide all-cargo air transportation.

[Docket No. 47582, 57 FR 38770, Aug. 27, 1992]

Subpart B—All-Cargo Air Transportation Certificates

§ 291.20 Applicability.

The rules in this subpart apply to cargo operations in interstate air transportation performed by air carriers certificated under sections 41102 or 41103 of the Statute. Section 41103 carriers that operate passenger-only or combination aircraft under section 41102, part 298 of this chapter, or other Department authority, must comply with the rules in this subpart in connection with cargo operations in interstate air transportation, whether provided on all-cargo or combination aircraft, operated pursuant to this authority or otherwise. In case a carrier may operate a particular flight under either a section 41102 certificate or a section 41103 certificate, the flight is presumed to be operated under the carrier’s section 41103 authority.

[60 FR 43526, Aug. 22, 1995]

§ 291.22 Aircraft accident liability insurance requirement.

No air carrier shall operate all-cargo aircraft or provide all-cargo air transportation unless such carrier has and maintains in effect aircraft accident liability coverage that meets the requirements of part 205 of this chapter.


§ 291.23 Record retention.

(a) The provisions of 14 CFR part 249, Preservation of air carrier accounts, records and memoranda, shall apply to all carriers, except that records pertaining to transportation provided on aircraft eligible to be operated under part 298 of this title, and records concerning transportation outside the geographic scope of interstate air transportation, need not be maintained unless required by other Department regulations.

(b) Each carrier shall retain for 1 year a copy of each rate sheet, airwaybill contract, and other document reflecting changed, new, or other previously unreported general or special prices or rules governing the carriage of freight in interstate air transportation (except mail), unless the transportation was performed in accordance with an effective tariff on file with the Department. Each carrier shall retain for 1 year a copy of any formula based on standard weight,
mileage, or other method used to determine an individual airbill or contract.

(Approved by the Office of Management and Budget under control number 3024-0022)  

§ 291.24 Waiver of Department Economic Regulations.

Except for this part and those parts of the Department’s Economic Regulations (parts 200 through 299 of this title) specifically referred to in this part, carriers providing cargo operations in interstate air transportation are, with respect to that transportation, relieved from all obligations imposed on air carriers by those economic regulations. Flights operated entirely within interstate air transportation shall be free from those obligations, even though they may also carry shipments to or from points outside that geographic area. This waiver shall not apply to the requirements of part 239 of this title.

[ER–1080, 43 FR 53635, Nov. 16, 1978, as amended at 60 FR 43526, Aug. 22, 1995]

Subpart D—Exemptions for Cargo Operations in Interstate Air Transportation

§ 291.30 General.

The following exemptions, except as otherwise specifically noted, apply only to cargo operations in interstate air transportation. They do not relieve a carrier from obligations derived from other transportation.

[ER–1080, 43 FR 53635, Nov. 16, 1978, as amended at 60 FR 43526, Aug. 22, 1995]

§ 291.31 Exemptions from the Statute.

(a) Each section 41102 or 41103 air carrier providing cargo operations in interstate air transportation is, with respect to such transportation, exempted from the following portions of the Statute only if and so long as it complies with the provisions of this part and the conditions imposed here- in, and to the extent necessary to permit it to conduct cargo operations in interstate air transportation:

(1) Sections 41310, 41705,
(2) Chapter 415, and
(3) Chapter 419 for all-cargo operations under section 41103.

(b) Each air carrier providing cargo operations in interstate air transportation under section 41103 of the Statute is exempted from the provisions of section 41106(a) of the Statute to the extent necessary to permit it to compete for and operate cargo charters in interstate air transportation for the Department of Defense under contracts of more than 30 days’ duration.

(c) The Department of Defense is exempted from section 41106(a) of the Statute to the extent necessary to permit it to negotiate and enter into contracts of more than 30 days’ duration with any section 41103 carrier for operation of cargo charters in interstate air transportation.

[60 FR 43526, Aug. 22, 1995]

Subpart E—Reporting Rules

§ 291.40 [Reserved]

§ 291.41 Financial and statistical reporting—general.

(a) Carriers providing cargo operations in interstate air transportation that also conduct other operations under section 41102 shall comply with the provisions of part 241 of this title.

(b) Carriers providing cargo operations in interstate air transportation under section 41103 certificates shall comply with § 291.42.

(c) Carriers providing cargo operations in interstate air transportation under section 41103, and also providing other services under part 298 of this title, shall report their cargo operations in interstate air transportation operations in accordance with § 291.42, and shall report all other traffic in accordance with the provisions of subpart F of part 298.

[ER–1080, 43 FR 53635, Nov. 16, 1978, as amended at 60 FR 43526, Aug. 22, 1995]

§ 291.42 Section 41103 financial and statistical reporting.

(a) General instructions. (1) Carriers operating under section 41103 certificates that are not subject to part 241 of this chapter shall file Form 291-A,
Statement of Operations and Statistics Summary, for section 41103 operations.

(2) The form required by this section shall be filed annually on February 10 covering the 12 months ending December 31. It shall be filed at the Office of Airline Information, 2K25, Room 4125, U.S. Department of Transportation, 400 Seventh St., SW., Washington, DC 20590.

(3) The carrier’s chief accounting officer shall sign a certification attesting to the truth and completeness of the reports required by this section.

(b) Statement of Operations and Statistics Summary for section 41103 operations. This statement shall include the following elements:

(1) Total operating revenue, categorized as follows:
   (i) Transport revenues from the carriage of property in scheduled and nonscheduled service;
   (ii) Transport revenue from the carriage of mail in scheduled and nonscheduled service; and
   (iii) Transport-related revenues.

(2) Total operating expenses;

(3) Operating profit or loss, computed by subtracting the total operating expenses from the total operating revenues; and

(4) Net income, computed by subtracting the total operating and nonoperating expenses, including interest expenses and income taxes, from the total operating and nonoperating revenues.

(c) Summary of traffic and capacity statistics. This summary shall include the following elements:

(1) Total revenue ton-miles, which are the aircraft miles flown on each flight stage times the number of tons of revenue traffic carried on that stage. They shall be categorized as follows:
   (i) Property; and
   (ii) Mail.

(2) Revenue tons enplaned, reflecting the total revenue tons of cargo loaded on aircraft during the annual period;

(3) Available ton-miles, reflecting the total revenue ton-miles available for all-cargo service during the annual period, and computed by multiplying aircraft miles flown on each flight stage by the number of tons of aircraft capacity available for that stage;

(4) Aircraft miles flown, reflecting the total number of aircraft miles flown in cargo service during the annual period;

(5) Aircraft departures performed, reflecting the total number of take-offs performed in cargo service during the annual period; and

(6) Aircraft hours airborne, reflecting the aircraft hours of flight (from take-off to landing) performed in cargo service during the annual period.


Subpart F—Enforcement

§ 291.50 Enforcement.

In case of any violation of any of the provisions of the Statute, or this part, or any other rule, regulation, or order issued under the Statute, the violator may be subject to a proceeding pursuant to section 46101 of the Statute before the Department, or sections 46106 through 46108 of the Statute before a U.S. District Court, as the case may be, to compel compliance therewith; or to civil penalties pursuant to the provisions of section 46301 of the Statute.

[60 FR 43526, Aug. 22, 1995]

PART 292—INTERNATIONAL CARGO TRANSPORTATION

Subpart A—General

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292.1 Applicability.
292.2 Definitions.

Subpart B—Exemption From Filing Tariffs

292.10 Exemption.
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292.20 Rule of construction.
292.21 Incorporation of contract terms by reference.
292.22 Effectiveness of tariffs on file.


Source: Docket No. 48827, 60 FR 61478, Nov. 30, 1995, unless otherwise noted.
Subpart A—General

§ 292.1 Applicability.
This part applies to direct air carriers providing scheduled transportation of cargo in foreign air transportation.

§ 292.2 Definitions.
For purposes of this part:
Cargo means property other than baggage accompanied or checked by passengers, or mail.
Cargo tariff means a tariff containing rates, charges or provisions governing the application of such rates or charges, or the conditions of service, applicable to the scheduled transportation of cargo in foreign air transportation.
Direct air carrier means an air carrier or foreign air carrier directly engaged in the operation of aircraft under a certificate, regulation, order, exemption or permit issued by the Department or its predecessor, the Civil Aeronautics Board.

Subpart B—Exemption From Filing Tariffs

§ 292.10 Exemption.
Direct air carriers are exempted from the requirement to file cargo tariffs with the Department of Transportation provided in 49 U.S.C. 41504 and 14 CFR Part 221.

§ 292.11 Revocation of exemption.
(a) The Department, upon complaint or upon its own initiative, may, immediately and without hearing, revoke, in whole or in part, the exemption granted by this part with respect to a carrier or carriers, when such action is in the public interest.
(b) Any such action will be taken in an order issued by the Assistant Secretary for Aviation and International Affairs, and will identify:
(1) The tariff matter to be filed; and
(2) The deadline for carrier compliance.
(c) Revocations under this section will have the effect of reinstating all applicable tariff requirements and procedures specified in the Department's regulations for the tariff material to be filed, unless otherwise specified by Department order.

Subpart C—Effect of Exemption

§ 292.20 Rule of construction.
Carriers holding an effective exemption from the duty to file tariffs under this part shall not, unless otherwise directed by order of the Department, be subject to tariff posting, notification or subscription requirements set forth in 49 U.S.C. 41504 or 14 CFR part 221, except as provided in § 292.21 of this part.

§ 292.21 Incorporation of contract terms by reference.
(a) Carriers holding an effective exemption from the duty to file tariffs under this part may incorporate contract terms by reference (i.e., without stating their full text) into the waybill or other document embodying the contract of carriage for the scheduled transportation of cargo in foreign air transportation, provided that:
(1) The notice, inspection, explanation and other requirements set forth in 14 CFR 221.177(a)(1), (a)(2), (a)(4), (b), (c) and (d) are complied with, to the extent applicable, except that the notice required under 14 CFR 221.177(b)(1) shall refer to the title or general nature of the publication(s) or document(s) containing the full text of the referenced terms rather than to “terms and conditions filed in public tariffs with U.S. authorities”;
(b) In addition to other remedies at law, a carrier may not claim the benefit as against a shipper or consignee of, and a shipper or consignee shall not be bound by, any contract term which is incorporated by reference under this part unless the requirements of paragraph (a)(1) of this section are complied with, to the extent applicable; and
(c) The purpose of this section is to set uniform disclosure requirements, which preempt any State requirements on the same subject, for terms incorporated by reference into contracts of carriage for the scheduled transportation of cargo in foreign air transportation.
§ 292.22 Effectiveness of tariffs on file.

(a) Cargo rate tariffs on file with the Department, including related classification and/or applicability rules, cease to be effective as tariffs under 49 U.S.C. 41504 and 41510, as well as under the provisions of 14 CFR Part 221, and they are canceled by operation of law.

(b) As of March 1, 1996, all remaining cargo tariffs on file with the Department cease to be effective as tariffs under 49 USC 41504 and the provisions of 14 CFR part 221, and are cancelled by operation of law. Any such tariffs may be cancelled voluntarily prior to that date. With respect to terms expressly agreed in the contract of carriage, carriers, agents and other persons are relieved from the requirement of adherence to filed tariffs in 49 USC 41510 and the related provisions of 14 CFR part 221 as of November 30, 1995.

(c) Applications for filing and/or effectiveness of any cargo tariffs pending on November 30, 1995 are dismissed by operation of law. No new filings or applications will be permitted except as provided under §292.11.

PART 294—CANADIAN CHARTER AIR TAXI OPERATORS

Subpart A—General

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Subpart B—Exemption

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294.20 Applying for registration.
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294.30 Scope of service and equipment authorized.
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294.60 Applications for authorization to conduct individual operations or programs not otherwise permitted by this part.
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source: ER-1257, 46 FR 52591, Oct. 27, 1981, unless otherwise noted.

the U.S. Department of Transportation through the Federal Aviation Administration (FAA), and Canadian charter air taxi operators in the conduct of their operations must observe all applicable safety standards and requirements.

§ 294.2 Definitions.

As used in this part:

(a) Agreement means the U.S.—Canada Nonscheduled Air Services Agreement signed May 8, 1974, and any amendments, supplements, reservations, or supersessions to it.

(b) Canadian charter air taxi operator means a foreign air carrier that is substantially owned and effectively controlled by Canadian citizens, the Government of Canada, or both, whose foreign air transportation operations are limited to charter air service between points in Canada and points in the United States, and that does not use large aircraft in those operations.

(c) Charter air service means nonscheduled commercial air transportation of persons and their accompanied baggage, and of property, on a time, mileage, or trip basis where the entire planeload capacity of one or more aircraft has been engaged, or the transportation of mail by aircraft.

(d) Large aircraft means any aircraft that are not small aircraft as defined in this section.

(e) Maximum authorized takeoff weight has the meaning assigned to it in regulations of the Canadian Transport Commission.

(f) Maximum certificated takeoff weight means the maximum takeoff weight authorized by the terms of the aircraft airworthiness certificate. This weight may be found in the airplane operating record or in the airplane flight manual that is incorporated by regulation into the airworthiness certificate.

(g) Maximum passenger capacity means the maximum number of passenger seats for which an aircraft is configured.

(h) Maximum payload capacity means the maximum certificated takeoff weight of an aircraft less the empty weight as defined in section 03 of part 241 of this chapter, less all justifiable aircraft equipment, and less the operating load (consisting of minimum fuel load, oil, flight crew, steward's supplies, etc.). For purposes of this part, the allowance for weight of the crew, oil and fuel is as follows:

1. Crew—200 pounds per crew member required under FAA regulations,
2. Oil—350 pounds,
3. Fuel—the minimum weight of fuel required under FAA regulations for a flight between domestic points 200 miles apart, assuming VFR weather conditions and flights not involving extended overwater operations. However, in the case of aircraft for which a maximum zero fuel weight is prescribed by the FAA, maximum payload capacity means the maximum zero fuel weight less the empty weight, less all justifiable aircraft equipment, and less the operating load (consisting of minimum flight crew, steward's supplies, etc., but not including disposable fuel or oil).

(i) Small aircraft means any aircraft designed to have:

1. A maximum passenger capacity of not more than 30 seats and a maximum payload capacity of not more than 7,500 pounds, and/or
2. Maximum authorized takeoff weight on wheels not greater than 35,000 pounds.

§ 294.3 General requirements for Canadian charter air taxi operators.

A Canadian charter air taxi operator shall conduct charter air service between the United States and Canada only if it:

(a) Has been registered by the Department under this part;
(b) Does not directly or indirectly utilize large aircraft in charter air services;
(c) Has and maintains in effect liability insurance coverage that complies with the requirements set forth in subpart E of this part and has and maintains a current certificate of insurance evidencing such coverage on file with the Department;
§ 294.10 Exemption authority.

Canadian charter air taxi operators registered under this part are exempt from the following provisions of the Statute to the extent necessary to perform charter air service between the United States and Canada, and as long as they comply with the terms, conditions, and limitations of this part:

(a) Section 41302 (permits).
(b) Section 41501 (carrier’s duty to observe reasonable rates).
(c) Section 41310 (discrimination).

§ 294.21 Procedure on receipt of registration form.

(a) The Department will list the names and addresses of all persons applying for registration under this part in its Weekly Summary of Filings.
(b) Any person objecting to the registration of a Canadian charter air taxi operator shall file an objection with the Office of Aviation Analysis, Special Authorities Division and serve a copy on the registrant within 28 days after the Department receives the properly completed registration application. Objections shall include any facts and arguments upon which the person relies to support its objection.
(c) Any answers to objections shall be filed within 14 days after the date that the objections were due.
(d) After receipt of OST Form 4505, the Department may request additional information.
(e) After the period for objections and answers has expired, the Department will take one of the following actions:

1. Issue the registration by stamping its effective date on OST Form 4505 and sending a copy of it to the carrier and to the FAA as evidence of registration under this part. The FAA will return its copy of OST Form 4505 to the Office of Aviation Analysis, Special Authorities Division, after the carrier has been granted FAA operations specifications under part 129 of the Federal Aviation Regulations;
2. Reject the application for failure to comply with this part;
3. Issue the registration subject to such terms, conditions, or limitations as may be consistent with the public interest; or
4. Institute evidentiary proceedings to consider whether the registration should be issued.

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

(g) A registration will not become effective until the United States Government receives from the Canadian Government written designation of the registrant under the Agreement.

(h) Rejection of an application for registration will not preclude the filing of a new application by the same carrier.

Subpart D—General Rules for Registrants

§ 294.30 Scope of service and equipment authorized.

(a) Upon fulfillment of the requirements of §294.3 of this part, the registrant will have Department authority to engage in charter air services between any point or points in Canada and any point or points in the United States using small aircraft.

(b) Nothing in this part shall be construed as authorizing the operation of large aircraft in charter air service, and the exemption provided by this part to Canadian charter air taxi operators that register with the Department extends only to the direct operations of charter air service in accordance with the limitations and conditions of this part using aircraft designed to have:

(1) A maximum passenger capacity of no more than 30 seats and a maximum payload capacity of no more than 7,500 pounds; and/or

(2) A maximum authorized takeoff weight on wheels not greater than 35,000 pounds.

(c) A Canadian charter air taxi operator shall not use large aircraft for charter air service until it has been granted a permit by the Department under section 41302 of the Statute or granted an exemption under section 41701 of the Statute. Its application for such a permit or exemption should refer to the registration under this part. Registration under this part will be canceled when a section 41302 permit has been granted by the Department.
§ 294.31 Use of business name.

(a) A Canadian charter air taxi operator, in holding out charter air service to the public and performing its charter operations, shall do so only in the names in which its registration is issued under this part. The Department may require a Canadian charter air taxi operator to change such names where they appear to be inconsistent with the public interest.

(b) [Reserved]

§ 294.32 Security arrangements for operating Public Charters.

When a Canadian charter air taxi operator performs a Public Charter under part 380 of this chapter, either:

(a) The Canadian charter air taxi operator shall meet the bonding or escrow requirements applicable to foreign air carriers as set forth in § 212.12 of this chapter; or

(b) The Canadian charter air taxi operator shall ensure that it does not receive any payments for the charter until after the charter has been completed. In this case, its contracts with the charter operator and the charter operator's depository bank, if any, shall state that the charter operator or bank, as applicable, shall retain control of and responsibility for all participant funds intended for payment for charter air service until after the charter has been completed, notwithstanding any provision of part 380.

§ 294.33 Compliance with the regulations of the Federal Aviation Administration.

(a) Registrants under this part shall obtain FAA operations specifications required under part 129 or other applicable rules of the Federal Aviation Regulations prior to beginning operations into the United States. Registrants should write to the FAA office at one of the following addresses to obtain instructions on how to apply for FAA authority.

(b) If the registrant's business address is located on or east of 76 degrees West Longitude (in or east of Ottawa, Ontario) it should write to: Federal Aviation Administration, General Aviation District Office No. 1, Albany County Airport, Albany, New York 12211.

(c) If the registrant's business address is located on or east of 100 degrees West Longitude (in or east of Winnipeg, Manitoba) and west of 76 degrees West Longitude (west of, but not including, Ottawa, Ontario) it should write to: Federal Aviation Administration, Flight Standards District Office, 1 Airport Way, Rochester, New York 14624.

(d) If the registrant's business address is west of Winnipeg, Manitoba, it should write to: Federal Aviation Administration, General Aviation District Office, 1601 Lind Avenue, SW., Renton, Washington 98055.

§ 294.34 Advance approval by the Department.

The Department, by order or regulation and without hearing, may require advance approval of individual charter trips conducted by the registrant under the authority granted by this part, if it finds such action to be consistent with the public interest.

Subpart E—Insurance Requirements

§ 294.40 Aircraft accident liability insurance requirements.

No Canadian charter air taxi operator shall engage in charter air service unless such carrier has and maintains in effect aircraft accident liability coverage that meets the requirements of part 205 of this chapter. Evidence of such insurance coverage, in the form of a certificate of insurance, as required in part 205 of this chapter, shall be maintained on file with the Department's Office of Aviation Analysis.
Special Authorities Division, at all times.

(Approved by the Office of Management and Budget under control number 3024-0050)


Subpart F—Cancellation of Registration and Presidential Review

§ 294.50 Cancellation, revocation, or suspension of registration.

The registration of a carrier subject to this part may be revoked, canceled, suspended, modified, or otherwise subjected to additional terms and conditions by the Department if:

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

(b) The carrier is the holder of a section 41302 permit to perform large aircraft charters under the Agreement;

(c) Substantial ownership or effective control is acquired by persons who are not (1) citizens of Canada, (2) the Government of Canada, or (3) a combination of both;

(d) The Canadian Government withdraws the registrant’s designation under the Agreement;

(e) The Agreement between the two countries is terminated;

(f) The registrant fails to have proper insurance coverage, or fails to file or keep a current insurance certificate on file with the Department;

(g) The registrant fails to comply with the terms, conditions, or limitations of this part;

(h) The carrier’s operations specifications issued by the FAA are suspended or terminated;

(i) The Department finds that it is in the public interest to do so.


§ 294.51 Presidential review.

A Department order under § 294.50 (e), (g) or (i) shall be subject to stay or disapproval by the President within 60 days.

Subpart G—Authorizations and Waivers

§ 294.60 Applications for authorization to conduct individual operations or programs not otherwise permitted by this part.

(a) Where the terms, conditions, or limitations of this part, particularly §§ 294.81, 294.82, 294.88, and 294.89, require prior approval of individual flights or charter programs, the registrant shall apply for such approval by filing three copies of OST Form 4540 with the Office of International Aviation, Foreign Air Carrier Licensing Division. OST Form 4540 may be obtained from the Foreign Air Carrier Licensing Division.

(b) Action on the application for authorization filed under paragraph (a) of this section will normally be taken within 30 days after the application is filed. The Department will consider requests for faster action that include a full explanation of the need for expedited action.


§ 294.61 Waivers.

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

Subpart H—Violations

§ 294.70 Enforcement.

In case of any violation of any of the provisions of the Statute, or this part, or any other rule, regulation, or order issued under the Statute, the violator may be subject to a proceeding under section 46101 of the Statute before the Department, or sections 46106 through 46108 of the Statute before a U.S. District Court, as the case may be, to compel compliance; or to impose civil penalties under the provisions of section 46301 of the Statute; or in the case of a willful violation, to impose criminal penalties under the provisions of
§ 294.80 Waiver of sovereign immunity.

By accepting an approved registration under this part, a registrant waives to the extent it may possess to assert any defense of sovereign immunity in any action or proceeding instituted against it in any court or other tribunal in the United States based upon any claim arising out of its operations under this part.

§ 294.81 Local traffic prohibited.

(a) Except as set forth in paragraph (b) of this section or § 294.60, a registrant shall not carry passengers, cargo, or mail between two or more United States points for compensation or hire.

(b) A registrant may grant stopover privileges at any point or points in the United States to passengers and their accompanied baggage on a flight that originates in Canada if:

(1) The flight is operated under a contract for round-trip charter transportation that is to be provided solely by the registrant; and

(2) The same aircraft stays with the passengers throughout the journey.

§ 294.82 Third-country traffic prohibited.

Except as set forth in § 294.60, a registrant shall not engage in foreign air transportation between the United States and any point that is not in Canada, or transport any property or persons whose journey includes a prior, subsequent, or intervening movement by air to or from a point not in the United States or Canada. This prohibition does not apply to passengers who are not moving as part of any group.

§ 294.83 Compliance with certain international agreements.

A registrant shall not operate any aircraft under this part unless it:

(a) Complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;

(b) Complies with all applicable provisions of the Agreement; and

(c) Complies with all applicable provisions of any treaty, convention, or agreement affecting international air transportation to which the United States and Canada are parties.

§ 294.84 Air competency requirements.

Registrants shall conform to the airworthiness and airman competency requirements prescribed by the Government of Canada for Canadian international air service.

§ 294.85 Charterworthiness standards.

(a) Registrants may perform U.S.-originating charters authorized under Annex B (III)(A) of the Agreement as follows: Commercial air transportation of passengers and their accompanied baggage, and of property, on a time, mileage, or trip basis, where the entire planeload capacity of one or more aircraft has been engaged by a person for his own use or by a person for the transportation of a group of persons and/or their property, as agent or representative of such group, or other small aircraft operations as may be authorized under any amendments, supplements, reservations, or supersessions of the Agreement.

(b) Registrants may perform Canadian-originating charters authorized by Annex B (III)(B) of the Agreement and any amendments, supplements, reservations or supersessions of it. Such charters may be performed only to the extent authorized by the Air Carrier Regulations of the Canadian Transport Commission applicable to operations by small aircraft.

§ 294.86 Industrial/agricultural/other nontransport air operations prohibited.

A registrant shall not engage in flights for the purpose of industrial or agricultural operations (e.g., crop dusting, pest control, pipeline patrol, mapping, surveying, banner towing, skywriting, aerial photography) within the United States unless it has obtained a permit from the Department under part 375 of this chapter.
§ 294.87 Compliance with Canadian licenses.

A registrant shall not, in the performance of operations authorized by this part, use any aircraft or conduct any operations except in accordance with the authority and conditions contained in the registrant's applicable Canadian licenses.

§ 294.88 Northwest Ontario restriction.

(a) Except as set forth in § 294.60 or paragraph (b) of this section, registrants shall not engage in the carriage of persons in foreign air transportation between the United States and Canada to or from a point in Ontario, west of a line drawn due north from Blind River, Ontario (46° 11′ North Latitude, 82° 58′ West Longitude) and extending to the border between Ontario and Manitoba, unless:

(1) The point is a resort, camp, or outpost operated by a person duly licensed for such purpose by the Government of the Province of Ontario, or the licensed base of a Canadian charter air carrier, or a Canadian Customs port of entry;

(2) The registrant is required on each flight out of the restricted area to make a stop at a Canadian Customs port of entry or at the licensed base of a Canadian charter air carrier where officers of the Ontario Ministry of Natural Resources may be available to make such inspection as they consider desirable; and

(3) The registrant has available on its aircraft for inspection by the U.S. authorities satisfactory evidence that it has complied with these conditions.

(b) The prohibition set forth in paragraph (a) of this section does not apply to flights performed for medical evacuation or similar emergencies.

(c) A registrant shall clearly notify in writing all persons who contract for the registrant's service, and are affected by the restrictions of this section, of the limitations set forth in paragraph (a) of this section.

§ 294.89 Uplift ratio.

Except as set forth in § 294.60, the aggregate number of all United States-originating charter flights performed by a registrant on or after May 8, 1974, shall not, at the end of any calendar quarter, exceed by more than one-third the aggregate number of all Canadian-originating charter flights performed by the registrant on or after May 8, 1974. For the purpose of making such computation, the following shall apply:

(a) A charter shall be considered to originate in the United States (or Canada) if the passengers or property are first taken on board in that country, and shall be considered as one flight whether the charter is one-way, round trip, circle tour, or open jaw, even if a separate contract is entered into for a return portion of the charter trip from Canada (or the United States).

(b) The computation shall be made separately for (1) “small aircraft” flights of persons; and (2) “small aircraft” flights of property.

(c) In the case of a lease of aircraft with crew for the performance of a charter flight on behalf and under the authority of another carrier, the flight shall be included in the computation if the registrant is the lessee, and shall not be included if the registrant is the lessor.

(d) There shall be excluded from the computation:

(1) Flights with aircraft having a maximum authorized takeoff weight on wheels (as determined by Canadian Transport Commission Regulations) not greater than 18,000 pounds; and

(2) Flights originating at a United States terminal point on a route listed in the Air Transport Services Agreement between the United States and Canada, signed January 17, 1966, as amended, or any agreement which may supersede it, or any supplementary agreement thereto which establishes obligations or privileges thereunder. These flights may be excluded from the computation only if, pursuant to any such agreement, the registrant also holds a foreign air carrier permit authorizing individually ticketed or individually waybilled service over that route, and provides some scheduled service on any route pursuant to any such agreement, and such flights serve either (i) a Canadian terminal point on such route, or (ii) any Canadian intermediate point authorized for service on the route by the foreign air carrier permit.
PART 296—INDIRECT AIR TRANSPORTATION OF PROPERTY

Subpart A—General

Sec. 296.1 Purpose.
296.2 Applicability.
296.3 Indirect cargo air carrier.
296.4 Joint loading.
296.5 Agency relationships.
296.6 Public disclosure of cargo liability limits and insurance.

Subpart B—Exemption for Indirect Air Transportation of Property

296.10 Exemption from the Statute.

Subpart C—Violations

296.20 Enforcement.

SOURCE: ER-1261, 46 FR 54727, Nov. 4, 1981, unless otherwise noted.

Subpart A—General

§ 296.1 Purpose.

This part establishes rules for the indirect air transportation of property. It creates a class of air carriers to provide this air transportation and grants exemptions from certain provisions of the Subtitle VII of Title 49 of the United States Code (Transportation).


§ 296.2 Applicability.

This part applies to air transportation of property by indirect cargo air carriers, and to persons entering into control relationships with indirect cargo air carriers.

§ 296.3 Indirect cargo air carrier.

An indirect cargo air carrier is any U.S. citizen who undertakes to engage indirectly in air transportation of property, and uses for the whole or any part of such transportation the services of an air carrier or a foreign air carrier that directly engages in the operation of aircraft under a certificate, regulation, order, or permit issued by the Department of Transportation or the Civil Aeronautics Board, or the services of its agent, or of another indirect cargo air carrier.


§ 296.4 Joint loading.

Nothing in this part shall preclude joint loading, meaning the pooling of shipments and their delivery to a direct air carrier for transportation as one shipment, under an agreement between two or more indirect air carriers or foreign indirect air carriers.

§ 296.5 Agency relationships.

An indirect cargo air carrier may act as agent of a shipper, or of a direct air carrier that has authorized such agency, rather than as an air carrier, if it expressly reserves the option to do so when the shipment is accepted.

§ 296.6 Public disclosure of cargo liability limits and insurance.

Every indirect cargo air carrier shall give notice in writing to the shipper, when any shipment is accepted, of the existence or absence of cargo liability accident insurance, and of the limits on the extent of its liability, if any. The notice shall be clear and conspicuously included on or attached to all of its rate sheets and airwaybills.

Subpart B—Exemption for Indirect Air Transportation of Property

§ 296.10 Exemption from the Statute.

(a) Indirect cargo air carriers are exempted from the provisions of the Statute only if and so long as they comply with the provisions of this part and its conditions, and to the extent necessary to permit them to organize and arrange their air freight shipments to provide indirect air transportation, except for the following sections:
(1) Section 41510(b) (solicitation of rebates). However, indirect cargo air carriers are exempt from section 41510(b) to the extent necessary to permit them to solicit, accept, or receive fees from direct air carriers.
(2) Section 41702 to the extent required to provide safe service, equipment, and facilities in connection with air transportation.
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§ 297.1 Purpose.

This part establishes registration procedures and operating rules for foreign air carriers that engage indirectly in interstate or foreign air transportation of property. It relieves these carriers from certain provisions of Subtitle VII of Title 49 of the United States Code (Transportation), and establishes simplified reports for them.

[ER-1294, 47 FR 19684, May 7, 1982, as amended at 60 FR 43527, Aug. 22, 1995]
§ 297.2 Applicability.
This part applies to interstate air transportation of property and to foreign air transportation of property outbound from the United States by foreign indirect air carriers. It also applies to applications for registration as a foreign indirect air carrier of property.
[ER-1294, 47 FR 19684, May 7, 1982, as amended at 60 FR 43947, Aug. 22, 1995]

§ 297.3 Definitions.
For purpose of this part:
(a) Foreign air freight forwarder means a foreign indirect air carrier that is responsible for the transportation of property from the point of receipt to point of destination, and utilizes for the whole or any part of such transportation the services of a direct air carrier or its agent, of another foreign indirect cargo air carrier as defined in part 296 of this chapter.
(b) Foreign cooperative shippers association means a bona fide association of shippers operating as a foreign indirect air carrier on a nonprofit basis that undertakes to ship property by air for the account of such association or its members, and utilizes for the whole or any part of such transportation the services of a direct air carrier or its agent, of a foreign indirect cargo air carrier as defined in part 296 of this chapter.
(c) Direct air carrier means an air carrier or foreign air carrier directly engaged in the operation of aircraft under a certificate, regulation, order, or permit issued by the Department of Transportation or the Civil Aeronautics Board.
(d) Foreign indirect air carrier means any person, not a citizen of the United States, who undertakes indirectly to engage in the air transportation of property.
[ER-1159, 44 FR 69635, Dec. 4, 1979, as amended by ER-1294, 47 FR 19684, May 7, 1982; Docket No. 47999, 57 FR 40103, Sept. 2, 1992]

§ 297.4 Joint loading.
Nothing in this part shall preclude joint loading, meaning the pooling of shipments and their delivery to a direct air carrier for transportation as one shipment, under an agreement between two or more indirect air carriers or foreign indirect air carriers.

§ 297.5 Foreign air freight forwarder as agent.
A foreign air freight forwarder may act as agent of a shipper, or of a direct air carrier that has authorized such agency, if it expressly reserves the option to do so when the shipment is accepted. A foreign air freight forwarder shall not act as the agent of any direct air carrier with respect to shipments accepted for forwarding.

§ 297.6 Foreign cooperative shippers association as agent.
A foreign cooperative shippers association may act as agent of a shipper, or of a direct air carrier that has authorized such agency, if it expressly reserves the option to do so when the shipment is accepted. A cooperative shippers association shall not act as an agent of any direct air carrier with respect to shipments accepted in its capacity as an indirect air carrier.
[ER-1235, 46 FR 38496, July 28, 1981]

Subpart B—Exemption for Foreign Indirect Air Transportation of Property

§ 297.10 Exemption from the Statute.
(a) Foreign indirect air carriers with an effective registration under this part are exempted from the following provisions of the Statute only if and so long as they comply with the provisions of this part and the conditions imposed herein, and to the extent necessary to permit them to arrange their air freight shipments:
(1) Section 41302 (Permits);
(2) Sections 41504 and 41510(a) (Tariffs);
(3) Section 41510(b) (Solicitation of rebates) to the extent necessary to permit them to solicit, accept, or receive fees from direct air carriers;
(4) Section 41501 (Carrier's duty to establish just and reasonable rates, etc.); and
(5) If awarded interstate air transportation operating rights, any other provision of the Statute that would otherwise prohibit them from engaging in
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the interstate indirect air transportation of property.

(6) Section 41310 (nondiscrimination) with respect to interstate and overseas air transportation.

(b) Direct air carriers are exempted from Chapter 415 of the Statute to the extent necessary to permit them to pay, directly or indirectly, fees to foreign air freight forwarders and foreign cooperative shippers associations on consolidated shipments.

§ 297.11 Disclaimer of jurisdiction.

The Department declines to exercise its jurisdiction over foreign indirect air carriers of property with respect to shipments that originate in a foreign country. The Department reserves the right to exercise its jurisdiction over any foreign indirect air carrier of property at any time it finds that such action is in the public interest.

§ 297.12 General requirements.

(a) The direct air transportation provided must be performed by direct air carriers that hold authority under section 41102, 41103, 41302, or 41701 of the Statute or are operating under part 298 of this chapter;

(b) Only U.S. citizen direct air carriers may provide direct air transportation operations in interstate air transportation.

(c) Foreign indirect air carriers that hold authority to engage in foreign air transportation must apply additionally for permission to consolidate freight in interstate air transportation.

Subpart C—Registration for Foreign Air Freight Forwarders and Foreign Cooperative Shippers Associations

§ 297.20 Filing for registration.

(a) Not later than 60 days before the start of operations as a foreign indirect air carrier, every foreign air freight forwarder and foreign cooperative shippers association shall apply for registration with the Department, unless upon a showing of good cause, the Director, Office of Aviation Analysis, allows application at a later time.

(b) Application shall consist of filing with the Department's Office of Aviation Analysis, Special Authorities Division, two copies of completed OST Form 4506, which may be obtained from the Department of Transportation, Special Authorities Division.

§ 297.21 Objections to registration application.

Persons objecting to registration by a foreign air freight forwarder or foreign cooperative shippers association shall file their objections with the Office of Aviation Analysis, Special Authorities Division, within 28 days of the filing date of the registration forms.

The Department will list the names and nationality of all persons applying for registration in its Weekly Summary of Filings.

§ 297.22 Procedure on receipt of registration application.

After review of a registration form filed under §297.20, the Department will take one or more of the following actions:

(a) Indicate by stamp on OST Form 4506 the effective date of registration, and return to the carrier the duplicate copy of OST Form 4506 as evidence of registration with the Department under this part;

(b) Reject an application for registration for failure to comply with this part, for reasons relating to the failure of effective reciprocity, or if the Department finds that it is in the public interest to do so.

(c) Request additional information from the applicant;

(d) Issue an order subjecting a carrier's exercise of authority under this part to such terms, conditions, or limitations as may be required by the public interest; or
§ 297.23 Waiver of sovereign immunity.

By accepting an approval registration form under this part, a carrier waives any right it may possess to assert any defense of sovereign immunity from suit in any action or proceeding instituted against the carrier in any court or other tribunal in the United States based upon any claim arising out of operations by the carrier under this part.

§ 297.24 Notification to the Department of change of operations.

(a) Not later than 30 days before any change in its name or address or any temporary or permanent cessation of operations, each foreign indirect air carrier shall notify the Department’s Office of Aviation Analysis, Special Authorities Division, of the change by resubmitting OST Form 4506.

(b) The registrant shall apply for an amendment of its registration not later than 30 days after any person listed on its existing registration as owning or holding beneficial ownership of 10 percent or more, or after any person not so listed becomes an owner or holder of 10 percent or more. Application for amendment shall be made by resubmitting OST Form 4506, but the existing registration shall remain valid pending Department action on the amendment.

§ 297.25 Cancellation or conditioning of registration.

The registration of a foreign indirect air carrier may be canceled or subjected to additional terms, conditions or limitations if:

(a) It files with the Department a written notice that it is discontinuing foreign indirect air carrier activities;

(b) It fails to perform air transportation services as authorized;

(c) It fails to file the reports required by this part;

(d) A substantial ownership or control interest is acquired by persons who are not citizens of the country of citizenship of the registrant;

(e) There is a failure of effective reciprocity; or

(f) The Department finds that it is in the public interest to do so.

§ 297.30 Public disclosure of cargo liability insurance.

Every foreign air freight forwarder shall give notice in writing to the shipper, when any shipment is accepted, of the limits of its cargo liability insurance, or of the absence of such insurance, and the limits of its liability, if any. The notice shall be included clearly and conspicuously on all of its rate sheets and airwaybills, and on any other documentation that is given to a shipper at the time of acceptance of the shipment.

§ 297.31 Preparation of airwaybills and manifests.

(a) Each registered foreign indirect air carrier shall prepare an accurate airwaybill describing completely all services rendered to or on behalf of the shipper, including the conditions under which the contract will be completed, in its capacity as a foreign indirect air carrier. A copy of the airwaybill shall be given to the consignor and to the consignee.

(b) Each registered foreign indirect air carrier shall prepare an accurate manifest showing every individual shipment included in each shipment consigned for transportation to a direct air carrier.

(c) A waiver of paragraph (a) of this section may be granted by the Department upon a written application by the foreign indirect air carrier not less than 30 days before the shipment to which it relates is transported, if the waiver is in the public interest, and is warranted by special or unusual circumstances.
§ 297.50 Enforcement.

In case of any violation of any of the provisions of the Statute, or this part, or any other rule, regulation or order issued under the Statute, the violator may be subject to a proceeding under section 46103 of the Statute before the Department, or sections 46106 through 46108 of the Statute before a U.S. District Court, as the case may be, to compel to compliance; or to civil penalties under the provisions of section 46301 of the Statute; or in the case of willful violation, to criminal penalties under the provisions of section 46316 of the Statute; or other lawful sanctions including cancellation of registration.

[ER-1159, 44 FR 69635, Dec. 4, 1979, as amended at 60 FR 43527, Aug. 22, 1995]

PART 298—EXEMPTIONS FOR AIR TAXI AND COMMUTER AIR CARRIER OPERATIONS

Subpart A—General

§ 298.1 Applicability of part.

This part establishes a classification of air carriers known as “air taxi operators,” provides certain exemptions to them from some of the economic regulatory provisions of Subtitle VII of Title 49 of the United States Code (Transportation) and specifies procedures by which such air carriers may obtain authority to conduct operations, and establishes rules applicable to their operations in interstate and/or foreign air transportation in all States, Territories and possessions of the United States. This part also establishes reporting requirements for commuter air carriers and small certificated air carriers.

§ 298.2 Definitions.

As used in this part:

(a) Air taxi operator means an air carrier coming within the classification of air taxi operators established by § 298.3.

(b) Air Transportation means interstate air transportation, foreign air transportation, or the transportation of mail by aircraft as defined by the statute.¹

(c) Aircraft-hours means the airborne hours of aircraft computed from the moment an aircraft leaves the ground until it touches the ground at the end of a flight stage.

(d) Aircraft miles means the miles (computed in airport-to-airport distances) for each flight stage actually completed, whether or not performed in accordance with the scheduled pattern.

(d±1) All-cargo air carrier or section 41103 carrier means an air carrier holding a certificate issued under section 41103 of the Statute authorizing the transportation of only property or only mail, or both.

(d±2) Certificated carrier means an air carrier holding a certificate issued under section 41102 of the Statute.

(e) Commuter air carrier means an air taxi operator that carries passengers on at least five round trips per week on at least one route between two or more points according to its published flight schedules that specify the times, days of the week, and places between which those flights are performed.

(f) Departure means takeoff from an airport.

(g) Flight stage means the operation of an aircraft from takeoff to landing.

(h) Large aircraft means any aircraft designed to have a maximum passenger capacity of more than 60 seats or a maximum payload capacity of more than 18,000 pounds.

(i) Maximum certificated takeoff weight means the maximum takeoff weight authorized by the terms of the aircraft airworthiness certificate.²

(j) Maximum passenger capacity means the maximum number of passenger seats for which an aircraft is configured.

(k) Maximum payload capacity means the maximum certificated takeoff weight of an aircraft, less the empty weight,² less all justifiable aircraft equipment, and less the operating load (consisting of minimum fuel load, oil, flight crew, steward's supplies, etc.). For purposes of this part, the allowance for the weight of the crew, oil, and fuel is as follows:

(1) Crew—200 pounds per crew member required under FAA regulations,

(2) Oil—350 pounds,

¹“Interstate air transportation” is defined in section 4102(a)(25) as the transportation of passengers or property by aircraft as a common carrier for compensation, or the transportation of mail by aircraft (1) between a place in (i) a State, territory, or possession of the United States and a place in the District of Columbia or another State, territory, or possession of the United States; (ii) Hawaii and another place in Hawaii through the airspace over a place outside Hawai’i; (iii) the District of Columbia and another place in the District of Columbia; or (iv) a territory or possession of the United States and another place in the same territory or possession; and (2) when any part of the transportation is by aircraft. NOTE: Operations wholly within the geographic limits of a single State are not considered “interstate air transportation” if in those operations the carrier transports no more than a de minimus volume of passengers or property moving as part of a continuous journey to or from a point outside the State.

“Foreign air transportation” is defined in section 4102(a)(23) of the Statute as the transportation of passengers or property by aircraft as a common carrier for compensation, or the transportation of mail by aircraft, between a place in the United States and a place outside the United States when any part of the transportation is by aircraft.

Air transportation also is defined to include “the transportation of mail by aircraft.” Section 5402 of the Postal Reorganization Act, 39 U.S.C. 5402, authorizes the carriage of mail by air taxi operators in some circumstances under contract with the Postal Service.

²This weight may be found in the airplane operating record or in the airplane flight manual which is incorporated by regulation into the airworthiness certificate.

²Empty weight is defined in section 03 of part 24 as follows: the weight of the airframe, engines, propellers, and fixed equipment. Empty weight excludes the weight of the crew and payload, but includes the weight of all fixed ballast, unusable fuel supply, undrainable oil, total quantity of engine coolant, and total quantity of hydraulic fluid.
(3) Fuel—the minimum weight of fuel required under FAA regulations for a flight between domestic points 200 miles apart.\(^4\)

Provided, however, That in the case of aircraft for which a maximum zero fuel weight is prescribed by the FAA,\(^5\) maximum payload capacity means the maximum zero fuel weight, less the empty weight, less all justifiable aircraft equipment, and less the operating load (consisting of minimum flight crew, steward's supplies, etc., but not including disposable fuel or oil).

(i) Mile means a statute mile, i.e., 5,280 feet.

(m) On-line origin-destination means the points at which a passenger enters and leaves the system of an air carrier on a one-way trip or on each of the directional parts of a round, circle, or open-jaw trip, ignoring intermediate points of intra-line transfer.

(n) Passengers carried means passengers on board each flight stage.

(o) Point when used in connection with any territory or possession of the United States, or the States of Alaska and Hawaii, means any airport or place where aircraft may be landed or taken off, including the area within a 25-mile radius of such airport or place; when used in connection with the continental United States, except Alaska, it shall have the same meaning except be limited to the area within a 3-mile radius of such airport or place: Provided, That for the purposes of this part, West 30th Street Heliport and Pan Am Building Heliport, both located in New York City, shall be regarded as separate points.

(p) Revenue passenger-mile means one revenue passenger transported one mile. Revenue passenger-miles are computed by multiplying the aircraft miles flown on each flight stage by the number of revenue passengers carried on that flight stage.

(q) Revenue seat-miles available means the aircraft-miles flown on each flight stage multiplied by the number of seats available for sale on that flight stage.

(r) Revenue ton-mile means one ton of revenue traffic transported one mile. Revenue ton-miles are computed by multiplying the aircraft-miles flown on each flight stage by the number of pounds of revenue traffic carried on that flight stage and converted to ton-miles by dividing total revenue pounds-miles by 2,000 pounds.

(s) Revenue ton-miles available means the aircraft-miles flown on each flight stage multiplied by the number of pounds of aircraft capacity available for use on that stage and converted to ton-miles by dividing total pounds-miles available by 2,000 pounds.

(t) Scheduled service means transport service operated over routes pursuant to published flight schedules or pursuant to mail contracts with the U.S. Postal Service.

(u) Small aircraft means any aircraft that is not a large aircraft, as defined in this section.

(v) Ton means a short ton, i.e., 2,000 pounds.

(w) Small certificated air carrier means an air carrier holding a certificate issued under section 41102 of the Statute that provides scheduled passenger air service within and between only the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands with small aircraft as defined in this section.

\[^{4}\text{Assumes VFR weather conditions and flights not involving extended overwater operations.}\]

\[^{5}\text{The maximum zero fuel weight is the maximum permissible weight of an airplane with no disposable fuel or oil. The zero fuel weight figure may be found in the FAA's type certificate data sheets, and/or in FAA-approved flight manuals.}\]
§ 298.4 Requests for statement of authority.

In any instance where an air taxi operator or commuter air carrier is required by a foreign government to produce evidence of its authority to engage in foreign air transportation under the laws of the United States, the Director, Office of Aviation Analysis will, upon request, furnish the carrier with a written statement, outlining its general operating privileges under this part for presentation to the proper authorities of the foreign government.


§ 298.5 Dual operations—air taxi or commuter air carrier and all-cargo air service.

Any person having or obtaining authority to operate as an all-cargo air service carrier shall not thereby lose, or be disqualified from obtaining, authority under this part to engage also in operations as an air taxi operator or commuter air carrier, regardless of the size of aircraft utilized in such all-cargo air service operations. The operations which such person conducts as an air taxi operator or commuter air carrier shall be subject to the conditions and entitled to the exemptions set forth in this part, and the operations which he conducts as an all-cargo air service carrier shall be subject to the conditions and entitled to the exemptions set forth in part 291 of this chapter.


Subpart B—Exemptions

§ 298.11 Exemption authority.

Air taxi operators and commuter air carriers are hereby relieved from the following provisions of the Statute only if and so long as they comply with the provisions of this part and the conditions imposed herein, and to the extent necessary to permit them to conduct air taxi or commuter air carrier operations:

(a) Section 41101;
(b) Section 41504; except that the requirements of that section shall apply to: (1) Tariffs for through rates, fares, and charges filed jointly by air taxi operators or commuter air carriers with air carriers or with foreign air carriers subject to the tariff-filing requirements of Chapter 415; and (2) Tariffs required to be filed by air taxi operators or commuter air carriers which embody the provisions of the counterpart to Agreement 18000 as specified in part 203 of this chapter;
(c) Section 41702, except for the requirements that air taxi operators and commuter air carriers shall:

1. Provide safe service, equipment, and facilities in connection with air transportation;

2. Provide adequate service insofar as that requires them to comply with parts 252 and 382 of this chapter;

3. Observe and enforce just and reasonable joint rates, fares, and charges, and just and reasonable classifications, rules, regulations and practices as provided in tariffs filed jointly by air taxi operators or commuter air carriers with certificated air carriers or with foreign air carriers; and

4. Establish just, reasonable, and equitable divisions of such joint rates, fares, and charges as between air carriers participating therein which shall not unduly prefer or prejudice any of such participating air carriers;

(d) Section 41310, except that the requirements of that subsection shall apply to through service provided pursuant to tariffs filed jointly by air taxi operators or commuter air carriers with certificated air carriers or with foreign air carriers and to transportation of the handicapped to the extent that that is required by part 382 of this chapter;

(e) Section 41902;

(f) Section 41708.

Subpart C—Registration and Reregistration for Exemption

§298.21 Filing for registration by air taxi operators and commuter air carriers.

(a) Every air taxi operator (whether or not he is also a commuter air carrier as defined in this part) who plans to commence operations under this part shall register with the Department not later than 30 days prior to the commencement of such operations, unless, upon a showing of good cause satisfactory to the Director, Office of Aviation Analysis, registration within a lesser period of time is allowed.

(b) The registration of an air taxi operator or commuter air carrier shall remain in effect until it is amended by the carrier or canceled by the Department.

(c) Registration by all commuter air carriers, and by those air taxi operators with a mailing address in any U.S. State or Territory except Alaska, shall be accomplished by filing with the Department’s Office of Aviation Analysis (or with the Department’s Alaska Aviation Field Office, 222 West Seventh Street, Box 27, Anchorage, Alaska 99513, for air taxi operators that are not also commuter air carriers and that have a mailing address in the State of Alaska) the following:

1. OST Form 4507, executed in duplicate. This form shall be certified by a responsible official and shall include the following information:

   i. The name of the carrier and its mailing address;

   ii. The carrier’s principal place of business, if different from its mailing address, and its area code and telephone number;

   iii. The carrier’s FAA certificate number, if any, and the address and telephone number of the carrier’s local FAA office;

   iv. The type of service the carrier will offer (scheduled passenger, scheduled cargo, or mail under a U.S. Postal Service contract).

§298.12 [Reserved]

§298.13 Duration of exemption.

The exemption from any provision of the Statute provided by this part shall continue in effect only until such time as the Department shall find that enforcement of that provision would be in the public interest, at which time the exemption shall terminate or be conditioned with respect to the person, class of persons, or service (e.g., limited-entry foreign air transportation market) subject to the finding.


§298.21 [Reserved]
§ 298.22 Processing by the Department.

After examination of the Form 298-A submitted by the carrier, the Department will stamp the effective date of the registration on the form and return the duplicate copy to the carrier to confirm that it has registered with the Department as required by this part. The effective date of the registration shall not be earlier than the effective date of the insurance policy or policies named in the certificate of insurance filed by the carrier under § 298.21(c)(2).


§ 298.23 Notifications to the Department of change in operations.

(a) An air taxi operator or commuter air carrier shall submit an amendment to its registration not later than 30 days after any of the following events:

(1) A change in its name or address;

(2) A change in its type of operations (passenger, cargo, mail, scheduled, etc.);

(3) A temporary or permanent cessation of its operations; or

(4) A change in the type of aircraft operated.

(EThe reporting requirements contained in paragraph (c)(2) were approved by the Office of Management and Budget under control number 3024–0007. The reporting requirements contained in paragraph (c)(1) were approved under control number 3024–0008. The reporting requirements contained in paragraph (c)(4) were approved under control number 3024–0064.)
Office of the Secretary, DOT § 298.36

(b) An amendment shall be made by resubmitting OST Form 4507 to the Department's Office of Aviation Analysis. If the air taxi operator has a mailing address in the State of Alaska, the form shall be mailed to the Department's Alaska Aviation Field Office, 222 West Seventh Avenue, Box 27, Anchorage, Alaska 99513.

(The reporting requirements in paragraph (b) were approved by the Office of Management and Budget under control number 3024-0008.)

§ 298.24 Cancellation of the registration.

The registration of an air taxi operator or commuter air carrier may be canceled by the Department if any of the following occur:

(a) The operator notifies the Department that it is ceasing operations;

(b) The operator's insurance coverage changes or lapses;

(c) The operator fails to file an amended registration when required by § 298.23;

(d) The operator's operating authorization is revoked by the Federal Aviation Administration;

(e) In the case of a commuter air carrier, the Department finds that the carrier is not fit, willing, and able to conduct scheduled service.

§ 298.31 Scope of service and equipment authorized.

Nothing in this part shall be construed as authorizing the operation of large aircraft in air transportation, and the exemption provided by this part to air taxi operators and commuter air carriers that register with the Department extends only to the direct operation in air transportation in accordance with the limitations and conditions of this part of aircraft designed to have a maximum passenger capacity of 60 seats or less or a maximum payload capacity of 18,000 pounds or less.

§§ 298.32–298.34 [Reserved]

§ 298.35 Limitations on carriage of mail.

An air taxi operator or commuter air carrier is not authorized to carry mail except pursuant to contract with the Postal Service entered into pursuant to section 5402 of the Postal Reorganization Act (39 U.S.C. 5402).

§ 298.36 Limitation on use of business name.

(a) An air taxi operator or commuter air carrier in holding out to the public and commuter air carrier's policy on baggage liability and denied boarding compensation.

(b) An air taxi or commuter air carrier shall provide a written notice on or with a passenger's ticket concerning baggage liability as provided in § 294.5 of this chapter. These ticket notices are required only for passengers whose ticket includes a flight segment that uses large aircraft (more than 60 seats).

(c) If the substantive terms of the counter sign and ticket notice required by this section differ, the terms contained in the required ticket notice govern.

(Approved by the Office of Management and Budget under control number 3024-0074)

Subpart D—Limitations and Conditions on Exemptions and Operations

§ 298.30 Public disclosure of policy on consumer protection.

(a) Every air taxi and commuter air carrier shall cause to be displayed continuously in a conspicuous public place at each desk, station and position in the United States that is in charge of a person employed exclusively by it, or by it jointly with another person, or by any agent employed by it to sell tickets to passengers, a sign located so as to be clearly visible and readable to the traveling public containing a statement setting forth the air taxi and commuter air carrier's policy on baggage liability and denied boarding compensation.
§ 298.37 Prohibition of services not covered by insurance.

An air taxi operator or commuter air carrier shall not operate in air transportation or provide or offer to provide air transportation unless there is in effect liability insurance which covers such transportation and which is evidenced by a current certificate of insurance on file with the Department as required by part 205 of this chapter.


§ 298.38 Security arrangements for operating Public Charters.

When an air taxi operator or commuter air carrier performs a Public Charter under part 380 of this chapter, either:

(a) The air taxi operator or commuter air carrier shall meet the bonding or escrow requirements applicable to certificated carriers as set forth in § 207.17 of this chapter; or

(b) The air taxi operator or commuter air carrier shall ensure that it does not receive any payments for the charter until after the charter has been completed. In this case, its contracts with the charter operator and the charter operator’s depository bank, if any, shall state that the charter operator or bank, as applicable, shall retain control of and responsibility for all participant funds intended for payment for air transportation until after the charter has been completed, notwithstanding any provision of part 380.

[ER-1140, 44 FR 49444, Aug. 23, 1979, as amended by Docket No. 47939, 57 FR 40103, Sept. 2, 1992]

(b) Schedules A-1 and T-1 shall be filed quarterly as set forth in §298.60.

(c) Each carrier shall indicate in the space provided its full corporate name and the quarter for which the report is filed.

(d) The information included in this report shall pertain only to flights performed in scheduled passenger service during the quarter for which the report is filed.

(e) Schedule A-1 shall be used to report the total flight and traffic statistics in scheduled passenger operations by commuter air carriers and small certificated air carriers. These statistics should cover only scheduled passenger services and should be compiled in accordance with the instructions below. All statistics shall be reported in whole numbers; do not use decimals.

(f) Schedule T-1 shall show the total on-line origin and destination traffic in scheduled passenger services for the period as follows:

(1) Each pair of origin and destination airports shall appear only once, i.e., no entry shall have the same origin and destination airports as another entry. For example, DAL-HOU and HOU-DAL would each appear once, but either DAL or HOU could reappear with any other point.

(2) The origin and destination data shall be for the on-line movement of traffic rather than for flight stages or flight origin and destination. For example, if a flight operates from A to B to C with 5 passengers enplaning at A, 1 deplaning and 2 enplaning at B, and 6 deplaning at C, the applicable passenger data would be reported as follows:

<table>
<thead>
<tr>
<th>Origin airport</th>
<th>Destination airport</th>
<th>Number of passengers</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>B</td>
<td>1</td>
</tr>
<tr>
<td>A</td>
<td>C</td>
<td>4</td>
</tr>
<tr>
<td>B</td>
<td>C</td>
<td>2</td>
</tr>
</tbody>
</table>

(3) Only the ultimate origins and destinations of the traffic moving on the reporting carrier's system shall be reported. Using the example given above, the traffic report would remain the same, even if the carrier operated one flight from A to B and a different flight from B to C, as long as the passengers' on-line origins and destinations remained the same.

(4) Only one grand total shall be shown in the space provided after the final traffic entry. Do not use subtotals.

(5) Columns (1) and (2) shall show the airport codes for the movement of traffic from the point of origin to the point of destination. Carriers shall use the airport codes in the Official Airline Guide (OAG). If an airport cannot be found in the OAG, the carrier shall, until otherwise instructed by the Department, insert its own code for the airport in column (1) or (2) followed by an asterisk, and shall identify the airport and its location in the space provided.

(6) Column (3) shall show the total number of revenue passengers transported from the point of on-line origin to the point of on-line destination.

(7) Columns (4) and (5) shall be completed only by intra-Alaskan carriers, and shall reflect the total pounds of cargo and pounds of mail, respectively, transported from the point of on-line origin to the point of on-line destination.

(g) The information requested in BTS Form 298-C may be submitted on any comparable form prepared on automatic data processing equipment if the substitute form has been approved by the Director, Office of Airline Information, Department of Transportation, Washington, D.C. 20590. Data in any approved format shall contain the same column headings arranged in the same sequence as in RSPA Form 298-C.

(h) Commuter air carriers serving or proposing to serve an eligible point shall comply with the applicable requirements in part 204 of this chapter.

(Approved by the Office of Management and Budget under control number 2138-0009)

§ 298.62 Reporting of financial data.

(a) Each commuter air carrier and each small certificated air carrier shall file BTS Form 298-C, Schedule F-1 “Report of Financial Data.” This report shall be filed quarterly as set forth in § 298.60 of this part.

(b) Each carrier shall indicate in the space provided, its full corporate name and the quarter for which the report is filed.

(c) This schedule shall be used to report financial data for the overall or system operations of the carrier. At the option of the carrier, the data may be reported in whole dollars by dropping the cents. Financial data shall be reported in the following categories:

(1) Line 1 “Total Operating Revenues” shall include gross revenues accruing from services ordinarily associated with air transportation and air transportation-related services. This category shall include revenue derived from scheduled service operations, revenue derived from nonscheduled service operations, amounts of compensation paid to the carrier under section 41732 of the Statute and other transport-related revenue such as in-flight sales, restaurant and food service (ground), rental of property or equipment, limousine service, cargo pick-up and delivery charges, and fixed-base operations involving the selling or servicing of aircraft, flying instructions, charter flights, etc.

(2) Line 2 “Total Operating Expenses” shall include expenses of a character usually and ordinarily incurred in the performance of air transportation and air transportation services. This category shall include expenses incurred: directly in the in-flight operation of aircraft; in the holding of aircraft and aircraft personnel in readiness for assignment to an in-flight status; on the ground in controlling and protecting the in-flight movement of aircraft; landing, handling, or servicing aircraft on the ground; selling transportation; servicing and handling traffic; promoting the development of traffic; and administering operations generally. This category shall also include expenses which are specifically identifiable with the repair and upkeep of property and equipment used in the performance of air transportation, all depreciation and amortization expenses applicable to property and equipment used in providing air transportation services, all expenses associated with the transport-related revenues included on line 1 of this schedule, and all other expenses not specifically mentioned which are related to transport operations. Interest expense and other nonoperating expenses attributable to financing or other activities which are extraneous to and not an integral part of air transportation or its incidental services shall not be included in this category.

(3) Line 3 “Net Income or (Loss)” shall reflect all operating and nonoperating items of profit and loss recognized during the period except for prior period adjustments.

(d) Data reported on this form shall be withheld from public release for a period of 3 years after the close of the calendar quarter to which the report relates. Individual carrier financial data withheld from public disclosure may be disclosed by the Department to:

(1) Parties to any proceeding before the Department to the extent such material is relevant and material to the issues in the proceeding upon a determination to this effect by the administrative law judge assigned to the case or by the Department;

(2) Such persons and in such circumstances as the Department determines to be in the public interest or consistent with its regulatory functions and responsibilities; and

(3) Agencies and other components of the Federal Government for their internal use only. Aggregate data that does not identify individual carriers may be released prior to the aforementioned time.

§ 298.63 Reporting of aircraft operating expenses and related statistics by small certificated air carriers.

(a) Each small certificated air carrier shall file BTS Form 298-C, Schedule F-2 “Report of Aircraft Operating Expenses and Related Statistics.” This schedule shall be filed quarterly as prescribed in § 298.60. Data reported on this report shall be for the overall or system operations of the air carrier.

(b) Each carrier shall indicate in the space provided its full corporate name and the quarter for which the report is filed.

(c) This schedule shall show the direct and indirect expenses incurred in aircraft operations. Direct expense data applicable to each aircraft type operated by the carrier shall be reported in separate columns of this schedule. Each aircraft type reported shall be identified at the head of each column in the space provided for “Aircraft Type.” “Aircraft Type” refers to aircraft models such as Beech-18, Piper PA-32, etc. Aircraft Type designations are prescribed in the Accounting and Reporting Directives, which is available from the BTS’ Office of Airline Information. In the space provided for “Aircraft Type,” “Aircraft Type” refers to aircraft models such as Beech-18, Piper PA-32, etc. Aircraft Type designations are prescribed in the Accounting and Reporting Directives, which is available from the BTS’ Office of Airline Information. In the space provided for “Aircraft Type,” “Aircraft Type” refers to aircraft models such as Beech-18, Piper PA-32, etc. Aircraft Type designations are prescribed in the Accounting and Reporting Directives, which is available from the BTS’ Office of Airline Information. In the space provided for “Aircraft Type,” “Aircraft Type” refers to aircraft models such as Beech-18, Piper PA-32, etc. Aircraft Type designations are prescribed in the Accounting and Reporting Directives, which is available from the BTS’ Office of Airline Information. In the space provided for “Aircraft Type,” “Aircraft Type” refers to aircraft models such as Beech-18, Piper PA-32, etc. Aircraft Type designations are prescribed in the Accounting and Reporting Directives, which is available from the BTS’ Office of Airline Information. In the space provided for “Aircraft Type,” “Aircraft Type” refers to aircraft models such as Beech-18, Piper PA-32, etc. Aircraft Type designations are prescribed in the Accounting and Reporting Directives, which is available from the BTS’ Office of Airline Information. In the space provided for “Aircraft Type,” “Aircraft Type” refers to aircraft models such as Beech-18, Piper PA-32, etc. Aircraft Type designations are prescribed in the Accounting and Reporting Directives, which is available from the BTS’ Office of Airline Information. In the space provided for “Aircraft Type,” “Aircraft Type” refers to aircraft models such as Beech-18, Piper PA-32, etc. Aircraft Type designations are prescribed in the Accounting and Reporting Directives, which is available from the BTS’ Office of Airline Information. In the space provided for “Aircraft Type,” “Aircraft Type” refers to aircraft models such as Beech-18, Piper PA-32, etc. Aircraft Type designations are prescribed in the Accounting and Reporting Directives, which is available from the BTS’ Office of Airline Information. In the space provided for “Aircraft Type,” “Aircraft Type” refers to aircraft models such as Beech-18, Piper PA-32, etc. Aircraft Type designations are prescribed in the Accounting and Reporting Directives, which is available from the BTS’ Office of Airline Information. In the space provided for “Aircraft Code” carriers shall insert the three digit code prescribed in the Accounting and Reporting Directives for the reported aircraft type. (Note: Aircraft of the same type but different cabin configuration may be grouped into a single classification; therefore, carriers are not required to report the fourth digit of an aircraft code indicating cabin configuration.)

(d) Line 1 Direct aircraft operating expenses shall be reported in the following categories:

1. Line 2 “Flying Operations (Less Rental)” shall be subdivided as follows:

   i. Line 3 “Pilot and Copilot” expense shall include pilots’ and copilots’ salaries, and related employee benefits, pensions, payroll taxes and personnel expenses.

   ii. Line 4 “Aircraft Fuel and Oil” expense shall include the cost of fuel and oil used in flight operations and non-refundable aircraft fuel and oil taxes.

   iii. Line 5 “Other” expenses shall include general (hull) insurance, and all other expenses incurred in the in-flight operation of aircraft and holding of aircraft and aircraft operational personnel in readiness for assignment to an in-flight status, which are not provided for otherwise on this schedule.

   (2) Line 6 “Total Flying Operations (Less Rentals)” shall equal the sum of lines 3, 4 and 5.

   (3) Line 7 “Maintenance-Flight Equipment” shall include the cost of labor, material and related overhead expended by the carrier to maintain flight equipment, general services purchased for flight equipment maintenance from associated or other outside companies, and provisions for flight equipment overhauls.

   (4) Line 8 “Depreciation and Rental-Flight Equipment” expense shall include depreciation of flight equipment, amortization of capitalized leases for flight equipment, provision for obsolescence and deterioration of spare parts, and rental expense of flight equipment.

   (5) Line 9 “Total Direct Expense” shall equal the sum of lines 6, 7 and 8.

(e) Line 10 Indirect aircraft operating expenses shall be reported only in total for all aircraft types and shall be segregated according to the following categories:

1. Line 11 “Flight Attendant Expense” shall include flight attendants’ salaries, and related employee benefits, pensions, payroll taxes and personnel expenses.

2. Line 12 “Traffic Related Expense” shall include traffic solicitor salaries, traffic commissions, passenger food expense, traffic liability insurance, advertising and other promotion and publicity expenses, and the fringe benefit expenses related to all salaries in this classification.

3. Line 13 “Departure Related (Station) Expense” shall include aircraft and traffic handling salaries, landing fees, clearance, customs and duties, related fringe benefit expenses and maintenance and depreciation on ground property and equipment.

4. Line 14 “Capacity Related Expense” shall include salaries and fringe benefits for general management personnel, recordkeeping and statistical personnel, lawyers and law clerks, and purchasing personnel; legal fees and expenses; stationery; printing;
§ 298.64 Reporting of nonscheduled passenger enplanements by small certificated air carriers.

(a) Each small certificated air carrier shall file BTS Form 298-C, Schedule E-1 "Report of Nonscheduled Passenger Enplanements by Small Certificated Air Carriers." This schedule shall be filed quarterly as prescribed in §298.60.

(b) Each carrier shall indicate in the space provided its full corporate name and the quarter for which the report is filed.

(c) Enplaned passenger data shall be provided for each airport served in nonscheduled service. Nonscheduled service includes charter flights and other transportation services not constituting an integral part of services performed pursuant to published flight schedules, but does not include flights performed as extra sections to published flight schedules.

(d) In column 1, carriers shall report the full name of each airport served in nonscheduled service.

(e) In column 2, carriers shall report the three-letter airport code found in the "Official Airline Guide" (OAG). If the OAG contains no three-letter code for a point served by the carrier, a three-letter code will be provided by the BTS' Office of Airline Information upon request.

(f) In column 3, carriers shall report the total nonscheduled passengers enplaned at each airport reported in column 1. This column shall be totaled.

§ 298.65 Requests for extensions of time within which to file reports or for waivers from reporting requirements.

(a) If circumstances prevent the filing of BTS Form 298-C on or before the due date, a written request for an extension may be submitted. Except in cases of emergency, the request must be delivered to the BTS's Office of Airline Information in writing at least three days in advance of the due date. The request must state good and sufficient reason to justify the granting of the extension and the date when the reports can be filed. If the request is denied, the air carrier remains subject to the filing requirements to the same extent as if no request for extension of time had been made.

(b) The Office of Airline Information may waive any reporting requirements contained in §298.61, §298.62, §298.63 and §298.64 of this part, upon its own initiative or upon written request from any air carrier if the waiver is in the public interest and the request demonstrates that:

1. Unusual circumstances warrant such a departure;
2. A specifically defined alternative procedure or technique will result in a substantially equivalent or more accurate portrayal; and
3. The application of the alternative procedure will maintain or improve uniformity in reporting between air carriers.

§ 298.66 Reporting exemption for State collection of data.

(a) The Office of Airline Information may exempt a commuter air carrier from the reporting requirements of § 298.61 of this part if a State government collects the information specified in that section and provides it to the Department by the dates specified. The data provided to the Department in this manner must be at least as reliable as if they were collected by the Department directly.

(b) The Office of Airline Information will provide assistance to any State agency interested in participating in this exemption program.


Subpart G [Reserved]

Subpart H—Violations

§ 298.80 Enforcement.

In case of any violation of the provisions of the Statute, or this part, or any other rule, regulation, or order issued under the Statute, the violator may be subject to a proceeding pursuant to section 46101 of the Statute before the Department, or sections 46106 through 46108 of the Statute before a U.S. District Court, as the case may be, to compel compliance therewith; or to civil penalties pursuant to the provisions of section 46301 of the Statute; or, in the case of a willful violation, to criminal penalties pursuant to the provisions of section 46316 of the Statute; or other lawful sanctions including revocation of operating authority.

[ER—929, 40 FR 42855, Sept. 17, 1975, as amended at 60 FR 43528, Aug. 22, 1995]
SUBCHAPTER B—PROCEDURAL REGULATIONS

PART 300—RULES OF CONDUCT IN DOT PROCEEDINGS UNDER THIS CHAPTER

§ 300.0 Applicability.
300.0a Applicability of 49 CFR part 99.
300.1 Judicial standards of practice.
300.2 Prohibited communications.
300.3 Reporting of communications.
300.4 Separation of functions in hearing cases.
300.5 Prohibited conduct.
300.6 Practitioners' standards of conduct.
300.7 Conciseness.
300.8 Gifts and hospitality and other conduct affecting DOT employees.
300.9 Permanent disqualification of employees from matters in which they personally participated before joining DOT or the Civil Aeronautics Board.
300.10 Temporary disqualification of employees from matters in which they had official responsibility before joining DOT.
300.10a Permanent and temporary disqualification of DOT employees.
300.11 Disqualification of Government officers and employees.
300.12 Practice of special Government employees permitted.
300.13 Permanent disqualification of former Civil Aeronautics Board members and employees and DOT employees from matters in which they personally participated.
300.14 Temporary disqualification of former DOT employees from matters formerly under their official responsibility.
300.15 Opinions or rulings by the General Counsel.
300.16 Waivers.
300.17 Disqualification of partners of DOT employees.
300.18 [Reserved]
300.19 Use of confidential information.
300.20 Violations.


§ 300.0a Applicability of 49 CFR part 99.

(a) Except as provided in paragraph (b) of this section, each DOT employee involved in matters covered by this chapter shall comply with the rules on "Employee Responsibilities and Conduct" in 49 CFR part 99.

(b) The rules in this part shall be construed as being consistent with those in 49 CFR part 99. If a rule in this part is more restrictive than a rule in 49 CFR part 99, the more restrictive rule shall apply.

§ 300.1 Judicial standards of practice.

Certain of DOT's functions involving aviation economic and enforcement proceedings are similar to those of a court, and parties to cases before DOT and those who represent such parties are expected—in fact and in appearance—to conduct themselves with honor and dignity as they would before a court. By the same token, any DOT employee or administrative law judge carrying out DOT's quasi-judicial functions and any DOT employee making recommendations or advising them are expected to conduct themselves with the same fidelity to appropriate standards of propriety that characterize a court and its staff. The standing and effectiveness of DOT in carrying out its quasi-judicial functions are in direct relation to the observance by DOT, DOT employees, and the parties and attorneys appearing before DOT of the
highest standards of judicial and professional ethics. The rules of conduct set forth in this part are to be interpreted in light of those standards.

[Docket No. 82, 50 FR 2380, Jan. 16, 1985, as amended at 60 FR 43528, Aug. 22, 1995]

§ 300.2 Prohibited communications.

(a) Basic requirement. Except as provided in paragraphs (c), (d) and (e) there shall be no substantive communication in either direction between any concerned DOT employee and any interested person outside DOT, concerning a public proceeding, until after final disposition of the proceeding, other than as provided by Federal statute or published DOT rule or order.

(b) Definitions. For purposes of this part:

(1) A “substantive communication” is any written or oral communication relevant to the merits of the proceeding.

(2) The “DOT decisionmaker” is defined in 14 CFR 302.22a.

(3) A “concerned DOT employee” is a DOT employee who is or may reasonably be expected to be directly involved in a decision which is subject to a public proceeding.

(4) A “public proceeding” is one of the following:

(i) A hearing proceeding (i.e., proceeding conducted on-the-record after notice and opportunity for an oral evidentiary hearing as provided in § 302.24)

(ii) A rulemaking proceeding involving a hearing as described in paragraph (b)(4)(i) of this section or an exemption proceeding covered by this chapter. (Other rulemaking proceedings are covered by the ex parte communication policies of DOT Order 2100.2.)

(iii) A tariff filing after DOT has ordered an investigation or a complaint has been filed or docketed.

(iv) A proceeding initiated by DOT show-cause order, after the filing in the docket of an identifiable written opposition to the order’s tentative findings.

(v) Any other proceeding initiated by a docket filing, other than a petition for generally applicable rulemaking, after the filing in the docket of an identifiable written opposition to the initiating document.

(c) General exceptions. Paragraph (a) of this section shall not apply to the following:

(1) Informal communications between legal counsel, including discussions about stipulations and other communications considered proper in Federal court proceedings.

(2) Information given to a DOT employee who is participating in a hearing case on behalf of an office that is a party, to another DOT employee who is reviewing that work, or to his or her supervisors within that office.

(3) Communications made in the course of an investigation to determine whether formal enforcement action should be begun.

(4) Settlement discussions and mediation efforts.

(5) Information given at the request of a DOT employee acting upon a specific direction of DOT, in a case other than a hearing proceeding as described in paragraphs (b)(4)(i) and (ii) (a “non-hearing case”), where DOT has decided that emergency conditions exist and this rule would otherwise prevent the obtaining of needed information in a timely manner.

(6) Information given at the request of a DOT employee in a tariff matter after a complaint is filed but before an investigation is ordered.

(7) Nonhearing cases that are to be decided within 30 days after the filing of the initiating document.

(8) Nonhearing cases arising under 49 U.S.C. 41731-42.

(9) In nonhearing cases, communications with other Federal agencies not exempted by paragraph (e) of this section, provided the agencies have not participated as parties in the proceeding by making filings on-the-record.

(10) Information given at the request of a DOT career employee in the course of investigating or clarifying information filed, or pursuant to a waiver granted to an applicant or other interested person, in docketed proceedings involving determinations of fitness and/or U.S. citizenship only, for that portion of the proceeding that precedes the issuance of a show-cause order or an order instituting a formal proceeding. Motions for such waivers and
§ 300.3 Reporting of communications.

(a) General. The following types of substantive communication shall be reported as specified in paragraph (b) of this section:

(1) Any communication in violation of § 300.2(a) of this chapter.

(2) Information given upon determination of an emergency under § 300.2(c)(5) of this chapter.

(3) Information given at the request of a DOT employee in a tariff matter under § 300.2(c)(6) of this chapter.

(4) Communications in nonhearing cases to be decided within 30 days under § 300.2(c)(7) of this chapter.

(5) Communications in nonhearing cases arising under 49 U.S.C. 41731-42, made under § 300.2(c)(8).

(b) Public filing. (1) A written communication shall be put into the correspondence or other appropriate file of the proceeding, which shall be available for inspection and copying during business hours in the Documentary Services Division.

(2) An oral communication shall be summarized by the DOT employee receiving it. One copy shall be put into a public file as described in paragraph (b)(1) of this section, and another copy shall be mailed to the communicator.

(3) In addition, copies of written communications and oral summaries shall be filed in chronological order in a “part 300” file maintained in the Documentary Services Division.

(4) Copies of all filings under this part dealing with discontinuances or reductions of air transportation shall be mailed to the directly affected local communities, State agencies, and airport managers.

(c) Status and expedition requests. A DOT decisionmaker who receives a communication asking about the status or requesting expeditious treatment of a public proceeding, other than a communication concerning national defense or foreign policy (including international aviation), shall either:

(1) Refer the communicator to the Documentary Services Division.

(2) If the DOT decisionmaker responds by advising on the status, put a memorandum describing the exchange in the public file as described in paragraph (b)(1) of this section.

[Docket No. 82, 50 FR 2380, Jan. 16, 1985, as amended at 60 FR 43528, Aug. 22, 1995]

§ 300.4 Separation of functions in hearing cases.

(a) This section applies after the initiation of a hearing or enforcement case by the Department.

(b) A DOT employee who is participating in a hearing case on behalf of an office that is a party, another DOT employee who is in fact reviewing the position taken, or who has participated in developing the position taken in that case, or, in cases involving accusatory or disciplinary issues (including all enforcement cases) such employees’ supervisors within that office, shall have no substantive communication.
with any DOT decisionmaker, administrative law judge in the case, or other DOT employee advising them, with respect to that or any factually related hearing case, except in accordance with a published DOT rule or order. In addition, each bureau or office supervisor of a DOT employee who is participating in a hearing case on behalf of that office when it is a party shall have no substantive communication with any administrative law judge in the case, or DOT employee advising the judge, in that or any factually related hearing case, except in accordance with a published DOT rule or order. For each hearing case, bureau or office heads shall maintain a publicly available record of those employees who are participating or are in fact reviewing the position taken, or who have participated in developing the position taken in that case.

(c) In hearing cases involving fares or rates, or applications for a certificate or permit under 49 U.S.C. 41102 and 41302, or applications by a holder for a change in a certificate or permit under 49 U.S.C. 41102 and 41302, or applications by a holder for a change in a certificate or permit, a supervisor who would not be permitted to advise the DOT decisionmaker under paragraph (a) may advise the DOT decisionmaker in the following manner:

The supervisor’s advice must either be made orally in an open DOT meeting or by a memorandum placed in the docket or other public file of such matter. Oral advice must be summarized in writing by the supervisor and placed in the docket or file of the matter. A copy of such written memorandum or summary of oral advice must be served on each party to the proceeding within 3 business days after such advice is given to the concerned DOT decisionmaker. Each of the parties may comment in writing on such advice within 5 business days after service or the summary. In no event, however, may a supervisor advise the DOT decisionmaker if he or she acted as the office’s counsel or witness in the matter.

(d) In enforcement cases, the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, under the supervision of the Deputy General Counsel, will conduct all enforcement proceedings and related investigative functions, while the General Counsel will advise the DOT decisionmaker in the course of the decisional process. The Office of the Assistant General Counsel for Aviation Enforcement and Proceedings will report to the Deputy General Counsel. To ensure the independence of these functions, this Office and the Deputy General Counsel, for the purpose of this section, shall be considered an “office” as that term is used in paragraph (a), separate from the General Counsel and the rest of the Office of the General Counsel.

[Docket No. 82, 50 F.R. 2380, Jan. 16, 1985, as amended at 60 F.R. 43528, Aug. 22, 1995]

§ 300.5 Prohibited conduct.

No person shall: (a) Attempt to influence the judgment of a concerned DOT employee by any unlawful means such as deception or the payment of money or other consideration; or

(b) Disrupt or interfere with the fair and orderly disposition of a DOT proceeding.

§ 300.6 Practitioners’ standards of conduct.

Every person representing a client in matters before DOT in all contacts with DOT employees, should:

(a) Strictly observe the standards of professional conduct;

(b) Refrain from statements or other actions designed to mislead DOT or to cause unwarranted delay;

(c) Avoid offensive or intemperate behavior;

(d) Advise all clients to avoid improprieties and to obey the law as the attorney believes it to be; and

(e) Terminate the professional relationship with any client who persists in improprieties in proceedings before DOT.

§ 300.7 Conciseness.

Every oral or written statement made in a DOT proceeding shall be as concise as possible. Verbose or redundant presentations may be rejected.

§ 300.8 Gifts and hospitality and other conduct affecting DOT employees.

(a) No person, otherwise than as provided by law for the proper discharge of official duty, shall directly or indirectly give, offer, or promise anything of value to any DOT employee for or
§ 300.9 Permanent disqualification of employees from matters in which they personally participated before joining DOT or the Civil Aeronautics Board.

Any DOT employee shall permanently disqualify himself or herself from participation in every matter before the Department in which he or she previously personally and substantially participated for an interested person or entity, including other agencies of the United States Government, before joining DOT, and the circumstances were such that the DOT employee’s subsequent participation in the matter as a DOT employee could fairly be said to create the appearance that his or her participation would be affected by his or her prior relationship.

§ 300.10 Temporary disqualification of employees from matters in which they had official responsibility before joining DOT.

Any DOT employee shall temporarily disqualify himself or herself from participation in any matter before DOT if he or she represented, was associated with or was employed by an interested person or entity including other agencies of the United States Government before joining DOT, and the circumstances were such that the DOT employee’s subsequent participation in the matter as a DOT employee could fairly be said to create the appearance that his or her participation would be affected by his or her prior relationship.

[Docket No. 82, 50 FR 2380, Jan. 16, 1985, as amended at 60 FR 43528, Aug. 22, 1995]
§ 300.10a Permanent and temporary disqualification of DOT employees.

The terms of §§ 300.9 and 300.10 shall not be construed to apply to DOT employees who previously personally and substantially participated in matters before the Board, which have become the subject of DOT proceedings.

[Docket No. 82, 50 FR 2380, Jan. 16, 1985, as amended at 60 FR 43528, Aug. 22, 1995]

§ 300.11 Disqualification of Government officers and employees.

No officer or employee of the Federal Government, other than a “special Government employee” as defined in 18 U.S.C. 202, shall represent anyone, otherwise than in the proper discharge of his or her official duties, in any DOT proceeding or matter in which the United States is a party or has a direct and substantial interest.

(18 U.S.C. 205)

§ 300.12 Practice of special Government employees permitted.

A special Government employee, who qualifies as such under the provisions of 18 U.S.C. 202(a), may participate in DOT proceedings only to the extent and in the manner specified in 18 U.S.C. 205.

§ 300.13 Permanent disqualification of former Civil Aeronautics Board members and employees and DOT employees from matters in which they personally participated.

No former Board member or employee or DOT employee shall act as agent or attorney before DOT for anyone other than the United States in connection with any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, or other particular matter, involving a specific party or parties, in which the United States is a party or has a direct and substantial interest and in which he or she participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise as a Board member or employee or DOT employee.

(18 U.S.C. 207(a))

§ 300.14 Temporary disqualification of former DOT employees from matters formerly under their official responsibility.

Within one year after termination of employment with DOT, no former DOT employee shall appear personally before DOT on behalf of any person other than the United States in any DOT proceeding or matter in which the United States is a party or has a direct and substantial interest and which was under his or her official responsibility at any time within one year preceding termination of such responsibility. The term “official responsibility” means the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action.

(18 U.S.C. 202(b), 207(b))

[Docket No. 82, 50 FR 2380, Jan. 16, 1985, as amended at 60 FR 43528, Aug. 22, 1995]

§ 300.15 Opinions or rulings by the General Counsel.

(a) The General Counsel is authorized to render opinions or rulings to the public on the application of the provisions of this part. When written request is made for such opinions and rulings, they shall be transmitted to DOT and shall be available to the public in the Documentary Services Division after any appeal to or review by the Secretary has been completed or after the time for review has expired. Identifying details shall normally be stricken from copies available to the public unless the public interest requires disclosure of such details.

(b) If any person is disqualified from a particular proceeding under the provisions of §§ 300.9, 300.10, 300.13, 300.14, and 300.17 of this chapter by a ruling of the General Counsel, or by such person’s own action, such disqualification shall be memorialized in a writing filed in the appropriate file of the matter by the General Counsel or such person.

§ 300.16 Waivers.

(a) A former Board member, Board employee or DOT employee with outstanding scientific or technological
§ 300.17 Disqualification of partners of DOT employees.

No partner of a DOT employee shall act as agent or attorney for anyone other than the United States in any DOT proceeding or matter in which such employee participates or has participated personally and substantially through decision, approval, disapproval, recommendation, rendering advice, investigation, or otherwise, or which is the subject of his or her official responsibility.

§ 300.18 [Reserved]

§ 300.19 Use of confidential information.

No former CAB member or employee or DOT employee, or any person associated with him or her, shall ever use or undertake to use in any DOT proceeding or matter any confidential facts or information which came into the possession of such Member or employee or to his or her attention by reason of his or her employment with the CAB or DOT without first applying for and obtaining the consent of the appropriate ethics counselor for the use of such facts or information.

§ 300.20 Violations.

(a) DOT may disqualify, and deny temporarily or permanently the privilege of appearing or practising before it in any way to, any person who is found by DOT after written notice of charges and hearing to have engaged in unethical or improper professional conduct. Any violation of this part shall be deemed to be such conduct.

(b) When appropriate in the public interest, DOT may deny any application or other request of a party in a proceeding subject to this part where DOT finds after hearing that such party has, in connection with any DOT proceeding, violated any of the provisions of this part or any of the provisions of Chapter 11 of Title 18 of the United States Code. DOT may also condition its further consideration of such party's application or other request or the effectiveness of any order granting such application or other request upon such party's first taking such action as DOT may deem necessary or appropriate to remedy the violation of this part or Chapter 11 of Title 18 of the United States Code to prevent or deter any repetition of such violation. DOT may in addition issue a cease and desist order against any repetition of such or similar misconduct.

(c) The actions authorized by this section may take place within the framework of the matter during or concerning which the violations occur or in a separate matter, as the DOT decisionmaker or the presiding administrative law judge may direct. A complaint alleging that a violation has occurred in the course of a matter shall be filed in the docket or appropriate public file of such matter unless such complaint is made after DOT's decision of the matter has become final, in which event such complaint may be filed pursuant to part 302, subpart B of the rules of practice. A violation in the course of a matter which may be attributable to or affect the fitness of a party will ordinarily either be disposed of within the framework of such matter or be considered within the context of any subsequent matter involving the interests of such party. Other violations will ordinarily be disposed of in a separate proceeding.

(d) In the case of any violation of the provisions of this part, the violator may be subject to civil penalties under the provisions of 49 U.S.C. 46301. The violator may also be subject to a proceeding brought under 49 U.S.C. 46101 before the Department, or sections 46106 through 46108 of the Statute before a U.S. District Court, as the case
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may be, to compel compliance with civil penalties which have been imposed.

[Docket No. 82, 50 FR 2380, Jan. 16, 1985, as amended at 60 FR 43528, Aug. 22, 1995]

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APPENDIX A TO PART 302—INDEX TO RULES OF PRACTICE


302.1 Applicability and description of part.

(a) Applicability. This part governs the conduct of all economic proceedings before DOT whether instituted by order of DOT or by the filing with DOT of an application, complaint, petition, or a section 412 contract or agreement. This part also contains delegations to administrative law judges and to the DOT decisionmaker of DOT's function to render the agency decision in certain cases. The decision of administrative law judges is subject to review by the DOT decisionmaker, pursuant to authority delegated by the Secretary. Decisions of the DOT decisionmaker are subject to review at the discretion of the Assistant Secretary for Aviation and International Affairs. In appropriate cases, the Secretary may exercise the discretionary review authority. The provisions of part 263 of this chapter of the Economic Regulations are applicable to participation of air carrier associations in proceedings under this part. Proceedings involving "Alaskan air carriers" are governed by the rules in this part, except as modified by part 292 of this chapter.

(b) Description. Subpart A of this part sets forth general rules applicable to all types of proceedings. Each of the other subparts of this part sets forth special rules applicable to the type of proceedings described in the title of the subpart. Therefore, for information as to applicable rules, reference should be made to subpart A and to the rules in the subpart relating to the particular type of proceeding, if any. In addition, reference should be made to the Federal Aviation Act, and to the substantive rules, regulations and orders of DOT relating to the proceeding. Wherever there is any conflict between one of the general rules in subpart A and a special rule in another subpart applicable to a particular type of proceeding, the special rule will govern.


302.2 Reference to part and method of citing rules.

This part shall be referred to as the "Rules of Practice". Each section, and any paragraph or subparagraph thereof, shall be referred to as a "Rule". The number of each rule shall include only the numbers and letters at the right of the decimal point. For example, "302.8 Service of documents", shall be referred to as "Rule 8". Paragraph (a)(2) of that..."
§ 302.3 Filing of documents.

(a) Filing address, date of filing, hours. Documents required by any section of this part to be filed with DOT shall be filed with the Documentary Services Division of DOT, Washington, DC 20590. Such documents shall be deemed to be filed on the date on which they are actually received by DOT. Documents must be filed between the hours of 9:00 a.m. and 5:00 p.m., eastern standard or daylight saving time, whichever is in effect in the District of Columbia at the time, Monday to Friday, inclusive, except on legal holidays.

(b) Formal specifications of documents. (1) Documents filed under this part must be on white paper not larger than 8½ by 11 inches, including any tables, charts and other documents that may be included. Ink must be dark enough (but may not be green) to provide substantial contrast for scanning and photographic reproduction. Text must be double-spaced (except for footnotes and long quotations, which may be single-spaced), using type not smaller than 12 point. The left margin must be at least 1 ½ inches; all other margins must be at least 1 inch. The title page and first page must bear a clear date and all subsequent pages must bear a page number and abbreviated heading. In order to facilitate automated processing in document sheet feeders, documents of more than one page should be held together with removable metal clips or similar retainers. Original documents may not be bound in any form or include tabs, except in cases assigned by order to an Administrative Law Judge for hearing, in which case the filing requirements will be set by order. Section 302.31 contains additional requirements as to the contents and style of briefs.

(2) To facilitate indexing, a filer should include in or provide with each document: the docket title and subject; the relevant operating administration before which the application or request is filed; the identity of the filer; the title of the specific action being requested; and the name and address of the designated agent, and so identified, on file for official service. The Docket Management Facility has an Expedited Processing Sheet that filers can use to assist in this index input.

(3) Reproduction of documents. Papers may be reproduced by any duplicating process, provided all copies are clear and legible. Appropriate notes or other indications shall be used, so that the existence of any matters shown in color on the original will be accurately indicated on all copies.

(c) Number of copies. Unless otherwise specified, an executed original, along with the number of true copies set forth below for each type of proceeding, must be filed with the Docket Management Facility. The copies filed need not be signed, but the name of the person signing the original document, as distinguished from the firm or organization he or she represents, must also be typed or printed on all copies below the space provided for the signature.

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Filers are encouraged to submit one of the required true copies (except for counterparts of Agreement CAB 18900) in electronic form on a 3½ inch floppy disk, labeled to show the filer’s and representative’s names, the docket number (if known) or space for it, and document title. The electronic submission must be in one of the following formats: Microsoft Word (or RTF), WordPerfect, Excel, Lotus 123, or ASCII text. The disk must be accompanied by a signed certification that it is a true copy of the executed original document.

(d) Table of contents. All documents filed under this part consisting of twenty or more pages must contain a subject-index of the matter in such document, with page references.

(e) [Reserved]

(f) Official docket copy. With respect to all documents filed under this part that are scanned, the electronic scanned record produced by the Department shall thereafter be the official docket copy of the document and any subsequent copies generated by the Department’s electronic records system will be usable for admission as record copies in any proceeding before the Department.


§ 302.4 General requirements as to documents.

(a) Contents. In case there is no rule, regulation, or order of DOT which prescribes the contents of a formal application, petition, complaint, motion or other authorized or required document, such document shall contain a proper identification of the parties concerned, a concise but complete statement of the facts relied upon and the relief sought, and, where required by §312.12 or §312.14 of this subchapter, such document shall, at the appropriate time, be accompanied by an Environmental Evaluation, a representation and explanation with respect to §312.9(a)(2) of this chapter, or an Environmental assessment, in conformity with those sections or orders issued thereunder.

(b) Subscription. Every application, petition, complaint, motion or other authorized or required document shall be signed by the party filing the same, or by a duly authorized officer or the attorney-at-law of record of such party, or by any other person; Provided, That, if signed by such other person, the reason therefor must be stated and the power of attorney or other authority authorizing such other person to subscribe the document must be filed with the document. The signature of the person signing the document constitutes a certification that he or she has read the document; that to the best of his or her knowledge, information and belief every statement contained in the instrument is true and no such statements are misleading; and that it is not interposed for delay.

(c) Designation of person to receive service. The initial document filed by a person shall state on its first page the name and post office address of the person or persons who may be served with any documents filed in the proceeding. It is requested, but not required, that the telephone number of that person also be included.

(d) Prohibition of certain documents. No document which is subject to the general requirements of this subpart concerning form, filing, subscription, service or similar matters shall be filed with DOT unless:

(1) Such document and its filing by the person submitting it has been expressly authorized or required in the Federal Aviation Act of 1958, any other law, this part, other Department regulations, or any order or other document issued by the DOT decision-maker, the chief administrative law judge or an administrative law judge assigned to the proceeding, and

(2) Such document complies with each of the requirements of §§302.3 and 302.8, and is submitted as a formal application, complaint, petition, motion, answer, pleading, or similar paper rather than as a letter, telegram, or other informal written communication: Provided, however, That for good cause shown, pleadings of any public body or civic organization may be submitted in the form of a letter: Provided further, That comments concerning tariff
§ 302.5 Amendment of documents and dismissal.

If any document initiating, or filed in, a proceeding is not in substantial conformity with the applicable rules or regulations of DOT as to the contents thereof, or is otherwise insufficient but not subject to rejection under § 302.4(e), DOT, on its own initiative, or on motion of any party, may strike or dismiss such document, or require its amendment. An application may be amended prior to the filing of answers thereto, or, if no answer is filed, prior to its designation for hearing. Thereafter, applications may be amended only if leave is granted pursuant to the procedures set forth in § 302.18. If properly amended, a document and any statutory deadline shall be made effective as of the date of original filing but the time prescribed for the filing of an answer or any further responsive document directed towards the amended document shall be computed from the date of the filing of the amendment.

§ 302.6 Responsive documents.

(a) Answers to applications, complaints, petitions, motions or other documents or orders instituting proceedings may be filed by any party to such proceedings or any person who has a petition for intervention pending. Except as otherwise provided, answers are not required. Protests or memoranda of opposition or support, permitted by statute, shall be filed in lieu of answers or shall be combined with answers.

Note: DOT does not grant formal intervention in nonhearing matters, such as applications for exemption under section 416(b) of the Act, and any interested person may file documents authorized under this part without first obtaining leave.

(b) Further responsive documents: Except as otherwise provided, no reply to an answer, reply to a reply, or any further responsive document shall be filed. Where a reply to an answer or any further responsive document is not fileable, all new matter contained in such answer shall be deemed controverted. A party to a proceeding whose application has been the subject of a protest or memorandum of opposition or support, permitted by statute, may respond thereto before the close of
the hearing in the case to which such documents relate, orally, in writing, or by introducing evidence, subject to appropriate rulings by the administrative law judge. Once such response has been made, such party may also discuss the protest or memorandum in his brief to the administrative law judge or the DOT decisionmaker or in his or her oral argument.

c) Time for filing. Except as otherwise provided, an answer or any further responsive document shall be filed within seven days after service of the document to which such responsive filing is directed. Protests or memoranda of opposition or support, permitted by statute, shall be filed before the close of the hearing in the case to which they relate.

§302.7 Retention of documents by DOT.

All documents filed with or presented to DOT may be retained in the files of the Documentary Services Division. However, DOT may permit the withdrawal of original documents upon the submission of properly authenticated copies to replace such documents.

§302.8 Service of documents.

(a) Who makes service—(1) DOT. Formal complaints, notices, orders to show cause, other orders, and similar documents issued by DOT will be served by DOT upon all parties to the proceeding.

(2) The parties. Answers, petitions, motions, briefs, exceptions, notices, protests, or memoranda, or any other documents filed by any party or other person with DOT shall be served by such party or other person upon all parties to the proceeding in which it is filed: Provided, That motions to expedite filed in any proceeding conducted pursuant to sections 401 and 402 of the Act, shall, in addition, be served on all persons who have petitioned for intervention in, or consolidation of applications with, such proceeding. Proof of service shall accompany all documents when they are tendered for filing.

(b) How service may be made. Service may be made by express mail, first class mail or priority mail, or by personal delivery. The means of service selected must be such as to permit compliance with section 1005(c) of the Act, which provides for service of notices, processes, orders, rules, and regulations by personal service or registered or certified mail.

(c) Who may be served. Service upon a party or person may be made upon an individual, or upon a member of a partnership, or firm to be served, or upon the president or other officer of the corporation, company, firm, or association to be served, or upon the assignee or legal successor of any of the foregoing, or upon any attorney of record for the party, or upon the agent designated by an air carrier under section 1005(b) of the Act, but it shall be served upon a person designated by a party to receive service of documents in a particular proceeding in accordance with §302.4(c) once a proceeding has been commenced.

(d) Where service may be made. Personal service may be made on any of the persons described in paragraph (c) of this section wherever they may be found, except that an agent designated by an air carrier under section 1005(b) of the Act may be served only at his or her office or usual place of residence. Service by regular or registered or certified mail shall be made at the principal place of business of the party to be served, or at his or her usual residence if he or she is an individual, or at the office of the party’s attorney of record, or at the office or usual residence of the agent designated by air carrier under section 1005(b) of the Act, or at the post office address stated for a person designated to receive service pursuant to §302.4(c).

(e) Proof of service. Proof of service of any document shall consist of one of the following:

(1) A certificate of mailing executed by the person mailing the document.

(2) An acknowledgment of service signed by a person receiving service personally, or a certificate of the person making personal service.

(f) Date of service. Whenever proof of service by mail is made, the date of mailing shall be the date of service. Whenever proof of service by personal delivery is made, the date of such delivery shall be the date of service.

(g) Freely Associated State Proceedings. In any proceeding directly involving
§ 302.9 Air transportation to the Federated States of Micronesia, the Marshall Islands, or Palau, the Department and any party or participant in the proceeding shall serve all documents on the President and the designated Authorities of the Government(s) involved. This requirement shall apply to all proceedings where service is otherwise required, and shall be in addition to any other service required by this chapter.

[Docket No. 82, 50 FR 2384, Jan. 16, 1985, as amended by Amdt 302-72, 52 FR 5445, Feb. 23, 1987]

§ 302.9 Parties.

The term “party” wherever used in this part shall include any individual, firm, partnership, corporation, company, association, joint stock association, or body politic, and any trustee, receiver, assignee or legal successor thereof, and shall include the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings. In any proceeding directly involving air transportation to the Federated States of Micronesia, the Marshall Islands or Palau, these Governments or their designated Authorities shall be a party.

[Amdt. 302-72, 52 FR 5445, Feb. 23, 1987]

§ 302.10 Substitution of parties.

Upon motion and for good cause shown, DOT may order a substitution of parties, except that in case of death of a party, substitution may be ordered without the filing of a motion.

§ 302.10a Participation of air carrier associations in Department proceedings.

(a) An association composed entirely or in part of direct air carriers may participate in any proceedings of the Department to which the Department’s procedural regulations apply only if:

(1) The issues substantially affect the property or financial interests of the association as opposed to an interest derivative from its members;

(2) The association acts as a conduit to the Department of factual information gathered from the members, as distinguished from presentation of opinions or positions on issues; or

(3) The association represents members that are identified in any documents filed with the Department, and that have specifically authorized the positions taken by the association in that proceeding. The specific authorizations may be informal and evidence of them shall be provided only upon request of the Department.

(b) Upon motion of any interest person or upon its own initiative, the Department may issue an order requiring an association to withdraw from a case on the ground of significant divergence of interest or position within the association.

[Docket No. 47939, 57 FR 40104, Sept. 2, 1992]

§ 302.11 Appearances; rights of witnesses.

(a) Any party to a proceeding may appear and be heard in person or by attorney. No register of persons who may practice before DOT is maintained and no application for admission to practice is required. Any person practicing or desiring to practice before DOT may, upon hearing and good cause shown, be suspended or barred from practicing.

(b) Any person appearing in person in any proceeding governed by this part, whether in response to a subpoena or by request or permission of DOT, may be accompanied, represented and advised by counsel and may be examined by his own counsel after other questioning.

(c) Any person who submits data or evidence in a proceeding governed by this part, whether in response to a subpoena or by request or permission of DOT, may retain or, on payment of lawfully prescribed costs, procure a copy of any document submitted by him or a copy of any transcript made of his testimony.

§ 302.12 Consolidation of proceedings.

(a) Initiation of consolidations. DOT upon its own initiative or upon motion, may consolidate for hearing or for other purposes or may contemporaneously consider two or more proceedings which involve substantially the same parties, or issues which are the same or closely related, if it finds that such consolidation or contemporaneous hearing will be conducive to the proper dispatch of its business and to
the ends of justice and will not unduly delay the proceedings. Although DOT may, in any particular case, consolidate or contemporaneously consider two or more proceedings on its own motion, the burden of seeking consolidation or contemporaneous consideration of a particular application shall rest upon the applicant and DOT will not undertake to search its docket for all applications which might be consolidated or contemporaneously considered.

(b) Time for filing. Unless DOT has provided otherwise in a particular proceeding, a motion to consolidate or contemporaneously consider an application with any other application shall be filed not later than the prehearing conference in the proceeding with which consolidation or contemporaneous consideration is requested. If made at such conference, the motion may be oral. All motions for consolidation or considerations of issues which enlarge, expand and change the nature of the proceeding shall be addressed to the DOT decisionmaker, unless made orally at the prehearing conference, in which event the presiding administrative law judge shall present such motion to the DOT decisionmaker for his or her decision. A motion which is not filed at or prior to the prehearing conference, or within the time prescribed by the DOT decisionmaker in a particular proceeding, as the case may be, shall be dismissed unless the movant shall clearly show good cause for his or her failure to file such motion on time. A motion which does not relate to an application pending at the time of the prehearing conference in the proceeding with which consolidation or contemporaneous consideration is requested, or on the date specifically prescribed by the DOT decisionmaker in a particular proceeding for filing of motions for consolidation or contemporaneous consideration, shall likewise be dismissed unless the movant shall clearly show good cause for his or her failure to file the application within the prescribed period.

(c) Answer. If a motion to consolidate two or more proceedings is filed with DOT, any party to any of such proceedings, or any person who has a petition for intervention pending, may file an answer to such motion within such period as the DOT decisionmaker may permit. The administrative law judge may require that answers to such motions be stated orally at the prehearing conference in the proceeding with which the consolidation is proposed.

§ 302.13 Joinder of complaints or complainants.

Two or more grounds of complaints involving substantially the same purposes, subject or state of facts may be included in one complaint even though they involve more than one respondent. Two or more complainants may join in one complaint if their respective causes of complaint are against the same party or parties and involve substantially the same purposes, subject or state of facts. The DOT decisionmaker he or she may separate or split complaints if it finds that the joinder of complaints, complainants, or respondents will not be conducive to the proper dispatch of DOT’s business or the ends of justice.

§ 302.14 Participation in hearing cases by persons not parties.

(a) Requests for expedition. In any case to which the DOT’s principles of practice, Part 300, are applicable, any interested person, including any State, subdivision thereof, State aviation commission, or other public body, may by motion request expedition of such case or file an answer in support of or in opposition to such motions. Such motions and answers shall be served as provided in § 302.8 of this part.

(b) Participation in hearings. Any person, including any State, subdivision thereof, State aviation commission, or other public body, may appear at any hearing, other than in an enforcement proceeding, and present any evidence which is relevant to the issues. With the consent of the administrative law judge or the DOT decisionmaker, such person may also cross-examine witnesses directly. Such persons may also present to the administrative law judge
a written statement on the issues involved in the proceeding. Such written statements, or protests or memoranda in opposition or support where permitted by statute, shall be filed and served on all parties prior to the close of the hearing.

§ 302.15 Formal intervention in hearing cases.

(a) Who may intervene. Petitions for leave to intervene as a party will be entertained only in those cases that are to be decided upon an evidentiary record after notice and hearing. Any person who has a statutory right to be made a party to such proceeding shall be permitted to intervene. Any person whose intervention will be conducive to the ends of justice and will not unduly delay the conduct of such proceeding may be permitted to intervene. DOT does not grant formal intervention, as such, in nonhearing matters, and any interested person may file documents authorized under this part without first obtaining leave.

(b) Considerations relevant to determination of petition to intervene. In passing upon a petition to intervene, the following factors, among other things, will be considered:

(1) The nature of the petitioner's right under the statute to be made a party to the proceeding;
(2) The nature and extent of the property, financial or other interest of the petitioner;
(3) The effect of the order which may be entered in the proceeding on petitioner's interest;
(4) The availability of other means whereby the petitioner's interest may be protected;
(5) The extent to which petitioner's interest will be represented by existing parties;
(6) The extent to which petitioner's participation may reasonably be expected to assist in the development of a sound record; and
(7) The extent to which participation of the petitioner will broaden the issue or delay the proceeding.

These criteria will be liberally interpreted to facilitate the effective participation by members of the public in DOT proceedings.

(c) Petition to intervene—(1) Contents. Any person desiring to intervene in a proceeding shall file a petition in conformity with this part setting forth the facts and reasons why he or she thinks he or she should be permitted to intervene. The petition should make specific reference to the factors set forth in paragraph (b) of this section.

(2) Time for filing. Unless otherwise ordered by DOT, any petition for leave to intervene shall be filed within the following time limits:

(i) In a proceeding where DOT issues a show cause order proposing fair and reasonable mail rates, such petition shall be filed within the time specified for filing notice of objection.

(ii) In all other proceedings, including mail rate proceedings where no show cause order is issued, the petition shall be filed with DOT prior to the first prehearing conference, or, in the event that no such conference is to be held, not later than fifteen (15) days prior to the hearing.

(iii) A petition to intervene in any Board proceeding filed by a city, other public body, or a chamber of commerce shall be filed with DOT not later than the last day prior to the beginning of the hearing thereon.

A petition for leave to intervene which is not timely filed shall be dismissed unless the petitioner shall clearly show good cause for his or her failure to file such petition on time.

(3) Answer. Any party to a proceeding may file an answer to a petition to intervene, making specific reference to the factors set forth in paragraph (b) of this section, within seven (7) days after the petition is filed.

(4) Disposition. The decision granting, denying or otherwise ruling on any petition to intervene may be issued without receiving testimony or oral argument either from the petitioner or other parties to the proceeding.

(d) Effect of granting intervention. A person permitted to intervene in a proceeding thereby becomes a party to the proceeding. However, interventions provided for in this section are for administrative purposes only, and no decision granting leave to intervene shall be deemed to constitute an expression by DOT that the intervening party has such a substantial interest in the order.
that is to be entered in the proceeding as will entitle it to judicial review of such order.

§ 302.16 Computation of time.

In computing any period of time prescribed or allowed by this part, by notice, order or regulation of the DOT or DOT decisionmaker the chief administrative law judge or an administrative law judge, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or legal holiday for DOT, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor holiday. When the period of time prescribed is seven (7) days or less, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation.

§ 302.17 Continuances and extensions of time.

(a) Generally. Whenever a party has the right or is required to take action within a period prescribed by this part, by a notice given thereunder, or by an order or regulation, the DOT decisionmaker, the head of the Documenting Services Division or the administrative law judge assigned to the proceeding may: (1) Before the expiration of the prescribed period, with or without notice, extend such period; or (2) upon motion, permit the act to be done after the expiration of the specified period, where the failure to act is clearly shown to have been the result of excusable neglect.

(b) Procedures. Except where an administrative law judge has been assigned to a proceeding, requests for continuance or extensions of time may be directed to the DOT decisionmaker. Requests for continuances and extensions of time may be directed to the Chief Administrative Law Judge in the absence of the administrative law judge assigned to the proceeding.

§ 302.18 Motions.

(a) Generally. An application to the DOT decisionmaker or an administrative law judge for an order or ruling not otherwise specifically provided for in this part shall be by motion. After the assignment of an administrative law judge to a proceeding and before the issuance of a recommended or initial decision, or the certification of the record to the DOT decisionmaker, all motions shall be addressed to the administrative law judge. At all other times motions shall be addressed to the DOT decisionmaker. All motions shall be made at an appropriate time depending upon the nature thereof and the relief requested therein.

NOTE: This paragraph is not construed as authorizing motions in the nature of petitions for reconsideration.

(a±1) Motions to disqualify DOT employee in review of hearing matters. In cases to be determined on an evidentiary record, a party desiring that a concerned DOT employee disqualify himself or herself from participating in a DOT decision shall file a motion supported by an affidavit setting forth the grounds for such disqualification within the periods hereinafter prescribed. Where review of the administrative law judge's decision can be obtained only upon the filing of a petition for discretionary review, such motions shall be filed on or before the date answers are due pursuant to § 302.28. In cases where exceptions are filed to recommended, initial, or tentative decisions or where the DOT decisionmaker orders review of an initial or recommended decision on his or her own initiative, such motions shall be filed on or before the date briefs are due pursuant to § 302.31 or § 302.1755, as applicable. Failure to file a timely motion shall be deemed a waiver of disqualification. Applications for leave to file an untimely motion seeking disqualification of a concerned DOT employee shall be accompanied by an affidavit setting forth in detail why the facts relied upon as grounds for disqualification were not known and could not have been discovered with reasonable diligence within the prescribed time.

(b) Form and contents. Unless made during a hearing, motions shall be made in writing in conformity with
§ 302.19 Subpenas.

(a) An application for a subpena requiring the attendance of a witness or the production of documentary evidence at a hearing may be made without notice by any party to the administrative law judge designated to preside at the reception of evidence or, in the event that an administrative law judge has not been assigned to a proceeding or the administrative law judge is not available, to the chief administrative law judge, for action by himself or herself or by the DOT decisionmaker.

(b) A subpena for the attendance of a witness shall be issued on oral application at any time.

(§s. 302.3 and 302.4, shall state with particularity the grounds therefor and the relief or order sought, and shall be accompanied by any affidavits or other evidence desired to be relied upon. Motions made during hearings, answers thereto, and rulings thereon, may be made orally on the record unless the administrative law judge directs otherwise. Written motions shall be filed as separate documents, and shall not be incorporated in any other documents, except (1) where incorporation of a motion in another document is specifically authorized by a rule or order of DOT, or (2) where a document is filed which requests alternative forms of relief and one of these alternative requests is properly to be made by motion. In these instances the document filed shall be appropriately entitled and identified to indicate that it incorporates a motion, otherwise the motion will be disregarded.

(c) Answers to motions. Within seven days after a motion is served, or such other period as the DOT decisionmaker or the administrative law judge may fix, any party to the proceeding may file an answer in support of or in opposition to the motion. In these instances the document filed shall be appropriately entitled and identified to indicate that it incorporates a motion, otherwise the motion will be disregarded.

(d) Oral arguments; briefs. No oral argument will be heard on motions unless the DOT decisionmaker or the administrative law judge otherwise directs. Written memoranda or briefs may be filed with motions or answers to motions, stating the points and authorities relied upon in support of the position taken.

(e) Disposition of motions. The administrative law judge shall pass upon all motions properly addressed to him or her, except that, if he or she finds that a prompt decision by the DOT decisionmaker on a motion is essential to the proper conduct of the proceeding, he or she may refer such motion to that person for decision. The DOT decisionmaker shall pass upon all motions properly submitted to him or her for decision.

(f) Appeals to the DOT decisionmaker from rulings of administrative law judges. Rulings of administrative law judges on motions may not be appealed to the DOT decisionmaker prior to his or her consideration of the entire proceeding except in extraordinary circumstances and with the consent of the administrative law judge. An appeal shall be disallowed unless the administrative law judge finds, either on the record or in writing, that the allowance of such an appeal is necessary to prevent substantial detriment to the public interest or undue prejudice to any party. If an appeal is allowed, any party may file a brief with the DOT decisionmaker within such period as the administrative law judge directs. No oral argument will be heard unless the DOT decisionmaker directs otherwise. The rulings of the administrative law judge on motion may be reviewed by the DOT decisionmaker in connection with his or her final action in the proceeding irrespective of the filing of an appeal or any action taken on it.

(g) Effect of pendency of motions. The filing or pendency of a motion shall not automatically alter or extend the time fixed by this part (or any extension granted thereunder) to take action.

(c) An application for a subpoena for documentary or tangible evidence shall be in duplicate except that if it is made during the course of a hearing, it may be made orally on the record with the consent of the administrative law judge. All such applications, whether written or oral, shall contain a statement or showing of general relevance and reasonable scope of the evidence sought, and shall be accompanied by two copies of a draft of the subpoena sought which shall describe the documentary or tangible evidence to be subpoenaed with as much particularity as is feasible.

(d) The administrative law judge or DOT decisionmaker considering any application for a subpoena shall issue the subpoena requested if the application complies with this section. No attempt shall be made to determine the admissibility of evidence in passing upon an application for a subpoena, and no detailed or burdensome showing shall be required as a condition to the issuance of a subpoena. It is the purpose of this section, on the one hand, to make subpoenas readily available to parties, and, on the other hand, to prevent the improvident issuance of subpoenas to secure evidence which is unrelated to the issues of the proceeding or wholly unreasonable in its scope.

(e) Where it appears at a hearing that the testimony of a witness or documentary evidence is relevant to the issues in a proceeding, the administrative law judge or chief administrative law judge may issue on his or her own motion a subpoena requiring such witness to attend and testify or requiring the production of such documentary evidence.

(f) Subpoenas issued under this section shall be served upon the person to whom directed in accordance with §302.8(b). Any person upon whom a subpoena is served may within seven (7) days after service or at any time prior to the return date thereof, whichever is earlier, file a motion to quash or modify the subpoena with the administrative law judge designated to preside at the reception of evidence or, in the event an administrative law judge has not been assigned to a proceeding or the administrative law judge is not available, to the chief administrative law judge for action by himself or herself or by the DOT decisionmaker. If the person to whom the motion to modify or quash the subpoena has been addressed or directed, has not acted upon such a motion by the return date, such date shall be stayed pending his or her final action thereon. The DOT decisionmaker may at any time review, upon his or her own initiative, the ruling of an administrative law judge or the chief administrative law judge denying a motion to quash a subpoena. In such cases, the DOT decisionmaker may at any time order that the return date of a subpoena which he or she has elected to review be stayed pending action thereon.

(g) The provisions of this section are not applicable to the attendance of DOT employees or the production of documentary evidence in the custody thereof at a hearing. Applications therefor shall be addressed to the administrative law judge in writing and shall set forth the need of the moving party for such evidence and the relevance to the issues of the proceeding. Such applications shall be processed as motions in accordance with §302.18 except that a grant of such motion by an administrative law judge, in whole or in part, shall be immediately reviewed by the DOT decisionmaker on his or her own initiative and shall be subject to his or her final action. No application will be required for the attendance of DOT personnel or the production of records in their custody when requested by an enforcement attorney. Where a DOT employee has testified in an enforcement proceeding that he or she used documents in his or her custody, or parts thereof, to refresh his or her recollection, a ruling by the administrative law judge for their production shall be final in the absence of an objection by the enforcement attorney. In the event of such objection, the DOT decisionmaker's review will be limited to the documents, or portions thereof, to which objection is taken by the enforcement attorney.

§ 302.20 Depositions.

(a) For good cause shown, the DOT decisionmaker or administrative law judge assigned as a hearing officer in a
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Proceeding may order that the testimony of a witness be taken by deposition and that the witness produce documentary evidence in connection with such testimony. Ordinarily an order to take the deposition of a witness will be entered only if:

(1) The person whose deposition is to be taken would be unavailable at the hearing, or

(2) The deposition is deemed necessary to perpetuate the testimony of the witness, or

(3) The taking of the deposition is necessary to prevent undue and excessive expense to a party and will not result in an undue burden to other parties or in undue delay.

(b) Any party desiring to take the deposition of a witness shall make application therefor in duplicate to an administrative law judge designated to preside at the reception of evidence or, in the event that a hearing officer has not been assigned to a proceeding or is not available, to the DOT decisionmaker setting forth the reasons why such deposition should be taken, the name and residence of the witness, the time and place proposed for the taking of the deposition, and a general description of the matters concerning which the witness will be asked to testify. If good cause be shown, the DOT decisionmaker or the administrative law judge may, in his or her discretion, issue an order authorizing such deposition and specifying the witness whose deposition is to be taken, the general scope of the testimony to be taken, the time when, the place where, and the designated officer (authorized to take oaths) before whom the witness is to testify, and the number of copies of the deposition to be supplied. Such order shall be served upon all parties by the person proposing to take the deposition a reasonable period in advance of the time fixed for taking testimony.

(c) Witnesses whose testimony is taken by deposition shall be sworn or shall affirm before any questions are put to them. Each question propounded shall be recorded and the answers shall be taken down in the words of the witness.

(d) Objections to questions or evidence shall be in short form, stating the grounds of objection relied upon, but no transcript filed by the officer shall include argument or debate. Objections to questions or evidence shall be noted by the officer upon the deposition, but he or she shall not have power to decide on the competency or materiality or relevance of evidence, and he or she shall record the evidence subject to objection. Objections to questions or evidence not made before the officer shall not be deemed waived unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(e) The testimony shall be reduced to writing by the officer, or under his or her direction, after which the deposition shall be subscribed by the witness unless the parties by stipulation waived the signing or the witness is ill or cannot be found or refuses to sign, and certified in usual form by the officer. If the deposition is not subscribed to by the witness, the officer shall state on the record this fact and the reason therefor. The original deposition and exhibits shall be forwarded to the Documentary Services Division and shall be filed in the proceedings.

(f) Depositions may also be taken and submitted on written interrogatories in substantially the same manner as depositions taken by oral examination. Ordinarily such procedure will only be authorized if necessary to achieve the purposes of an oral deposition and to serve the balance of convenience of the parties. The interrogatories shall be filed in quadruplicate with two copies of the application and a copy of each shall be served on each party. Within seven (7) days after service any party may file with the person to whom application was made two copies of his or her objections, if any, to such interrogatories and may file such cross-interrogatories. Cross-interrogatories shall be filed in quadruplicate, and a copy thereof together with a copy of any objections to interrogatories, shall be served on each party, who shall have five (5) days thereafter to file and serve his or her objections, if any, to such cross-interrogatories. Objections to interrogatories or cross-interrogatories, shall be served on the DOT decisionmaker or
Office of the Secretary, DOT

§ 302.21 Attendance fees and mileage.

(a) Where tender of attendance fees and mileage is a condition of compliance with subpoena. No person whose attendance at a hearing or whose deposition is to be taken shall be obliged to respond to a subpoena unless upon a service of the subpoena he or she is tendered attendance fees and mileage by the party at whose instance the deposition is taken.

(b) Amount of mileage and attendance fees to be paid. (1) Witnesses who are not salaried employees of the United States, or such employees summoned to testify on matters not related to their public employment, shall be paid the same fees and mileage paid to witnesses for like service in the courts of the United States, as provided in paragraphs (b)(1) (i) through (iii) of this section: Provided, That no employee, officer, or attorney of an air carrier who travels under the free or reduced rate provisions of section 403(b) of the Act shall be entitled to any fees or mileage: And provided further, That the amounts hereinafter set forth for fees and mileage shall not be applicable for witnesses summoned to testify in Alaska.

(i) Per diem for attendance. There shall be tendered $20 for each day of expected attendance at a hearing or place where deposition is to be taken, and for the time necessarily occupied in going to and returning from the place of attendance.

(ii) Allowance for subsistence. In addition to per diem for attendance, when attendance is required at a point so far removed from the witness' residence as to prohibit daily return thereto, there shall be tendered an additional sum of $16 per day for expenses of subsistence for each day of expected attendance and including the time necessarily occupied in going to and returning from the place of attendance.

(iii) Mileage. There shall be tendered an amount equal to 10 cents per mile for the round trip distance between the witness' place of residence and the place where attendance is required. Regardless of the mode of travel employed, computation of mileage shall be made on the basis of a uniform table of distances adopted by the Attorney General where the travel is covered by such table: Provided, That in lieu of this mileage allowance witnesses who are required to travel between the territories and possessions, or to and from the continental United States or between two foreign points shall be tendered a ticket for such transportation at the coach rate available at the time of reservation plus the required per
§ 302.22 Administrative law judges.

(a) Defined. The term "administrative law judge" as used in this part includes presiding officers, administrative law judges, or any other DOT employee assigned to hold a hearing in a proceeding.

(b) Disqualification. An administrative law judge shall withdraw from the case if at any time he or she deems himself or herself disqualified. If, prior to the initial or recommended decision in the case, there is filed with the administrative law judge, in good faith, an affidavit of personal bias or disqualification with substantiating facts and the administrative law judge does not withdraw, the DOT decisionmaker shall determine the matter, if properly presented by exception or brief, as a part of the record and decision in the case. The DOT decisionmaker shall not otherwise consider any claim of bias or disqualification. The DOT decisionmaker, in his or her discretion, may order a hearing on a charge of bias or disqualification.

(c) Powers. An administrative law judge shall have the following powers, in addition to any others specified in this part:

(1) To give notice concerning and to hold hearings;
(2) To administer oaths and affirmations;
(3) To examine witnesses;
(4) To issue subpenas and to take or cause depositions to be taken;
(5) To rule upon offers of proof and to receive relevant evidence;
(6) To regulate the course and conduct of the hearing;
(7) To hold conferences before or during the hearing, for the settlement or simplification of issues;
(8) To rule on motions and to dispose of procedural requests or similar matters;
(9) To make initial or recommended decisions as provided in §302.27;
(10) To take any other action authorized by this part, by the Administrative Procedure Act, or by the Federal Aviation Act.

The administrative law judge's authority in each case will terminate either upon the certification of the record in the proceeding to the DOT decisionmaker, or upon the issuance of an initial or recommended decision, or when he or she shall have withdrawn from the case upon considering himself or herself disqualified.
(d) Certification to the DOT decisionmaker for decision. At any time prior to the close of the hearing, the DOT decisionmaker may direct the administrative law judge to certify any question or the entire record in the proceeding to the DOT decisionmaker for decision. In cases where the record is thus certified, the administrative law judge shall not render an initial decision but shall recommend a decision to the DOT decisionmaker as required by section 8(a) of the Administrative Procedure Act, unless, in rulemaking or determining applications for initial licenses, the office advises him or her that it intends to issue a tentative decision.

§ 302.23 Prehearing conference.

(a) Purpose and scope of conference. Prior to any hearings there will ordinarily be a prehearing conference before an administrative law judge, although in economic enforcement proceedings where the issues are drawn by the pleadings such conference will usually be omitted. Written notice of the prehearing conference shall be sent by the chief administrative law judge to all parties to a proceeding and to other persons who appear to have an interest in such proceeding. The purpose of such a conference is to define and simplify the issues and the scope of the proceeding, to secure statements of the positions of the parties with respect to such issues, to determine the availability of discovery from other persons who appear to have an interest in the proceeding or who have information that may be useful, to consider any motions filed by the parties, and to consider and exercise any other appropriate power or duty the administrative law judge has to conduct the prehearing conference.

(b) Notice. The administrative law judge shall give at least 14 days' written notice to all parties to a proceeding and to other persons who appear to have an interest in such proceeding of any time and place fixed for a prehearing conference. Written notice of the prehearing conference shall be sent by the chief administrative law judge to all parties to a proceeding and to other persons who appear to have an interest in such proceeding. Written notice of the prehearing conference shall state the time and place fixed for the conference, the issues to be considered at the conference, and any other matters the administrative law judge considers appropriate.

(c) Time and place. The time and place fixed for the prehearing conference shall be 30 days after written notice of the conference has been given. The administrative law judge may, however, change the time and place of the conference upon notice to all parties to a proceeding and to other persons who appear to have an interest in such proceeding. If the administrative law judge gives less than 30 days' written notice of the prehearing conference, the administrative law judge may not hold the conference but shall reschedule it to a reasonable time after the parties have received notice of the change in time and place.

(d) Conduct of conference. The administrative law judge shall conduct the prehearing conference in such manner as to facilitate the conduct of the proceeding and to expedite the resolution of the issues involved. The administrative law judge may limit the time allowed for the presentation of the positions of the parties and may limit the number of persons who may present arguments on behalf of the parties. The administrative law judge may order the parties to provide any evidence that the administrative law judge considers necessary to the resolution of the issues involved in the prehearing conference. The administrative law judge may order the parties to supplement their briefs with written or oral arguments on any issue that the administrative law judge considers necessary to the resolution of the issues involved in the prehearing conference. The administrative law judge may also conduct the prehearing conference in such manner as to facilitate the resolution of the issues involved in the proceeding and to expedite the resolution of the issues involved in the proceeding.
thereto and amendments to the pleadings in conformity therewith, to schedule the exchange of exhibits before the date set for hearing, and to arrive at such agreements as will aid in the conduct and disposition of the proceeding. For example, consideration will be given to:

1. Matters which the DOT decisionmaker can consider without the necessity of proof;
2. Admissions of fact and of the genuineness of documents;
3. Requests for documents;
4. Admissibility of evidence;
5. Limitation of the number of witnesses;
6. Reducing of oral testimony to exhibit form;
7. Procedure at the hearing, etc.

The administrative law judge may require further conference, or responsive pleadings, or both. If a party refuses to produce documents requested by another party at the conference, the administrative law judge may compel the production of such documents through the issuance of a subpoena issued in accordance with the provisions of §302.19 as though at a hearing. Applications for the production of documents in DOT’s possession shall be addressed to the administrative law judge, in accordance with the provisions of §302.19(g), in the same manner as provided therein for production of documents at a hearing. The administrative law judge may also on his or her own motion or on motion of any party, direct any party to the proceeding (air carrier or non-air carrier) to prepare and submit exhibits setting forth studies, forecasts, or estimates on matters relevant to the issues in the proceeding.

(b) Report of prehearing conference. The administrative law judge shall issue a report of prehearing conference, defining the issues, giving an account of the results of the conference, specifying a schedule for the exchange of exhibits and rebuttal exhibits, the date of hearing, and specifying a time for the filing of objections to such report. The report shall be served upon all parties to the proceeding and any person who appeared at the conference. Objections to the report may be filed by any interested person within the time specified therein. The administrative law judge may revise his or her report in the light of the objections presented. The revised report, if any, shall be served upon the same persons as was the original report. Exceptions may be taken on the basis of any timely written objection which has not been met by a revision of the report if they are filed within the time specified in the revised report. Such report shall constitute the official account of the conference and shall control the subsequent course of the proceeding, but it may be reconsidered and modified at any time to protect the public interest or to prevent injustice.

§302.24 Hearing cases.

(a) Definition. A hearing case means any proceeding (including an enforcement case) that the Department has noticed will be conducted on the record after oral evidentiary hearing subject to 5 U.S.C. 556 and 557.

(b) Notice. The administrative law judge to whom the case is assigned or the DOT decisionmaker shall give the parties reasonable notice of a hearing or of the change in the date and place of a hearing and the nature of such hearing.

(c) Evidence. Evidence presented at the hearing shall be limited to material evidence relevant to the issues as drawn by the pleadings or as defined in the report of prehearing conference, subject to such later modifications of the issues as may be necessary to protect the public interest or to prevent injustice and shall not be unduly repetitious. Evidence shall be presented in written form by all parties wherever feasible, as the administrative law judge may direct.

(d) Objections to evidence. Objections to the admission or exclusion of evidence shall be in short form, stating the grounds of objections relied upon, and the transcript shall not include argument or debate thereon except as ordered by the administrative law judge. Rulings on such objections shall be a part of the transcript.

(e) Exceptions. Formal exceptions to the rulings of the administrative law judge made during the course of the hearing are unnecessary. For all purposes for which an exception otherwise
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would be taken, it is sufficient that a party, at the time the ruling of the administrative law judge is made or sought, makes known the action he or she desires the administrative law judge to take or his or her objection to an action taken, and his or her grounds therefor.

(f) Offers of proof. Any offer of proof made in connection with an objection taken to any ruling of the administrative law judge rejecting or excluding proffered oral testimony shall consist of a statement of the substance of the evidence which counsel contends would be adduced by such testimony, and if the excluded evidence consists of evidence in documentary or written form or of reference to documents or records, a copy of such evidence shall be marked for identification and shall constitute the offer of proof.

(g) Exhibits. When written exhibits are offered in evidence, one copy must be furnished to each of the parties at the hearing, and two copies to the administrative law judge, unless the parties previously have been furnished with copies or the administrative law judge directs otherwise. If the administrative law judge has not fixed a time for the exchange of exhibits, the parties shall exchange copies of exhibits at the earliest practicable time, preferably before the hearing or, at the latest, at the commencement of the hearing.

(h) Substitution of copies for original exhibits. In his or her discretion, the administrative law judge may permit a party to withdraw original documents offered in evidence and substitute true copies in lieu thereof.

(i) Designation of parts of documents. When relevant and material matter offered in evidence by any party is embraced in a book, paper, or document containing other matter not material or relevant, the party offering the same shall plainly designate the matter so offered. The immaterial and irrelevant parts shall be excluded and shall be segregated insofar as practicable. If the volume of immaterial or irrelevant matter would unduly encumber the record, such book, paper, or document will not be received in evidence, but may be marked for identification, and, if properly authenticated, the relevant or material matter may be read into the record, or, if the administrative law judge so directs, a true copy, of such matter, in proper form, shall be received as an exhibit, and like copies delivered by the party offering the same to opposing parties or their attorneys appearing at the hearing, who shall be afforded an opportunity to examine the book, paper, or document, and to offer in evidence in like manner other portions thereof.

(j) Records in other proceedings. In case any portion of the record in any other proceeding or civil or criminal action is offered in evidence, a true copy of such portion shall be presented for the record in the form of an exhibit unless:

(1) The portion is specified with particularity in such manner as to be readily identified; and

(2) The party offering the same agrees unconditionally to supply such copies later, or when required by the DOT decisionmaker; and

(3) The parties represented at the hearing stipulate upon the record that such portion may be incorporated by reference, and that any portion offered by any other party may be incorporated by like reference upon compliance with paragraphs (i) (1) and (2) of this section; and

(4) The administrative law judge directs such incorporation or waives the above requirement with the consent of the parties.

(k) Receipt of documents after hearing. No document or other writings shall be accepted for the record after the close of the hearing except in accordance with an agreement of the parties and the consent of the administrative law judge.

(l) Transcripts of hearings. (1) Hearings shall be recorded and transcribed, under supervision of the administrative law judge, by the reporting firm under contract with DOT. Copies of the transcript shall be supplied to the parties to the proceeding by said reporting firm, at the contract price for copies.

(2) The administrative law judge shall determine whether “ordinary transcript” or “daily transcript” (as those terms are defined in the contract) will be necessary and required
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for the proper conduct of the proceeding and DOT will pay the reporting firm the full cost of reporting its proceedings at the contract price for such type of transcript. If the administrative law judge has determined that ordinary transcript is adequate, and has notified the parties of such determination (in the notice of hearings, or otherwise), then any party may request reconsideration of such determination and that daily transcript be required. In determining what is necessary and required for the proper conduct of the proceeding, the administrative law judge shall consider, among other things:

(i) The nature of the proceeding itself;

(ii) The DOT decisionmaker’s needs as well as the reasonable needs of the parties; and

(iii) The requirements of a fair hearing.

(3) If the administrative law judge has determined that ordinary transcript is adequate, or, upon reconsideration, has adhered to such determination, then any party may request the reporting firm to provide daily transcript. In that case, pursuant to its contract with DOT, the reporting firm will be obligated to furnish to the DOT daily transcript upon the agreement by the requesting party to pay to the reporting firm an amount equal to the difference between the contract prices for ordinary transcript and daily transcript, provided that the requesting party makes such agreement with the reporting firm at least twenty-four (24) hours in advance of the date for which such transcript is requested.

(4) Any party may obtain from the Office of the Assistant Secretary for Administration, the name and address of the private reporting company with which DOT currently has a contract for transcripts and copies, as well as the contract prices then in effect for such services.

(5) Copies of transcripts ordered by parties other than DOT shall be prepared for delivery to the requesting person at the reporting firm’s place of business, within the stated time for the type of transcript ordered. The requesting party and the reporting firm may agree upon some other form or means of delivery (mail, messenger, etc.) and the reporting firm may charge for such special service, provided that such charge shall not exceed the reasonable cost of such service.

(m) Corrections to transcript. Changes in the official transcript may be made only when they involve errors affecting substance. A motion to correct a transcript shall be filed with the Documentary Services Division, within ten (10) days after receipt of the completed transcript by DOT. If no objections to the motion are filed within ten (10) days thereafter, the transcript may, upon the approval of the administrative law judge, be changed to reflect such corrections. If objections are received, the motion and objections shall be submitted to the official reporter by the administrative law judge together with a request for a comparison of the transcript with the stenographic record of the hearing. After receipt of the report of the official reporter an order shall be entered by the administrative law judge settling the record and ruling on the motion.

(n) Official notice of facts contained in certain documents. Without limiting, in any manner or to any extent, the discretionary powers of the DOT decisionmaker and its administrative law judges to notice other matters or documents properly the subject of official notice, facts contained in any document within the categories enumerated in this subdivision are officially noticed in all formal economic proceedings except those subject to subpart B of this part. Each such category shall include any document antedating final DOT decision in the proceeding where such notice is taken. The matters officially noticed under the provisions of this paragraph are:

1. Official Guide of the Airways for each month prior to and including April 1943; Universal Airline Schedules for each month from May 1943 to September 1944, inclusive; American Aviation Air Traffic Guide for each month from October 1944 to August 1948, inclusive; and Official Airline Guide.


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5. All schedules and amendments thereof, and all tariffs and amendments thereof, of all carriers, on file with DOT.
6. Air Carrier operating certificates or applications therefor, filed with DOT together with any requests for amendment thereof.
7. Monthly reports, Forms 2380 and 2780, for each month through December 1946, and monthly and quarterly reports, Forms 41 and 41(a) (including monthly and annual reports required to be filed by all carriers in connection therewith), filed with DOT.
8. Recurrent Reports of Mileage and Traffic Data of all Domestic Airline Carriers from 1945 and all similar reports issued by the Civil Aeronautics Board or DOT.
9. Certified Air Carrier Traffic Statistics from 1953, prepared by the Office of Carrier Accounts and Statistics, Civil Aeronautics Board, and all such other similar compilations of statistics issued by the Civil Aeronautics Board or DOT.
10. Recurrent Reports of Financial Data of all Domestic Airline Carriers from 1947 through the quarter ended September 30, 1953; issued by the Civil Aeronautics Board, and all such other similar recurrent reports issued by the Civil Aeronautics Board or DOT.
11. Certificated Air Carrier Financial Data from the quarter ended December 31, 1953; prepared by the Office of Carrier Accounts and Statistics, Civil Aeronautics Board, and all such other similar compilations of data issued by the Civil Aeronautics Board or DOT.
12. Annual Airline Statistics, Domestic Carriers, fiscal years 1936-1941; Annual Airline Statistics, Domestic Carriers, calendar years 1938-1947; prepared by the Bureau of Pricing and Domestic Aviation Civil Aeronautics Board; and all such other similar compilations of statistics issued by the Civil Aeronautics Board or DOT.
13. Quarterly Report of Air Carrier Operating Factors, for the quarter ended September 30, 1953; prepared by the Office of Carrier Accounts and Statistics, Civil Aeronautics Board, and all such other reports for quarterly periods as may be made available to the public by the Civil Aeronautics Board or DOT.
14. Passenger, mail, express, and freight data submitted to the Board on Form 2767 by all carriers for any months subsequent to March 1955 and any similar data submitted to DOT.
15. Airline Traffic Surveys, compiled by the Civil Aeronautics Board, from September 1946, and any other such surveys made available to the public by the Civil Aeronautics Board or DOT.
16. The publication Competition Among Domestic Air Carriers, March 1-14, 1955, compiled by the Civil Aeronautics Board and published by the Air Transport Association of America, and any other compilations of similar data made available to the public by the Civil Aeronautics Board or DOT.
17. Service Mail Pay and Subsidy for United States Certificated Air Carriers from 1955, published by the Civil Aeronautics Board, and any supplemental data and subsequent issues published by the Civil Aeronautics Board or DOT.
18. Airport Activity Statistics of Certificated Air Carriers, from December 31, 1955; compiled by the Civil Aeronautics Board, and published by Air Transport Association of America, and any subsequent issues thereof published by DOT.
25. Federal Airways Air Traffic Activity, from 1953-1956 (fiscal year) issued by the Civil Aeronautics Administration, U.S. Department of Commerce, and subsequent editions thereof issued by the Federal Aviation Administration.
27. Record of Airport Facilities, Form ACA-29A, issued by the Civil Aeronautics Administration, U.S. Department of Commerce and by the Federal Aviation Administration.
28. International Section, Airline Traffic Surveys prepared by the Civil Aeronautics Board from March and September 1959, and any such surveys issued or otherwise made.
available to the parties by the Civil Aeronautics Board or published privately.


30. ICAO Statistical Summary, Preliminary issue and Nos. 1 through 14, and Digest of Statistics, Nos. 15 through 71, prepared by the International Civil Aviation Organization, Montreal, Canada, with all changes and additions.


36. The Airman’s Guide, from 1950, issued by the Civil Aeronautics Administration, U.S. Department of Commerce, and any subsequent editions thereto, issued by the Federal Aviation Administration.


39. First and Second Class Post Offices, July 1, 1939-July 1, 1946 and Receipts and Classes of Post Offices, from July 1, 1947, issued by the U.S. Post Office Department.


41. All forms and reports required by the Postmaster General designating schedules for the transportation of mail.

42. All orders of the Postmaster General governing the operation of post offices.

43. Handbook of Airline Statistics from 1961, prepared by the Bureau of Accounts and Statistics, Civil Aeronautics Board or DOT.

44. CAB Forms 242, 243, 244, and 244A (including all monthly, quarterly, semiannual, and annual reports required to be filed by carriers in connection therewith), filed with the Board or DOT.

Any fact contained in a document belonging to a category enumerated in paragraph (m)(1) of this section shall be deemed to have been physically incorporated into and made part of the record in such proceedings. However, such taking of official notice shall be subject to the rights granted to any party or intervener to the proceeding under section 7(d) of the Administrative Procedure Act.

(3) The decisions of the Department and its administrative law judges may officially notice any appropriate matter without regard to whether or not such items are contained in a document belonging to the categories enumerated in paragraph (m)(1) of this section. However, where the decision rests on official notice of a material fact or facts, it will set forth such items with sufficient particularity to advise interested persons of the matters which have been noticed.

§ 302.25 Argument before the administrative law judge.

(a) The administrative law judge shall give the parties to the proceeding adequate opportunity during the course of the hearing for the presentation of arguments in support of or in opposition to motions, and objections and exceptions to rulings of the administrative law judge.

(b) When, in the opinion of the administrative law judge, the volume of the evidence or the importance or complexity of the issues involved warrants, he or she may, either of his or her own motion, or at the request of a party, permit the presentation of oral argument. He or she may impose such time limits on the argument as he or she may determine, having regard for other assignments for hearing before him or her. Such argument shall be transcribed and bound with the transcript of testimony and will be available to the DOT decisionmaker for consideration in deciding the case.

§ 302.26 Proposed findings and conclusions before the administrative law judge or the DOT decisionmaker.

Within such limited time after the close of the reception of evidence fixed by the administrative law judge, any party may, upon request and under such conditions as the administrative law judge may prescribe, file for his or her consideration briefs to include proposed findings and conclusions of law which shall contain exact references to the record and authorities relied upon. The provisions of this section shall be applicable to proceedings in which the
§ 302.27 Delegation to administrative law judges and action by administrative law judges after hearing.

(a) Delegation of authority to make the agency decision subject to discretionary review. Pursuant to the authority conferred on DOT under section 1601(b)(1) of the Federal Aviation Act of 1958, as amended, there is hereby delegated to each administrative law judge assigned to a particular case subject to this part the DOT decisionmaker’s function of making the agency decision on the substantive and procedural issues remaining for disposition at the close of the hearing in such case, except that this delegation does not apply in cases where the record is certified to the DOT decisionmaker, with or without a recommended decision by the administrative law judge, or in cases requiring Presidential approval under section 801 of the Act. This delegation does not apply to the review of rulings by the administrative law judge on interlocutory matters which have been appealed to the DOT decisionmaker in accordance with the requirements of §302.18. The term “initial decision,” as used in this part, shall encompass the administrative law judge’s decision pursuant to this delegation of authority on the merits of the proceeding and on all ancillary procedural issues remaining for disposition at the close of the hearing.

(b) Action by administrative law judge after hearing. (1) Every initial or recommended decision issued shall state the names of the persons who are to be served with copies of it, the time within which exceptions to, or petitions for review of, such decision may be filed, and the time within which briefs in support of the exceptions may be filed. In addition, every initial decision shall recite that it is made under delegated authority, and contain notice of the provisions of paragraph (c) of this section. In the event the administrative law judge certifies the record to the DOT decisionmaker without an initial or recommended decision, he or she shall notify the parties of the time within which to file proposed findings and conclusions with the DOT decisionmaker and supporting briefs.

(2) Except where the DOT decisionmaker directs otherwise, after the taking of evidence and the receipt of proposed findings and conclusions, if any, the administrative law judge shall take the following action:

(i) Cases subject to section 801 of the Act. In cases where the action of the Department is subject to the approval of the President pursuant to section 801 of the Act, the administrative law judge shall render a recommended decision orally on the record or in writing.

(ii) Other matters. If the proceeding relates to any matter not provided for in paragraph (b)(2)(i) of this section, the administrative law judge shall render an initial decision in writing.

(c) Effect of initial decision. Unless a petition for discretionary review is filed pursuant to §302.28, exceptions are filed pursuant to §302.1754, or the DOT decisionmaker issues an order to review upon his or her own initiative, the initial decision shall become effective as the final order of the Department 30 days after service thereof. If a petition for discretionary review or exceptions are timely filed or action to review is taken by the DOT decisionmaker upon his or her own initiative, the effectiveness of the initial decision is stayed until the further order of the DOT decisionmaker.

§ 302.28 Petitions for discretionary review of initial decisions or recommended decisions; review proceedings.

(a) Petitions for discretionary review. (1) Review by the DOT decisionmaker pursuant to this section is not a matter of right but of the sound discretion of the DOT decisionmaker. Any party may file and serve a petition for discretionary review by the DOT decisionmaker of an initial decision or recommended decision within 21 days after service thereof, except that the DOT decisionmaker may fix a different period in any decision involving a foreign air carrier where the action of DOT is subject to the approval of the President pursuant to section 801 of the Act. Such petitions shall be accompanied by proof of service on all parties.
(2) Petitions for discretionary review shall be filed only upon one or more of the following grounds:
   (i) A finding of a material fact is erroneous;
   (ii) A necessary legal conclusion is without governing precedent or is a departure from or contrary to law, DOT rules, or precedent;
   (iii) A substantial and important question of law, policy, or discretion is involved; or
   (iv) A prejudicial procedural error has occurred.

(3) Each issue shall be separately numbered and plainly and concisely stated. Petitioners shall not restate the same point in repetitive discussions of the same issue. Each issue shall be supported by detailed citations of the record when objections are based on the record, and by statutes, regulations or principal authorities relied upon. Any matters of fact or law not argued before the administrative law judge, but which the petitioner proposes to argue on brief to the DOT decisionmaker, shall be stated.

(4) Petitions for discretionary review shall be self-contained and shall not incorporate by reference any part of another document. Except by permission of the DOT decisionmaker or the Chief Administrative Law Judge, petitions shall not exceed 20 pages including appendices and other papers physically attached to the petition. Petitions of more than 10 pages shall contain a subject index with page references.

(5) Requests for oral argument on petitions for discretionary review will not be entertained by the DOT decisionmaker.

(b) Answer. Within 15 days after service of a petition for discretionary review, any party may file and serve an answer of not more than 15 pages in support of or in opposition to the petition. If any party desires to answer more than one petition for discretionary review in the same proceeding, he or she shall do so in a single document of not more than 20 pages.

(c) Orders declining review. DOT orders declining to exercise the discretionary right of review will specify the date upon which the administrative law judge's decision shall become effective as the final decision of DOT. A petition for reconsideration of a DOT order declining review will be entertained only when the order exercises, in part, the DOT decisionmaker's discretionary right of review, and such petition shall be limited to the single question of whether any issue designated for review and any issue not so designated are so inseparably interrelated that the former cannot be reviewed independently or that the latter cannot be made effective before the final decision of DOT in the review proceeding.

(d) Review proceedings. (1) The DOT decisionmaker may exercise his or her right of review upon petition for review or on his or her own initiative. The DOT decisionmaker will issue a final order upon such review without further proceedings on any or all the issues where he or she finds that matters raised do not warrant further proceedings.

(2) Where the DOT decisionmaker desires further proceedings, he or she will issue an order for review which will:
   (i) Specify the issues to which review will be limited. Such issues shall constitute one or more of the issues raised in a petition for discretionary review, and/or matters which the DOT decisionmaker desires to review on his or her own initiative. Only those issues specified in the order shall be argued on brief to the DOT decisionmaker, pursuant to §302.31, and considered by the DOT decisionmaker.
   (ii) Specify the portions of the administrative law judge's decision, if any, which are to be stayed as well as the effective date of the remaining portions thereof.
   (iii) Designate the parties to the review proceeding.

§ 302.29 Tentative decision of DOT.

(a) Except as provided in paragraph (b) of this section, whenever the administrative law judge certifies the record in a proceeding directly to the DOT decisionmaker without issuing an initial or recommended decision in the matter, the DOT decisionmaker shall, after consideration of any proposed findings and conclusions submitted by the parties, prepare a tentative decision and
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§ 302.31 Briefs before decisionmaker.

(a) Time for filing. Within such period after the date of service of any tentative decision by the DOT decisionmaker as may be fixed therein, any party to a proceeding may file exceptions to such decision with the DOT decisionmaker.

(b) Form and contents of exceptions. Each exception shall be separately numbered and shall be stated as a separate point, and appellants shall not state the same point in several repetitive exceptions. Each exception shall state, sufficiently identify, and be limited to, an ultimate conclusion in the decision to which exception is taken (such as, selection of one carrier rather than another to serve any point or points; points included in or excluded from a new route; imposition or failure to impose a given restriction; determination of a rate at a given amount rather than another). No specific exception shall be taken with respect to underlying findings or statements, but exceptions to an ultimate conclusion shall be deemed to include exceptions to all underlying findings and statements pertaining thereto. Provided, however, That exceptions shall specify any matters of law, fact or policy which were not argued before the administrative law judge but will be set forth for the first time on brief to the DOT decisionmaker.

(c) Effect of failure to file timely and adequate exceptions. No objection may be made on brief or at a later time to an ultimate conclusion which is not expressly made the subject of an exception in compliance with the provisions of this section. Provided, however, That any party may file a brief in support of the decision and in opposition to the exceptions filed by any other party.

§ 302.30 Exceptions to tentative decisions of DOT.

(a) Time for filing. Within ten (10) days after service of any tentative decision of the DOT decisionmaker, any party to a proceeding may file exceptions to such decision with the DOT decisionmaker.

(b) Form and contents of exceptions. Each exception shall be separately numbered and shall be stated as a separate point, and appellants shall not state the same point in several repetitive exceptions. Each exception shall state, sufficiently identify, and be limited to, an ultimate conclusion in the decision to which exception is taken (such as, selection of one carrier rather than another to serve any point or points; points included in or excluded from a new route; imposition or failure to impose a given restriction; determination of a rate at a given amount rather than another). No specific exception shall be taken with respect to underlying findings or statements, but exceptions to an ultimate conclusion shall be deemed to include exceptions to all underlying findings and statements pertaining thereto. Provided, however, That exceptions shall specify any matters of law, fact or policy which were not argued before the administrative law judge but will be set forth for the first time on brief to the DOT decisionmaker.

§ 302.22a Final decisions of the DOT decisionmaker are subject to review as provided in §302.22a.

§ 302.32 Oral argument before the DOT decisionmaker.

(a) If any party desires to argue a case orally before the DOT decisionmaker, he shall request leave to make such argument in his exceptions or brief. Such request shall be filed no later than the date when briefs before the DOT decisionmaker are due in the proceeding. The DOT decisionmaker will rule on such request, and if oral argument is to be allowed, all parties to the proceeding will be advised of the date and hour set for such argument and the amount of time allowed to each party. Requests for oral argument on petitions for discretionary review will not be entertained.

(b) Pamphlets, charts, and other written data may be presented to the DOT decisionmaker at oral argument only in accordance with the following rules: All such material shall be limited to facts in the record of the case being argued. All such material shall be served on all parties to the proceeding and eight copies transmitted to the Documentary Services Division at least five (5) calendar days in advance of the argument. As used herein “material” includes, but is not limited to, maps, charts included in briefs, and exhibits which are enlarged and used for demonstration purposes at the argument, but does not include the enlargements of such exhibits.

§ 302.33 Waiver of procedural steps after hearing.

The parties of any proceeding may agree to waive any one or more of the following procedural steps provided in
§ 302.25 through 302.32: Oral argument before the administrative law judge, the filing of proposed findings and conclusions for the administrative law judge or for the DOT decisionmaker, a recommended decision of the administrative law judge, a tentative decision of the DOT decisionmaker, a petition for discretionary review of or exceptions to an initial decision or recommended decision, and the filing of briefs with the DOT decisionmaker, or oral argument before the DOT decisionmaker.

§ 302.35 Shortened procedure.

In cases where a hearing is not required by law, §§ 302.23 through 302.33, relating to prehearing, hearing, and post-hearing procedures, shall not be applicable except to the extent that DOT shall determine that the application of some or all of such rules in the particular case will be conducive to the proper dispatch of its business and to the ends of justice.

§ 302.36 Final decision of DOT.

When a case stands submitted to the DOT decisionmaker for final decision on the merits, he or she will dispose of the issues presented by entering an appropriate order which will include a statement of the reasons for his or her findings and conclusions. Such orders shall be deemed “final orders” within the purview of § 302.37(a), in the manner provided by § 302.22a.

§ 302.37 Petitions for reconsideration or review by the DOT decisionmaker.

(a) DOT orders subject to reconsideration; time for filing. Unless an order or a rule of the Department specifically provides otherwise, any interested person may file a petition for reconsideration, of any interlocutory order issued by the Department which institutes a proceeding. Any party to a proceeding, unless an order or rule of the Department specifically provides otherwise, may file a petition for reconsideration, rehearing, or reargument of (1) final orders issued by the Department, or (2) an interlocutory order which defines the scope and issues of a proceeding or suspends a provision of a tariff on file with the Department. Unless the time is shortened or enlarged by the Department, petitions for reconsideration shall be filed, in the case of a final order, within twenty (20) days after service thereof, and, in the case of an interlocutory order, or a final decision described in § 302.1757 within ten (10) days after service. However, neither the filing nor the granting of such a petition shall operate as a stay of such final or interlocutory order unless specifically so ordered by the DOT decisionmaker. Within ten (10) days after a petition for reconsideration, rehearing, or reargument is filed, any party to the proceeding may file an answer in support of or in opposition. Motions for extension of time to file a petition or answer, and for leave to file a petition or answer after the time for the filing has expired, will not be granted except on a showing of unusual and exceptional circumstances, constituting good cause for movant’s inability to meet the established procedural dates.

(b) Contents of petition. A petition for reconsideration, rehearing, or reargument shall state, briefly and specifically, the matters of record alleged to have been erroneously decided, the ground relied upon, and the relief sought. If a decision by the Secretary or Deputy Secretary is requested, the petition should describe in detail the reasons for such request and specify any important national transportation policy issues that are presented. If the petition is based, in whole or in part, on allegations as to the consequences which would result from the final order, the basis of such allegations shall be set forth. If the petition is based, in whole or in part, on new matter, such new matter shall be set forth, accompanied by a statement to the effect that petitioner, with due diligence, could not have known or discovered such new matter prior to the date the case was submitted for decision. Unless otherwise directed by the DOT decisionmaker upon a showing of unusual or exceptional circumstances, petitions for reconsideration, rehearing or reargument or answers thereto which exceed twenty-five (25) pages (including appendices) in length shall not be accepted for filing by the Office of the Documentary Services.
§ 302.38 Successive petitions. A successive petition for rehearing, reargument, reconsideration filed by the same party or person, and upon substantially the same ground as a former petition which has been considered or denied will not be entertained.

§ 302.38 Petitions for rulemaking.

Any interested person may petition DOT for the issuance, amendment, modification and repeal of any regulation, subject to the provisions of Part 5, Rulemaking Procedures, of the Office of the Secretary regulations (49 CFR 5.1 et seq.)

§ 302.39 Objections to public disclosure of information.

(a) General. Part 7 of the Office of the Secretary regulations, Public Availability of Information, governs the availability of records and documents of DOT to the public. (49 CFR 7.1 et seq.)

(b) Information contained in paper to be filed. Any person who objects to the public disclosure of any information contained in any paper filed in any proceeding, or in any application, report, or other document filed pursuant to the provisions of the Federal Aviation Act of 1958, as amended, or any rule, regulation, or order of the DOT thereunder, shall segregate, or request the segregation of, such information into a separate paper and shall file it, or request that it be filed, with the administrative law judge or the person conducting the hearing or proceeding, as the case may be, or with the person with whom said application, report, or document is required to be filed, separately in a sealed envelope, bearing the caption of the enclosed paper, and the notation “Classified or Confidential Treatment Requested Under § 302.39.” At the time of filing such paper, or when the objection is made by a person not himself or herself filing the paper, application, report or other document, within five (5) days after the filing of such paper, the objecting party shall file a motion to withhold the information from public disclosure, in accordance with the procedure outlined in paragraph (e) of this section, or in accordance with the procedure outlined in paragraph (d) of this section if objection is made by a Government department or a representative thereof. Notwithstanding any other provision of this section, copies of the filed paper and of the motion need not be served upon any other party unless so ordered by the DOT.

(c) Information contained in oral testimony. Any person who objects to the public disclosure of any information sought to be elicited from a witness or deponent on oral examination shall, before such information is disclosed, make his or her objection known. Upon such objection duly made, the witness or deponent shall be compelled to disclose such information only in the presence of the administrative law judge or the person before whom the deposition is being taken, as the case may be, the official stenographer and such attorneys for and lay representative of each party as the administrative law judge or the person before whom the deposition is being taken, as the case may be, shall designate, and after all present have been sworn to secrecy. The transcript of testimony containing such information shall be segregated and filed in a sealed envelope, bearing the title and docket number of the proceeding, and the notation “Classified or Confidential Treatment Requested Under § 302.39 Testimony Given by (name of witness or deponent).” Within five (5) days after such testimony is given, the objecting person shall file a motion, except as hereinafter provided in paragraph (d) of this section, in accordance with the procedure outlined in paragraph (e) of this section, to withhold the information from public disclosure. Notwithstanding any other provision of this section, copies of the segregated portion of the transcript and of the motion need not be served upon any other party unless so ordered by the DOT.

(d) Objection by Government departments or representative thereof. In the case of objection to the public disclosure of any information filed by or elicited from any United States Government department, or representative thereof, under paragraph (b) or (c) of this section, the department making such objection shall be exempted from the provisions of paragraphs (b), (c), and (e) of this section insofar as said
§ 302.200 Applicability of this subpart.

(a) In general. This subpart contains the specific rules that apply to DOT proceedings to enforce the act and the rules, regulations, orders and other requirements issued by DOT. Subpart A of this part contains other rules that apply to these proceedings.

(b) Informal complaints. Informal complaints may be made in writing with respect to anything done or omitted to be done by any person in contravention of any provision of the act or any requirement established pursuant thereto without compliance with this part.
§ 302.201 Formal complaints.

Any person may make a formal complaint to the Assistant General Counsel for Aviation Enforcement and Proceedings about any violation of the economic regulatory provisions of the act or of DOT’s rules, regulations, orders, or other requirements. Every formal complaint shall conform to the requirements of § 302.3, concerning the form and filing of documents. The filing of a complaint shall result in a formal enforcement proceeding only if the Assistant General Counsel for Aviation Enforcement and Proceedings issues a notice instituting an enforcement proceeding as to all or part of the complaint under § 302.206(a) or the Deputy General Counsel does so under § 302.206(b). A formal complaint may be amended at any time before service of an answer to the complaint. After service of an answer but before institution of an enforcement proceeding, the complaint may be amended with the permission of the Assistant General Counsel for Aviation Enforcement and Proceedings. After institution of an enforcement proceeding, the complaint may be amended only on grant of a motion filed under § 302.18.

§ 302.202 [Reserved]

§ 302.203 Insufficiency of formal complaint.

In any case where the Assistant General Counsel for Aviation Enforcement and Proceedings is of the opinion that a complaint does not sufficiently set forth the material required by any applicable rule, regulation or order of the DOT, or is otherwise insufficient, he or she may advise the party filing the same of the deficiency and require that any additional information be supplied by amendment.

§ 302.204 Third-party complaints.

(a) A third-party complaint, and any amendments thereto, submitted pursuant to § 302.201 shall be served by the person filing such documents upon each party complained of, upon the Deputy General Counsel, and upon the Assistant General Counsel for Aviation Enforcement Proceeding.

(b) Within fifteen (15) days after the date of service of a third-party complaint, each person complained of shall file an answer in conformance with and subject to the requirements of § 302.207(b). Extensions of time for filing an answer may be granted by the Assistant General Counsel for Aviation Enforcement and Proceedings for good cause shown.

(c) A person complained against in a third-party complaint may offer to satisfy the complaint through submission of facts, offer of settlement or proposal of adjustment. Such offer shall be in writing and shall be served, within fifteen (15) days after service of the complaint, upon the same persons and in the same manner as an answer. The submittal of an offer to satisfy the complaint shall not excuse the filing of an answer.

(d) Motions to dismiss a third-party complaint shall not be fileable prior to the filing of a notice instituting an enforcement proceeding with respect to such complaint or a portion thereof.

§ 302.205 Procedure when no enforcement proceeding is instituted.

(a) Within a reasonable time, but not more than 60 days, after an answer to a formal third-party complaint is filed, or such extension of that 60-day period as may be granted pursuant to § 302.206(b), the Assistant General Counsel for Aviation Enforcement and Proceedings shall either issue a notice instituting a formal enforcement proceeding in accordance with § 302.206(a) or issue a notice dismissing the complaint in whole or in part, stating the reasons for such dismissal.

(b) A notice dismissing a complaint issued pursuant to paragraph (a) of this section shall become effective as a final order of DOT 30 days after service thereof.
§ 302.206 Commencement of enforcement proceeding.

(a) Whenever in the opinion of the Assistant General Counsel for Aviation Enforcement and Proceedings, there are reasonable grounds to believe that any provision of the Act, or any rule, regulation, order, limitation, condition, or other requirement established pursuant thereto, has been or is being violated, that, in the case of third-party complaints, efforts to satisfy a complaint insofar as required by §302.204 have failed, and that the investigation of any or all of the alleged violations is in the public interest, the Assistant General Counsel for Aviation Enforcement and Proceedings may issue a notice instituting a formal enforcement proceeding. The notice shall incorporate by reference a formal complaint submitted pursuant to §302.201 or shall be accompanied by a complaint by an attorney from the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings. The notice and accompanying complaint, if any, shall be formally served upon each respondent and each complainant. The proceedings thus instituted shall be processed in regular course in accordance with this part. However, nothing in this part shall be construed to limit the authority of the Department to institute or conduct any investigation or inquiry within its jurisdiction in any other manner or according to any other procedures which it may deem necessary or proper.

(b) The Assistant General Counsel for Aviation Enforcement and Proceedings may at any time move, upon a showing of good cause, for an extension of the time within which to act upon a third-party complaint. Whenever the Assistant General Counsel for Aviation Enforcement and Proceedings has failed to act on a third-party complaint within 60 days of the date when the answer is due, or within such extension of that period as may have been granted, the following motions may be addressed to the Deputy General Counsel:

(1) By the complainant to institute a proceeding by docketing the complaint upon a showing that it is in the public interest to do so; and

(2) By the respondent to dismiss the complaint upon a showing that it is in the public interest to do so.

(c) The Deputy General Counsel may grant, deny, or defer any of the motions, in whole or in part, and take appropriate action to carry out his or her decision.

§ 302.206a Assessment of civil penalties.

(a) Whenever the Assistant General Counsel for Aviation Enforcement and Proceedings seeks an assessment of civil penalties in an enforcement proceeding, the Deputy General Counsel shall serve on all parties to the proceeding a notice of the violations alleged and the amount of penalties for which the respondent may be liable. The notice may be included in the notice instituting an enforcement proceeding or in a separate document.

(b) Within 15 days after service of a notice proposing assessment of civil penalties, the respondent shall file a response specifically presenting any matters he or she intends to rely on in opposition to or mitigation of such civil penalties. The response may be contained in an answer filed under §302.207.

(c) In any proceeding in which civil penalties are sought, the initial and final decisions shall state the amount of any civil penalties assessed upon a finding of violation, and the time and manner in which payment shall be made to the United States.

§ 302.207 Answer.

(a) Within 15 days after the date of service of a notice issued pursuant to §302.206, the respondent shall file an answer to the complaint attached to or incorporated in a notice instituting an enforcement proceeding shall be filed with DOT in accordance with §302.207. Any requests for extension of time for filing of an answer to a complaint attached to or incorporated in a notice instituting an enforcement proceeding shall be filed with DOT in accordance with §302.17.

(b) All answers shall conform to the requirements of §302.8(a)(2) and shall fully and completely advise the parties and the Department as to the nature of the defense and shall admit or deny
§ 302.208 Default.

Failure of a respondent to file and serve an answer within the time and in the manner prescribed by this part shall be deemed to authorize the Department, in its discretion, to find the facts alleged in the complaint incorporated in or accompanying the notice instituting an enforcement proceeding to be true and to enter such orders as may be appropriate without notice or hearing, or, in its discretion, to proceed to take proof, without notice, of the allegations or charges set forth in the complaint or order, provided that the DOT decisionmaker or administrative law judge may permit late filing of an answer for good cause shown.

§ 302.209 Reply.

The DOT decisionmaker (or the administrative law judge) may, in his or her discretion, require or permit the filing of a reply in appropriate cases, otherwise no reply shall be filed.

§ 302.210 Parties.

The parties to an enforcement proceeding shall be the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, the respondent, any person whose formal complaint alleged violations that were later covered by the notice of enforcement, and any other person permitted to intervene under § 302.15.

§ 302.210a Consolidation of proceedings.

The DOT decisionmaker or Chief Administrative Law Judge, upon his or her own initiative, or upon motion of any party, may consolidate for hearing or for other purposes, or may contemporaneously consider, two or more enforcement proceedings which involve substantially the same parties, or issues which are the same or closely related, if he or she finds that such consolidation or contemporaneous hearing will be conducive to the dispatch of business and to the ends of justice and will not unduly delay the proceedings.

§ 302.211 Prehearing conference.

A prehearing conference may be held in an enforcement proceeding whenever the DOT decisionmaker or the administrative law judge believes that the fair and expeditious disposition of the proceeding requires one. If a prehearing conference is held, it shall be conducted in accordance with § 302.23.

§ 302.212 Admissions as to facts and documents; motions to dismiss and for summary judgment.

(a) At any time after answer has been filed, any party may file with DOT and serve upon the opposing side a written request for the admission of the genuineness and authenticity of any relevant documents described in and exhibited with the request or for the admission of the truth of any relevant matters of fact stated in the request with respect to such documents. Each of the matters of which an admission is requested shall be deemed admitted unless within a period designated in the request, not less than ten (10) days after service thereof, or within such further time as the DOT decisionmaker or the administrative law judge may allow upon motion and notice, the party to whom the request is directed serves upon the requesting party a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he or she cannot truthfully either admit or deny such matters. Service of such request and answering statement shall be made as provided in § 302.8. Any admission made by a party pursuant to such request is only for the purposes of the pending proceeding, or any proceeding or action instituted for the enforcement or any order entered therein, and shall not constitute an admission by him or her for any other purpose or be used against him or her in any other proceeding or action.
Office of the Secretary, DOT

§ 302.218

(b) At any time after answer has been filed, any party may file with the DOT decisionmaker or the administrative law judge a motion to dismiss or a motion for summary judgment, including supporting affidavits. The procedure on such motions shall be in accordance with the Federal Rules of Civil Procedure (28 U.S.C.), particularly Rules 6(d), 7(b), 12, and 56, except that answers and supporting papers to a motion to dismiss or for summary judgment shall be filed within 7 days after service of the motion.

(c) Parties may petition the DOT decisionmaker to review action by the administrative law judge granting summary judgment or dismissing an enforcement proceeding under the procedure established for review of an initial decision in §302.28.

§ 302.219

§ 302.213 Hearing.

After the issues have been formulated, whether by the pleadings or otherwise, the administrative law judge or the DOT decisionmaker shall give the parties reasonable written notice of the time and place of the hearings.

§ 302.214 Appearances by persons not parties.

With consent of the administrative law judge or the DOT decisionmaker, appearances may be entered without request for or grant of permission to intervene by interested persons who are not parties to the proceeding. Such persons may, with consent of the administrative law judge or the DOT decisionmaker, cross-examine a particular witness or suggest to any party or counsel therefor questions or interrogations to be propounded to witnesses called by any party, but may not otherwise examine witnesses and may not introduce evidence or otherwise participate in the proceeding. However, such persons may present to both the administrative law judge and the DOT decisionmaker an oral or written statement of their position on the issues involved in the proceeding.

§ 302.215 Settlement of proceedings.

(a) The Deputy General Counsel and the respondent may agree to settle all or some of the issues in an enforcement proceeding at any time before a final decision. The Deputy General Counsel shall serve a copy of any proposed settlement on each party and shall submit the proposed settlement to the administrative law judge for approval. The submission of a proposed settlement shall not automatically delay the proceeding.

(b) Any party to the proceeding may submit written comments supporting or opposing the proposed settlement within 10 days from the date of service.

(c) The administrative law judge shall approve the proposed settlement, as submitted, if it appears to be in the public interest, or otherwise shall disapprove it.

(d) Information relating to settlement offers and negotiations will be withheld from public disclosure if the Deputy General Counsel determines that disclosure would interfere with the likelihood of settlement of an enforcement proceeding.

§ 302.216 Evidence of previous violations.

Evidence of previous violations by any person or of any provision of the act or any requirement thereunder found by DOT or a court in any other proceeding or criminal or civil action may, if relevant and material, be admitted in any enforcement proceeding involving such person.

§ 302.217 Motions for immediate suspension of operating authority pendente lite.

All motions for the suspension of the economic operating authority of an air carrier during the pendency of proceedings to revoke such authority shall be filed with, and decided by the DOT decisionmaker. Proceedings on the motion shall be in accordance with §302.18. In addition, the DOT decisionmaker shall afford the parties an opportunity for oral argument on such motion.

§ 302.218 Modification or dissolution of enforcement actions.

Whenever any party to a proceeding in which an order of DOT has been issued pursuant to section 1002(c) of the Act, or an injunction or other form of enforcement action has been issued by
§ 302.300 Applicability of this subpart.

This subpart sets forth the special rules applicable to proceedings for the establishment of mail rates by DOT for foreign air transportation and air transportation between points in Alaska. For information as to other applicable rules, reference should be made to Subpart A of this part, to the Federal Aviation Act, and to the substantive rules, regulations, and orders of DOT.

§ 302.301 Parties to the proceeding.

The parties to the proceeding shall be the air carrier or carriers for whom rates are to be fixed, the Postal Service, the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings and any other person whom DOT permits to intervene. (See § 302.15.)

Final Mail Rate Proceedings

§ 302.302 Participation by persons other than parties.

In addition to participation in hearings in accordance with § 302.14, persons other than parties may, within the time fixed for filing notice of objections to an order to show cause in a mail rate proceeding as provided in § 302.305, submit a memorandum of opposition to, or in support of, the position taken in the petition or order. Such memorandum shall not be received as evidence in the proceeding.

§ 302.303 Institution of proceedings.

Proceedings for the determination of rates of compensation for the transportation of mail may be commenced by the filing of a petition by an air carrier whose rate is to be fixed, or the Postal Service, or upon the issuance of an order by DOT.

(a) The petition shall set forth the rate or rates sought to be established, a statement that they are believed to be fair and reasonable, and a detailed economic justification sufficient to establish the reasonableness of the rate or rates proposed.

(b) In any case where a carrier is operating under a final mail rate uniformly applicable to an entire rate-making unit as established by the Department, a petition must clearly and unequivocally challenge the rate for such entire rate-making unit and not only a part of such unit.

(c) All petitions, amended petitions, and documents relating thereto shall be served upon the Postal Service by sending a copy to the Assistant General Counsel, Transportation, by registered or certified mail, postpaid, prior to the filing thereof with the Department. Proof of service on the Postal Service shall consist of a statement in the document that the person filing it has served a copy on the Assistant General Counsel, Transportation, as required by this section. The petition need not be accompanied by any further proof of service, but upon setting any petition down for public hearing, the Department will cause notice of such hearing to be given to such interested persons as it deems appropriate in a particular case.

(d) Answers to petitions shall be filed within 20 days after service of the petition.
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§ 302.304 Order to show cause.

Whether the proceeding is commenced by the filing of a petition or upon the Department's own initiative, the DOT may issue an order directing the respondent to show cause why it should not adopt such provisional findings and conclusions, and such rates, as may be specified in the order to show cause.

§ 302.305 Objections and answer to order to show cause.

(a) Any person having objections to the provisional rates specified in such order shall file with the Department a notice of objection within ten (10) days after the date of service of such order.

(b) If such notice is filed as aforesaid, written answer and any supporting documents shall be filed within thirty (30) days after the service of the order to show cause. The Department may specify different times for filing a notice of objection or an answer. An answer to an order to show cause shall contain specific objections, and exhibits in support thereof, and shall set forth the findings and conclusions, the rates, and the supporting exhibits which would be substituted for the corresponding items in the Statement of Provisional Findings and Conclusions, if such objections were found valid.

(c) A notice or answer filed by a person who is neither a party nor a person ultimately permitted to intervene shall be treated as a memorandum filed under §302.302.

§ 302.306 Effect of failure to timely file notice and answer raising material issue of fact.

If no notice, or, if after notice, no answer is filed within the designated time, all parties shall be deemed to have waived the right to a hearing and all other procedural steps short of a final decision of the Department fixing rates, and, in such case, or if an answer timely filed raises no material issue of fact, the Department may thereupon, upon the basis of all of the documents filed in the proceeding, enter a final order fixing the fair and reasonable rate or rates as specified in the order to show cause.

§ 302.307 Procedure when material issue of fact is timely raised.

If an answer raising a material issue of fact is filed within the time designated in the Department's order, a prehearing conference and hearing shall be held unless waived by all parties. The issues shall be limited to those specifically raised by the answer, except that at the prehearing conference, the administrative law judge may permit the parties to raise such additional issues as he or she deems necessary to a full and fair determination of a fair and reasonable rate. (Reference should be made to Subpart A of this part for rules applicable to hearings.)

§ 302.308 Evidence.

All direct evidence shall be in writing and shall be filed in exhibit form in advance of the hearing unless, for good cause shown, the administrative law judge otherwise directs.

§ 302.309 Hearing to be ordered.

When no order to show cause is to be issued by the Department, the Department will order a hearing before an administrative law judge similar to that provided for in §§302.307 and 302.308, except that the issues at such hearing shall be formulated initially at a prehearing conference.

Temporary Rate Proceedings

§ 302.310 Procedure for fixing temporary service and subsidy mail rates.

(a) At any time during the pendency of a proceeding for the determination of final mail rates, the Department, upon its own initiative, or on petition by the carrier whose rates are in issue or the Postal Service, may fix temporary rates of compensation for the transportation of mail subject to downward or upward adjustment upon the determination of final mail rates.

(b) Temporary service mail rates: The procedure for determining temporary mail rates involving an issue as
§ 302.311 Invocation of procedure.

Conferences between DOT employees, representatives of air carriers, the Postal Service and other interested persons may be called by DOT employees for the purpose of considering and clarifying issues and factual material in pending proceedings for the establishment of rates for the transportation of mail.

§ 302.312 Scope of conferences.

The mail rate conferences shall be limited to the discussion of, and possible agreement on, particular issues and related factual material in accordance with sound rate-making principles. The duties and powers of DOT employees in rate conferences essentially will not be different, therefore, from the duties and powers the Department has in the processing of rate cases not involving a rate conference. The employee function in both instances is to present clearly to the DOT decisionmaker the issues and the related material facts, together with recommendations. The DOT decisionmaker will make an independent determination of the soundness of the employee’s analyses and recommendations.

§ 302.313 Participants in conferences.

The persons entitled to be present in mail rate conferences will be the representatives of the carrier whose rates are in issue, the staff of the Postal Service, and the authorized DOT employees. No other person will attend unless the DOT employees deems his or her presence necessary in the interest of one or more purposes to be accomplished, and in such case his or her participation will be limited to such specific purposes. No person, however, shall have the duty to attend merely by reason of invitation by the authorized DOT employees.

§ 302.314 Conditions upon participation.

(a) Nondisclosure of information. As a condition to participation, every participant, during the period of the conference and for 90 days after its termination, or until the Department takes public action with respect to the facts and issues covered in the conference, whichever is earlier:

(1) Shall, except for necessary disclosures in the course of employment in connection with conference business, hold the information obtained in conference in absolute confidence and trust; (2) shall not deal, directly or indirectly, for the account of himself or herself, his or her immediate family, members of his or her firm or company, or as a trustee, in securities of the carrier involved in the rate conference except that under exceptional circumstances special permission may be obtained in advance from the Department; and (3) shall adopt effective controls for the confidential handling of such information and shall instruct personnel under his or her supervision, who by reason of their employment
come into possession of information obtained at the conference, that such information is confidential and must not be disclosed to anyone except to the extent absolutely necessary in the course of employment, and must not be misused. The word "information", as used in paragraph (b) of this section, shall refer only to information obtained at the conference regarding the future course of action or position of the Department or its employees with respect to the facts or issues discussed at the conference.

(b) Signed statement required. Every representative of a carrier actually present at any conference shall sign a statement that he or she has read this entire instruction and promises to abide by it and advise any other participant to whom he or she discloses any confidential information of the restrictions imposed above. Every representative of the Postal Service actually present at any conference shall, on his or her own behalf, sign a statement to the same effect.

(c) Presumption of having conference information. A director of any carrier, which has had a representative at the conference, who deals either directly or indirectly for himself or herself, his or her immediate family, members of his or her firm or company, or as a trustee, in securities of the air carrier involved in the conference, during the restricted period set forth above, shall be presumed to have come into possession of information obtained at the conference knowing that such information was subject to the restrictions imposed above; but such presumption can be rebutted.

(d) Compliance report required. Within ten (10) days after the expiration of the time specified for keeping conference matters confidential every participant, as defined in this section, shall file a verified compliance report with the Documentary Services Division stating that he or she has complied in every respect with the conditions of this section, or if he or she has not so complied, stating in detail in what respects he or she has failed to comply.

(e) Persons subject to the provisions of this section. For the purposes of this section, participants shall include (1) any representative of the Postmaster General actually present at the conference; (2) the carrier and the officers of any carrier which has had a representative at the conference; (3) the directors of any carrier, which has had a representative at the conference, the members of any firm of attorneys or consultants, which has had a representative at the conference, and the members of the Postmaster General's staff, who come into possession of information obtained at the conference, knowing that such information is subject to the restrictions imposed in this section.³

³ Restrictions on disclosure of confidential information and dealing in air carrier securities are imposed upon the DOT employees pursuant to applicable law.
§ 302.317 Availability of data to Postal Service.

The representatives of the Postal Service shall have access to all conference data and, insofar as practicable, shall be furnished copies of all pertinent data prepared by the DOT employees and the carrier, and a reasonable time shall be allowed to get acquainted with the facts and issues and to make any presentation deemed necessary. Provided, That in cases other than those involving an issue as to the service mail rates payable by the Postal Service pursuant to section 406(c) of the Act representatives of the Postal Service shall be furnished with copies of data under this provision only upon their written request.

§ 302.318 Post-conference procedure.

The rate conferences not being in the nature of proceedings, no briefs, or argument, or any formal steps, will be entertained by the Department. The form, content and time of the staff's presentation to the Department are entirely matters of internal procedure. Any party to the mail rate proceeding may, through an authorized DOT employee, request the opportunity to submit a written or oral statement to the DOT decisionmaker on any unresolved issue. The Department will grant such requests whenever it deems such action desirable in the interest of further clarification and understanding of the issues. The granting of an opportunity for such further presentation shall not, however, impair the rights that any party might otherwise have under the act and the rules of practice.

§ 302.319 Effect of conference agreements.

No agreements or understanding reached in rate conferences as to facts or issues shall in any respect be binding on the Department or any participant. Any party to mail rate proceedings will have the same rights to file an answer and take other procedural steps as though no rate conference had been held. The fact, however, that rate conferences were held and certain agreements or understandings may have been reached on certain facts and issues renders it proper to provide that upon the filing of an answer by any party to the rate proceeding all issues going to the establishment of a rate shall be open, except insofar as limited in prehearing conference in accordance with § 302.23.

§ 302.320 Waiver of §§ 302.313 and 302.314.

After the termination of a mail rate conference hereunder, the carrier, whose rates were in issue, may petition the Department for a release from the obligations imposed upon it and all other persons by §§ 302.313 and 302.314. The Department will grant such petition only after a detailed and convincing showing is made in the petition and supporting exhibits and documents that there is no reasonable possibility that any of the abuses sought to be prevented will occur or that the Department's processes will in any way be prejudiced. There will be no hearing or oral argument on the petition and the Department will grant or deny the request without assigning reasons therefor.

§ 302.321 Time of commencing and terminating conference.

At the commencement of an informal mail rate conference pursuant to this section, the authorized DOT employees conducting such conferences shall issue to each person present at such conference a written statement to the effect that such conference is being conducted pursuant to this section and stating the time of commencement of such conference; and at the termination of such conference the DOT employees conducting such conference shall note in writing on such statement the time of termination of such conference.

Subpart D—Rules Applicable to Exemption Proceedings

§ 302.400 Applicability.

This subpart sets forth the rules applicable to proceedings for exemptions under sections 101(3), 416(b)(1), 416(b)(3), and 416(b)(7) of the Federal Aviation Act. It also provides for the granting of emergency exemptions. The provisions of Subpart A of this part also apply to such proceedings where not inconsistent with this subpart. Proceedings
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§ 302.401 Filing of application.

(a) Except as provided in paragraphs (b) and (c) of this section, applications for exemption shall conform to the requirements of §§ 302.3 and 302.4.

(b) Applications for exemption from section 401 or 402 of the Act (and section 403 of the Act if accompanying the former) which involve 10 or fewer flights may be submitted to the Licensing Division, Office of Aviation Operations on CAB Form 302 or the DOT replacement form. However, that form may not be used for:

(1) Applications filed under section 416(b)(7) of the Act;

(2) Applications by persons who do not have either:

(i) An effective air carrier certificate or foreign air carrier permit from DOT, or

(ii) A properly completed application for such a certificate or permit, and an effective exemption from the DOT for operations similar to those proposed;

(3) Successive applications for the same or similar authority that would total more than 10 flights; or

(4) Any other application for which the DOT decides the requirements of §§ 302.3 and 302.4 are more appropriate.

Upon a showing of good cause, an application may be filed by cablegram, telegram, or telephone. All telephone requests must be confirmed by written application within three business days of the original request.

(c) Applications for exemption from section 403 of the Act, tariffs (except for waivers filed under subpart Q of part 221 of this chapter), or DOT regulations concerning tariffs may be submitted by letter. Three copies of such applications shall be sent to the Documentary Services Division, Office of the General Counsel. Upon a showing of good cause, the application may be also be filed by cablegram, telegram, or telephone. All telephone requests must be confirmed by written application within three business days of the original request.

(d) Applications filed under paragraph (a) of this section shall be docketed and any additional documents filed shall be identified by the assigned docket number.

(e) Applications filed under paragraph (b) or (c) of this section will normally not be docketed. The DOT may require such applications to be docketed if appropriate. The DOT will list the names and addresses of all persons filing such applications, and will briefly describe the authority sought, in its weekly list of applications filed.

§ 302.402 Contents of application.

(a) Title. An application filed under § 302.401(a) shall be entitled "Application for Exemption," and shall state if the application involves renewal and/or amendment of existing exemption authority.

(b) Factual statement. Each application shall state:

(1) The section(s) of the Act or the rule, regulation, term, condition, or limitation from which exemption is requested;

(2) The proposed effective date and duration of the exemption;

(3) A description of how the applicant proposes to exercise the authority (for example, applications for exemption from section 401 or 402 of the Act should include at least: places to be served; equipment types, capacity and source; type and frequency or service; and other operations which the proposed service will connect with or support); and

(4) Any other facts the applicant relies upon to establish that the proposed service will be consistent with the public interest.

(c) Supporting evidence. (1) Each application shall be accompanied by:

(i) A statement of economic data, or other matters or information that the applicant desires the DOT to officially notice;

(ii) Affidavits, or statements under penalty of perjury, establishing any other facts the applicant wants the Board to rely upon; and

(iii) Information showing the applicant is qualified to perform the proposed services.

(2) In addition to the information required by paragraph (c)(1) of this section, an application for exemption from section 401 or 402 of the Act (except exemptions under section...
§ 302.403 Service of application.

(a) Manner of service. An application for exemption shall be served as provided by § 302.8.

(b) General requirements. Except for an application for exemption from sections 403 and 404 of the Act, an applicant shall serve on the persons listed in paragraph (c) of this section a notice that the application has been filed, and, upon request, shall promptly provide those persons with copies of the application and any supporting documents. (Applicants filing CAB Form 302, or the DOT replacement form may serve a copy of the form instead of a notice.) The notice must clearly state the authority sought, the due date for responsive pleadings, and that copies of the application will be supplied upon request. Responsive pleadings shall be filed in accordance with paragraph (c) of this section.

(c) Persons to be served. (1) Applicants for scheduled interstate or overseas air transportation authority shall serve (i) all U.S. air carriers (including commuter air carriers) that publish schedules in the “Official Airline Guide” or the “Air Cargo Guide” for the city-pair market specified in the application, (ii) local airport authorities at each point specified in the application, and (iii) any other person who has filed a pleading in a related proceeding under section 401 or 416 of the Act.

(2) Applicants for scheduled foreign air transportation authority shall serve (i) all U.S. air carriers (including commuter air carriers) that publish schedules for the country-pair market specified in the application, (ii) local airport authorities at each point specified in the application, and (iii) any other person who has filed a pleading in a related proceeding under section 401 or 416 of the Act.

(3) Applicants for charter-only or nonscheduled-only authority shall serve any person who has filed a pleading in a related proceeding under section 401, 402, or 416 of the Act.

(e) Renewal applications. An application requesting renewal of an exemption that is intended to invoke the automatic extension provisions of 5 U.S.C. 558(c) shall comply with, and contain the statements and information required by part 377 of this chapter.

(f) Record of service. An application shall list the parties served as required by § 302.403.
interest in the subject matter of the application.
(d) Additional service. The DOT may, in its discretion, order additional service made on any other person.

§ 302.404 Posting of application.
A copy of every application for exemption shall be posted in the Documentary Services Division and listed in the DOT’s weekly list of applications filed.

§ 302.405 Dismissal or rejection of incomplete application.
(a) Dismissal or rejection. The DOT may dismiss or reject any application for exemption that does not comply with the requirements of this part.
(b) Additional data. The DOT may require the filing of additional data with respect to any application for exemption, answer, or reply.

§ 302.406 Answers to applications for exemption.
Within 15 days after the filing of an application for exemption, any person may file an answer in support of or in opposition to the grant of a requested exemption. Such answer shall set forth in detail the reasons why the exemption should be granted or denied. An answer shall include a statement of economic data or other matters the DOT is requested to officially notice, and shall be accompanied by affidavits establishing any other facts relied upon.

§ 302.407 Replies to answers.
Within seven days after the last day for filing an answer, an applicant may file a reply to one or more answers.

§ 302.408 Request for hearing.
The DOT will not normally conduct formal hearings concerning applications for exemption. However, the DOT may, in its discretion, order a hearing on an application. Any applicant, or any party opposing an application, may request a hearing. Such a request shall set forth in detail the reasons why the filing of affidavits or other written evidence will not permit the fair and expeditious disposition of the application. A request relying on factual assertions shall be accompanied by affidavits establishing such facts. If the DOT orders a hearing, the procedures in Subpart A of this part shall apply.

§ 302.409 Exemptions on the Department's initiative.
The DOT may grant exemptions on its own initiative when it finds that such exemptions are required by the circumstances and consistent with the public interest.

§ 302.410 Emergency exemptions.
(a) Applicability. When required by the circumstances and consistent with the public interest, the DOT may take action, without notice, on exemption applications prior to the expiration of the normal period for filing answers and replies. When required in a particular proceeding, the DOT may specify a lesser time for the filing of answers and replies, and notify interested persons of this time period.
(b) Applications. (1) Applications for emergency exemption need not conform to the requirements of Subparts A and D of this part (except as provided in this section and in § 302.402(d) concerning emergency cabotage requests). However, an application for emergency exemption must normally be in writing and must state in detail the facts and evidence that support the application, the grounds for the exemption, and the public interest basis for the authority sought. In addition, the application shall state specific reasons that justify departure from the normal exemption application procedures. The application shall also identify those persons notified as required by paragraph (c) of this section. The DOT may require additional information from any applicant before acting on an application.
(2) The DOT will consider oral requests, including telephone requests, for emergency exemption authority under this section in circumstances that do not permit the immediate filing of a written application. All oral requests must, however, provide the information required in paragraph (b)(1) of this section, except that actual evidence in support of the application need not be tendered when the request is made. All oral requests must be confirmed by written application, together
§ 302.500

Applicability of this subpart.

This subpart sets forth the special rules applicable to proceedings with respect to rates, fares and charges in foreign air transportation. For information as to other applicable rules, reference should be made to Subpart A of this part, to the Federal Aviation Act, and to the substantive rules, regulations and orders of DOT.

§ 302.501 Institution of proceedings.

A proceeding to determine rates, fares, or charges for the foreign air transportation of persons or property by aircraft, or the lawful classification, rule, regulation, or practice affecting such rates, fares or charges, may be instituted by the filing of a petition or complaint by any person, or by the issuance of an order by DOT.

§ 302.502 Contents and service of petition or complaint.

(a) If a petition or complaint is filed it shall state the reasons why the rates, fares, or charges, or the classification, rule, regulation, or practice complained of are unlawful and shall support such reasons with a full factual analysis.

(b) A petition or complaint shall be served by the petitioner or complainant upon the carrier against whose tariff provision the petition or complaint is filed.

§ 302.503 Dismissal of petition or complaint.

If DOT is of the opinion that a petition or complaint does not state facts which warrant an investigation or action on its part, it may dismiss such petition or complaint without hearing.

§ 302.504 Order of investigation.

The Department on its own initiative, or if it is of the opinion that the facts stated in a petition or complaint warrant it, may issue an order instituting an investigation of the lawfulness of any present or proposed rates, fares, or charges for the transportation of persons or property by aircraft or the lawfulness of any classification, rule, regulation, or practice affecting such rates, fares, or charges, and assigning the proceeding for hearing before an administrative law judge. (Reference should be made to Subpart A of this part for rules applicable to hearings.)

§ 302.505 Complaints requesting suspension of tariffs—answers to such complaints.

(a) Formal complaints seeking suspension of tariffs pursuant to section 1002(j) of the Act shall fully identify the tariff and include reference (1) to the issued or posting date, (2) to the effective date, (3) to the name of the publishing carrier or agent, (4) to the DOT number, and (5) to specific items or particular provisions protested or complained against. The complaint should indicate in what respect the tariff is considered to be unlawful, and state what complainant suggests by way of substitution.

(b) A complaint requesting suspension of a tariff ordinarily will not be considered unless made in conformity with this section and filed no more than ten (10) days after the issued date contained within such tariff.

(c) A complaint requesting suspension, pursuant to section 1002(j) of the Act, of an existing tariff for foreign air transportation may be filed at any time. However, such a complaint must be accompanied by a statement setting forth compelling reasons for not having requested suspension within the time limitations provided in paragraph (b) of this section.

(d) In an emergency satisfactorily shown by complainant, and within the time limits herein provided, a telegraphic complaint may be sent to the
Department and to the carrier against whose tariff provision the complaint is made. Such a telegraphic complaint shall state the grounds relied upon, and must immediately be confirmed by complaint filed and served in accordance with this part.

(e) Answers to complaints shall be filed within six (6) working days after the complaint is filed.

§ 302.506 Burden of going forward with the evidence.

At any hearing involving a change in a rate, fare, or charge for the transportation of persons or property by aircraft, or the lawful classification, rule, regulation, or practice affecting such rate fare, or charge, the burden of going forward with the evidence shall be upon the person proposing such change to show that the proposed changed rate, fare, charge, classification, rule, regulation or practice is just and reasonable, and not otherwise unlawful.

§ 302.508 Computing time for filing complaints.

In computing the time for filing formal complaints pursuant to § 302.505, with respect to tariffs which do not contain a posting date, the first day preceding the effective date of the tariff shall be the first day counted, and the last day so counted shall be the last day for filing unless such day is a Saturday, Sunday, or legal holiday for DOT, in which event the period for filing shall be extended to the next successive day which is neither a Saturday, Sunday, nor holiday. The computation of the time for filing complaints as to tariffs containing a posting date shall be governed by § 302.16.
request for determination filed with respect to the same airport fee or fees will be considered in a consolidated proceeding, as provided in §§ 302.611 and 302.613.

§ 302.605 Contents of complaint or request for determination.

(a) The complaint or request for determination shall set forth the entire grounds for requesting a determination of the reasonableness of the airport fee. The complaint or request shall include a copy of the airport owner or operator’s written notice to the carrier of the imposition of the fee, a statement of position with a brief, and all supporting testimony and exhibits available to the carrier on which the filing party intends to rely. In lieu of submitting duplicative exhibits or testimony, the filing party may incorporate by reference testimony and exhibits already filed in the same proceeding.

(b) All exhibits and briefs prepared on electronic spreadsheet or word processing programs should be accompanied by standard-format computer diskettes containing those submissions. Word processing and spreadsheets files must be readable by current versions of one or more of the following programs, or in such other format as may be specified by notice in the Federal Register: Microsoft Word, Word Perfect, Ami Pro, Microsoft Excel, Lotus, Quattro Pro, or ASCII tab-delineated files. Parties should submit one copy of each diskette to the docket section, one copy to the office of the Chief Administrative Law Judge (M-50); and one copy to the Chief, Economic and Financial Analysis Division (X-55), of the Office of Aviation Analysis. Filers should ensure that files on the diskettes are unalterably locked.

(c) When a carrier files a complaint, it must also submit the following certifications:

(1) The carrier has served the complaint, brief, and all supporting testimony and exhibits on the airport owner or operator and all other air carriers and foreign air carriers serving the airport by hand, by electronic transmission, or by overnight express delivery. (Unless an air carrier or foreign air carrier has informed the airport owner or operator that a different person should be served, service may be made on the person responsible for communicating with the airport on behalf of the carrier about airport fees.);

(2) The parties served have received the complaint, brief, and all supporting testimony and exhibits or will receive them no later than the date the complaint is filed;

(3) The carrier has previously attempted to resolve the dispute directly with the airport owner or operator;

(4) When there is information on which the carrier intends to rely that is not included with the brief, exhibits, or testimony, the information has been omitted because the airport owner or operator has not made that information available to the carrier. The certification shall specify the date and form of the carrier’s request for information from the airport owner or operator; and

(5) Any submission on computer diskette is a true copy of the data file used to prepare the printed versions of the exhibits or briefs.

(d) When an airport owner or operator files a request for determination, it must also submit the following certifications:

(1) The airport owner or operator has served the request, brief, and all supporting testimony and exhibits on all air carriers and foreign air carriers serving the airport by hand, by electronic transmission, or by overnight express delivery. (Unless the air carrier or foreign air carrier has informed the airport owner or operator that a different person should be served, service may be made on the person responsible for communicating with the airport on behalf of the carrier about airport fees.);

(2) The carriers served have received the request, brief, and all supporting testimony and exhibits or will receive them no later than the date the request is filed;

(3) The airport owner or operator has previously attempted to resolve the dispute directly with the carriers; and

(4) Any submission on computer diskette is a true copy of the data file used to prepare the printed versions of the exhibits or briefs.
§ 302.607 Answers to a complaint or request for determination.

(a)(1) When an air carrier or foreign air carrier files a complaint under this subpart, the owner or operator of an airport and any other air carrier or foreign air carrier serving the airport may file an answer to the complaint as provided in paragraphs (b) and (c) of this section.

(2) When the owner or operator of an airport files a request for determination of the reasonableness of a fee it has imposed, any air carrier or foreign air carrier serving the airport may file an answer to the request.

(b) The answer to a complaint or request for determination shall set forth the answering party's entire response. When one or more additional complaints or a request for determination has been filed pursuant to §302.603(b) with respect to the same airport's fee or fees, the answer shall set forth the answering party's entire response to all complaints and any such request for determination. The answer shall include a statement of position with a brief and any supporting testimony and exhibits on which the answering party intends to rely. In lieu of submitting duplicative exhibits or testimony, the answering party may incorporate by reference testimony and exhibits already filed in the same proceeding.

(c) Answers to a complaint shall be filed no later than fourteen calendar days after the filing date of the first complaint with respect to the fee or fees in dispute at a particular airport. Answers to a request for determination shall be filed no later than fourteen calendar days after the filing date of the request.

(d) All exhibits and briefs prepared on electronic spreadsheet or word processing programs should be accompanied by standard-format computer diskettes containing those submissions. Word processing and spreadsheet files must be readable by current versions of one or more of the following programs, or in such other format as may be specified by notice in the Federal Register: Microsoft Word, WordPerfect, Ami Pro, Microsoft Excel, Lotus, Quattro Pro, or ASCII tab-delineated files. Parties should submit one copy of each diskette to the docket section, one copy to the office of the Chief Administrative Law Judge (M-50), and one copy to the Chief, Economic and Financial Analysis Division (X-55), of the Office of Aviation Analysis. Filers should ensure that files on the diskettes are unalterably locked.

(e) The answering party must also submit the following certifications:

(1) The answering party has served the answer, brief, and all supporting testimony and exhibits by hand, by electronic transmission, or by overnight express delivery on the carrier filing the complaint or the airport owner or operator requesting the determination;

(2) The parties served have received the answer and exhibits or will receive them no later than the filing date of the answer; and

(3) Any submission on computer diskette is a true copy of the data file used to prepare the printed versions of the exhibits or briefs.

§ 302.609 Replies.

(a) The carrier submitting a complaint may file a reply to any or all of the answers to the complaint. The airport owner or operator submitting a request for determination may file a reply to any or all of the answers to the request for determination.

(b) The reply shall be limited to new matters raised in the answers. It shall constitute the replying party's entire response to the answers. It shall be in the form of a reply brief and may include supporting testimony and exhibits responsive to new matters raised in the answers. In lieu of submitting duplicative exhibits or testimony, the replying party may incorporate by reference testimony and exhibits already filed in the same proceeding.

(c) The reply shall be filed no later than two calendar days after answers are filed.

(d) All exhibits and briefs prepared on electronic spreadsheet or word processing programs should be accompanied by standard-format computer
§ 302.611 Review of complaints.

(a) Within 30 days after a complaint is filed under this subpart, the Secretary will determine whether the complaint meets the procedural requirements of this subpart and whether a significant dispute exists, and take appropriate action pursuant to paragraph (b), (c), or (d) of this section.

(b) If the Secretary determines that a significant dispute exists, he or she will issue an instituting order assigning the complaint for hearing before an administrative law judge. The instituting order will:

1. Establish the scope of the issues to be considered and the procedures to be employed;
2. Indicate the parties to participate in the hearing;
3. Consolidate into a single proceeding all complaints and any request for determination with respect to the fee or fees in dispute; and
4. Include any special provisions for exchange or disclosure of information by the parties.

(c) The Secretary will dismiss any complaint if he or she finds that no significant dispute exists. The order dismissing the complaint will contain a concise explanation of the reasons for the determination that the dispute is not significant.

(d) If the Secretary determines that the complaint does not meet the procedural requirements of this subpart, the complaint will be dismissed without prejudice to filing a new complaint. The order of the Secretary will set forth the terms and conditions under which a revised complaint may be filed.

§ 302.613 Review of requests for determination.

(a) Except as provided in paragraph (e) of this section, within 30 days after an airport owner or operator files a request for determination of the reasonableness of a fee under this subpart, the Secretary will determine whether the request meets the procedural requirements of this subpart and whether a significant dispute exists.

(b) If the Secretary determines that a significant dispute exists, he or she will issue an instituting order assigning the request for hearing before an administrative law judge. The instituting order will establish the scope of the issues to be considered and the procedures to be employed and will indicate the parties to participate in the hearing. The instituting order will consolidate into a single proceeding all complaints and any request for determination with respect to the fee or fees in dispute.

(c) If the Secretary finds that the request for determination presents no significant dispute, the Secretary will either issue a final order as provided in §302.621 or set forth the schedule for any additional procedures required to complete the proceeding.

(d) If the Secretary determines that the request does not meet the procedural requirements of this subpart, the request for determination will be dismissed without prejudice to filing a new request. The order of the Secretary will set forth the terms and conditions under which a revised request may be filed.

(e) When both a complaint and a request for determination have been filed with respect to the same airport fee or
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fees, the Secretary will issue a determination as to whether the complaint, the request, or both meet the procedural requirements of this subpart and whether a significant dispute exists within 30 days after the complaint is filed.

§ 302.615 Decision by administrative law judge.

The administrative law judge shall issue a decision recommending a disposition of a complaint or request for determination within 60 days after the date of the instituting order, unless a shorter period is specified by the Secretary.

§ 302.617 Petitions for discretionary review.

(a) Within 5 calendar days after service of a decision by an administrative law judge, any party may file with the Secretary a petition for discretionary review of the administrative law judge's decision.

(b) Petitions for discretionary review shall comply with § 302.28(a). The petitioner must also submit the following certifications:

1. The petitioner has served the petition by hand, by electronic transmission, or by overnight express delivery on all parties to the proceeding; and
2. The parties served have received the petition or will receive it no later than the date the petition is filed.

(c) Any party may file an answer in support of or in opposition to any petition for discretionary review. The answer shall be filed within 4 calendar days after service of the petition for discretionary review. The answer shall comply with the page limits specified in § 302.28(b).

§ 302.619 Completion of proceedings.

(a) When a complaint with respect to an airport fee or fees has been filed under this subpart and has not been dismissed, the Secretary will issue a determination as to whether the fee is reasonable within 120 days after the date the request for determination is filed.

(b) When a request for determination has been filed under this subpart and has not been dismissed, the Secretary will issue a determination as to whether the fee is reasonable within 120 days after the complaint is filed.

§ 302.621 Final order.

(a) When a complaint or request for determination stands submitted to the Secretary for final decision on the merits, he or she may dispose of the issues presented by entering an appropriate order, which will include a statement of the reasons for his or her findings and conclusions. Such an order shall be deemed a final order of the Secretary.

(b) The final order of the Secretary shall include, where necessary, directions regarding an appropriate refund or credit of the fee increase or newly established fee which is the subject of the complaint or request for determination.

(c) If the Secretary has not issued a final order within 120 days after the filing of a complaint by an air carrier or foreign air carrier, the decision of the administrative law judge shall be deemed to be the final order of the Secretary.

Subparts G–H [Reserved]

Subpart I—Rules Applicable to Route Proceedings under Sections 401 and 402 of the Act

GENERAL PROVISIONS

§ 302.901 Applicability.

This subpart sets forth the special rules applicable to proceedings for conferment and/or modification of route authority under sections 401 and 402 of the Federal Aviation Act of 1958. For information as to other applicable rules, reference should be made to Subpart A of this part, to the Federal Aviation Act, and to the substantive rules (parts 201 and 211 for the form of applications) and orders of DOT.
§ 302.915

Initiation of Route Proceedings

§ 302.915 Initiation of route proceedings by DOT order.

(a) Purpose and policy. The purpose of this section is to establish a procedure for the initiation of proceedings involving particular routes or geographic areas, in addition to existing procedures under subpart A, so that the Department may select the one best suited to the efficient and expeditious disposition of route proceedings.

(b) Order instituting proceedings. The Department may initiate a route proceeding by issuing an order of investigation or an order to show cause which, respectively, defines the scope of the issues in the proceeding, or consolidates pending applications and proceedings for simultaneous hearing, or institutes investigations under section 401(g) or 402(f) of the Act directed to the amendment of outstanding certificates of public convenience and necessity and foreign air carrier permits, and specifies other matters included in the proceeding.

(c) Pleadings in response to Department order instituting proceedings. Any person having a substantial interest may respond to the Department’s order instituting a proceeding by filing with the Department a written answer, or a motion pursuant to § 302.12, or both, within the period of time specified in said order. Such answer or motion shall set forth all objections and proposals which such persons may have with respect to the geographic scope of the proceeding or the scope of the issues, as respectively defined in such order. Such answer or motion shall be in lieu of petitions for reconsideration of said order under § 302.37. Any such objection or proposal which is not set forth in such answer or motion shall be deemed to have been waived. Any person who fails to file a timely answer or motion in response to the Department’s order shall also be deemed to have waived his or her right to have his or her own application consolidated or contemporaneously considered with those falling within the geographic scope of the proceeding or the scope of the issues therein, as respectively defined in said order: Provided, however, That where any further order of the Department adds to the geographic scope of a proceeding or the scope of the issues therein beyond that defined in the Department’s order instituting such proceeding, failure to file an answer or motion addressed to the Department’s first order shall not preclude the filing of a petition under § 302.37, or of a motion under § 302.12, addressed exclusively to the additional scope or issues.

(d) Answers to motions. Answers in support of or in opposition to motions as mentioned in paragraph (c) of this section may be filed within seven (7) days after service of such motions or within such other period as may be specified in the Department’s order.

Conduct of Route Proceedings

§ 302.930 Evidence in route proceedings.

Route authority not specifically applied for. Applicants for certificate authority under section 401 of the Act may not introduce, in support of awards to them of such authority, evidence that does not support service to the points, routes, or areas specifically described in their applications.

Subpart J—Rules Applicable to Proceedings Involving Charter Air Carriers

§ 302.1001 Applicability.

This subpart sets forth procedural rules specifically applicable to certain proceedings involving charter air carriers. For information as to other applicable rules, reference should be made to subparts A and B of this part, to the Federal Aviation Act of 1958, as amended, and to the substantive rules and orders of the Department. See especially part 208 of this chapter (Economic Regulations).

§ 302.1002 Definition.

As used in this part, charter air carrier means a person holding operating authority issued pursuant to section 401(d)(3) or 417 of the Federal Aviation Act of 1958, as amended.
Immediate Suspension of Operating Authority

§ 302.1011 Rules governing proceedings.

Proceedings for suspension, modification or revocation of a charter air carrier certificate pursuant to section 401(n)(5) of the Act, shall be governed by §§ 302.1012 to 302.1017 and, as to matters not provided for in said sections, by subparts A and B of this part.

NOTE: Secs. 302.1012 to 302.1017 do not apply to proceedings for modification, suspension or revocation not initiated under, or by reference to, the provisions of section 401(n)(5) of the Act.

§ 302.1012 Order of suspension.

In any case in which the Department determines that the failure of a charter air carrier to comply with the provisions of paragraphs (q) or (r) of section 401 of the Act or regulations or orders of the Department thereunder requires, in the interest of the rights, welfare or safety of the public immediate suspension of such carrier’s certificate or other operating authority as the case may be, the Department will issue, without notice or hearing, an order of suspension which will set forth:

(a) The duration of the suspension, which initially will be for not more than 30 days;

(b) The specific provision or provisions of section 401 (q) or (r), or of the regulations or orders of the Department thereunder with which the carrier has failed to comply together with the manner of such failure;

(c) A determination that such failure requires the immediate suspension, in whole or in part as the case may be, of the carrier’s operating authority in the interest of the rights, welfare, or safety of the public;

(d) A statement that the order shall constitute a complaint instituting a formal economic proceeding on which a hearing shall be held to determine whether the charter air carrier’s operating authority should be modified, suspended or revoked;

(e) A statement as to which attorneys of the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings are to be made a party to the proceeding.

§ 302.1013 Answer of carrier.

(a) Time for filing, and contents. Within 7 days of service of the order of suspension, the carrier may file and serve on all parties an answer to the order of suspension. No objections or affirmative defenses not plainly raised in the answer may be raised subsequently in the proceeding, except if based on grounds of newly discovered evidence or supervening events. Late filing of an answer shall be permitted only for good cause shown.

(b) Failure to file an answer. In case of the carrier’s failure to file and serve an answer to the order within the time and in the manner prescribed, the right to all further procedural steps before final decision, including hearing, briefs, and recommended and tentative decisions, shall be deemed waived, and the Department will proceed immediately to disposition of the case.

§ 302.1014 Motions.

(a) Motions for termination of suspension and/or proceeding. (1) The charter air carrier may at any time file and serve on all parties to the proceeding, a motion addressed to the Department asking that the suspension be lifted, on the ground (i) that suspension, pending completion of the proceeding, is not required in the interest of the rights, welfare or safety of the public; or (ii) that the carrier has come into compliance with the provision or provisions with which it had failed to comply. Such motions may be combined with a motion to terminate the proceeding. Such motions shall be made in lieu of petitions for reconsideration of the Department’s initial order, or of motions to dismiss.

(2) Motions made pursuant to paragraph (a) of this section will be submitted to the DOT decisionmaker for determination. The DOT decisionmaker may grant motions for termination of suspension in proper cases without waiting for expiration of the time for answers but parties may submit informal written or telegraphic statements of position on such motions which will be considered if received prior to DOT action. Such communications need not be served separately but
shall be copied in full in a timely answer filed and served pursuant to the provisions of this part.

(b) Motions directed to pleadings. No motion for more definite statement shall be made but the substance thereof may be stated in the answer. The administrative law judge may permit or require a more definite statement or other amendment to any pleading at the hearing upon just and reasonable terms.

(c) Motions for extension of time. Substantial extensions of procedural dates shall be granted only when required in the interest of justice, unless the respondent air carrier stipulates that it will refrain from operating the suspended service until the Department’s adjudication on the merits of the proceedings becomes final even though the Department has exhausted its emergency suspension power. The filing of motions for extension shall not operate to excuse failure of timely compliance with any procedural requirement.

(d) Other motions. The provisions of §302.18 shall govern the above mentioned motions in respects not provided for in this section, and shall govern any other motions, except that answers to written motions shall be filed and served within 5 days of service of such motions.

§ 302.1015 Additional suspension.

Pending the completion of proceedings hereunder, the Department, upon motion or its own initiative, may further extend the period of suspension of the charter carrier’s operating authority for an additional period or periods aggregating not more than 60 days.

§ 302.1016 Expedited hearing.

The administrative law judge shall set the date of hearing not later than 15 days after the issuance of the DOT decisionmaker’s suspension order. He or she may postpone the date of the hearing, or grant continuations of the hearing, only to the extent necessary in the interest of justice. The administrative law judge shall urgently expedite the proceeding and shall fix all procedural dates on the basis of maximum acceleration consistent with justice. Proposed findings and conclusions and supporting reasons shall be stated orally on the record. The delegation of §302.27(a) shall not be applicable and the administrative law judge shall, upon termination of the hearing, make his or her initial decision orally on the record. Requests for a written initial decision may be granted on the same condition as substantial extensions of procedural dates (§ 302.1014(c)).

§ 302.1017 Final decision.

The parties may appeal from the initial decision by filing with the Department and serving upon all other parties a notice of appeal within two days after the rendering of the initial decision if it is made orally, or the service of a written initial decision, as the case may be. No exceptions shall be filed but within 10 days of the notice of appeal each party may file one brief (§ 302.31(c)) with the Department. The DOT decisionmaker will give three days’ notice of oral argument, where granted. If no notice of appeal is filed, or if no brief is filed by the party or parties having filed a notice of appeal, within the times herein provided, the initial decision shall without further proceedings become the final decision of the Department five days after expiration of the time for filing notice of appeal or brief, as the case may be unless the DOT decisionmaker has issued an order to review upon his or her own initiative.

Subparts K-N [Reserved]

Subpart O—Procedure for Processing Contracts for Transportation of Mail by Air in Foreign Air Transportation

§ 302.1501 Applicability.

This subpart sets forth the rules applicable to certain contractual arrangements between the Postal Service and certificated air carriers for the transportation of mail by air entered into pursuant to 39 U.S.C. 5402(a), 84 Stat. 772. Such contracts must be for the transportation of at least 750 pounds of mail per flight, and no more than 5 percent, based on weight, of the international mail transported under any such contract may consist of letter mail. Any such contract is required by
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the statute to be filed with the Department not later than 90 days before its effective date, and unless the Department disapproves the contract not later than 10 days prior to its effective date, the contract automatically becomes effective.

§ 302.1502 Filing.

Any air carrier which is a party to a contract to which this subpart is applicable shall file eight copies of the contract in the Documentary Services Division, Department of Transportation, Washington, D.C. 20590, not later than 90 days before the effective date of the contract. A copy of such contract shall be served upon the persons specified in §302.1504 and the certificate of service shall specify the persons upon whom service has been made. One copy of each contract filed shall bear the certification of the Secretary or other duly authorized officer of the filing carrier to the effect that such copy is a true and complete copy of the original written instrument executed by the parties.

§ 302.1503 Explanation and data supporting the contract.

Each contract filed pursuant to this subpart shall be accompanied by economic data and such other information in support of the contract upon which the filing air carrier intends that the Department rely, including, in cases where pertinent:

(a) Estimates of the costs of performing the contract, and an explanation of the basis for the estimates which clearly sets forth the methodology involved in the assignment of direct and all allocated costs and the investment related thereto (including, where available and relevant, data as to costs of performing past contracts for the transportation of mail by air);

(b) Estimates of the effect of the contract upon such carrier’s revenues, and an explanation of the basis for the estimates (including, where available and relevant, data as to effects upon revenues resulting from past contracts for the transportation of mail by air); and

(c) Estimates of the annual volume of contract mail (weight and ton-miles) under the proposed contract, the nature of such mail (letter mail, parcel post, third class, etc.), together with a statement as to the extent to which this traffic is new or diverted from existing classes of air and surface mail services and the priority assigned to this class of mail.

§ 302.1504 Service.

A copy of each contract filed pursuant to §302.1502, and a copy of all material and data filed pursuant to §302.1503, shall be served upon each of the following persons:

(a) Each certified route air carrier, other than the contracting carrier, which is authorized to carry mail between any pair of points between which mail is to be transported pursuant to the contract;

(b) Each commuter air carrier (as defined in §298.2 of this chapter) which serves between any pair of points between which mail is to be transported pursuant to the contract; and

(c) The Assistant General Counsel, Transportation Division, U.S. Postal Service, Washington, DC 20260-1124.

§ 302.1505 Complaints.

Within 15 days of the filing of a contract, any interested person may file with the Department a complaint against the contract setting forth the basis for such complaint and all pertinent information in support of same. A copy of the complaint shall be served upon the air carrier filing the contract and upon each of the persons served with such contract pursuant to §302.1504.

§ 302.1506 Answers to complaints.

Answers to the complaint may be filed within 10 days of the filing of the complaint, with service being made as provided in §302.1505.

§ 302.1507 Further procedures.

(a) In any case where a complaint is filed, the Department shall issue either an order dismissing the complaint, or an order disapproving the contract, or such other order as may be appropriate. Any such order shall be issued not later than 10 days prior to the effective date of the contract.

(b) In cases where no complaint is filed, the Department may issue an
§ 302.1508 Petitions for reconsideration.

Except in the case of a Board determination to disapprove a contract, no petitions for reconsideration of any DOT determination pursuant to this subpart shall be entertained.

Subpart P [Reserved]

Subpart Q—Expedited Procedures for Processing Licensing Cases

§ 302.1701 Applicability.

This subpart sets forth the rules applicable to proceedings on:

(a) Applications for certificates of public convenience and necessity and renewals, amendments, modifications, suspensions and transfers of certificates under sections 401(d)(1), 401(d)(2), 401(d)(3), 401(g), and 401(h) of the Act;

(b) Applications under section 401(e)(7)(B) of the Act for the removal or modification of a term, condition, or limitation attached to a certificate; and

(c) Applications for foreign air carrier permits, and renewals, alterations, amendments, modifications, suspensions, and transfers of such permits under sections 402(c) and 402(f) of the Act.

(d) Applications for all-cargo air service certificates, and renewals, alterations, amendments, modifications, suspensions, and transfers of such certificates under section 418 of the Act.

[Docket No. 82, 50 FR 2384, Jan. 16, 1985, as amended by Docket No. 47582, 57 FR 38770, Aug. 27, 1992]
§ 302.1705 Service of documents.

(a) General requirements. (1) Applicants shall serve on the persons listed in paragraph (b) of this section a notice that an application has been filed, and upon request shall promptly provide those persons with copies of the application and supporting documents. The notice must clearly state the authority sought and the due date for other pleadings. Persons shall file responsive pleadings in accordance with paragraph (b).

(2) After the order establishing further procedures under § 301.1750 has been issued, persons need only serve documents on those listed in the service list accompanying the order.

(3) In the case of an application sought to be consolidated, the applicant shall serve the notice required in paragraph (a) of this section on all persons served by the original applicant.

(b) Persons to be served—

(1) U.S. air carriers.

(i) In certificate proceedings described in § 302.1701 (a) and (b) (except for those proceedings under section 401(d)(3) of the Act):

(A) Applicants for certificates to engage in interstate or overseas air transportation, and other persons, shall serve:

(1) The airport authority of each airport that the applicant proposes to serve, and
(2) Any other person who has filed a pleading in the docket.

(B) Applicants for certificates to engage in foreign air transportation or other persons shall serve:

(1) All U.S. air carriers (including commuter air carriers) that publish schedules for the country-pair market(s) specified in the application in the “Official Airline Guide” or the “Air Cargo Guide,”

(2) The airport authority of each U.S. airport that the applicant proposes to serve, and

(3) Any other person who has filed a pleading in the docket.

(ii) In certificate proceedings under section 401(d)(3) of the Act, applicants and other persons shall serve:

(A) All U.S. air carriers (including commuter air carriers) that publish schedules for the country-pair market(s) specified in the application in the “Official Airline Guide” or the “Air Cargo Guide,”

(B) The U.S. Departments of State, and

(C) Any other person who has filed a pleading in the docket.

(ii) In foreign air carrier permit proceedings for charter-only authority, applicants shall serve the U.S. Department of State and any other person who has filed a pleading in the docket.

(c) Additional service. The Department may, in its discretion, order additional service upon such persons as the facts of the situation warrant. Where only notices are required, parties are encouraged to serve copies of their actual pleadings where feasible. In any proceeding directly involving air transportation to the Federated States of Micronesia, the Marshall Islands or Palau, the Department and any party or participant in the proceeding shall serve all documents on the President and the designated Authorities of the Government(s) involved.

[Docket No. 82, 50 FR 2384, Jan. 16, 1985, as amended by Amdt. 302-72, 52 FR 5445, Feb. 23, 1987]

§ 302.1706 Computation of time.

All time periods prescribed in this subpart are stated in terms of calendar days. Intermediate Saturdays, Sundays and holidays shall be included in the computation. In all other respects, § 302.16 applies.

§ 302.1707 Verification.

The facts asserted in any pleading filed under this subpart shall be attested to by persons having knowledge of them and this attestation shall be stated in an affidavit in support of the pleading. Such persons shall be those who will appear as witnesses to substantiate the facts asserted if an oral hearing becomes necessary.
§ 302.1708 Joint pleadings.

Parties having common interests shall, to the extent practicable, arrange for the joint preparation of pleadings.

§ 302.1709 Definition of parties.

Notwithstanding the provisions of §§ 302.14 and 302.15, any person may participate in proceedings under this subpart. Petitions for leave to intervene are not required. Any person may become a party by filing a pleading in the docket before the issuance of the order establishing further procedures.

§ 302.1710 Economic data and other facts.

Whenever economic data and other facts are provided, such information shall include enough detail so that final results can be obtained, without further clarification. Sources, bases, and methodology used in constructing exhibits, including any estimates or judgments, shall be provided.

§ 302.1711 Continuances and extensions of time.

The procedures described in § 302.17 will apply to proceedings under this subpart. The filing deadlines in certificate proceedings will be strictly enforced and extensions will be granted only in extraordinary circumstances. Extensions in foreign air carrier permit cases will be granted for good cause shown.

§ 302.1712 Oral presentation; initial or recommended decision.

(a) Cases to be decided on written submissions. Applications under this subpart will be decided on the basis of written submissions unless the DOT decisionmaker, on petition or on his or her own initiative, determines that an oral presentation or an administrative law judge's decision is required.

(b) Petitions for oral presentation or judge's decision. Any party may file a petition for oral evidentiary hearing, oral argument, an initial or recommended decision, or any combination of these. Petitions shall demonstrate that one or more of the criteria set forth in § 302.170 are applicable to the issues for which an oral presentation or judge's decision is requested. Such petitions shall be supported by a detailed explanation of the following:

(1) Why the evidence or argument to be presented cannot be submitted in the form of written evidence or briefs, including an estimate of the time required for the oral presentation and the number of witnesses whom the petitioner would present;

(2) Which issues should be examined by an administrative law judge and why such issues should not be presented directly to the DOT decisionmaker for decision; and

(3) If cross-examination of any witness is desired, the name of the witness, if known, the subject matter of the desired cross-examination or the title or number of the exhibit to be cross-examined, what the petitioner expects to establish by the cross-examination, and an estimate of the time needed for it.

(c) Time for filing petitions. Petitions for an oral hearing, oral argument, or a judge's decision shall be filed as soon as practicable, but in no event later than:

(1) 52 Days after the filing of the original application in proceedings governed by § 302.1720;

(2) 35 Days after the filing of the original application in proceedings governed by § 302.1730; and

(3) 14 Days after the due date for answers in proceedings governed by § 302.1740.

(d) Stipulations. Where a stipulation of disputed facts would eliminate the need for an oral presentation or judge's decision, parties shall include in their petitions an offer to withdraw the request should the stipulation be made.

§ 302.1713 Preliminary procedures for rejection or deferral of nonconforming applications.

Within 21 days after the filing of any application under this subpart (including an application which is sought to be consolidated or a conforming application), the DOT decisionmaker may, on behalf of the Department, (a) reject any application that does not comply with this subpart, or (b) defer further processing of the application until information necessary to process the application is submitted. Applications
§ 302.1720 Procedures in certificate cases.

(a) Applicability. This section applies to the certificate cases described in §302.1701(a).

(b) Notice on cover page. Applications to which this section applies shall include a notice on the cover page stating that any person that wishes to support or oppose the application must file an answer indicating briefly that person's position, and serve that answer on all persons served with the application. The notice shall also state the due date for answers.

(c) Conforming applications or motions to modify scope. Any person may file an application for the same authority as sought in an application filed under §302.1701(a). Requests to modify the issues to be decided and to consolidate applications filed in other dockets, shall be filed as a “motion to modify scope.” Motions and applications under this section shall include economic data, other facts, and any argument in support of the person's position and must be filed within 28 days after the original application is filed.

(d) Answers to applications. Any person may file an answer in support of or in opposition to any application. Answers shall set forth the basis for the position taken, including any economic data or other facts relied on. Answers to applications filed in accordance with paragraph (c) of this section shall be filed within 28 days after the filing of the original application. Answers to applications filed in accordance with paragraph (c) of this section shall be filed within 42 days after the filing of the original application.

(e) Answers to motions to modify scope. Any person may file an answer to a motion to modify scope within 42 days after the filing of the original application. Answers shall set forth the basis for the support or opposition to the motion, including any economic data or other facts relied on. Answers may argue that an application should be dismissed. Answers may also seek to consolidate an application filed in another docket if that application conforms to the scope of the proceeding proposed in the motion to modify scope and include the information prescribed in §302.1704. Answers and applications shall not, however, propose the consideration of additional markets.

(f) Order establishing further procedures. Within 90 days after the filing of the original application, the DOT decisionmaker will issue an order establishing further procedures for processing the case.

§ 302.1730 Procedures in restriction removal cases.

(a) Applicability. This section applies to the certificate cases described in §302.1701(b).

(b) Applications. Each application to which this section applies shall be limited to a single city-pair market or a single restriction unless a waiver of this requirement has first been obtained under §302.1790. All restriction removal applications (including conforming applications under paragraph (c) of this section) shall include a notice on the cover page that any person wishing to support or oppose the application must file an answer briefly describing its position, and serve a copy of the answer on all persons served with the application. The notice shall also state the due date for answers. Any application that does not conform with this paragraph will be rejected unless a waiver has been granted before the application is filed.

(c) Conforming applications. The issues in any proceeding under this section will be limited to those raised in the original application. Motions to modify the scope of the proceeding will not be entertained. Any person may file an application conforming to the scope of the proceeding within 14 days after the filing of the original application. Conforming applications are automatically consolidated. Nonconforming applications will be rejected under §302.1713.

(d) Answers to applications. Any person may file an answer in support of or
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in opposition to any application. Answers to the original application shall be filed within 14 days after the filing of that application. Answers to conforming applications shall be filed within 28 days after the filing of the original application.

(e) Order establishing further procedures. Within 60 days after the filing of the original application, the DOT decisionmaker will issue an order establishing further procedures for processing the case.

§ 302.1740 Procedures in foreign air carrier permit cases.

(a) Applicability. This section applies to the foreign air carrier permit cases described in § 302.1701(c).

(b) Notice on cover page. Applications to which this section applies shall include a notice on the cover page stating that any person may support or oppose the application by filing an answer and serving a copy of the answer on all persons served with the application. The notice shall also state the due date for answers. Time limits shall be calculated from the date of filing with the Documentary Services Division. Amendments to applications will be considered new applications for the purpose of calculating the time limitations of this subsection.

(c) Answers to applications. Any person may file an answer in support of or in opposition to any application. Answers shall be filed within 28 days after the filing of the application and shall include any economic data, other facts, and argument upon which the person relies to support its position.

(d) Executive departments. The views of the Department of State and the Federal Aviation Administration’s evaluation of the applicant’s operational fitness shall be filed not later than the due date for answers to applications.

(e) Order establishing further procedures. As soon as possible after the date that answers are due, the DOT decisionmaker will issue an order establishing further procedures for processing the case.

§ 302.1750 Disposition of applications—orders establishing further procedures.

(a) General requirements. Within the time limits established in § 302.1720(f), § 302.1730(e), or § 302.1740(e), as applicable, the DOT decisionmaker will issue an order establishing further procedures in each case. The order will establish the scope of the issues to be considered and the procedures to be employed, and will indicate whether one or more attorneys from the office of the Assistant General Counsel for Aviation Enforcement and Proceedings will participate as a party. With respect to all or any portion of each application, the DOT decisionmaker will take one of the following actions:

(1) Set the application for oral evidentiary hearing. In this event, all of the procedures set forth in §§ 302.1751 through 302.1755 will apply unless the DOT decisionmaker decides otherwise. The DOT decisionmaker may limit the scope of the issues to be decided in an oral evidentiary hearing. In that event, the procedures set forth in §§ 302.1751 through 302.1755 will apply to the oral evidentiary hearing phase of the case, and the DOT decisionmaker will indicate what procedures will be employed in deciding the other issues in the case.

(2) Dismiss the application. This action constitutes a final DOT order subject to judicial review. Petitions for reconsideration of such an order will be entertained. This option will not be used in restriction removal cases under § 302.1730.

(3) Announce that the Department has begun to make a determination with respect to the application under simplified procedures without oral evidentiary hearing. In this event, the DOT decisionmaker will indicate which, if any, of the procedural steps set forth in §§ 302.1752 through 302.1756 will be employed. The DOT decisionmaker may also indicate that other non-oral evidentiary hearing procedures will be employed.

(4) Announce that the Department will decide the case by show cause procedures or issue an Order to Show Cause why the application should not be granted.
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(b) Additional evidence. The order establishing further procedures may provide for the filing of additional evidence.

(c) Petitions for reconsideration of an order establishing further procedures. Petitions for reconsideration of an order establishing further procedures will not be entertained except to the extent that the order dismissed all or part of an application. If a petition for reconsideration results in the reinstatement of all or part of an application, the deadline for final Department decision established in §302.1757 will be calculated from the date of the order reinstating the application.

§ 302.1751 Oral evidentiary hearing.

If the Department determines under §302.1750(a) that an oral evidentiary hearing should be held, the application or applications will be set promptly for oral hearing before an administrative law judge. The issues will be those set forth in the order establishing further procedures.

§ 302.1752 Briefs to the administrative law judge.

Briefs to the administrative law judge shall be filed within the following periods, as applicable:

(a) 14 days after the close of the oral evidentiary hearing established under §302.1750(a)(1), unless the administrative law judge determines that, under the circumstances of the case, briefs are not necessary or that the parties will require more time to prepare briefs; or

(b) 14 days after the filing of additional evidence called for in the order establishing further procedures if no oral evidentiary hearing is called for, unless the Department determines that some other period should be allowed.

§ 302.1753 Administrative law judge's initial or recommended decision.

(a) In a case that has been set for oral evidentiary hearing under §302.1750(a)(1), the administrative law judge shall adopt and serve an initial or recommended decision within 136 days after the issuance of the order establishing further procedures unless:

(1) The Department, having found extraordinary circumstances, has by order delayed the initial or recommended decision by a period of not more than 30 days; or

(2) An applicant has failed to meet the procedural schedule adopted by the judge or the DOT decisionmaker. In this case the administrative law judge may, by notice, extend the due date for the issuance of an initial or recommended decision for a period not to exceed the period of delay caused by the applicant.

(b) In a case in which some of the issues have not been set for oral hearing under §302.1750(a)(1), the administrative law judge shall issue an initial or recommended decision within the time established by the DOT decisionmaker in the order establishing further procedures, except that that due date may be extended in accordance with paragraph (a)(2) of this section.

(c) The initial or recommended decision shall be issued by the administrative law judge 14 days after it is served. Unless exceptions are filed under §302.1754 or the DOT decisionmaker issues an order to review on its own initiative, an initial decision shall become effective as the final order of DOT the day it is issued. Where exceptions are timely filed or the DOT decisionmaker takes action to review on his or her own initiative, the effectiveness of the initial decision is stayed until further order of the DOT decisionmaker.

(d) In all other respects, the provisions of §302.27 shall be applicable.

§ 302.1754 Exceptions to administrative law judge's initial or recommended decision.

(a) Time for filing. Within 7 days after service of any initial or recommended decision of an administrative law judge, any party may file exceptions to the decision with the Department.

(b) Form and content of exception. Exceptions shall comply with §302.30(b).

(c) Effect of failure to file timely and adequate exceptions. The provisions of §302.30(c) shall apply.

(d) Review is automatic. If timely and adequate exceptions are filed, review of the initial or recommended decision is automatic.
§ 302.1755 Briefs.

The provisions of §302.31 shall apply, except that:

(a) In a case in which an initial or recommended decision has been served and exceptions have been filed, any party may file a brief in support of or in opposition to any exceptions. Such briefs shall be filed within 14 days after service of the initial or recommended decision.

(b) In a case in which an initial or recommended decision has been issued and no exceptions have been filed, briefs shall not be filed unless the DOT decisionmaker has taken review on his or her own initiative and specifically provided for the filing of briefs to the DOT decisionmaker.

(c) In a case in which an initial or recommended decision will not be issued, briefs to the DOT decisionmaker may be filed only if specifically provided for in the order establishing further procedures, and only upon the issues specified in that order. Such briefs may be filed by any party within 21 days after the service date of the order establishing further procedures, unless that order established a different due date.

§ 302.1756 Oral argument before the DOT decisionmaker.

If the order establishing further procedures provides for an oral argument, or if the DOT decisionmaker otherwise decides to hear oral argument, all parties will be advised of the date and hour set for that argument and the amount of time allowed each party. The provisions of §302.32(b) shall also apply.

§ 302.1757 Final decision of the Department.

In addition to the provisions of §302.36, the following provisions shall apply:

(a) In the case of a certificate application that has been set for oral evidentiary hearing under §302.1750(a)(1), DOT will issue its final order within 90 days after the initial or recommended decision is issued. If an applicant has failed to meet the procedural schedule established by the Department, the DOT decisionmaker may, by notice, extend the date for a final decision for a period equal to the period of delay caused by the applicant.

(b) If the DOT decisionmaker does not act in the time period established in paragraph (a) of this section in the case of an application for a certificate to engage in foreign air transportation, the initial or recommended decision shall be transmitted to the President under section 801 of the Act.

(c) In the case of a certificate application that has been processed under §302.1750(a)(3) or (4), the Department will issue its final order within 180 days after the order establishing further procedures. If an applicant has failed to meet the procedural schedule established by the Department, the DOT decisionmaker may, by notice, extend the due date for a final decision for a period equal to the period of delay caused by the applicant.

§ 302.1758 Petitions for reconsideration.

The provisions of §302.37 shall apply to petitions for reconsideration.

§ 302.1760 Internal procedures.

(a) In deciding which of the procedures set forth in §302.1750 will be used for each case under this subpart, the DOT decisionmaker will receive a recommendation from the Director of Aviation Analysis. That recommendation will be coordinated with the General Counsel and the Chief Administrative Law Judge, or their designees. If there is disagreement in that group, separate recommendations will be promptly submitted to the extent necessary to reflect those views.

(b) In deciding each case under this subpart on the merits, the DOT decisionmaker will receive a recommendation from the Director, Office of Aviation Analysis, and the Office of the General Counsel. If there is disagreement among these employees, separate recommendations will be promptly submitted to the extent necessary to reflect those views.

[Docket No. 82, 50 FR 2384, Jan. 16, 1985, as amended by Amdt. 302-74, 58 FR 34882, June 30, 1993]
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§ 302.1770 Criteria for use of oral evidentiary hearing procedures and assignment of a case to an administrative law judge.

The Department will assign applications made under §§ 302.1701, 302.1720 (c) and (e), 302.1730(c) and 302.1740 for consideration under the expedited procedures of this subpart and order the record presented directly to the DOT decisionmaker for final decision unless it determines that:

(a) Use of expedited procedures will prejudice a party;
(b) Material issues of decisional fact cannot adequately be resolved without oral evidentiary hearing procedures; or
(c) Assignment of an application for oral evidentiary hearing procedures or an initial or recommended decision by an administrative law judge is otherwise required by the public interest.

§ 302.1780 Standards for deciding cases in which expedited, simplified procedures are employed.

The standards employed in deciding cases under §§ 302.1750(a)(3) or (4) shall be the same as the standards applied in cases decided under § 302.1750(a)(1). These are the standards set forth in the Federal Aviation Act of 1958, as amended, as interpreted and expanded upon under the Act.

§ 302.1790 Waivers.

Upon the filing of a motion, the DOT decisionmaker or the Assistant General Counsel for International Law, as appropriate, may, on behalf of the Department, grant such waivers from the terms and limitations contained in this subpart as it shall find to be consistent with the public interest and the proper dispatch of DOT’s business. Petitions for review of the staff action taken under this section may be filed in accordance with subpart C of part 385 of this chapter.
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[Docket No. 82, 50 FR 2384, Jan. 16, 1985, as amended by Docket No. 47939, 57 FR 40105, Sept. 2, 1992]
§ 303.01 Purpose.

These regulations set forth the procedures by which applications may be made to the Department of Transportation under sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions.

[Amtd. 303-2, 54 FR 33499, Aug. 15, 1989]

§ 303.02 Definitions.

(a) The term Act refers to the Federal Aviation Act of 1958, as amended. (49 U.S.C. 1301 et seq.)

(b) The term Assistant Secretary means the Assistant Secretary for Aviation and International Affairs, or as delegated. As provided in 49 CFR 1.43, the Secretary or Deputy Secretary may exercise any authority in lieu of the Assistant Secretary under the provisions of this part.

(c) The term documents means (1) all written, recorded, transcribed or graphic matter including letters, telegrams, memoranda, reports, studies, forecasts, lists, directives, tabulations, logs, or minutes and records of meetings, conferences, telephone or other conversations or communications; and (2) all information contained in data processing equipment or materials. The term does not include daily or weekly statistical reports in whose place an annual or monthly summary is submitted.

(d) The term Documentary Services Division means the Documentary Services Division of the Office of the Assistant General Counsel for Regulation and Enforcement.

(e) The term hearing means either a show cause proceeding as provided in § 303.44 of this part or a full evidentiary hearing as provided in § 303.45 of this part, whichever is determined by the Assistant Secretary to be appropriate.

(f)–(g) [Reserved]

(h) The term Section 412 transaction means any contract, agreement or discussion of a cooperative working arrangement within the scope of section 412 of the Act. (49 U.S.C. 1382).

(i) [Reserved]


§ 303.03 Requirement to file application.

A person who seeks approval of a section 412 transaction must file with the Documentary Services Division an application that conforms to the requirements set forth in §§ 303.04 and 303.05 of this part.

[Amtd. 303-2, 54 FR 33499, Aug. 15, 1989]
§ 303.04 General rules governing application content, procedure and conditions of approval.

(a) Unless specifically exempted by these regulations or by an order of the Assistant Secretary, a person filing an application pursuant to § 303.03 of this part shall prepare and file the application in the manner specified in this section. The application shall also contain the information required by subpart D of this part. An application may be deemed incomplete if it is not in substantial compliance with these requirements.

(b) The parties to the transaction may file either separate applications or one joint application so long as all the information required herein is submitted for each party to the transaction. The Assistant Secretary or Administrative Law Judge, if the matter has been assigned to a judge, may order the target company or other persons to submit some or all of the information required by this subpart, or other information under 14 CFR 302.19.

(c) Each page of the application and each document submitted with the application shall be marked with the name, initials, or some other identifying symbol of the applicant. The application shall also indicate the date of preparation and the name and corporate position of the preparer.

(d) Where the required information is in data processing equipment, on microfilm, or is otherwise not eye-readable, the applicant shall provide such information in eye-readable form.

(e) The information provided by the applicant shall be updated in a timely fashion throughout the period of consideration of the application.

(f) In any information or documents required by the applicable subpart are not available, the applicants shall file an affidavit executed by the individual responsible for the search explaining why they cannot be produced.

(g) The Assistant Secretary or the Administrative Law Judge may order any applicant to submit information in addition to that required by the applicable subpart.

(h) An applicant may withhold a document required by this part on the grounds that it is privileged, but each document so withheld shall be identified and the applicant shall supply a brief description of the nature of the document, a written statement indicating the basis of the privilege claimed, and the names of the preparers and recipients of the document. If any interested party contests the assertion of privilege, the document shall be promptly submitted to the Assistant Secretary, or the Administrative Law Judge, if the matter has been assigned to a judge. Where appropriate, an in camera inspection may be ordered.

(i) The person submitting the application to the Department shall send a complete copy of the application to the Chief, Transportation Section, Antitrust Division of the Department of Justice, at the same time as it is filed with the Documentary Services Division.

(j) The applicant shall, if requested, be responsible for expeditiously providing the application to any interested person, whether or not a party.

(k) Unless otherwise specified in this subpart, all applications shall conform generally to the requirements set forth in 14 CFR part 302, subpart A.

(l) In exceptional circumstances, the Assistant Secretary may waive or alter the procedural requirements of this part to permit a transaction to proceed on an expedited basis.

[50 FR 31142, July 31, 1985, as amended by Amdt. 302-2, 54 FR 33499, Aug. 15, 1989]

§ 303.05 Applications requesting antitrust immunity.

(a) Each application must state explicitly whether or not the applicant seeks antitrust immunity under the provisions of section 414 of the Act. If antitrust immunity is requested, the application should specify whether the applicant seeks full immunity or immunity only from the provisions of sections 4, 4a and 4c of the Clayton Act, 15 U.S.C. 15, 15a, 15c. Each application seeking antitrust immunity shall contain a statement explaining why the applicant believes immunity is in the public interest and necessary in order for the transaction to proceed.

(b) [Reserved]

(c) Any material misrepresentation of fact in such an application shall be grounds for rescission nunc pro tunc of
any antitrust immunity granted as a result of the misrepresentation.

(d) A request for renewal of any immunity granted does not operate under section 558 of Administrative Procedure Act, 5 U.S.C. 558(c), to extend the period of immunity conferred.

§ 303.06 Review of antitrust immunity.

The Assistant Secretary may initiate a proceeding to review any antitrust immunity previously conferred by the Civil Aeronautics Board or the Department in any section 412 transaction. The Assistant Secretary may terminate or modify such immunity if the Assistant Secretary finds after notice and hearing that the previously conferred immunity is not consistent with the provisions of section 414. In any proceeding to review such immunity, the proponents of the immunity will have the burden of justifying the continuation of previously conferred immunity under the provisions of section 414.

§ 303.07 Transitional rule.

If a section 412 application or a request for antitrust immunity under section 414 is pending on the date this part is amended, such application or request shall be deemed made pursuant to the provisions of this part, as amended.

§ 303.30 General provisions concerning contents of applications.

A section 412 application shall contain the following general information:

(a) The name, mailing address and primary line of business of each party to the contract, agreement or request for authority to discuss a possible cooperative working arrangement.

(b) If the contract or agreement for which approval is sought is not evidenced by a resolution of an air carrier association, the application shall contain a copy of the contract or agreement that is certified to be true and complete by each party to the contract of agreement. If the contract or agreement is set forth in an exchange of correspondence, copies of all such correspondence must be submitted and must be certified as true and complete by all parties to the contract or agreement. If the contract or agreement is oral, a memorandum fully describing the agreement must be submitted and must be certified as true and complete by all parties to the contract or agreement. If approval is sought for a request for authority to discuss a possible cooperative working arrangement, the application shall contain a complete description of the possible cooperative working arrangement and all matters to be discussed. The description shall be certified to be true and complete by each party to the proposed discussion.

(c) If the contract, agreement or request for authority to discuss a cooperative working arrangement is evidenced by a resolution or other action of an air carrier association, the application shall contain the resolution or other action and a certification by an authorized employee of the association that the resolution or other action was duly adopted on a certain date. The authorized employee shall also specify in such certification the name of each air carrier that concurred in such resolution or other action and the name of each air carrier member that did not concur. Contracts, agreements and requests for authority to discuss cooperative working arrangements may be filed in this manner only if the Association has complied with 14 CFR part 263.

§ 303.31 Justification for the application.

A section 412 application shall explain the nature and purpose of the
§ 303.32 Contract, agreement or request to discuss a cooperative working arrangement and describe how it changes any price, rule or practice existing under a previously-approved application. The application also, consistent with Department of Transportation and CAB precedent, shall contain factual material, documentation and argument in support of the application. Economic analyses, when required, shall include full explanatory details, including data sources and allocation methods. If the applicants intend to rely on public benefits to justify approval they shall describe these benefits, including foreign policy and comity considerations.

§ 303.33 Service of the application.
(a) Except as provided in paragraph (b) of this section, a section 412 application described in § 303.30(c) of this subpart and any related pleadings shall be served on any person or organization that has previously advised the air carrier association of its desire for service of such agreements. Each application shall contain the names and addresses of all persons served and a notice that any party in interest may within 21 days of the date of the application file comments with the Assistant Secretary in support or opposition to the application.
(b) Service of IATA Traffic Conference agreements and amendments thereto upon any person or organization that previously has advised IATA of its desire for service of agreements may be accomplished by sending a summary notice specifying the filing date; the IATA memorandum number; the particular Conferences involved; the subject matter (e.g. cargo/passenger, tariffs/agency matters/procedures); the proposed effective date(s); the markets or Conference areas affected; the names of the carriers participating in the agreement; the names of all persons served; and a notice that any party in interest may within 21 days of the date of filing of the application file comments with the Assistant Secretary in support of or opposition to the application. A request for a complete copy of the application can be made under the provisions of § 303.04(j).

§ 303.34 Modifications and cancellations.
This subpart also applies to all modifications or cancellations of contracts or agreements or requests for authority to discuss a possible cooperative working arrangement.

Subpart E—Procedures Upon Application or Review
§ 303.40 Determination of compliance.
(a) Within 10 days after an application is filed pursuant to § 303.03, the Assistant Secretary will determine whether the application complies with the requirements of §§ 303.04 and 303.05.
(b) If the Assistant Secretary determines that the application is incomplete, he or she may issue a notice dismissing the application without prejudice. If the application is dismissed, and statutory time period for completion of proceedings will not begin to run until a completed application is filed.

§ 303.41 Notice.
(a) The Documentary Service Division shall compile a weekly list of all applications filed under §§ 303.04 and 303.05. The list shall include a description of the application, the docket number, date of filing, state that it may be reviewed in the Documentary Services Division, and indicate that interested parties may comment on the application or request a hearing within 21 days of the date of filing or other period as specified. The weekly list will normally be prepared on the following Monday, or as soon as possible, and will be posted on a public bulletin board in the Documentary Services Division. The list also shall be submitted for publication in the Federal Register.
(b) In appropriate case, particularly when an application concerns a matter of broad public significance, the Assistant Secretary may cause a notice of an application and request for public comment to be published separately in the Federal Register.

§ 303.42 Comments on application.
(a) Unless a different comment period is specified in the weekly list, or in a
§ 303.45 Notice of filing published in the Federal Register, any person may file comments, responses to the application, and/or a request for a hearing within 21 days of the filing of an application.

(b) Comments supporting or opposing an application or proposing conditions and responses thereto shall state with particularity the factual basis on which the person commenting relies, and provide affidavits or other material in support of the factual basis, if appropriate.

(c) Requests for a formal oral evidentiary hearing must set out with specificity the material issues of fact in dispute that cannot be resolved without such a hearing. Vague, unsupported allegations will not suffice.

§ 303.43 Action following the comment period.

(a) [Reserved]

(b) Section 412 applications. After the period for which comments, requests for a hearing or responses to an order to show cause are due concerning a section 412 application, the Assistant Secretary may proceed by order requesting further information or justification or by order of approval or disapproval or, in appropriate cases, may proceed by order to show cause or by order instituting a full evidentiary hearing.

(c) Notice to the public of any full evidentiary hearing or order to show cause concerning an application shall be made by publication in the Federal Register.

[50 FR 31142, July 31, 1985, as amended by Amdt. 303-2, 54 FR 33500, Aug. 15, 1989]

§ 303.44 Show cause proceedings.

If the Assistant Secretary determines that an application, or review of a previously granted application, will be considered in a show cause proceeding, a tentative decision shall be issued inviting interested persons to show cause why the tentative decision should not be made final. Interested persons may respond to the order within the time specified in the order. Replies to such responses shall be permitted within the time specified in the order. Persons wishing to introduce additional facts into the record should incorporate such information in their responses or replies by affidavit. In the case of applications, show cause orders may be issued after the receipt of initial comments on the application.

§ 303.45 Evidentiary hearings.

(a) If the Assistant Secretary determines that an application, or review of a previously granted application, should be the subject of a full evidentiary hearing, he or she shall issue an order so stating. The term “full evidentiary hearing” includes any hybrid format set out in the instituting order. This order shall set forth the issues that are to be considered in such hearing.

(b) After the issuance of an order for a full evidentiary hearing, the Chief Administrative Law Judge shall promptly appoint an Administrative Law Judge to conduct such hearing in accordance with section 7 of the Administrative Procedure Act, 5 U.S.C. 556, and the Rules of Practice in part 302 of this chapter.

(c) The applicants and the Assistant General Counsel for Aviation Enforcement and Proceedings shall be parties in any full evidentiary hearing held under these regulations. The Assistant Attorney General, Antitrust, shall be a party upon notice filed with the Administrative Law Judge. Other persons may intervene as parties as provided by § 302.15 of this chapter.

(d) Within the time specified in the order instituting the full evidentiary hearing, the Administrative Law Judge shall recommend to the Assistant Secretary that the application be approved or denied or that the previously granted exemption approval or immunity should be terminated or continued in accordance with the standards of the Act. The recommendation shall be in writing, shall be based solely on the hearing record, and shall include a statement of the Administrative Law Judge's findings and conclusions, and the reasons or basis therefore, or all material issues of fact, law or discretion presented on the record. Copies of the recommendation shall be served on each party.

(e) Within 10 days after the date the Administrative Law Judge serves his or her recommendation, any party may file written exceptions to the recommendation for consideration by the
§ 303.46 Decision by the Assistant Secretary.

The Assistant Secretary shall decide, on the basis of the record and in accordance with the procedures prescribed in part 302 of this chapter, whether to grant or deny, in whole or in part, the application. A copy of the Assistant Secretary’s final decision shall be served on all parties.

PART 305—RULES OF PRACTICE IN INFORMAL NONPUBLIC INVESTIGATIONS

Sec.
305.1 Applicability.
305.2 Definition.
305.3-305.4 [Reserved]
305.5 Initiation of investigation.
305.6 Appearance of witnesses.
305.7 Issuance of investigation subpenas.
305.8 [Reserved]
305.9 Rights of witnesses.
305.10 Nonpublic character of proceedings.
305.11 Procedures after investigation.
305.12 Motions to quash or modify an investigation subpena.


Source: Docket No. 82, 50 FR 2421, Jan. 16, 1985, unless otherwise noted.

§ 305.1 Applicability.

The provisions of this part shall govern informal nonpublic investigations, as distinguished from formal investigations and adjudicatory proceedings, undertaken by the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings with a view to obtaining information from any person. While the Department seeks and encourages voluntary cooperation and believes that it is in the best interest of all parties concerned, it will utilize the procedures provided by this part to compel the disclosure of information by any person where DOT wishes to determine whether such person, or any other person, has been or is violating any provisions of Title IV or sections 101(3), 1002, 1003, or 1108(b) of the Act, or any rule, regulation, order, certificate, permit, or letter or registration issued pursuant thereto by DOT and when the information appears to be relevant to the matter under investigation. This part shall not apply to employees or records of other agencies of the U.S. Government, the District of Columbia, or the several States and their political subdivisions.

§ 305.2 Definition.

For the purpose of, and as used in this part, the term investigation means a non-adjudicatory, informal nonpublic investigation for the purpose of determining whether formal enforcement action should be instituted with respect to alleged violations of law.

§§ 305.3-305.4 [Reserved]

§ 305.5 Initiation of investigation.

An investigation may be initiated by order of the Department. Attorneys of the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings shall conduct such investigations pursuant to the provisions of this part and they shall be designated Investigation Attorneys. Investigation Attorneys, administrative law judges and the DOT decisionmaker are hereby authorized to exercise and perform their duties and functions under this part in accordance with the provisions of the Act and the rules and regulations of the Department.

§ 305.6 Appearance of witnesses.

Witnesses may be required to appear before any administrative law judge for the purpose of receiving their testimony or receiving from them documents or other data relating to any subject under investigation. Such testimony shall be mechanically or stenographically recorded, and a transcript thereof shall be made and incorporated in the record of the investigation.
§ 305.7 Issuance of investigation subpenas.

(a) The Deputy General Counsel, the DOT decisionmaker, the chief administrative law judge or the administrative law judge designated to preside at the reception of evidence, may issue a subpena directing the person named therein to appear before a designated administrative law judge at a designated time and place to testify or to produce documentary evidence relating to any matter under investigation, or both. Each such subpena shall briefly advise the person required to testify or submit documentary evidence of the purpose and scope of the investigation, and a copy of the order initiating the investigation shall be attached to the subpena.

(b) Witnesses subpenaed to appear shall be paid the fees and mileage prescribed in §302.21 of the Rules of Practice (14 CFR 302.21). Service of such subpenas shall be made in accordance with the provisions of §302.8 of the Rules of Practice (14 CFR 302.8).

§ 305.8 [Reserved]

§ 305.9 Rights of witnesses.

Any person required to testify or to submit documentary evidence shall be entitled to procure, on payment of lawfully prescribed costs, a copy of any document produced by such person and of his or her own testimony as stenographically reported. Any person compelled to testify or to produce documentary evidence may be accompanied, represented, and advised by counsel.

§ 305.10 Nonpublic character of proceedings.

Investigations shall be attended only by the witnesses and their counsel, the administrative law judge, the Investigation Attorney, other DOT personnel concerned with the conduct of the proceeding and the official stenographer. All orders initiating investigations, motions to quash or modify investigation subpenas, orders disposing of such motions, documents, and transcripts of testimony shall be part of the record in the investigation. Unless DOT determines otherwise, all orders initiating investigations which do not disclose the identity of the particular persons of firms under investigation shall be published in the Federal Register. Except as otherwise required by law, the remainder of the record of such proceedings shall constitute internal DOT documents which shall not be available to the general public. The use of such records in DOT proceedings subject to part 302 of the Rules of Practice shall be governed by §§302.19(g) and 302.39 and by the law of evidence applicable to DOT proceedings.

§ 305.11 Procedures after investigation.

Upon completion of the investigation, where the Deputy General Counsel, determines that no corrective action is warranted, the investigation will be closed, and any documentary evidence obtained in the investigation will be returned to the persons who produced it. Where remedial action is indicated by the investigation, the Deputy General Counsel will proceed pursuant to subpart B of part 302 of the Rules of Practice or will take such other action as may be appropriate.

§ 305.12 Motions to quash or modify an investigation subpena.

Any person upon whom an investigation subpena is served may, within seven (7) days after such service or at any time prior to the return date thereof, whichever is earlier, file a motion to quash or modify such subpena with the administrative law judge who issued such subpena, or in the event the administrative law judge is not available, with the chief administrative law judge for action by himself or herself or by the DOT decisionmaker. Such motions shall be made in writing in conformity with Rules 3 and 4 of the Rules of Practice (part 302 of this subchapter); shall state with particularity the grounds therefor and the relief sought; shall be accompanied by the evidence relied upon and all such factual matter shall be verified in accordance with the provisions of Rule 202 of the aforesaid Rules of Practice. Written memoranda or briefs may be filed with the motions, stating the points and authorities relied upon. No oral argument will be heard on such motions unless the chief administrative law
judge, the administrative law judge or the DOT decisionmaker directs otherwise. A subpoena will be quashed or modified if the evidence whose production is required is not reasonably relevant to the matter under investigation, or the demand made does not describe with sufficient particularity the information sought, or the subpoena is unlawful or unduly burdensome. The filing of a motion to quash or modify an investigation subpoena shall stay the return date of such subpoena until such motion is granted or denied. The DOT decisionmaker may at any time review, upon his or her own initiative, the ruling of an administrative law judge or the chief administrative law judge denying a motion to quash a subpoena. In such cases, the DOT decisionmaker may order that the return date of a subpoena which he or she has elected to review be stayed pending DOT action thereon.

PART 313—IMPLEMENTATION OF THE ENERGY POLICY AND CONSERVATION ACT

Sec. 313.1 Purpose, scope, and authority.
313.2 Policy.
313.3 Definitions.
313.4 Major regulatory actions.
313.5 Energy information.
313.6 Energy statements.
313.7 Integration with environmental procedures.


§ 313.1 Purpose, scope, and authority.
(a) Chapter 77 (Energy Conservation) of Title 42 (The Public Health and Welfare), authorizes and directs certain actions to conserve energy supplies through energy conservation programs and where necessary, the regulation of certain energy uses, and to provide for improved energy efficiency of motor vehicles, major appliances, and certain other consumer products. In furtherance of these purposes, 42 U.S.C. 6362 requires several transportation regulatory agencies, including DOT, to submit a number of reports to the Congress with respect to energy conservation and efficiency, and where practicable and consistent with the exercise of DOT’s authority under other law, to include in any major regulatory action a statement of its probable impact on energy efficiency and energy conservation. 42 U.S.C. 6362(b) directs DOT to define the term “major regulatory action” by rule.

(b) Section 40113 of Subtitle VII of Title 49 of the United States Code (Transportation)(“the Statute”), authorizes DOT to establish such rules, regulations, and procedures as are necessary to the exercise of its functions and are consistent with the purposes of the Statute.

(c) The purpose of these regulations is to establish procedures and guidelines for the implementation of DOT’s responsibility under 42 U.S.C. 6362 to include in any major regulatory action taken by DOT a statement of the probable impact on energy efficiency and energy conservation.

(d) These regulations apply to all proceedings before DOT, as provided herein.

[Docket No. 82, 50 FR 2425, Jan. 16, 1985, as amended at 60 FR 43528, 43529, Aug. 22, 1995]

§ 313.2 Policy.
(a) General. It is the policy of DOT to view the conservation of energy and the energy efficiency improvement goals of Chapter 77 of Title 42 as part of DOT’s overall mandate, to be considered along with the several public interest and public convenience and necessity factors enumerated in section 40101 of the Statute. To the extent practicable and consistent with DOT’s authority under the Statute and other law, energy conservation and efficiency are to be weighed in the decision-making process just as are DOT’s traditional policies and missions.

(b) Implementation. Implementation of this policy is through the integration of energy findings and conclusions into decisions, opinions, or orders in proceedings involving a major regulatory action, as defined in this part.

(c) Proceedings in progress. The provisions of this part are intended primarily for prospective application. Proceedings in progress on the effective date of this part, in which an application has been docketed but no
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§ 313.4 Major regulatory actions.

(a) Any initial, recommended, tentative or final decision, opinion, order, or final rule is a major regulatory action requiring an energy statement, if it:

(1) May cause a near-term net annual change in aircraft fuel consumption of 10 million (10,000,000) gallons or more, compared to the probable consumption of fuel were the action not to be taken; or

(2) Is specifically so designated by DOT because of its precedential value, substantial controversy with respect to energy conservation and efficiency, or other unusual circumstances.

(b) Notwithstanding paragraph (a)(1) of this section, the following types of actions shall not be deemed as major regulatory actions requiring an energy statement:

(1) Tariff suspension orders under section 41509 of the Statute, emergency exemptions or temporary exemptions not exceeding 24 months under section 40109 of the Statute and other proceedings in which timely action is of the essence;

(2) Orders instituting or declining to institute investigations or rulemaking, setting or declining to set applications for hearing, on reconsideration, or on requests for stay;

(3) Other procedural or interlocutory orders;

(4) Actions taken under delegated authority; and

(5) Issuance of a certificate where no determination of public convenience and necessity is required.

(c) Notwithstanding paragraph (a)(1) of this section, DOT may provide that an energy statement shall not be prepared in a proceeding which may result in a major regulatory action, if it finds that:

(1) The inclusion of an energy statement is not consistent with the exercise of DOT’s authority under the Statute or other law;

(2) The inclusion of an energy statement is not practicable because of time constraints, lack of information, or other unusual circumstances; or

(3) The action is taken under laws designed to protect the public health or safety.

[Docket No. 82, 50 FR 2425, Jan. 16, 1985, as amended at 60 FR 43529, Aug. 22, 1995]
§ 313.5  Energy information.

(a) It shall be the responsibility of applicants and other parties or participants to a proceeding which may involve a major regulatory action to submit sufficient information about the energy consumption and energy efficiency consequences of their proposals or positions in the proceeding to enable the administrative law judge or the DOT decisionmaker, as the case may be, to determine whether the proceeding will in fact involve a major regulatory action for purposes of this part, and if so, to consider the relevant energy factors in the decision and prepare the energy statement.

(b) In proceedings involving evidentiary hearings, the energy information shall be submitted at such hearings pursuant to DOT’s usual procedural regulations and practices, under control of the administrative law judge or other hearing officer.

(c) In proceedings not involving evidentiary hearings, the energy information shall be submitted at such time as other materials in justification of an application are submitted. Where an application itself is intended as justification for DOT action, the energy information shall be submitted with the application. In rulemakings not involving hearings, the energy information shall normally be submitted along with comments on the notice of proposed rulemaking, or as directed in any such notice or any advance notice.

§ 313.6  Energy statements.

(a) Each major regulatory action shall include, to the extent practicable, consideration of the probable impact of the action taken or to be taken upon energy efficiency and conservation. The administrative law judge or the DOT decisionmaker, as the case may be, shall normally make findings and conclusions about:

1. The net change in energy consumption;
2. The net change in energy efficiency; and
3. The balance struck between energy factors and other public interest and public convenience and necessity factors in the decision.

(b) Energy findings and conclusions contained in any initial or recommended decision are a part of that decision and thus subject to discretionary review by DOT.

(c) In the case of orders to show cause initiated by DOT, energy findings and conclusions may be omitted if adequate information is not available. In such instances, the energy statement shall be integrated into the final decision.

§ 313.7  Integration with environmental procedures.

(a) In proceedings in which an environmental impact statement or a finding of no significant impact is prepared by a responsible official pursuant to DOT’s procedures implementing the National Environmental Policy Act of 1969 (NEPA), the energy information called for by this part may be included in that statement or declaration in order to yield a single, comprehensive document. In such instances, the DOT’s NEPA procedures shall govern the submission of the energy information. However, it shall remain the responsibility of the administrative law judge or the DOT decisionmaker, as the case may be, to make the findings and conclusions required by §§313.6(a) of this part.

(b) A determination that a major regulatory action within the meaning of 42 U.S.C. 6362 and this part may be involved in a proceeding is independent from any determination that the proceeding is a “major Federal action significantly affecting the quality of the human environment” within the meaning of NEPA, and vice versa.

[Docket No. 82, 50 FR 2425, Jan. 16, 1985, as amended at 60 FR 43528, 43529, Aug. 22, 1995]
Subpart B—Determination of Qualifying Dislocation

§ 314.10 Beginning of proceeding.
§ 314.11 Applications.
§ 314.12 Answers.
§ 314.13 Disposition of applications.
§ 314.14 Show-cause order.
§ 314.15 Oral proceedings.
§ 314.16 Final determination.

Subpart C—Major Contractions

§ 314.20 Regular monthly computation.
§ 314.21 Advance determinations.
§ 314.22 Notice of major contraction.


Source: Docket No. 82, 50 FR 2426, Jan. 16, 1985, unless otherwise noted.

Editorial Note: The reporting requirements contained in part 314 have been approved by the Office of Management and Budget under control number 3024–0053.

Subpart A—General

§ 314.1 Applicability.

Section 43 of the Airline Deregulation Act of 1978, Pub. L. 95–504, establishes an employee protection program. After a determination by DOT that an air carrier has undergone a qualifying dislocation, the Secretary of Labor gives financial assistance to certain employees of the carrier. This part sets out procedures for the Department to determine whether a qualifying dislocation has occurred.

§ 314.2 Definitions.

As used in this part:

Bankruptcy means an adjudication of bankruptcy under Title 11 of the U.S. Code.

Carrier means an air carrier that on October 24, 1978, held a certificate issued under section 401 of the Federal Aviation Act of 1958.

§ 314.3 Conformity with part 302.

Except where they are inconsistent with this part, the provisions of part 302 of this chapter shall apply to proceedings under this part.

§ 314.4 Information requirements.

The Department may require any carrier to submit any information that it considers necessary to carry out its functions under this part.

§ 314.5 Major contractions.

A major contraction is a reduction by at least 7 1⁄2 percent of the total number of full-time employees of an air carrier within a 12-month period, and includes an advance determination of major contraction as set forth in §314.21. The method by which DOT determines whether a carrier has undergone a major contraction is set forth in subpart C.

§ 314.6 Qualifying dislocation.

A qualifying dislocation is a bankruptcy or major contraction of a carrier, the major cause of which is the change in regulatory structure provided by the Airline Deregulation Act of 1978.

Subpart B—Determination of Qualifying Dislocation

§ 314.10 Beginning of proceeding.

A proceeding to determine whether a bankruptcy or major contraction is a qualifying dislocation begins either with an application filed with the Department or an investigation on DOT’s own initiative. Proceedings that begin with an application are governed by §§314.11 through 314.16. DOT-initiated proceedings are governed by §§314.14 through 314.16.

§ 314.11 Applications.

(a) Who may file. An application may be filed by an employee who has been deprived of employment or adversely affected with respect to compensation, or by a representative of one or more such employees.

(b) Title and contents. Applications shall be titled “Application for Determination of Qualifying Dislocation,” and shall contain, with respect to at least one employee:

(1) Name and address of the employee;

(2) Number of years employed by carrier as of October 24, 1978;
§ 314.12

(3) Name and address of the applicant, if different from paragraph (b)(1);
(4) Name of carrier-employer;
(5) Position held by employee immediately before being deprived of employment or adversely affected with respect to compensation;
(6) Date on which employee was deprived of employment or adversely affected with respect to compensation; and
(7) An explanation of the applicant’s basis for claiming that a qualifying dislocation has occurred, including all supporting evidence available to the applicant.

(c) Service. The Department will serve a copy of each application on the affected carrier, the collective bargaining representatives of that carrier’s employees, the Secretary of Labor, and any State agencies that are acting as agents of the Secretary of Labor to administer the Employee Protection Program.

(Approved by the Office of Management and Budget under control number 3024-0053)

§ 314.13 Disposition of applications.

(a) After the due date for answers, the Department will dismiss the application or begin an investigation to determine whether a qualifying dislocation has occurred.

(b) The Department will dismiss an application if it does not name an employee who, on October 24, 1978, had been employed by a carrier for at least 4 years.

(c) The Department will dismiss an application if the carrier has neither become bankrupt nor undergone a major contraction.

(d) The Department will dismiss an application even though the carrier has become bankrupt or undergone a major contraction, if it finds that the bankruptcy or major contraction clearly did not have as its major cause the change in regulatory structure provided by the Airline Deregulation Act.

(e) A DOT order dismissing an application will announce the reasons for the dismissal.

§ 314.14 Show-cause order.

When the Department makes a preliminary determination of whether the major cause of the bankruptcy or major contraction was the change in regulatory structure provided by the Airline Deregulation Act of 1978, it will issue an order announcing a tentative decision that a qualifying dislocation has, or has not, occurred. The order will direct all interested persons to show cause why the tentative decision should not be made final, and will allow 30 days for objections to be filed. The Department will publish a summary of the order in the Federal Register and serve a copy of the order on each of the following:

(a) The applicant and the applicant's representative, if any;
(b) The affected carrier;
(c) The collective bargaining representatives of the carrier’s employees;
and
(d) The Secretary of Labor;
(e) State agencies that are acting as agents of the Secretary of Labor to administer the Employee Protection Program.

§ 314.15 Oral proceedings.

The Department will provide for an oral evidentiary hearing, with notice published in the Federal Register and served on the persons listed in §314.14, if there are material issues of decisional fact that cannot otherwise be adequately resolved. The DOT decisionmaker may in his or her discretion hear oral argument before making a final determination.

§ 314.16 Final determination.

The Department will publish in the Federal Register a summary of an order announcing its final determination and, within 3 business days after the determination, serve a copy of the order on the persons listed in §314.14.

Subpart C—Major Contractions

§ 314.20 Regular monthly computation.

(a) The Department will monitor the number of full-time employees of each carrier, including employees deprived of employment because of a strike, as
reported monthly by carriers in accordance with part 241 of this chapter.

(b) The DOT does not require monthly reporting of the number of positions that are vacant as a result of terminations for cause and, except as set forth in paragraph (c)(3) of this section, will not account for those positions in computing major contractions. In the cases set forth in paragraphs (c)(1) and (c)(2) of this section, the DOT presumes that the number of employment positions vacant as a result of terminations for cause is small enough that accounting for them would not change the result.

(c) Each month, with respect to each carrier:

(1) If the carrier’s current reported full-time employment level is 92 percent or less of any of the carrier’s preceding 12 monthly levels, DOT will find that the carrier has undergone a major contraction.

(2) If the current reported level is 93 percent or more of each of the carrier’s preceding 12 monthly levels, the Department will not find that the carrier has undergone a major contraction.

(3) If neither of the conditions described in paragraphs (c)(1) and (c)(2) of this section is present, the Department will ascertain by special report from the carrier, and add to the reported employment levels, the number of positions that were vacant in each of the relevant months as a result of terminations for cause. If the resulting figure for the current month is 92.5 percent or less of the resulting figure for any of the preceding 12 months, the Department will find that the carrier has undergone a major contraction. Otherwise, the Department will not make such a finding.

§314.21 Advance determinations.

(a) If circumstances indicate that a major contraction will occur, the Department may make an advance determination of a major contraction without waiting for the regular monthly computation set forth in §314.20. The Department will consider whether to make an advance determination either on its own initiative or upon receipt of an application from an employee who has been deprived of employment or adversely affected with respect to compensation, or a representative of one or more such employees.

(b) An application under this section shall be titled “Application for Advance Determination of Major Contraction.” It shall contain the information set forth in §314.11 (b)(1) through (b)(6) and an explanation of the applicant’s basis for claiming that a major contraction will occur, including all supporting evidence available to the applicant. A person may consolidate an application under this section with an application under §314.11 for determination of a qualifying dislocation.

(c) The Department will terminate an advance determination of a major contraction whenever it finds that the predicted major contraction has not occurred or will not occur.

§314.22 Notice of major contraction.

Upon finding a major contraction under §314.20, or making or terminating an advance determination under §314.21, the Department will publish the finding in the Federal Register and send written notice of it to the persons listed in §314.14.

PART 323—TERMINATIONS, SUSPENSIONS, AND REDUCTIONS OF SERVICE

Sec.
323.1 Applicability.
323.2 Definitions.
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323.17 Delays in discontinuing service.
323.18 Carriers’ obligations when terminating, suspending, or reducing air service.
323.19 Withdrawal notice by exemption carriers in certain limited-entry markets.

§ 323.1 Applicability.

This part applies to certificated air carriers who terminate or suspend service to a point, or in a market, and to all air carriers who terminate, suspend, or reduce service below the level of essential air service under 49 U.S.C. 41731-41742.

[Docket No. 82, 50 FR 2430, Jan. 16, 1985, as amended by Doc. No. OST-96-1269, 61 FR 19165, May 1, 1996]

§ 323.2 Definitions.

As used in this part:
Certificated carrier means a direct air carrier holding authority to provide air transportation granted by the Department of Transportation ("DOT") or the former Civil Aeronautics Board ("CAB") in the form of a certificate of public convenience and necessity under section 41102 of the Title 49 of the United States Code (Transportation) ("the Statute") or an all-cargo air transportation certificate to perform all-cargo air transportation under section 41103 of the Statute.

Eligible place means a place in the United States that—
1. Was an eligible point under section 419 of the Federal Aviation Act of 1958 as in effect before October 1, 1988;
2. Received scheduled air transportation at any time between January 1, 1990, and November 4, 1990; and
3. Is not listed in Department of Transportation Orders 89-9-37 and 89-12-52 as a place ineligible for compensation under Subchapter II of Chapter 417 of the Statute. (For availability of Department of Transportation Orders, see 49 CFR part 7, subpart E and appendix A.)

Essential air service is that air transportation which the Department has found to be essential under Subchapter II of Chapter 417 of the Statute.

FAA means the Federal Aviation Administration, U.S. Department of Transportation.

FAA-designated hub means any airport serving a small, medium, or large air traffic hub listed in the Department of Transportation publication, Airport Activity Statistics of Certificated Route Carriers.

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

United States includes the several States, the District of Columbia, and the several territories and possessions of the United States. State includes any of the individual entities comprising the United States.

[Docket No. 82, 50 FR 2430, Jan. 16, 1985, as amended by Doc. No. OST-96-1269, 61 FR 19165, May 1, 1996]

§ 323.3 Who shall file notices.

(a) Terminations, suspensions, or reductions by certificated carriers. The notice described in § 323.4(a) shall be filed by any certificated carrier that intends to:
1. Terminate or suspend all passenger air transportation that it is providing to any eligible place in the United States when that termination or suspension will leave no certificated carriers serving that place. Service shall be considered to be terminated or suspended whenever it is operated less than 5 days per week, with three or more intermediate stops, or in one direction only between the two places;
2. Reduce passenger air transportation so that any eligible place receives less than the level of essential air service determined by DOT;
3. Terminate or suspend all passenger air transportation that it is providing to any eligible place in the United States for which DOT has not issued an essential air service determination under either § 325.5 or § 325.7 of this chapter, when that termination or suspension will leave only one certificated carrier serving that place. Service shall be considered to be terminated or suspended whenever it is operated less than 5 days per week, with three or more intermediate stops, or in one direction only between the two places;
4. Reduce passenger air transportation to any eligible place in Alaska for which DOT has not determined the level of essential air service so that the service between that place and every other place served by a certificated carrier is either:
   1. Less than two round trip flights per week, or
(ii) Less than the average weekly number of round trip flights actually provided during calendar year 1976, or

(iii) Less than the number of flights specified under an agreement between DOT and the State of Alaska; or

(5) Terminate, suspend, or reduce passenger air transportation at an eligible place for which DOT has issued, or is required to issue, an essential air service determination under section 41731 or section 41733 of the Statute so that the total available seats of all the carriers linking that place to FAA-designated hubs will be reduced by 33 percent or more during a 90-day period. Service to a hub shall be considered to be terminated or suspended whenever it is operated less than 5 days per week, with three or more intermediate stops, or in one direction only between two places.

(b) [Reserved]

(c) Uncertificated carriers. The notice described in §323.4(a) shall be filed by any uncertificated carrier that intends to terminate, suspend, or reduce:

(1) Air transportation so that any eligible place receives less than the level of essential air service determined by the DOT;

(2) Passenger air transportation to any eligible place for which DOT has not determined the level of essential air service, other than a place in Alaska, so that there is no FAA-designated hub from which the place receives at least two round trip flights per day, 5 days per week; or

(3) Passenger air transportation to any eligible place in Alaska, for which DOT has not determined the level of essential air service, so that the service between that place and every other place served by a certificated carrier is either:

(i) Less than two round trip flights per week, or

(ii) Less than the average number of weekly round trip flights actually provided during calendar year 1976; or

(iii) Less than the number of flights specified under an agreement between DOT and the State of Alaska.

(d) For the purpose of this section, in ascertaining the level of air transportation being provided to a place or between two places, air transportation that has been the subject of a notice filed under this section shall be considered not in operation for the duration of the notice period.

(e) If a certificated carrier was, before October 24, 1978, granted authority to suspend air transportation, and that authority ends on a stated date, the carrier shall comply with the requirements of this part before continuing the suspension beyond that date.

(f) If a certificated carrier was, before October 24, 1978, granted authority to terminate or suspend air transportation, but has not suspended service, the carrier shall comply with the requirements of this part before terminating or suspending service.

[Docket No. 82, 50 FR 2430, Jan. 16, 1985, as amended by Doc. No. OST-96-1269, 61 FR 19165, 19166, May 1, 1996]

§ 323.4 Contents of notices.

(a) The notice required under §323.3 (a) and (c) shall contain:

(1) Identification of the carrier, including address and telephone number.

(2) Statement whether the carrier is a certificated carrier or an uncertificated carrier.

(3) Names of all other air carriers serving the point at the time of filing.

(4) Description of the service to be terminated, suspended, or reduced, including:

(i) Arrival and departure times at the affected points of the flights to be discontinued,

(ii) Aircraft type used,

(iii) Routes of the flights to be discontinued, and a statement of which routes, if any, will be left without non-stop or single-plane service from a certificated carrier by the intended change, and

(iv) Date of intended termination, suspension, or reduction of service.

(5) A statement whether DOT has determined the level of essential air service for the point, and

(i) If such a determination has been made, a statement whether the intended termination, suspension, or reduction will reduce air transportation to the place below the essential level; or

(ii) If such a determination has not been made, and the place is an eligible
§ 323.5 Time for filing notices.

(a) Except as specified by paragraph (b) of this section, a notice required by § 323.3 shall be filed at least:

(1) 90 days before the intended termination, suspension, or reduction, if it is filed by a certificated carrier or by an uncertificated carrier receiving compensation under 49 U.S.C. 41731-41742 for service to the place;

(2) 30 days before the intended termination, suspension, or reduction, if it is filed by an uncertificated carrier not receiving compensation under section 419 of the Act for service to the place.

(b) The notice required by § 323.3(a)(3) shall be filed at least 30 days, and the notice required by § 323.3(a)(1) shall be filed at least 60 days, before the intended termination or suspension.

§ 323.6 General requirements for notices.

(a) Each notice filed under this part shall, unless otherwise specified, conform to the procedural rules of general applicability in subpart A of part 302 of this chapter.

(b) Each notice filed under this part shall be titled to indicate the place(s) involved, and to indicate whether it is a 30-, 60-, or 90-day notice and whether it involves a termination, a suspension, or a reduction of air transportation.

§ 323.7 Service of notices.

(a) A copy of each notice required by § 323.3 shall be served upon:

(1) The chief executive of the principal city or other unit of local government at the affected place. The principal city is the one named, or previously named, in the section 41102 certificate by virtue of which the place qualifies as an eligible place. For places in Alaska or Hawaii that are designated as eligible places without having been listed on a section 41102 certificate, the principal city is the most populous municipality at the place.

(2) The State agency with jurisdiction over transportation by air in the State containing any community required to be served under paragraph (a)(1) of this section. If there is no such State agency, the notice shall be sent to the governor of that State.

(3) The manager of, or other individual with direct supervision over and responsibility for, the airport at any community required to be served under paragraph (a)(1) of this section.

(4) The Postmaster General (marked for the attention of the Assistant General Counsel, Transportation), if the carrier filing the notice is authorized to transport United States mail to or from any community required to be served under paragraph (a)(1) of this section.

(5) Each air carrier providing scheduled service to a non-hub or FAA-designated small hub that is directly affected by the notice.

(6) The DOT Regional Office for the region in which the affected point is located.

(b) Any other person designated by DOT.

(c) Local communities, State agencies, and airport managers shall be served personally or by registered or
certificated mail. All other persons may be served by ordinary mail.

[Docket No. 82, 50 FR 2430, Jan. 16, 1985, as amended by Doc. No. OST-96-1269, 61 FR 19166, May 1, 1996]

§ 323.8 Exemptions.

Carriers are exempted from paragraphs (a)(1), (a)(3), and (a)(5) of § 323.3 to the extent that those provisions require them to file a notice when terminating or suspending the domestic leg of an international flight (fill-up service).

[Doc. No. OST-96-1269, 61 FR 19166, May 1, 1996]

§ 323.9 Objections to notices.

(a) Any person may file an objection requesting DOT to prohibit any termination, suspension, or reduction of air transportation to an eligible place that is the subject of a notice filed under this part.

(b) Objections shall contain:
   (1) Identification of the objector, including address and telephone number.
   (2) A statement of DOT action requested.
   (3) The schedules, routes, carriers, and aircraft types for all air transportation to the affected place other than that proposed to be terminated, suspended, or reduced.
   (4) A suggested reasonable level of essential air service to the affected place.
   (5) [Reserved]
   (6) A justification of the suggested level of essential air service.
   (7) Proof of service on the carrier filing the notice objected to, on all airport managers and State and local governments on whom the notice was filed, and any other person designated by DOT. The proof of service shall include the names of all carriers served and the names and addresses of all other persons served.

   (c) Objectors are strongly urged to include in their objections facts to support the suggested level of essential air service (e.g., traffic and enplanement data, other market studies, facts descriptive of the place's isolation or dependence on air transportation).

(Approved by the Office of Management and Budget under control number 3024-0030)

[Docket No. 82, 50 FR 2430, Jan. 16, 1985, as amended by Doc. No. OST-96-1269, 61 FR 19166, May 1, 1996]

§ 323.10 Time for filing objections.

(a) Objections shall be filed not later than:
   (1) 12 days from the date of filing of a 30-day notice;
   (2) 15 days from the date of filing of a 60-day notice; or
   (3) 20 days from the date of filing of a 90-day notice.

   (b) The Department may accept late-filed objections, upon motion, for good cause shown.

   (c) Whenever a notice has been filed earlier than required under § 323.5, the Department may extend the time for filing an objection to that notice.

§ 323.11 Answers to objections.

(a) Any person may file an answer to an objection filed under this part.

(b) An answer must be filed not later than 7 business days after the filing of the objection to which it responds. Late-filed answers may be allowed, and extensions of filing time granted, by the Department for the same reasons as for objections.

(c) An answer may contain the same type of facts and discussion permitted for objections under this part, and must contain:
   (1) Proof of service on the objector, on all persons on whom the objection was required to be served, and on any other person designated by the Department. The proof of service shall include the names and addresses of all persons served.
   (2) Identification of the answering party, including address and telephone number.

(Approved by the Office of Management and Budget under control number 3024-0030)

§ 323.12 General requirements for objections and answers.

(a) Each objection and answer filed under this part shall, unless otherwise
§ 323.13

Specified, conform to the procedural rules of general applicability in subpart A of part 302 of this chapter.

(b) Each objection shall be titled “Objection to Termination, Suspension, or Reduction of Air Service,” and shall identify the notice to which it responds. Each answer shall be titled “Answer to Objection to Termination, Suspension, or Reduction of Air Service,” and shall identify the objection to which it responds.

§ 323.13 DOT actions.

(a) If an objection has been filed under this part, DOT will dispose of the objection by order.

(b) If no objection has been filed within the time allowed by § 323.10(a), DOT may:

(1) By order prohibit a termination, suspension, or reduction that reasonably appears to deprive any eligible place of essential air transportation;

(2) Issue a notice or a final order that it will take no action on a notice filed under § 323.3; or

(3) Take no action.

[Docket No. 82, 50 FR 2430, Jan. 16, 1985, as amended by Doc. No. OST-96-1269, 61 FR 19166, May 1, 1996]

§ 323.14 Temporary suspension authority for involuntary interruption of service.

(a) Any air carrier may temporarily suspend service without filing a notice under § 323.3 for any interruption of service that the carrier cannot reasonably be expected to foresee or control, such as rules, standards, or other action, or inaction, of the Administrator of the Federal Aviation Administration or of a foreign government, emergency measures, strikes, weather conditions, construction work on airports, or disasters. However, the provisions of this paragraph shall apply to interruptions due to airport inadequacies only if the carrier is unable to serve the place through any airport convenient to the place with the type of equipment last regularly used to serve the place.

(b) In the case of an interruption of service caused by a strike, the carrier shall give immediate notice of the interruption to DOT. Suspension authority under this section due to a strike shall expire 90 days after employees return to work.

(c) If service to a place is interrupted for more than 3 consecutive days for reasons beyond the carrier’s control other than a strike, the holder shall give notice to DOT within 3 days following the date of first interruption, setting forth the date of first interruption and a full statement of the reasons for the interruption.

(d) The notice required by paragraph (b) or (c) of this section shall be marked for the attention of the Director, Office of Aviation Analysis.

(Approved by the Office of Management and Budget under control number 3024-0030)

[Docket No. 82, 50 FR 2430, Jan. 16, 1985, as amended by Doc. No. OST-96-1269, 61 FR 19166, May 1, 1996]

§ 323.15 Report to be filed after strikes.

(a) Within 15 days following resumption of service after a strike, an air carrier shall file a report with DOT containing a list of all flights that were canceled, the date they were canceled, and the date service was resumed.

(b) The report shall be marked for the attention of the Director, Office of Aviation Analysis.

(Approved by the Office of Management and Budget under control number 3024-0030)

[Docket No. 82, 50 FR 2430, Jan. 16, 1985, as amended by Doc. No. OST-96-1269, 61 FR 19166, May 1, 1996]

§ 323.16 Listings in schedule publications.

Each air carrier filing a notice under § 323.3 (a)(2), (a)(4), (a)(5), or (c) shall continue to list the affected flights in all generally-distributed schedule publications in which the flight was listed before the notice. The listings shall continue until DOT permits the flights to be discontinued. The listings may include a notice stating that the flights are “to be discontinued as of (date) subject to government approval.”
§ 323.17 Delays in discontinuing service.

If transportation that is the subject of a notice under this part is not discontinued within 90 days of the intended date stated in the notice, a new notice must be filed before the service may be discontinued. However, if DOT requires the carrier to provide service beyond the stated date, the carrier need not file a new notice if it discontinues the service within 90 days after DOT permits it to do so.

§ 323.18 Carriers' obligations when terminating, suspending, or reducing air service.

Any air carrier that terminates, suspends, or reduces air service, whether or not subject to the notice requirements of this part, shall make reasonable efforts to contact all passengers holding reservations on the affected flights to inform them of the flights' cancellation.

§ 323.19 Withdrawal notice by exemption carriers in certain limited-entry markets.

As a condition on the exemption, an air carrier operating under exemption authority in an international market which is the subject of a carrier selection proceeding shall file a notice with the Department at least ninety days before it terminates service in that market. Once such a notice has been filed, the carrier may not terminate service in that market during the notice period unless the air carrier chosen in the selection proceeding enters the market and the Department grants the operating carrier permission to do so. The Department may allow earlier termination for good cause when in the public interest.

[Doc. No. 43403, 51 FR 43188, Dec. 1, 1986]

PART 325—ESSENTIAL AIR SERVICE PROCEDURES

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Source: Docket No. 82, 50 FR 2434, Jan. 16, 1985, unless otherwise noted.

§ 325.1 Purpose.

The purpose of this part is to establish procedures to be followed in designating eligible points and in determining essential air transportation levels for eligible points, and in the appeals and periodic reviews of these determinations, under section 419 of the Act.

§ 325.2 Applicability.

This part applies to essential air service determinations for communities designated as eligible under section 419(a) of the Act and to eligible point designations and essential air service determinations for communities that qualify under section 419(b) of the Act. It applies to the gathering of data by the Department, and to the participation of State, local, and other officials and other interested persons in the designation and determination processes.

Note: Criteria for designating eligible points under section 419(b) are contained in part 396 of this chapter. Guidelines for deciding essential air service levels are contained in part 396 of this chapter.

§ 325.3 Definitions.

As used in this part, eligible point means:
(a) Any point in the United States, the District of Columbia, and the several territories and possessions of the United States to which any direct air carrier was authorized, under a certificate issued by CAB under section 401 of the Act, to provide air service on October 24, 1978, whether or not such service was actually provided;
(b) Any point in the United States and the several territories and possessions of the United States that was deleted from a section 401 certificate between July 1, 1968 and October 24, 1978.
§ 325.4 State and local participation.

(a) DOT, on a periodic basis, will send a questionnaire to each eligible point that is served by not more than one certificated air carrier, or is designated as an eligible point under section 419(b) of the Act, or for which DOT is reviewing its essential air service needs. The questionnaire will be addressed to:

(1) The chief executive of the principal city, or other unit of local government at the affected point, that is named or has been previously named in a qualifying section 401 certificate. For points in Alaska or Hawaii that are named DOT as eligible points without having been listed on a section 401 certificate, the principal city is the most populous municipality at the point;

(2) The individual or entity with direct supervision over and responsibility for the airport at the eligible point; and

(3) The State agency with jurisdiction over air transportation in the State containing the eligible point. If there is no such State agency, the questionnaire will be sent to the governor of that State.

(b) Within 60 days after receipt of the questionnaire, five copies of the response shall be filed in the Documentary Services Division, unless the Department specifies another date. If no response is received within the period, essential air service for that eligible point may temporarily be set at the minimum level prescribed in section 419(f) of the Act.

(c) Any other interested person may, during the 60-day response period, submit information relevant to the essential air service level of that eligible point by filing in the Documentary Services Division, five copies of a document titled with the name of the point involved.

(d) As necessary, the DOT may request additional information to supplement the questionnaire.

(Approved by the Office of Management and Budget under control number 3024-0037)

§ 325.5 Determinations and designations.

(a) Not later than October 24, 1979, after reviewing all information submitted, CAB issued determinations of the essential level of air service for eligible points that, on October 24, 1978, were served by not more than one direct air carrier holding a certificate under section 401 of the Act for scheduled service to the point.

(b) DOT will issue a determination of the essential level of air service for a point within 6 months after each of the following events:

(1) A notice is received that service to an eligible point will be reduced to only one carrier that holds a section 401 certificate;

(2) A point is designated as an eligible point under section 419(b) of the Act and either paragraph (c) of this section, paragraph (d) of this section, or §325.7(e); or

(3) A review was conducted of essential air service of that point under §325.6.

(c) Not later than January 1, 1982, CAB designated the communities described in §270.2(a) and (b) as eligible or as ineligible.

(d) After January 1, 1982, DOT may designate communities in Alaska or Hawaii as eligible points if they apply for such designation.

§ 325.6 Periodic reviews.

(a) The Department will start a periodic review of essential air service within 1 year of the date of the previous determination of essential air service for eligible points receiving subsidized service, within 2 years of the date of the previous determination for eligible points in Alaska, and within 3 years of the date of the previous determination for eligible points without subsidized air service.

(b) The review shall be conducted in accordance with the procedures in §§325.4, 325.5 and 325.7.

(c) The Department may review the designation under section 419(b) of a community as an eligible point to determine whether that point continues to meet the criteria in part 270 of this chapter.
§ 325.10 Modification of the designated level of essential air service.

(a) Any person may file with DOT a petition titled “Petition for Modification of Essential Air Service Level,” asking to modify the essential air service level at a point.

(b) The petition shall identify the point affected, and specifically state the reasons why the petitioner believes the designated essential level is inadequate. It should contain any facts and arguments that support its requests, and describe the level of essential air service that should be substituted.

(c) Any person may, within 30 days after the filing of a petition for modification, file an answer to that petition titled “Answer to Petition for Modification.”

(d) After review, the Department may seek more information and the procedures of §§ 325.5 and 325.7 will be followed.

(Approved by the Office of Management and Budget under control number 3024-0037)

§ 325.11 Form of documents.

All documents filed under this part shall be filed in the Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590, and on their front page state:

(a) The title of the document;

(b) The name of the affected community;

(c) The name, address, and telephone number of a person who can be contacted for further information concerning the subject of the document; and

(d) In the case of a responsive document, the docket number of the document to which it responds.

§ 325.12 Service of documents.

Any person, except one filing individually as a consumer, who files a document under this part, including responses to the questionnaire, shall serve that document upon those listed in § 325.4(a) of this part and upon the following:

(a) The governor of the State in which the eligible point is located;

(b) Each air carrier providing scheduled service to the affected eligible point;

(c) In the case of a responsive document, the one who filed the document to which it responds; and

(d) The U.S. Postal Service, Assistant General Counsel, Transportation Division, Law Department, Washington, D.C. 20260.

§ 325.13 Environmental evaluations and energy information not required.

Notwithstanding any provision of part 312 or part 313 of this chapter, a person filing a petition or appeal under this part is not required to file an environmental evaluation or energy information with the application.

§ 325.14 Conformity with subpart A of part 302.

Except where they are inconsistent, the provisions of subpart A of part 302 of this chapter shall apply to proceedings under this part.
PART 372—OVERSEAS MILITARY PERSONNEL CHARTERS

Subpart A—General Provisions

Sec. 372.1 Applicability.
372.3 Definitions.
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Subpart B—Exemption

372.10 Exemption.

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372.20 Requirement of operating authorization.
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372.24 Surety bond, depository agreement, escrow agreement.
372.25 Tariffs to be filed for charter trips.
372.26 [Reserved]
372.27 Name of operator.
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Subpart D—Operating Authorization

372.30 Application.
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372.32 Effective period.
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Appendix A to Part 372—OVERSEAS MILITARY PERSONNEL CHARTER OPERATOR'S SURETY BOND UNDER PART 372 OF THE SPECIAL REGULATIONS OF THE DEPARTMENT OF TRANSPORTATION (14 CFR PART 372)

S O U R C E : SPR–54, 37 FR 11163, June 3, 1972, unless otherwise noted.

Subpart A—General Provisions

§ 372.1 Applicability.

This part establishes the terms and conditions governing the furnishing of overseas military personnel charters in air transportation by direct air carriers or foreign air carriers and by overseas military charter operators. This part also relieves charter operators from the provisions of section 41102 of Title 49 of the United States Code ("the Statute"), for the purpose of enabling them to provide overseas military personnel charters utilizing aircraft chartered from such direct air carriers or foreign air carriers. Nothing contained in this part shall be construed as repealing or amending any provisions of any of the Department's regulations, unless the context so requires.

§ 372.2 Definitions.

As used in this part, unless the context otherwise requires:
Charter means overseas military personnel charter.
Charter operator means overseas military personnel charter operator.
Charter participant means a member of the overseas military personnel charter group.
Charter price means the total amount of money paid by the charter participant to the charter operator for air transportation.
Immediate family means only the following persons: the spouse, children, parents, parents of the spouse, children of the parents, and children of the parents of the spouse of (1) military personnel on active duty with the United States Armed Forces (including Coast Guard) stationed outside the contiguous states of the United States and the District of Columbia, and (2) civilian employees of the Department of Defense who are citizens of the United States and are stationed in a foreign country, or in a U.S. territory or possession, where U.S. military personnel are stationed.

Overseas military personnel charter means a charter, either one-way or round-trip, limited to military personnel on active duty with the U.S. Armed Forces (including the Coast Guard), stationed outside the 48 contiguous States of the United States and
§ 372.20 Requirement of operating authorization.

No person shall engage in air transportation as an overseas military personnel charter operator by organizing, providing, selling, or offering to sell,

the District of Columbia, and/or civilian employees of the Department of Defense who are citizens of the United States and are stationed in a foreign country, or in a U.S. territory or possession, where such U.S. military personnel are stationed, and/or the immediate families of the foregoing persons, where the following conditions are met: (a) All military personnel and civilian employees of the Department of Defense participating in the charter are on official furlough, leave, pass, or other authorized absence from duty, and (b) the transportation is between a place in the 48 contiguous States of the United States or the District of Columbia and a place in Alaska, Hawaii, or a territory or possession of the United States, or a foreign country in which military personnel of the United States are stationed: Provided, however, That nothing contained herein shall preclude an overseas military personnel charter operator from utilizing any unused space on an aircraft chartered by it pursuant to this part for the transportation, on a free or reduced-rate basis, of such charter operator’s employees, directors, and officers, and the parents and immediate families of such persons, subject to the provisions of part 223 of this chapter.

Overseas military personnel charter operator means any citizen of the United States, as defined in section 40102(a)(15) of the Statute authorized hereunder to engage in the formation of overseas military personnel charter groups and who complies with the provisions of this part.

Person means any individual, firm, association, partnership, or corporation.

Statute when used in this chapter means Subtitle VII of Title 49 of the United States Code (Transportation).


§ 372.23 Waiver.

A waiver of any of the provisions of this regulation may be granted by the Department upon its own initiative, or upon the submission of a charter operator of a written request therefor: Provided, That such a waiver is in the public interest and it appears to the Department that special or unusual circumstances warrant a departure from the provisions set forth herein.

§ 372.4 Enforcement.

In case of any violation of the provisions of the Statute, or this part, or any other rule, regulation, or order issued under the Statute, the violator may be subject to a proceeding pursuant to section 46101 of the Statute before the Department, or sections 46106 through 46108 of the Statute before a U.S. district court, as the case may be, to compel compliance therewith, to civil penalties pursuant to the provisions of section 46301 of the Statute, or in the case of willful violation, to criminal penalties pursuant to the provisions of section 46316 of the Statute; or other lawful sanctions.

[SPR-54, 37 FR 11163, June 3, 1972, as amended at 60 FR 43529, Aug. 22, 1995]

§ 372.5 Suspension or revocation of authority.

The Department reserves the power to suspend the authority of any charter operator, without hearing, if it finds that such action is necessary in order to protect the rights of the traveling public, or to revoke such authority for cause.

Subpart B—Exemption

§ 372.10 Exemption.

Charter operators are hereby relieved from the provisions of section 41102 of the Statute only if and so long as they comply with the provisions of this part and the conditions imposed herein, and to the extent necessary to permit them to organize and arrange overseas military personnel charters.


Subpart C—Conditions and Limitations

§ 372.20 Requirement of operating authorization.

No person shall engage in air transportation as an overseas military personnel charter operator by organizing, providing, selling, or offering to sell,
soliciting, or advertising an overseas military personnel charter or charters unless there is in force an operating authorization issued pursuant to §372.31 authorizing such person to engage in such transportation.

[Docket No. 47939, 57 FR 40105, Sept. 2, 1992]

§ 372.21 Solicitation.

Solicitation of charter participants through advertising by charter operators shall be restricted to the following:

(a) Radio and television stations operated by the U.S. Armed Forces;

(b) Newspapers, periodicals, or other printed media disseminated and distributed primarily among military personnel or civilian employees of the Department of Defense: Provided, however, That any printed advertisement of a charter operator shall include a statement explaining that eligibility for participation in such charters is limited to military servicemen who are stationed outside of the 48 contiguous States and the District of Columbia, and/or U.S. citizen civilian DOD employees who are stationed in a foreign country, or a U.S. territory or possession, where U.S. military personnel are stationed, and their respective immediate families.

§ 372.22 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.

§ 372.23 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.

§ 372.24 Surety bond, depository agreement, escrow agreement.

(a) Before selling or offering to sell, soliciting or advertising any charter flight, a charter operator shall comply with one of the three following requirements:

(1) The charter operator shall furnish a surety bond in an amount not less than the maximum fare held out for charter flights proposed to be operated during each calendar month multiplied by 90 percent of the number of available seats on such flights: Provided, however, That the liability of the surety to any charter participant shall not exceed the charter operator’s applicable tariff fare. Such bond shall be filed with the Department not less than 45 days prior to the commencement of the calendar month covered by the bond together with a list of flights proposed to be operated during the month showing charter price, departure dates, equipment to be used for each flight and the seating capacity: Provided, however, That the amount of the bond shall be increased if additional charter flights are proposed or may be reduced if proposed charter flights are canceled, in which event a substitute bond and amended list of proposed flights shall be filed with the Department within 10 days of the date that the charter operator adds flights or cancels flights previously proposed, but in no event later than 2 days prior to the operation of any such additional charter flights; or

(2) The charter operator shall:

(i) Furnish and file with the Department a surety bond in the amount of $100,000 for the protection of the charter participants: Provided, however, That the liability of the surety to any charter participant shall not exceed the charter operator’s applicable tariff fare; and

(ii) Enter into an agreement with a bank, the terms of which shall include the following:

(a) Each participant shall pay for his deposit and subsequent payments comprising the charter participant’s tariff fare only by check or money order payable to such bank which shall maintain a separate accounting for each flight: Provided, however, That if the participant makes a cash deposit, the charter operator who receives such cash deposit shall forthwith remit to the designated bank a check for the full amount of the deposit;

(b) The charter operator shall:

(i) Furnish and file with the Department a surety bond in the amount of $100,000 for the protection of the charter participants: Provided, however, That the liability of the surety to any charter participant shall not exceed the charter operator’s applicable tariff fare; and

(ii) Enter into an agreement with a bank, the terms of which shall include the following:

(a) Each participant shall pay for his deposit and subsequent payments comprising the charter participant’s tariff fare only by check or money order payable to such bank which shall maintain a separate accounting for each flight: Provided, however, That if the participant makes a cash deposit, the charter operator who receives such cash deposit shall forthwith remit to the designated bank a check for the full amount of the deposit;
(b) The bank shall not pay the air carrier or foreign air carrier the charter price for the transportation 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 and price by the charter operator; 

(c) The bank shall reimburse the charter operator for refunds made by the latter to the participants upon written notification from the charter operator; 

(d) If the charter operator notifies the bank that a flight has been canceled, the bank shall make the applicable refunds directly to the participants; 

(e) Except as provided in paragraph (a)(2)(iii)(c) of this section, the bank shall not pay any funds from the account to the charter operator prior to 2 banking days after completion of each flight when the balance in the account shall be paid to the charter operator upon certification of the completion date by the charter operator and direct air carrier; 

(f) Notwithstanding any provisions above, 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 surety bond in the form prescribed herein in excess of the minimum bond required by paragraph (a)(2)(i) 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 for cash, but the market value thereof shall at all times be not less than the amount of cash for which they are substituted; 

(b) The escrow agreement or the trust agreement between the bank and the operator shall not be effective until approved by the Department. Claims against the escrow or trust may be made only with respect to the non-performance of air transportation. 

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

(c) Any bond furnished under this section shall insure the financial responsibility of the charter operator and the supplying of the air transportation in accordance with the contract between the charter operator and the charter participants, and shall be in the form set forth as appendix A to this part. Such bond shall be issued by a bonding or surety company (1) whose surety bonds are accepted by the Interstate Commerce Commission under 49 CFR 1084.6; or (2) which 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 charter originates or in which the charter operator is incorporated. For purposes of this section, the term “State” includes any territory or possession of the United States, or the District of Columbia. The bond shall be specifically identified by the issuing surety with a company bond numbering system so that the Department may identify the bond with the specific charter or charters to which it relates: Provided, however, That these data may be set forth in an addendum attached to the bond which addendum must be signed by the charter operator and the surety company. It shall be effective on or before the date the operating authorization becomes effective. 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 direct air carrier and the charter operator, by registered or certified mail, stating the deficiencies of the bond. Unless such deficiencies are corrected within the time set forth in such notification, the subject charters shall in no event be operated.

(d) Any bond furnished under this section shall provide that unless the charter participant files a claim with the charter operator, or, if he is unavailable, with the surety, within sixty (60) days after termination of the charter, the surety shall be released from all liability under the bond to such charter participant. The contract between the charter operator and the charter participants shall contain notice of this provision.

(Secs. 101(3), 204(a), 401, and 402 of the Federal Aviation Act of 1958, as amended, 72 Stat. 737, 743, 754, and 757, as amended, 49 U.S.C. 1301, 1324, 1371 and 1372)


§ 372.25 Tariffs to be filed for charter trips.

Effective October 1, 1972, a charter operator shall not operate or sell or offer to sell, solicit or advertise, any charter trips unless such operator shall have on file with the Department a currently effective tariff showing all rates, fares, and charges for such charter trips and showing the rules, regulations, practices, and services in connection with such transportation.

§ 372.26 [Reserved]

§ 372.27 Name of operator.

It shall be an express condition upon the exercise of the exemption herein granted and the operating authorizations issued hereunder, that the charter operator concerning in holding out to the public and performing air transportation services, shall do so only in a name the use of which is authorized under the provisions of part 215 of this chapter.

§ 372.28 Record retention.

(a) Every charter operator conducting a charter pursuant to this part shall retain for 2 years after completion of the charter or series of charters true copies of the following documents at its principal or general office in the United States:

(1) All documents which evidence or reflect deposits made by, and refunds made to, each charter participant;

(2) All statements, invoices, bills, and receipts from suppliers or furnishers of goods and services in connection with the charter or series of charters.

(b) Every charter operator shall make the documents listed in this section available upon request by an authorized representative of the Department and shall permit such representative to make such notes and copies thereof as he deems appropriate.

Office of the Secretary, DOT

Subpart D—Operating Authorization

§ 372.30 Application.

(a) Application. Any person desiring to operate as an overseas military personnel charter operator may apply to the Department for an appropriate operating authorization. Contact the Office of Aviation Analysis, Special Authorities Division, for filing instructions. The application shall be certified by a responsible official of such person and shall contain the following information:

1. Date;
2. Name of applicant, trade names, and name in which authorization is to be issued;
3. Address of principal office and mailing address;
4. Form of organization (i.e., corporation, partnership, etc.), State under whose laws company is authorized to operate and date company was formed;
5. A list containing the names of each officer, director, partner, owner, or member of applicant, and holder of more than 5 percent of outstanding stock if a corporation, or owner of more than a 5-percent interest if other than a corporation; an indication as to whether or not 75 percent or more of the voting interest is owned or controlled by citizens of the United States or one of its possessions; if more than 5 percent of applicant’s stock is held by a corporation, an indication must be made as to whether or not 75 percent or more of the voting interest in such corporation is owned or controlled by citizens of the United States or one of its possessions;
6. A description of current business activities and of former business experience in, or related to, the transportation field;
7. Description of operating authority granted applicant by agencies of the U.S. Government (such as customs broker, surface or air freight forwarder, motor carrier, ocean freight forwarder, etc.), and, if applicable, reasons for revocation or other termination;
8. List of names of the officers, owners, etc., of applicants who have at any time applied for any type of authority or registration from the Civil Aeronautics Board or the Department of Transportation and, if applicable, reasons for revocation or other termination;
9. List of officers, owners, etc., of applicant who have at any time been employed by or associated with any air carrier authorized to operate by the Civil Aeronautics Board or the Department of Transportation indicating dates of employment and capacity in which employed;
10. Any additional information in support of application;
11. Balance sheet as of a date not more than 3 months prior to application and profit and loss statement for the full year ending as of date of balance sheet;
12. Brief account of any arrangement by which applicant will have available financial sources and facilities of other companies or individuals;
13. The charter operator’s surety bond and, where applicable, a copy of the depository, escrow or trust agreement with a bank as provided in § 372.24.2

(b) Additional information. The applicant shall also submit such other additional information pertinent to its proposed activities as may be requested by the Department with respect to any individual application.


§ 372.31 Issuance.

(a) If, after the filing of an application for an operating authorization, it appears that the applicant is capable of performing the air transportation authorized by this part as an overseas military personnel charter operator and of conforming to the provisions of the Act and all rules and requirements thereunder, and that the conduct of such operations by the applicant will not be inconsistent with the public interest, the applicant will be notified by letter. Such notification will advise

2The surety bond and, where applicable, a copy of the depository escrow, or trust agreement with the bank should not be filed with the Department until the applicant is notified by the Department to do so.
§ 372.32 Effective period.

Each operating authorization shall be effective upon the date specified therein, and shall continue in effect, unless sooner suspended or revoked, during such period as the authority provided by this part shall remain in effect, or if issued for a limited period of time, shall continue in effect until the expiration thereof unless sooner suspended or revoked.

§ 372.33 Nontransferability.

(a) An operating authorization shall be nontransferable and shall be effective only with respect to the person named therein or his successor by operation of law, subject to the provisions of this section. The following persons may temporarily continue operations under an operating authorization issued in the name of another person, for a maximum period of 6 months from the effective date of succession, by giving written notice of such succession to the Department within 60 days after the succession:

1. Administrators or executors of deceased persons;
2. Guardians of incapacitated persons;
3. Surviving partner or partners collectively of dissolved partnerships; and
4. Trustees, receivers, conservators, assignees, or other such persons who are authorized by law to collect and preserve the property of financially disabled persons.

(b) All operations by successors, as above authorized, shall be performed in the name or names of the prior holder of the operating authorization and the name of the successor, whose capacity shall also be designated. Any successor desiring to continue operations after the expiration of the 6-month period above authorized must file an application for a new operating authorization within 120 days after such succession. If a timely application is filed, such successor may continue operations until final disposition of the application by the Department.

APPENDIX A TO PART 372—OVERSEAS MILITARY PERSONNEL CHARTER OPERATOR’S SURETY BOND UNDER PART 372 OF THE SPECIAL REGULATIONS OF THE DEPARTMENT OF TRANSPORTATION (14 CFR PART 372)

Know all men by these presents, that we _______________ (name of charter operator) of _______________ (address) 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 §372.24(a), 14 CFR Part 372) 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 is an overseas military personnel charter operator pursuant to the provisions of Part 372 of the Department’s
Special Regulations and other rules and regulations of the Department relating to 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 monies received from charter participants for services in connection with overseas military personnel charters to be operated subject to Part 372 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 372 of the Department’s Special Regulations, and other rules and regulations of the Department relating to 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 372 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 (face amount) 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 made and judgments rendered, and payments made by Surety under this bond.

This bond shall cover the following Charter:

Surety company’s bond No.__________

Date of flight departure

Place of flight departure

This bond is effective on the day of____, 199_, 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 (X-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, 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____, 199_.

PRINCIPAL

Name

By: Signature and title

Witness

SURETY

Name

By: Signature and title

Witness

Only corporations may qualify to act as surety and they must meet the requirements set forth in §372.24(c) of Part 372.


PART 374—IMPLEMENTATION OF THE CONSUMER CREDIT PROTECTION ACT WITH RESPECT TO AIR CARRIERS AND FOREIGN AIR CARRIERS

Sec. 374.1 Purpose.

374.2 Applicability.
§ 374.1 Purpose.

The purpose of this part is to state the Department of Transportation’s responsibility to enforce air carrier and foreign air carrier compliance with Subchapters I, III, IV, V and VI of the Consumer Credit Protection Act and Regulations B and Z of the Board of Governors of the Federal Reserve System.


§ 374.2 Applicability.

This part is applicable to all air carriers and foreign air carriers engaging in consumer credit transactions.

§ 374.3 Compliance with the Consumer Credit Protection Act and regulations.

(a) Each air carrier and foreign air carrier shall comply with the requirements of the Consumer Credit Protection Act, 15 U.S.C. 1601-1693. Any violation of the following requirements of that Act will be a violation of 49 U.S.C. Subtitle VII, enforceable by the Department of Transportation:

1. The Truth in Lending Act, as supplemented by the Fair Credit Billing Act, 15 U.S.C. 1601-1667, requiring disclosure of credit terms to the consumer and prohibiting inaccurate or unfair credit billing and credit card practices.

2. The Fair Credit Reporting Act, 15 U.S.C. 1681-1681, setting forth requirements to be met by consumer credit reporting agencies and persons who use consumer credit reports.

(b) Each air carrier and foreign air carrier shall comply with the requirements of Regulation B, 12 CFR part 202, and Regulation Z, 12 CFR part 226, of the Board of Governors of the Federal Reserve Board. Any violation of those regulations will be a violation of 49 U.S.C. Subtitle VII, enforceable by the Department of Transportation.


§ 374.4 Enforcement procedure.

The statutes and regulations referred to in § 374.3 may be enforced by an enforcement procedure as set forth in part 302 of this chapter or by the assessment of civil penalties under 49 U.S.C. 46301.


PART 374a—EXTENSION OF CREDIT BY AIRLINES TO FEDERAL POLITICAL CANDIDATES

Sec.

374a.1 Purpose.

374a.2 Applicability.

374a.3 Definitions.

374a.4 Conditions governing extension of unsecured credit.

374a.5 Exemption authority.

374a.6 Reporting requirements.

374a.7 Record retention requirements.

374a.8 Prospective application of part.


SOURCE: SPR-53, 37 FR 9988, May 10, 1972, unless otherwise noted.

§ 374a.1 Purpose.

Section 401 of the Federal Election Campaign Act of 1971 (Pub. L. 92-225, 86 Stat. 19, 2 U.S.C. 451, enacted February 7, 1972, and hereafter referred to as the “Election Campaign Act”) directs the Civil Aeronautics Board to promulgate, within 90 days after enactment, regulations with respect to the extension of unsecured credit by any person regulated by the Board to any candidate for Federal office, or to any person on behalf of such a candidate, for goods furnished or services rendered in connection with the campaign of such candidate for nomination for election, or election, to such office. The purpose of this part is to issue rules pursuant to said section 401 of the Election Campaign Act in accordance with the Civil Aeronautics Board’s responsibility thereunder.

§ 374a.2 Applicability.

This regulation shall be applicable to all air carriers as defined herein.
§ 374a.3 Definitions.

Adequate security means (a) a bond, issued by a surety meeting the standards prescribed for sureties in part 380 of this chapter, in an amount not less than one hundred and fifty percent (150%) of the credit limit established by the air carrier for the candidate, or the person acting on behalf of the candidate, as the case may be, by the terms of which bond the surety undertakes to pay to the air carrier any and all amounts (not exceeding the face amount of the bond) for which the assured candidate or the assured person acting on behalf of the candidate, as the case may be, is or may become legally liable to the air carrier for transportation, as defined in this part; or (b) collateral with a market value equal to one hundred and fifty percent (150%) of the established credit limit for such account, which collateral must be deposited in escrow and must consist of Federal, State, or municipal bonds or other negotiable securities which are publicly traded on a securities exchange.

Air carrier means any air carrier holding a certificate of public convenience and necessity issued under section 401 of the Federal Aviation Act of 1958, as amended.

Candidate means an individual who seeks nomination for election, or election, to Federal office, whether or not such individual is elected. For purposes of this part, an individual shall be deemed to seek nomination for election, or election, to Federal office, if he has (a) taken the action necessary under the law of a State to qualify himself for nomination for election, or election, to Federal office; or (b) received contributions or made expenditures, or given his consent for any other person to receive contributions or make expenditures, with a view to bringing about his nomination for election, or election, to such office.

Election shall have reference to (a) a general, special, primary, or runoff election; (b) a convention or caucus of a political party held to nominate a candidate; (c) a primary election held for the selection of delegates to a national nominating convention of a political party; or (d) a primary election held for the expression of a preference for the nomination of persons for election to Federal office.

Established credit limit means the dollar limit of credit established by the carrier extending credit.

Federal office means the office of President or Vice President of the United States, or of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress of the United States.

Person acting on behalf of a candidate means (a) a political committee acting on behalf of, or a person employed by such candidate or by such political committee to act on behalf of, such candidate in connection with such candidate's campaign for nomination for election, or election, to Federal office; (b) a person acting under a contract with, or as an agent of, such candidate or political committee to engage in activities in connection with such candidate's campaign for nomination for election, or election, to Federal office; or (c) a person for whom such candidate or political committee pays, directly or indirectly, for services purchased by such person. The term includes persons acting on behalf of more than one candidate.

Payment in advance means payment by cash, check, money order, or by credit card (if the issuer of such card is not an air carrier or a subsidiary, parent, or affiliate thereof) prior to performance of such transportation by an air carrier.

Political committee means any committee, association, corporation, or organization which accepts contributions, or makes expenditures, for the purpose of supporting a candidate or candidates for nomination for election, or election, to Federal office.

Transportation means (a) the carriage of persons or property (including services connected therewith) for compensation or hire to or from any place in the United States, or (b) the lease or rental of aircraft, with or without crew.


§ 374a.4 Conditions governing extension of unsecured credit.

(a) Unless adequate security is posted, or full payment in advance is made,
§ 374a.5

no air carrier shall provide transportation to any person it knows, or has reasons to know, is a candidate or a person acting on behalf of such candidate, in connection with the campaign of such candidate, except in accordance with, and subject to, the following conditions:

(1) At least once a month the air carrier shall submit to each such candidate or person a statement covering all unsecured credit extended to such candidate or person, as the case may be (whether in connection with the campaign of such candidate or otherwise).

(2) Such statements shall be mailed no later than the second business day following the last day of the billing period, covered by the statement.

(3) The amount of indebtedness shown on each such statement shall be payable in full no later than 25 days after the last day of the billing period, after which time the indebtedness shall be overdue.

(4)(i) Unsecured credit shall not be extended by an air carrier to a candidate, or to any person acting on his behalf in connection with the campaign of such candidate, so long as any overdue indebtedness of such candidate to such air carrier shall remain unpaid, in whole or in part, or so long as such air carrier shall know that any overdue indebtedness of such candidate to any other air carrier remains unpaid, in whole or in part.

(ii) Unsecured credit shall not be extended by an air carrier to a person acting on behalf of a candidate for transportation in connection with the campaign of such candidate, so long as any overdue indebtedness of such person to such carrier shall remain unpaid, in whole or in part, or so long as such air carrier shall know that any overdue indebtedness of such person to any other air carrier remains unpaid, in whole or in part.

(5)(i) With respect to transportation in connection with the campaign of any candidate to be performed after June 1, 1972, unsecured credit shall not be extended by an air carrier to any person acting on behalf of such candidate unless the carrier is authorized in writing by such candidate to extend such credit. The foregoing sentence shall not be construed as requiring the candidate to assume liability to the carrier for credit so extended.

(ii) Within 7 days after indebtedness becomes overdue for any unsecured credit extended by an air carrier to a person acting on behalf of a candidate in accordance with paragraph (a)(5)(i) of this section, the carrier shall notify the candidate in writing of the amount of the overdue indebtedness, and, unless paid in full within 25 days after the date of such notice, the overdue indebtedness shall be deemed to be the overdue indebtedness of the candidate, for the purposes of paragraph (b)(4)(i) of this section.

(b) It shall be presumed that a candidate or person acting on behalf of a candidate intends to use transportation in connection with the campaign of such candidate for nomination for election, or election, to Federal office.


§ 374a.5 Exemption authority.

Air carriers are exempt from the following provisions of Title IV of the Federal Aviation Act of 1958, as amended: (a) Section 403, (b) section 404(b), and any and all other provisions of Title IV of the Federal Aviation Act of 1958, as amended, to the extent necessary to enable air carriers to comply with the provisions of this part.

§ 374a.6 Reporting requirements.

(a) Air carriers shall make monthly reports to the Bureau of Transportation Statistics with respect to the credit for transportation furnished to candidates, or persons acting on behalf of candidates, during the period from 6 months before nomination, if any, or from 6 months before election, until the date of election. After that 6-month period, air carriers shall file such a report with the Bureau of Transportation Statistics not later than the 20th day following the end of the calendar month in which the election or nomination takes place, and thereafter
when any change occurs in that report, until a negative report is filed showing
that no debt for such extension of credit is owed to the carrier.

(b)(1) A separate report shall be filed for each candidate with an aggregate indebtedness balance of over $5,000 on the last day of the month to which the report pertains. The report shall cover all debts incurred by the candidate, whether or not incurred in connection with his campaign, and all debts incurred by persons acting on his behalf in connection with such campaign. The indebtedness accounts reported shall be those which the air carrier knows, or has reason to know, have been incurred by or on behalf of a candidate; and it shall be presumed that the transportation for which the indebtedness has been incurred is intended to be used in connection with the campaign of such candidate for nomination for election, or election, to Federal office.

(2) The reports required by this paragraph (b) shall be filed with the Office of Airline Information not later than the 20th day following the end of the calendar month to which the report pertains. They shall include the following data: (i) Name of account; (ii) the credit limit established for such account; (iii) the balance, if any, of the amount payable for transportation not paid for in advance; (iv) any unpaid balance of the charges for such transportation as of the last day of the month covered by the report, and the length of time that such balance has remained unpaid; and (v) a description of the type and value of any bond, collateral, or other security securing such unpaid balance.

(c) A separate report shall be filed for each person acting on behalf of any candidate, if the aggregate indebtedness balance of such person to the reporting air carrier (including all debts incurred by such person, whether or not incurred in connection with the campaign of a candidate, as defined in this part) is over $5,000 on the last day of the month to which the report pertains. The report shall be filed with the Office of Airline Information not later than the 20th day following the end of the calendar month to which the report pertains and shall include (1) the credit limitation established for such person; (2) the balance, if any, of the amount payable for transportation not paid for in advance; (3) any unpaid balance of the charges for such transportation as of the last day of the month covered by the report, and the length of time that such balance has remained unpaid; and (4) a description of the type and value of any bond, collateral, or other security securing such unpaid balance.

§ 374a.7 Record retention requirements.

(a) Every air carrier subject to the part shall retain for 2 years after a Federal election true copies of the following documents at its principal or general office in the United States:

(1) All documents which evidence or reflect the furnishing of transportation to a candidate for political office or a person acting on his behalf;

(2) All statements, invoices, bills, and receipts with respect to the furnishing of such transportation referred to in paragraph (a)(1) of this section.

(b) Every air carrier shall make the documents listed in this section available in the United States upon request by an authorized representative of the DOT and shall permit such representative to make such notes and copies thereof as he deems appropriate.

§ 374a.8 Prospective application of part.

The provisions of this part shall apply only to the extension of credit by an air carrier to a candidate, or to a person acting on his behalf, which is made subsequent to the effective date of this part, and shall not be applicable to debts incurred prior to such date but which are unpaid as of the effective date of this part. The provisions of this part will be applicable, however, to all credit transactions which occur subsequent to the effective date of the part even though the credit account in

\[\text{Filed as part of the original document.}\]
which the transaction takes place was opened prior to the effective date of the part.

**PART 375—NAVIGATION OF FOREIGN CIVIL AIRCRAFT WITHIN THE UNITED STATES**

**Subpart A—General**

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**Subpart C—Rules Generally Applicable**

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375.40 Permits for commercial air operations.
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**Subpart F—Transit Flights**

375.50 Transit flights; scheduled international air service operations.
Foreign air carrier permit means a permit authorizing foreign air transportation by a foreign air carrier pursuant to section 402 of the Act;

Foreign aircraft permit means a permit authorizing navigation of foreign civil aircraft in the United States pursuant to section 1108(b) of the Act and this part;

Foreign civil aircraft means (a) an aircraft of foreign registry that is not part of the armed forces of a foreign nation, or (b) a U.S.-registered aircraft owned, controlled or operated by persons who are not citizens or permanent residents of the United States;

Stop for non-traffic purposes means a landing for any purpose other than taking on or discharging passengers, cargo or mail, and does not include landings for embarking or disembarking stopover passengers or transshipped cargo or mail, or for other than strictly operational purposes.

Type means all aircraft of the same basic design including all modifications thereto except those modifications that result in a change in handling or flight characteristics.

§ 375.2 Applicability.

The provisions of this part regulate the admission to, and navigation in, the United States of foreign civil aircraft other than aircraft operated under authority contained in a foreign air carrier permit or exemption. This part also contains provisions that specify the extent to which certain classes of flight operations by foreign civil aircraft may be conducted, and the terms and conditions applicable to such operations. Nothing in this part shall authorize any foreign civil aircraft to engage in air transportation nor be deemed to provide for such authorization by the Department.

§ 375.3 [Reserved]

Subpart B—Authorization

§ 375.10 Certain foreign civil aircraft registered in ICAO member states.

Subject to the observance of the applicable rules, conditions, and limitations set forth in this part:

(a) Foreign civil aircraft manufactured in a State that at the time of manufacture was a member of the International Civil Aviation Organization (ICAO), and registered in a State that at the time of flight is a member of ICAO, may be navigated in the United States;

(b) Foreign civil aircraft manufactured in a State that at the time of manufacture was a member of ICAO, and registered in a State that at the time of flight is a member of ICAO, may be navigated in the United States,

(1) If the State of registry has notified ICAO that the requirements under which it issues or renders valid certificates of airworthiness are equal to or above the minimum standards established pursuant to the Chicago Convention;

(2) If such notification has not been made to ICAO at the time of flight, there is on file with the Department a statement by the State of registry that, with regard to aircraft of the type that is proposed to be operated hereunder, the requirements under which certificates of airworthiness are issued or rendered valid are equal to or above the minimum standards established pursuant to the Chicago Convention.

§ 375.11 Other foreign civil aircraft.

A foreign civil aircraft other than those referred to in § 375.10 may be navigated in the United States only when (a) the operation is authorized by the Department under the provisions of this part, and (b) the aircraft complies with any applicable airworthiness standards of the Federal Aviation Administration for its operation.

Subpart C—Rules Generally Applicable

§ 375.19 Nature of privilege conferred.

The provisions of this part, and of any permit issued hereunder, together with section 1108(b) of the Act, are designed, among other purposes, to carry out the international undertakings of the United States in the Chicago Convention, in particular Article 5. That article gives foreign aircraft the privilege of “taking on or discharging passengers, cargo or mail” subject to the
right of the State where such embar-
kation or discharge takes place to im-
pose such regulations, conditions or
limitations as it may consider desir-
able. The U.S. Congress by the 1953
amendment to section 6 of the Air
Commerce Act of 1926, now designated
as section 1108(b) of the Act, authorizes
the Department to permit such oper-
ations only where conditions of reci-
procity and the interest of the public
in the United States are met. Thus, the
operator of any foreign registered air-
craft is not entitled as a matter of
right to the issuance, renewal or free-
dom from modification or change in a
permit issuable pursuant to this au-
thority. Accordingly, any authority
conferrerd by this part may be withheld,
revoked, amended, modified, restricted,
suspended, withdrawn, or canceled by
the Department in the interest of the
public of the United States, without
notice or hearing.

§ 375.20 Airworthiness and registra-
tion certificates.

Foreign civil aircraft shall carry cur-
rently effective certificates of registra-
tion and airworthiness issued or ren-
dered valid by the country of registry
and shall display the nationality and
registration markings of that country.
However, a foreign civil aircraft may
carry, in lieu of such certificate of air-
worthiness, an effective special flight
authorization issued by the Federal
Aviation Administration for the oper-
ations being performed.

§ 375.21 Airmen.

Members of the flight crew of a for-
eign civil aircraft shall have in their
personal possession valid airman cer-
tificates or licenses authorizing them
to perform their assigned functions in
the aircraft and for the operation in-
volved issued or rendered valid by the
country of registry of the aircraft or by
the United States. No such flight crew
members shall perform any flight duty
within the United States that they are
not currently authorized to perform in
the country issuing or validating the
certificate.

§ 375.22 Flight operations.

Flights of foreign civil aircraft in the
United States shall be conducted in ac-
cordance with the currently applicable
rules of the Federal Aviation Adminis-
tration.

§ 375.23 Maximum allowable weights.

Foreign civil aircraft that are per-
mitted to navigate in the United
States on the basis of foreign air-
worthiness certificates must conform
to the limitations on maximum certifi-
cated weights prescribed or authorized
for the particular variation of the air-
craft type, and for the particular cat-
egory of use, by the country of manu-
facture of the aircraft type involved.

§ 375.24 Entry and clearance.

All U.S. entry and clearance require-
ments for aircraft, passengers, crews,
baggage and cargo shall be followed.

§ 375.25 Unauthorized operations.

No foreign civil aircraft shall be
navigated in the United States unless
authorized by this part. Commercial
air operations (other than those au-
thorized by § 375.36) shall not be under-
taken without a permit issued by the
Department.

§ 375.26 Waiver of sovereign immunity.

Owners and operators of aircraft op-
erated under this part that are engaged
in proprietary of commercial activities
waive any defense of sovereign immu-

nity from suit in any action or pro-
ceeding instituted against any of them
in any court or other tribunal in the
United States for any claim relating to
that operation.

Subpart D—Authorized Operations

§ 375.30 Operations other than com-
mercial air operations.

Foreign civil aircraft that are not en-
gaged in commercial air operations
into, out of, or within the United
States may be operated in the United
States and may carry non-revenue traf-

fic to, from or between points in the
United States.

§ 375.31 Demonstration flights of for-
eign aircraft.

Flights of foreign civil aircraft with-
in the United States may be made for
the purpose of demonstration of the
§ 375.32 Flights incidental to agricultural and industrial operations outside the United States.

Foreign civil aircraft that are engaged in agricultural or industrial operations to be performed wholly outside the United States may be navigated into, out of, and within the United States in connection with those operations provided that the aircraft is not at the time engaged in the carriage of passengers, cargo, or mail for remuneration or hire.

§ 375.33 Transit flights, irregular operations.

Foreign civil aircraft carrying passengers, property or mail for remuneration or hire, but not engaged in scheduled international air services, are authorized to navigate nonstop across the territory of the United States and to make stops for non-traffic purposes. The navigation of foreign civil aircraft in the United States is not authorized under this section when the elapsed time between landing and takeoff at a stop in the United States exceeds 24 hours and passengers are permitted to leave the airport or when passengers, property or mail are transferred to another aircraft. Flights involving stops under such circumstances may, however, be performed in the case of emergency relating to the safety of the aircraft, passengers, cargo or crew.

§ 375.34 Indoctrination training.

Foreign civil aircraft may be operated in the United States for the purpose of giving indoctrination training in the operation of the aircraft concerned to a buyer or a buyer’s employees or designees. This section does not, however, authorize foreign civil aircraft to be used within the United States for the purpose of flight instruction for remuneration or hire.

§ 375.35 Free transportation.

(a) Foreign civil aircraft may be navigated in the United States by a foreign air carrier for the transportation of persons and property specified in paragraph (b) of this section over the following non-traffic segments provided such transportation is not for compensation or hire:

1. Between two or more points in the United States;
2. Between a point in the United States named in the carrier’s section 402 permit or exemption, and a point outside the United States not so named, when authorized in accordance with the provisions of part 216 of this chapter to carry blind sector traffic to or from such unnamed foreign point; and
3. Between a point in the United States and a point outside thereof when the carrier lands at the United States point for non-traffic purposes in exercise of the privilege granted under the International Air Services Transit Agreement.

(b) Free transportation may be provided under this section for the following categories of persons and property:

1. Directors, officers and employees, and their parents and immediate families, of the foreign air carrier operating the aircraft;
2. Directors, officers and employees, and their parents and immediate families, of an air carrier or another foreign air carrier traveling pursuant to a pass interchange arrangement;
3. Travel agents being transported for the purpose of familiarizing themselves with the carrier’s services, if the agents are under no obligation to sell the transporting carrier’s services;
4. Witnesses and attorneys attending any legal investigation in which any such foreign air carrier is involved;
5. Persons injured in aircraft accidents and physicians and nurses attending such persons;
6. Any persons or property with the object of providing relief in cases of general epidemic, natural disaster or other catastrophe;
7. Any person who has the duty of guarding foreign government officials travelling on official business; and
8. Guests of a foreign air carrier (including members of the press) on delivery flights of newly-acquired or newly-renovated aircraft.
§ 375.36 Charge related to meals and beverages furnished enroute.

(c) A charge reasonably related to the value of meals and beverages furnished enroute shall not be deemed to constitute compensation or hire for purposes of this section.

§ 375.36 Lease of foreign civil aircraft without crew.

Foreign civil aircraft that are leased without crew to an air carrier or citizen or permanent resident of the United States, and used by the lessee in otherwise authorized air transportation or commercial air operations, may be operated into, out of, and within the United States in accordance with any applicable regulations prescribed by the Federal Aviation Administration.

Subpart E—Operations Requiring Specific Preflight Authorization of Filing

§ 375.40 Permits for commercial air operations.

(a) Permit required. Except for aircraft being operated under a foreign air carrier permit, an exemption, or as otherwise provided in Subpart D or H of this part, foreign civil aircraft may engage in commercial air operations only if there is carried on board the aircraft a permit issued by the Department in accordance with this subpart authorizing the operations involved.

(b) Aircraft are not authorized to engage in air transportation under this section. Where an operation involves the carriage of persons, property or mail for compensation or hire, the Department will determine whether particular flights for which a permit is sought will be in common carriage, and therefore in air transportation, based on all the facts and circumstances surrounding the applicant's entire operations. The burden rests upon the applicant in each instance to demonstrate by an appropriate factual showing that the contemplated operation will not constitute common carriage from, to or within the United States. In general, an applicant that holds itself out to the public, or to a particular class or segment, as willing to furnish transportation for hire is a common carrier.

§ 375.41 Agricultural and industrial operations within the United States.

Foreign civil aircraft shall not be used for such commercial air operations as crop dusting, pest control, pipeline patrol, mapping, surveying, banner towing, skywriting or similar agricultural or industrial operations within the United States, including its territorial waters and overlying airspace, unless a permit has been issued by the Department and the operation is conducted in accordance with all applicable State and local laws and regulations as well as the applicable provisions of this part.

§ 375.42 Transport operations—occasional planeload charters.

Occasional planeload charters may be authorized where, because of their limited nature and extent, special equipment or facilities utilized, or other circumstances pertaining to them, it appears that they are not within the scope of the applicant's normal holding out of transportation services to the general public. Such charters are normally limited to those in which the entire capacity of the aircraft is engaged by a single charterer, and since they are occasional in nature, should not exceed for any one applicant more than six flights during a calendar year. This part does not authorize operations that involve solicitation of the general public such as is usually involved in the transportation of individually-ticketed passengers or individually-waybilled cargo, or in which the charterer is a travel agent, a charter operator, a broker, an air freight forwarder or any other organization that holds itself out to the general public to provide transportation services. Carriage of cargo for the operator's own account is governed by the provisions of this section if the cargo is to be resold or otherwise used in the furtherance of a business other than the business of providing carriage by aircraft.

§ 375.43 Application for foreign aircraft permit.

(a) Applications for foreign aircraft permits shall be submitted on OST Form 4509, (Appendix A), in duplicate,
addressed to the Chief, Discrete Operations Branch, Licensing Division, P-45, Office of Aviation Operations. Upon a showing of good cause, applications may be made by telegram or by telephone.

(b) Applications shall contain a proper identification (including citizenship) of the applicant (the operator of the aircraft concerned) and of the owner thereof (if different from the applicant), a description of the aircraft by make, model, and registration marks; and a full description of the operations for which authority is desired, indicating type and dates of operations and number of flights, and routing. In the case of cargo flights, the names of all contractors, agents, if any, and the beneficial owner of the cargo, and a description of the cargo and of the proposed operations shall be provided. In the case of passenger flights, a full identification and description of the group chartering the aircraft, and identification of the travel agent, if any, shall be provided. Applications shall also contain a statement as to whether the applicant’s homeland allows operators of U.S.-registered aircraft to conduct similar operations.

(c) Applications shall be filed at least 15 days in advance of the proposed commencement date of the operations. The Department may direct the applicant to serve copies of its application on additional persons. Late applications may be considered by the Department upon a showing of good cause.

(d)(1) Any party in interest may file a memorandum supporting or opposing an application. Two copies of each memorandum shall be filed within 7 business days after the application is filed but no later than the proposed commencement date of the operations. Memoranda will be considered to the extent practicable; the Department may act on an application without waiting for supporting or opposing memoranda to be filed.

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

(e)(1) Unless otherwise ordered by the Department, each application and memorandum filed in response shall be available for public inspection at the Licensing Division of the Office of Aviation Operations 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 should be withheld under applicable provisions of law, and the public interest does not require disclosure, it will order that the injurious information be withheld.

(Approved by the Office of Management and Budget under control number 2106-0002)

§ 375.44 Issuance of permit.

(a) The Department will issue a foreign aircraft permit if it finds that the proposed operations meet the requirements of this part and are in the public interest. Foreign aircraft permits may be conditioned or limited by the Department. Permits must be carried aboard the applicant’s aircraft during flight over U.S. territory, and are not transferable.

(b) In determining whether to grant a particular application, the Department will consider, among other factors, the extent to which the country of the applicant’s nationality deals with U.S. civil aircraft operators on the basis of substantial reciprocity, and whether the operation is otherwise in the public interest.

§ 375.45 Records and reports of occasional planeload charters.

(a) Cargo documents. The holder of a permit for cargo operations shall issue a manifest or shipping document to its shipper with respect to each shipment.

(b) [Reserved]

(c) Contents of documents for passenger flights. The holder of a permit for passenger charters originating or terminating in the United States shall require each charterer to file with it
prior to flight a list of names and addresses of all passengers to be transported on each flight.

(d) Reports of unused authority. All foreign operators of occasional plane-load charters for which authority is granted must notify the Department, in writing, not later than 15 days after the expiration of their permits, or their failure to use this authority. The unused authority shall otherwise be deemed to have been exercised.

Subpart F—Transit Flights

§ 375.50 Transit flights; scheduled international air service operations.

(a) Requirement of notice. Scheduled international air services proposed to be operated pursuant to the International Air Services Transit Agreement in transit across the United States may not be undertaken by foreign civil aircraft unless the operator of such aircraft, and (if other than the operator) the carrier offering such service to the public, has, not less than 30 days prior to the date of commencement of such service, filed a Notice of Proposed Transit Flights Pursuant to the International Air Services Transit Agreement in accordance with the provisions of paragraphs (b) and (c) of this section.

(b) Filing of the notice. An original and two copies of the Notice shall be filed with the Chief, Discrete Operations Branch, Licensing Division, P-45, Office of Aviation Operations. Copies of the Notice shall be served upon the Department of State and the Administrator of the Federal Aviation Administration. The filing date shall be the date of actual receipt by the Department.

(c) Content of notice. A “Notice of Proposed Transit Flights Pursuant to the International Air Services Transit Agreement” shall be clearly labeled as such, and as a minimum shall set forth, with whatever detail may be necessary, the following information:

1. The name, country or organization, and citizenship of the operator, and, if other than the operator, of the carrier offering the services to the public. If any interest (direct or indirect) in the operator or carrier of services is held by nationals of a country other than the country of organization or citizenship, the nature and extent of such interest must be fully disclosed.

2. The State of registration of the aircraft proposed to be operated.

3. A full description of the proposed operations including the type of operations (passenger, property, mail, or combination), date of commencement, duration and frequency of flights, and routing (including each terminal and intermediate point to be served).

4. A statement as to whether or not any advertisement or publication of the proposed operations has been made in the United States. If there has been any advertisement or publication of the operations in the United States, copies of all such advertisements or publications shall be included.

5. Any change with respect to these matters (minor changes in schedules or routing excepted) shall also be filed with the Department.

(d) Authorized operations. If the operator and the carrier offering services to the public (if different from the operator) have filed a “Notice of Proposed Transit Flights Pursuant to the International Air Services Transit Agreement,” at least 30 days before the date of commencement of the proposed operations in accordance with paragraphs (a), (b), and (c) of this section, the described operations may be commenced and performed without further authorization from the Department, unless and until the Department issues an order notifying the operator and/or the carrier offering the services to the public that, considering the matters submitted in the Notice, the Department is of the view that a question may exist as to whether:
§ 375.60 Penalties.

The operation of a foreign aircraft within the United States or over adjacent territorial waters in violation of the provisions of this part constitutes a violation of the Federal Aviation Act and of this chapter, and may, in addition, constitute a violation of the rules of the Federal Aviation Administration. Such operation makes the person or persons responsible for the violation or violations subject to a civil penalty as provided in section 901 of the Act, and to the alteration, amendment, modification, suspension or revocation of any permit issued under this part and of any U.S. certificate involved as provided in section 609 of the Act. Engaging in air transportation as defined in the Act by a foreign aircraft without a foreign air carrier permit issued pursuant to section 402 of the Act or an exemption, or in violation of the terms of such authority constitutes not only a violation of this part but of title IV of
the Act as well, which entails a criminal penalty as set forth in section 902 of the Act.

Subpart H—Special Authorization

§ 375.70 Special authorization.

Any person desiring to navigate a foreign civil aircraft within the United States other than as specifically provided in this part may petition the Department for a special authorization to conduct the particular flight or series of flights. Such authorization may be issued only if the Department finds that the proposed operation is fully consistent with the applicable law, that the applicant's homeland grants a similar privilege with respect to operators of U.S.-registered aircraft, and that the proposed operation is in the interest of the public of the United States.
### APPLICATION FOR FOREIGN AIRCRAFT PERMIT OR SPECIAL AUTHORIZATION UNDER PART 375

(See Instructions On Reverse Side)

**TO:** Department of Transportation  
Licensing Division, P-40  
Office of Aviation Operations  
Washington, DC 20590

**Nationality:**

<table>
<thead>
<tr>
<th><strong>2. Send authorization to:</strong></th>
<th><strong>3. Aircraft make, model, and registration or identification marks:</strong></th>
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<tr>
<td>a. Name and address:</td>
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<td>b. Telephone:</td>
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<th><strong>4. Country in which aircraft is registered:</strong></th>
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<th><strong>5. Name and address of registered owner of aircraft:</strong></th>
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<th><strong>6. Name and address of contractor/charterer:</strong></th>
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<th><strong>7. Dates of flights:</strong></th>
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<th><strong>8. Planned routing of flights (indicate non-traffic stops by asterisk):</strong></th>
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<th><strong>9. Description of operations (see instructions) (Check one):</strong></th>
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- [ ] Agricultural or industrial operation
- [ ] Passenger
- [ ] Cargo

**10. Does the nation which is the domicile of the applicant grant to United States carriers a privilege similar to that requested herein?**

If so, has the fact of such reciprocity been established with the Department?  
If the fact has not been established with the Department, provide documentation to establish such reciprocity.

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11. If application is being filed late, state reasons for lateness:

12. Other information requested by the Department:

CERTIFICATION

I hereby certify that the flights for which authority is sought herein conform to the requirements of the applicable regulations and orders of the Department of Transportation.

(Date) (Signature and title of authorized officer)

INSTRUCTIONS

1. Prepare an original and one copy of this application according to Section 375.43 of the Department's Regulations. If extra space is required to complete an item, continue on a separate sheet of paper.

2. Under item 9:
   (a) For passenger flights, provide full identification or description of group contracting for charter, and name and address of travel agent, if any.
   (b) For cargo flights, provide the names of all contractors, description of cargo, beneficial owner of cargo, and provide a full description of the proposed operation including nature of any service to be performed by any exporter, importer, or transportation agent.
   (c) For agricultural or industrial operations, describe area involved and purpose of operations.

3. Send the application to: Department of Transportation, Licensing Division, P-45, Office of Aviation Operations, Washington, D.C. 20590.


DO NOT WRITE—FOR OFFICIAL USE ONLY

Exercise of the authorization is subject to the following condition(s):
OR Application is disapproved/dismissed for the following reason(s):
PART 377—CONTINUANCE OF EXPIRED AUTHORIZATIONS BY OPERATION OF LAW PENDING FINAL DETERMINATION OF APPLICATIONS FOR RENEWAL THEREOF

Subpart A—General Provisions

Sec.
377.1 Definitions.
377.2 Applicability of part.
377.3 Authorizations not covered by 5 U.S.C. 558(c).
377.4 Certain authorizations with alternative termination dates.
377.5 Procedure to obtain Board interpretation.

Subpart B—Renewal Applications and Procedure Thereon

377.10 Requirements for, and effect of, renewal applications.
377.11 Processing of defective renewal applications.


§ 377.2 Applicability of part.
(a) This part implements the last sentence of 5 U.S.C. 558(c) with regard to temporary authorizations granted by the Board.

NOTE: The last sentence of 5 U.S.C. 558(c) provides: "When the licensee has made timely and sufficient application for a renewal or a new license in accordance with agency rules, a license with reference to an activity of a continuing nature does not expire until the application has been finally determined by the agency."

(b) Nothing in this part prevents the Board from terminating at any time, in accordance with law, any authorization or any extension of an authorization.

(c) Nothing in this part constitutes a determination that any given authorization is a "license with reference to an activity of a continuing nature" within the meaning of 5 U.S.C. 558(c).

§ 377.3 Authorizations not covered by 5 U.S.C. 558(c).
The Board hereby determines that the following authorizations are not licenses "with reference to an activity of a continuing nature" within the meaning of 5 U.S.C. 558(c):

(a) Authorizations granted for a specified period of 180 days or less; and

(b) Authorizations, other than those granted under section 401 of the Act, that by their terms are subject to termination at an uncertain date upon the happening of an event, including fulfillment of a condition subsequent or occurrence of a contingency.

§ 377.4 Certain authorizations with alternative termination dates.
Unless granted under section 401 of the Act, an authorization that by its terms is subject to termination alternatively, either at an uncertain date upon the happening of an event or upon the arrival of a specified date:

(a) Will not be considered a "license with reference to an activity of a continuing nature" within the meaning of 5 U.S.C. 558(c), if the event does not occur before the specified date; and

(b) Ordinarily (subject to Board interpretation under § 377.5) will be considered such a license, if the event does not occur before the specified date and

[SPR–184, 47 FR 7212, Feb. 18, 1982]
§ 377.5 Procedure to obtain Board interpretation.

(a) The Board will determine upon written request by the holder of a temporary authorization or by any competitively affected air carrier or foreign air carrier, or upon its own initiative, whether the temporary authorization is a "license with reference to an activity of a continuing nature" within the meaning of 5 U.S.C. 558(c).

(b) A written request for such a Board determination shall be filed at least 60 days before the deadline set forth in §377.10 for a timely renewal application.

(c) The filing of such a written request shall not affect the timeliness requirements for renewal applications that are set forth in §377.10 or any other applicable Board rule or order.

[SPR-184, 47 FR 7212, Feb. 18, 1982]

Subpart B—Renewal Applications and Procedure Thereon

§ 377.10 Requirements for, and effect of, renewal applications.

(a) Identification of authorization covered by renewal application. Each renewal application shall identify the authorization or authorizations to which it is intended to relate. The application shall indicate the applicant's intention to rely upon 5 U.S.C. 558(c) as implemented by this part. In case of applications for renewal of an authorization for route service, the renewal application shall specifically identify the separate routes which the applicant proposes to continue serving pursuant to the expiring authorization, pending final determination of the renewal application.

(b) Contents of renewal application. The application must contain all the information required by law and the Board's regulations, and meet the requirements thereof as to form. The new authorization sought need not be of the same duration as the expiring authorization. If the application relates to renewal of route authority, it must contain, as a minimum, a request for renewed authority to render route service between the terminals named in each separate route for which renewal is requested.

(c) Timeliness. The application must be filed and served in compliance with applicable law and the Board's regulations at least 60 days before the expiration date of the outstanding temporary authorization, except that:

(1) For certificates issued under section 401 of the Act with a specified expiration date, the deadline is 180 days before the expiration date;

(2) For certificates issued under section 401 of the Act that terminate by the terms upon the happening of an event that could not be foreseen, the deadline is 30 days after the time that the carrier has notice that the event will occur or has occurred;

(3) For foreign air carrier permits issued under section 402 of the Act and exemptions issued under section 416 to non-U.S. citizens, the deadline is the expiration date itself;

(4) For renewal by substantially equivalent certificate authority of fixed term route authorizations granted by exemption and for interim extension of the exemption, pursuant to §§302.909 and 399.18 of this chapter, the deadline is 90 days before the expiration date; and

(5) Nothing in this part supersedes a requirement for earlier filing contained in any law, Board rule or order, or temporary authorization.

(d) Effect. In the case of authorizations which constitute licenses with reference to activities of a continuing nature within the meaning of 5 U.S.C. 558(c), the filing of an application complying in all respects with the requirements of paragraphs (a) through (c) of this section shall extend the authorization to which it relates as then outstanding in its entirety, together with all applicable terms, conditions and limitations, until the application has been finally determined by the Board. In the case of routes granted under section 401 of the Act, the duty to render adequate service continues to attach to every point as provided in the expired authorization which is extended pursuant to this provision. The date of final determination of the application shall
be the date when the final order determining the application takes effect, or when the applicable period for filing of petitions for rehearing, reargument or reconsideration expires, or when a timely filed petition therefor is denied, whichever occurs latest.

[SPR–84, 40 FR 24998, June 12, 1975, as amended by SPR–184, 47 FR 7212, Feb. 18, 1982]

§ 377.11 Processing of defective renewal applications.

When the Board determines that a renewal application does not comply with the requirements of this part, or that it does not relate to a license with reference to an activity of a continuing nature, it will so notify the applicant. The applicant may amend his application to cure the deficiency as a matter of right at any time prior to the date when the application was due pursuant to § 377.10(c).

[SPR–84, 40 FR 24998, June 12, 1975]
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 air carrier means a direct 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.
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:
(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 it 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 provisions 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 provisions 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) [Reserved]

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

(c) 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.
Office of the Secretary, DOT § 380.28

(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:

(i) 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.

(ii) 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 on OST Form 4533.

(b) Each of the statements described in paragraph (a) of this section shall also include the names and addresses of
§ 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;
§ 380.33 Major changes in itinerary or price; refunds.

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

(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);

(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 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 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.
§ 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

§ 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 ¼ 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.
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; 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 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;

(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

2See also n.1, supra.
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.
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
§ 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
§ 380.36 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 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 TO PART 380—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 __________ (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 judgments rendered, and payments made by Surety under this bond.

The bond shall cover the following charters:

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 __________.

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1These data may be supplied in addendum attached to the bond.
Office of the Secretary, DOT

APPENDIX B TO PART 380—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 ______ of ______, 19____, 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 assure compliance by the Operator with the Department’s Special Regulations in accordance with said charters, such damages as will inure to the benefit of any and all charter participants 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; and

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.

The Operator shall convey to 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 inure to the benefit of 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 reason 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 be discharged by any payment or succession of payments hereunder, unless and until such payment or payments, shall amount in the aggregate to $________.

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 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 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 __________, ______.

By: ____________________________
Name ___________________________
By: Signature and title
Charter Operator

By: ____________________________
Name ___________________________
By: Signature and title

PART 381—SPECIAL EVENT TOURS

Sec. 381.1 Purpose.
381.3 Applicability.
381.5 Definition.
381.7 Advertising.
381.9 Sales.
381.11 Refunds.
381.13 Price increases.

A U T H O R I T Y : 49 U.S.C. 40113(a) and 41712.
S O U R C E : Docket No. 49385, 59 FR 61514, Nov. 30, 1994, unless otherwise noted.

§ 381.1 Purpose.

The purpose of this part is ensure that air travelers who have purchased tours to special events will receive the promised admission to the event. This part expands the “Super Bowl rule” to other events.

§ 381.3 Applicability.

This part applies to Special Event Tours that are in interstate air transportation, or in foreign air transportation originating at a point in the United States. This part applies to U.S. and foreign operators of Special Event Tours, whether they be air carriers or ticket agents. This part applies to scheduled, charter, and other air transportation.

§ 381.5 Definition.

Special Event Tour means a tour that is organized for the purpose of attending a sporting, social, religious, educational, cultural, political or other event of a special nature and limited duration, which exists for reasons apart from the tour itself, and which is represented by the operator of the tour.
as including admission to that event. Examples of such events include, but are not limited to, college and professional sporting events, the Olympics, concerts, the Passion Play in Oberammergau, etc.

§ 381.7 Advertising.

No operator of a Special Event Tour or agent of such an operator shall conduct, or cause or allow to be conducted, any advertising, solicitation or other promotion for a Special Event Tour unless:

(a) The operator is in physical possession of enough tickets for admission to the event to provide such tickets for a substantial number of seats on the tour; or

(b) The operator has entered into a written contract with an organization that is the distributor of such tickets or an organization that receives such tickets directly from the distributor (e.g., a bowl committee, football conference, league or team; concert promoter or arena; etc.), the terms of which provide for that organization to furnish the operator enough admission tickets to provide such tickets for a substantial number of seats on the tour; or

(c) The operator has entered into a written contract with another person or organization that has a written contract or series of written contracts with the distributor of such tickets or with an organization that receives such tickets directly from the distributor, the terms of which provide for that organization (the organization with which the operator has contracted) to furnish the operator enough admission tickets to provide such tickets for a substantial number of seats on the tour.

§ 381.9 Sales.

(a) Except as provided in paragraph (b) of this section:

(5) No operator of a Special Event Tour shall accept money for a seat on a Special Event Tour, or authorize an agent to accept such money, unless the operator has physical possession of, or written contracts (in the manner described in §381.7) for, a ticket for admission to the event for that individual. To the extent that the operator receives an unsolicited booking for which the operator does not have physical possession of or written contracts for a ticket for admission to the event, any payment accompanying that booking must be returned within 3 business days.

(2) Upon acceptance of the money for a sale, the operator must reserve one event ticket for that individual. An operator may not sell more seats on the tour than it has event tickets in hand or under contract. (An operator need not continue to reserve an event ticket for an individual who withdraws from the tour by providing notice to the operator or by being notified by the operator that the individual’s participation has been canceled due to failure to remit a required installment payment.)

(b) An operator of a Special Event Tour may accept a booking and payment from an individual for whom the operator does not have an event ticket in hand or under contract if that individual agrees in writing that he or she understands that no event ticket has been reserved for him or her. This agreement shall specify whether the person has agreed to participate in the tour without an event ticket and/or the operator has agreed to attempt to acquire an event ticket for this person. If the two parties agree that the operator will attempt to acquire an event ticket, the agreement shall specify any penalties that will apply if the individual later cancels because an event ticket did not become available. If the operator notifies this person that an event ticket has become available, that person shall enjoy all the other protections of this part from that time.

§ 381.11 Refunds.

If promised admission to the primary event for which a Special Event Tour was organized is not furnished by the tour operator, at the tour price agreed to before departure (including any increases that the participant has accepted pursuant to §381.13(a)), the operator must provide each tour participant affected in this way a refund of the total tour price. This refund is to be provided within 14 calendar days after the scheduled return date of the tour.
§ 381.13 Price increases.

(a) Should the tour operator increase a participant’s tour price by more than 10 percent (aggregate of all increases to that participant), that participant shall have the option of canceling his or her participation in the tour and receiving a full refund within 14 days after the cancellation.

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

PART 382—NONDISCRIMINATION ON THE BASIS OF DISABILITY IN AIR TRAVEL

Subpart A—General Provisions

382.1 Purpose.
382.3 Applicability.
382.5 Definitions.
382.7 General prohibition of discrimination.
382.9 Assurances from contractors.
382.11–382.19 [Reserved]

Subpart B—Requirements Concerning Facilities

382.21 Aircraft accessibility.
382.23 Airport facilities.
382.25–382.29 [Reserved]

Subpart C—Requirements for Services

382.31 Refusal of transportation.
382.33 Advance notice requirements.
382.35 Attendants.
382.37 Seat assignments.
382.38 Seating accommodations.
382.39 Provision of services and equipment.
382.40 Boarding assistance for small aircraft.
382.41 Stowage of personal equipment.
382.43 Treatment of mobility aids and assistive devices.
382.45 Passenger information.
382.47 Accommodations for persons with hearing impairments.
382.49 Security screening of passengers.
382.51 Communicable diseases.
382.53 Medical certificates.
382.55 Miscellaneous provisions.
382.57 Charges for accommodations prohibited.
382.59 [Reserved]

Subpart D—Administrative Provisions

382.61 Training.
382.63 Carrier programs.
382.65 Compliance procedures.

AUTHORITY: 49 U.S.C. 41702, 47105, and 41712.

SOURCE: 55 FR 8046, Mar. 6, 1990, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 382 appear at Amdt. 6, 61 FR 56422, Nov. 1, 1996.

Subpart A—General Provisions

§ 382.1 Purpose.

The purpose of this part is to implement the Air Carrier Access Act of 1986 (49 U.S.C. 1374(c)), which provides that no air carrier may discriminate against any otherwise qualified individual with a disability, by reason of such disability, in the provision of air transportation.

§ 382.3 Applicability.

(a) Except as provided in this section, this part applies to all air carriers providing air transportation.

(b) Sections 382.21–382.63 do not apply to indirect air carriers.

(c) This part does not apply to foreign air carriers or to airport facilities outside the United States, its territories, possessions, and commonwealths.

(d) Nothing in this part shall authorize or require a carrier to fail to comply with any applicable FAA safety regulation.

(e) The compliance date for the following provisions of this part is June 4, 1990:

§ 382.7 (b)
§ 382.21(c)
§ 382.31(e)
§ 382.33(f)
§ 382.35 (d), (e)
§ 382.37 (b), (c)
§ 382.39 (a) (second sentence of introductory language); (a)(1) and (a)(2), with respect to acquisition of equipment; (a)(3); (b)(3); (b)(4)

§ 382.41 (d), (e)(2), (f)
§ 382.45 (a), (c)
§ 382.47(a)
§ 382.49 (b), (c)
§ 382.65 (a), (b)(2).

(f) The compliance date for the following provisions of this part is August 5, 1990:

§ 382.9
§ 382.23(e)
§ 382.33(d)
§ 382.51
§ 382.53(c).
Office of the Secretary, DOT

§ 382.5 Definitions.

As used in this part—

Air Carrier or carrier means any citizen of the United States who undertakes, whether directly or indirectly or by a lease or any other arrangement, to engage in air transportation.

Air carrier airport means a public, commercial service airport which11 emplanes annually 2,500 or more passengers and receives scheduled air service.

Air transportation means interstate, overseas, or foreign air transportation, or the transportation of mail by aircraft, as defined in the Federal Aviation Act.

Department or DOT means the United States Department of Transportation.

FAA means the Federal Aviation Administration, an operating administration of the Department.

Facility means all or any portion of aircraft, buildings, structures, equipment, roads, walks, parking lots, and any other real or personal property, normally used by passengers or prospective passengers visiting or using the airport, to the extent the carrier exercises control over the selection, design, construction, or alteration of the property.

Individual with a disability means any individual who has a physical or mental impairment that, on a permanent or temporary basis, substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(a) Physical or mental impairment means:

(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory including speech organs, cardio-vascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine; or

(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

The term physical or mental impairment includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments; cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction, and alcoholism.

(b) Major life activities means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(c) Has a record of such impairment means has a history of, or has been classified, or misclassified, as having a mental or physical impairment that substantially limits one or more major life activities.

(d) Is regarded as having an impairment means:

(1) Has a physical or mental impairment that does not substantially limit major life activities but that is treated by an air carrier as constituting such a limitation;

(2) Has a physical or mental impairment that substantially limits a major life activity only as a result of the attitudes of others toward such an impairment; or

(3) Has none of the impairments set forth in this definition but is regarded as having such an impairment.

Indirect air carrier means a person not directly involved in the operation of an aircraft who sells air transportation services to the general public other than as an authorized agent of an air carrier.

Qualified individual with a disability means a individual with a disability who—

(a) With respect to accompanying or meeting a traveler, use of ground transportation, using terminal facilities, or obtaining information about schedules, fares or policies, takes those
§ 382.7 General prohibition of discrimination.

(a) A carrier shall not, directly or through contractual, licensing, or other arrangements:
   (1) Discriminate against any otherwise qualified individual with a disability, by reason of such disability, in the provision of air transportation;
   (2) Require a handicapped person to accept special services (including, but not limited to, preboarding) not requested by the passenger;
   (3) Exclude a qualified individual with a disability from or deny the person the benefit of any air transportation or related services that are available to other persons, even if there are separate or different services available for handicapped persons except when specifically permitted by another section of this part; or,
   (4) Take any action adverse to an individual because of the individual's assertion, on his or her own behalf or through or behalf of others, of rights protected by this part or the Air Carrier Access Act.

(b) If an indirect air carrier provides facilities or services for passengers that are covered for other carriers by sections §§ 382.21-382.55, the indirect air carrier shall do so in a manner consistent with those sections.

(c) Carriers shall, in addition to meeting the other requirements of this part, modify policies, practices, or facilities as needed to ensure non-discrimination, consistent with the standards of section 504 of the Rehabilitation Act, as amended. Carriers are not required to make modifications that would constitute an undue burden or would fundamentally alter their program.

[55 FR 8046, Mar. 6, 1990, as amended by Doc. No. OST-96-1880, 63 FR 10535, Mar. 4, 1998]

§ 382.9 Assurances from contractors.

Carriers' contracts with contractors who provide services to passengers, including carriers' agreements of appointment with travel agents (excluding travel agents who are not U.S. citizens who provide services to air carriers outside the United States, its territories and commonwealths), shall include a clause assuring:

(a) Nondiscrimination on the basis of disability, consistent with this part, by such contractors in activities performed on behalf of the carriers; and

(b) That contractor employers will comply with directives issued by carrier complaints resolution officials (CROs) under § 382.67.

§§ 382.11-382.19 [Reserved]

Subpart B—Requirements Concerning Facilities

§ 382.21 Aircraft accessibility.

(a) The following requirements apply to new aircraft operated under 14 CFR part 121 and ordered by the carrier after the effective date of this part or delivered to the carrier more than two years after the effective date of this part:

(1)(i) Aircraft with 30 or more passenger seats on which passenger aisle seats have armrests shall have movable aisle armrests on at least one-half of passenger aisle seats.

(ii) Such armrests are not required to be provided on aisle seats on which a movable armrest is not feasible or aisle
seats which a passenger with a mobility impairment is precluded from using by an FAA safety rule.

(iii) For aircraft equipped with movable aisle armrests as required by this paragraph, carriers shall configure cabins, or establish administrative systems, to ensure that an individuals with mobility impairments or other handicapped persons can readily obtain seating in rows with movable aisle armrests.

(2) Aircraft with 100 or more passenger seats shall have a priority space in the cabin designated for stowage of at least one folding wheelchair;

(3) Aircraft with more than one aisle in which lavatories are provided shall include at least one accessible lavatory. This lavatory shall permit a qualified individual with a disability to enter, maneuver within as necessary to use all lavatory facilities, and leave, by means of the aircraft's on-board wheelchair. The accessible lavatory shall afford privacy to persons using the on-board wheelchair equivalent to that afforded ambulatory users. The lavatory shall provide door locks, accessible call buttons, grab bars, faucets and other controls, and dispensers usable by qualified individuals with a disability, including wheelchair users and persons with manual impairments;

(4)(i) Aircraft with more than 60 passenger seats having an accessible lavatory, whether or not required to have such a lavatory by paragraph (a)(3) of this section, shall be equipped with an operable on-board wheelchair for the use of passengers.

(ii) The carrier shall ensure that an operable on-board wheelchair is provided for a flight using an aircraft with more than 60 passenger seats on the request (with advance notice as provided in § 382.33(b)(8)) of a qualified individual with a disability who represents to the carrier that he or she is able to use an inaccessible lavatory but is unable to reach the lavatory from a seat without the use of an on-board wheelchair.

(iii) On-board wheelchairs shall include footrests, armrests which are movable or removable, adequate occupant restraint systems, a backrest height that permits assistance to passengers in transferring, structurally sound handles for maneuvering the occupied chair, and wheel locks or another adequate means to prevent chair movement during transfer or turbulence. The chair shall be designed to be compatible with the maneuvering space, aisle width, and seat height of the aircraft on which it is to be used, and to be easily pushed, pulled, and turned in the cabin environment by carrier personnel.

(b)(1) Except as provided in paragraph (b)(2) of this section, aircraft in service on the effective date of this part shall not be required to be retrofitted for the sole purpose of enhancing accessibility.

(2) Each carrier, within two years of the effective date of this part, shall comply with the provisions of paragraph (a)(4) of this section with respect to all aircraft with more than 60 passenger seats operated under 14 CFR part 121.

(c) Whenever an aircraft operated under 14 CFR part 121 which does not have the accessibility features set forth in paragraph (a) of this section undergoes replacement of cabin interior elements or lavatories, or the replacement of existing seats with newly manufactured seats, the carrier shall meet the requirements of paragraph (a) of this section with respect to the affected feature(s) of the aircraft.

(d) Aircraft operated under 14 CFR part 121 with fewer than 30 passenger seats (with respect to the requirements of paragraph (a)(1) of this section), fewer than 100 passenger seats (with respect to the requirements of paragraph (a)(2) of this section) or 60 or fewer passenger seats (with respect to the requirements of paragraph (a)(4) of this section), and aircraft operated under 14 CFR part 135, shall comply with the requirements of this section to the extent not inconsistent with structural, weight and balance, operational and interior configuration limitations.

(e) Any replacement or refurbishing of the aircraft cabin shall not reduce existing accessibility to a level below that specified in this part.

(f) Carriers shall maintain aircraft accessibility features in proper working order.
§ 382.23 Airport facilities.

(a) This section applies to all terminal facilities and services owned, leased, or operated on any basis by an air carrier at a commercial service airport, including parking and ground transportation facilities.

(b) Air carriers shall ensure that the terminal facilities and services subject to this section shall be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Air carriers shall be deemed to comply with this Air Carrier Access Act obligation if they meet requirements applying to places of public accommodation under Department of Justice (DOJ) regulations implementing Title III of the Americans with Disabilities Act (ADA).

(c) The carrier shall ensure that there is an accessible path between the gate and the area from which aircraft are boarded.

(d) Systems of inter-terminal transportation, including, but not limited to, shuttle vehicles and people movers, shall comply with applicable requirements of the Department of Transportation's ADA rule.

(e) The Americans with Disabilities Act Accessibility Guidelines (ADAAGs), including section 10.4 concerning airport facilities, shall be the standard for accessibility under this section.

(f) Contracts or leases between carriers and airport operators concerning the use of airport facilities shall set forth the respective responsibilities of the parties for the provision of accessible facilities and services to individuals with disabilities as required by this part for carriers and applicable section 504 and ADA rules of the Department of Transportation and Department of Justice for airport operators.

[Amdt. 6, 61 FR 56422, Nov. 1, 1996]

§§ 382.25-382.29 [Reserved]

Subpart C—Requirements for Services

§ 382.31 Refusal of transportation.

(a) Unless specifically permitted by a provision of this part, a carrier shall not refuse to provide transportation to a qualified individual with a disability on the basis of his or her disability.

(b) A carrier shall not refuse to provide transportation to a qualified individual with a disability solely because the person's disability results in appearance or involuntary behavior that may offend, annoy, or inconvenience crew members or other passengers.

(c) A carrier shall not refuse to provide transportation to qualified individuals with a disability by limiting the number of such persons who are permitted to travel on a given flight.

(d) Carrier personnel, as authorized by 49 U.S.C. 1511, 14 CFR 91.8, or 14 CFR 121.533, may refuse to provide transportation to any passenger on the basis of safety, and may refuse to provide transportation to any passenger whose carriage would violate the Federal Aviation Regulations. In exercising this authority, carrier personnel shall not discriminate against any qualified individual with a disability on the basis of disability and their actions shall not be inconsistent with the provisions of this part. In the event that such action is inconsistent with the provisions of this part, the carrier shall be subject to remedies provided under § 382.65.

(e) When a carrier refuses to provide transportation to any person on a basis relating to the individual's disability, the carrier shall specify in writing to the person the basis for the refusal, including, where applicable, the reasonable and specific basis for the carrier's opinion that transporting the person would or might be inimical to the safety of the flight. This written explanation shall be provided within 10 calendar days of the refusal of transportation.

§ 382.33 Advance notice requirements.

(a) Except as provided in paragraph (b) of this section, a carrier shall not require a qualified individual with a disability to provide advance notice of his or her intention to travel or of his or her disability as a condition of receiving transportation or of receiving services or accommodations required by this part.
(b) A carrier may require up to 48 hours advance notice and one-hour advance check-in concerning a qualified individual with a disability who wishes to receive any of the following services, types of equipment, or accommodations:

(1) Medical oxygen for use on board the aircraft, if this service is available on the flight;
(2) Carriage of an incubator, if this service is available on the flight;
(3) Hook-up for a respirator to the aircraft electrical power supply, if this service is available on the flight;
(4) Accommodation for a passenger who must travel in a stretcher, if this service is available on the flight;
(5) Transportation for an electric wheelchair on a flight scheduled to be made with an aircraft with fewer than 60 seats;
(6) Provision by the carrier of hazardous materials packaging for a battery for a wheelchair or other assistive device;
(7) Accommodation for a group of ten or more qualified individuals with a disability, who make reservations and travel as a group; and
(8) Provision of an on-board wheelchair on an aircraft that does not have an accessible lavatory.

(c) If a passenger does not meet advance notice or check-in requirements established by a carrier consistent with this section, the carrier shall nonetheless provide the service, equipment, or accommodation if it can do so by making a reasonable effort, without delaying the flight.

(d) Carriers' reservation and other administrative systems shall ensure that when advance notice is provided by qualified individuals with a disability as provided by this section, the notice is recorded and properly transmitted to operating employees responsible for providing the accommodation concerning which notice was provided.

(e) If the qualified individual with a disability provides the notice required by the carrier for a service under paragraph (b) of this section, the carrier shall ensure that the requested service is provided.

(f) If a qualified individual with a disability provides advance notice to a carrier, and the individual is forced to change to the flight of a different carrier because of the cancellation of the original flight or the substitution of inaccessible equipment, the first carrier shall, to the maximum extent feasible, provide assistance to the second carrier in providing the accommodation requested by the individual from the first carrier.

§ 382.35 Attendants.

(a) Except as provided in this section, a carrier shall not require that a qualified individual with a disability travel with an attendant as a condition of being provided air transportation. A concern on the part of carrier personnel that an individual with a disability may need to use inaccessible lavatory facilities or may otherwise need extensive special assistance for personal needs which carrier personnel are not obligated to provide is not a basis on which the carrier may require an attendant.

(b) A carrier may require that a qualified individual with a disability meeting any of the following criteria travel with an attendant as a condition of being provided air transportation, if the carrier determines that an attendant is essential for safety:

(1) A person traveling in a stretcher or incubator. The attendant for such a person must be capable of attending to the passenger's in-flight medical needs;
(2) A person who, because of a mental disability, is unable to comprehend or respond appropriately to safety instructions from carrier personnel, including the safety briefing required by 14 CFR 121.571(a)(3) and (a)(4) or 14 CFR 135.117(b);
(3) A person with a mobility impairment so severe that the person is unable to assist in his or her own evacuation of the aircraft;
(4) A person who has both severe hearing and severe vision impairments, if the person cannot establish some means of communication with carrier personnel, adequate to permit transmission of the safety briefing required by 14 CFR 121.571(a)(3) and (a)(4) or 14 CFR 135.117(b).

(c) If the carrier determines that a person meeting the criteria of paragraph (b)(2), (b)(3) or (b)(4) of this section must travel with an attendant,
§ 382.37 Seat assignments.

(a) Carriers shall not exclude any qualified individual with a disability from any seat in an exit row or other location or require that a qualified individual with a disability sit in any particular seat, on the basis of disability, except in order to comply with the requirements of an FAA safety regulation or as provided in this section.

(b) If a person's disability results in involuntary active behavior that would result in the person properly being refused transportation under §382.31, and the safety problem could be mitigated to a degree that would permit the person to be transported consistent with safety if the person is seated in a particular location, the carrier shall offer the person that particular seat location as an alternative to being refused transportation.

(c) If a service animal cannot be accommodated at the seat location of the qualified individual with a disability whom the animal is accompanying (see §382.55(a)(2)), the carrier shall offer the passenger the opportunity to move with the animal to a seat location, if present on the aircraft, where the animal can be accommodated, as an alternative to requiring that the animal travel with checked baggage.

§ 382.38 Seating accommodations.

(a) On request of an individual who self-identifies to a carrier as having a disability specified in this paragraph, the carrier shall provide the following seating accommodations, subject to the provisions of this section:

(1) For a passenger who uses an aisle chair to access the aircraft and who cannot readily transfer over a fixed aisle armrest, the carrier shall provide a seat in a row with a movable aisle armrest.

(2) The carrier shall provide a seat next to a passenger traveling with a disability for a person assisting the individual in the following circumstances:

(i) When an individual with a disability is traveling with a personal care attendant who will be performing a function for the individual during the flight that airline personnel are not required to perform (e.g., assistance with eating);

(ii) When an individual with a vision impairment is traveling with a reader/assistant who will be performing functions for the individual during the flight;

(iii) When an individual with a hearing impairment is traveling with an interpreter who will be performing functions for the individual during the flight.

(3) For an individual traveling with a service animal, the carrier shall provide, as the individual requests, either a bulkhead seat or a seat other than a bulkhead seat.

(4) For a person with a fused or immobilized leg, the carrier shall provide a bulkhead seat or other seat that provides greater legroom than other seats, on the side of an aisle that better accommodates the individual's disability.

(b) A carrier that provides advance seat assignments shall comply with the requirements of paragraph (a) of this section by any of the following methods:

(1) The carrier may “block” an adequate number of the seats used to provide the seating accommodations required by this section.

(i) The carrier shall not assign these seats to passengers not needing seating accommodations provided under this paragraph until 24 hours before the scheduled departure of the flight.

(ii) At any time up until 24 hours before the scheduled departure of the flight, the carrier shall assign a seat
meeting the requirements of this section to an individual who requests it.

(iii) If an individual with a disability does not make a request at least 24 hours before the scheduled departure of the flight, the carrier shall meet the individual’s request to the extent practicable, but is not required to reassign a seat assigned to another passenger in order to do so.

(2) The carrier may designate an adequate number of the seats used to provide seating accommodations required by this section as “priority seats” for individuals with disabilities.

(i) The carrier shall provide notice that all passengers assigned these seats (other than passengers with disabilities listed in paragraph (a) of this section) are subject to being reassigned to another seat if necessary to provide a seating accommodation required by this section. The carrier may provide this notice through its computer reservation system, verbal information provided by reservation personnel, ticket notices, gate announcements, counter signs, seat cards or notices, frequent-flier literature, or other appropriate means.

(ii) The carrier shall assign a seat meeting the requirements of this section to an individual who requests the accommodation and checks in at least one hour before the scheduled departure of the flight. If all designated priority seats that would accommodate the individual have been assigned to other passengers, the carrier shall reassign the seats of the other passengers as needed to provide the requested accommodation.

(iii) If the individual with a disability does not check in at least an hour before the scheduled departure of the flight, the carrier shall meet the individual’s request to the extent practicable, but is not required to reassign a seat assigned to another passenger in order to do so.

(c) On request of an individual who self-identifies to a carrier as having a disability other than one in the four categories listed in paragraph (a) of this section and as needing a seat assignment accommodation in order to readily access and use the carrier’s air transportation services, a carrier that assigns seats in advance shall provide such an accommodation, as described in this paragraph.

(1) A carrier that complies with paragraph (a) this section through the “seat-blocking” mechanism of paragraph (b)(1) of this section shall implement the requirements of this paragraph as follows:

(i) When the passenger with a disability not described in paragraph (a) of this section makes a reservation more than 24 hours before the scheduled departure time of the flight, the carrier is not required to offer the passenger one of the seats blocked for the use of passengers with disabilities listed under paragraph (a) of this section.

(ii) However, the carrier shall assign to the passenger any seat, not already assigned to another passenger, that accommodates the passenger’s needs, even if that seat is not available for assignment to the general passenger population at the time of the request.

(2) A carrier that complies with this section through the “designated priority seats” mechanism of paragraph (b)(2) of this section shall implement the requirements of this paragraph as follows:

(i) When a passenger with a disability not described in paragraph (a) of this section makes a reservation, the carrier shall assign to the passenger any seat, not already assigned to another passenger, that accommodates the passenger’s needs, even if that seat is not available for assignment to the general passenger population at the time of the request.

(ii) If such a passenger is assigned to a designated priority seat, he or she is subject to being reassigned to another seat as provided in paragraph (b)(2) of this section.

(d) A carrier that does not provide advance seat assignments shall provide seating accommodations for persons described in paragraphs (a) and (c) of this section by allowing them to board the aircraft before other passengers, including other “pre-boarded” passengers, so that the individuals needing seating accommodations can select seats that best meet their needs if they have taken advantage of the opportunity to pre-board.

(e) A carrier may comply with the requirements of this section through an
alternative method not specified in paragraphs (b) through (d) of this section. A carrier wishing to do so shall obtain the written concurrence of the Department of Transportation (Office of the Secretary) before implementing the alternative method.

(f) The carrier shall assign a seat providing an accommodation requested by an individual with a disability, as specified in this section, even if the seat is not otherwise available for assignment to the general passenger population at the time of the individual's request.

(g) If the carrier has already provided a seat to an individual with a disability to furnish an accommodation required by paragraph (a) or (c) of this section, the carrier shall not reassign that individual to another seat in response to a subsequent request from another individual with a disability, without the first individual's consent.

(h) In no case shall any individual be denied transportation on a flight in order to provide accommodations required by this section.

(i) Carriers are not required to furnish more than one seat per ticket or to provide a seat in a class of service other than the one the passenger has purchased.

(j) In responding to requests from individuals for accommodations required by this section, carriers shall comply with FAA safety rules, including those pertaining to exit seating (see 14 CFR 121.585 and 135.129).

(k) Carriers are required to comply with this section beginning September 30, 1998.

[Doc. No. OST-96-1880, 63 FR 10535, Mar. 4, 1998; 63 FR 11954, Mar. 11, 1998]

§ 382.39 Provision of services and equipment.

Carriers shall ensure that qualified individuals with a disability are provided the following services and equipment:

(a) Carriers shall provide assistance requested by or on behalf of qualified individuals with a disability, or offered by air carrier personnel and accepted by qualified individuals with a disability, in enplaning and deplaning. The delivering carrier shall be responsible for assistance in making flight connections and transportation between gates.

(1) This assistance shall include, as needed, the services personnel and the use of ground wheelchairs, boarding wheelchairs, on-board wheelchairs, where provided in accordance with this part, and ramps or mechanical lifts.

(2) Boarding shall be by level entry boarding platforms or accessible passenger lounges, where these means are available. Where these means are not available, carriers shall use ramps, mechanical lifts, or other suitable devices (not normally used for freight) for enplaning and deplaning qualified individuals with a disability who need them. Such devices shall be maintained in proper working order. In no case shall carrier personnel be required to hand-carry a passenger in order to provide boarding assistance (i.e., directly to pick up the passenger's body in the arms of one or more carrier personnel to effect a level change the passenger needs to enter or leave the aircraft). Requirements for providing boarding assistance to aircraft with 30 or fewer seats are found in §382.40.

(3) Carriers shall not leave a handicapped passenger unattended in a ground wheelchair, boarding wheelchair, or other device, in which the passenger is not independently mobile, for more than 30 minutes.

(b) Carriers shall provide services within the aircraft cabin as requested by or on behalf of individuals with a disability, or when offered by air carrier personnel and accepted by individuals with a disability as follows:

(1) Assistance in moving to and from seats, as part of the enplaning and deplaning processes;

(2) Assistance in preparation for eating, such as opening packages and identifying food;

(3) If there is an on-board wheelchair on the aircraft, assistance with the use of the on-board wheelchair to enable the person to move to and from a lavatory;

(4) Assistance to a semiambulatory person in moving to and from the lavatory, not involving lifting or carrying the person; or

(5) Assistance in loading and retrieving carry-on items, including mobility
aids and other assistive devices stowed on board in accordance with §382.41.

(c) Carriers are not required to provide extensive special assistance to qualified individuals with a disability. For purposes of this section, extensive special assistance includes the following activities:

(1) Assistance in actual eating;
(2) Assistance within the restroom or assistance at the passenger’s seat with elimination functions;
(3) Provision of medical services.


§ 382.40 Boarding assistance for small aircraft.

(a) Paragraphs (b) and (c) of this section apply to air carriers conducting passenger operations with aircraft having 19–30 seat capacity at airports with 10,000 or more annual enplanements.

(b) Carriers shall, in cooperation with the airports they serve, provide boarding assistance to individuals with disabilities using mechanical lifts, ramps, or other suitable devices that do not require employees to lift or carry passengers up stairs.

(c) (1) Each carrier shall negotiate in good faith with the airport operator at each airport concerning the acquisition and use of boarding assistance devices. The carrier(s) and the airport operator shall, by no later than September 2, 1997, sign a written agreement allocating responsibility for meeting the boarding assistance requirements of this section between or among the parties. The agreement shall be made available, on request, to representatives of the Department of Transportation.

(2) The agreement shall provide that all actions necessary to ensure accessible boarding for passengers with disabilities are completed as soon as practicable, but no later than December 2, 1998 at large and medium commercial service hub airports (those with 1,200,000 or more annual enplanements); December 2, 1999 for small commercial service hub airports (those with between 250,000 and 1,199,999 annual enplanements); or December 4, 2000 for non-hub commercial service primary airports (those with between 10,000 and 249,999 annual enplanements). All air carriers and airport operators involved are jointly responsible for the timely and complete implementation of the agreement.

(3) Under the agreement, carriers may require that passengers wishing to receive boarding assistance requiring the use of a lift for a flight using a 19–30 seat aircraft check in for the flight one hour before the scheduled departure time for the flight. If the passenger checks in after this time, the carrier shall nonetheless provide the boarding assistance by lift if it can do so by making a reasonable effort, without delaying the flight.

(4) Boarding assistance under the agreement is not required in the following situations:

(i) Access to aircraft with a capacity of fewer than 19 or more than 30 seats;
(ii) Access to float planes;
(iii) Access to the following 19-seat capacity aircraft models: the Fairchild Metro, the Jetstream 31, and the Beech 1900 (C and D models);
(iv) Access to any other 19-seat aircraft model determined by the Department of Transportation to be unsuitable for boarding assistance by lift on the basis of a significant risk of serious damage to the aircraft or the presence of internal barriers that preclude passengers who use a boarding or aisle chair to reach a non-exit row seat.

(5) When boarding assistance is not required to be provided under paragraph (c)(4) of this section, or cannot be provided as required by paragraphs (b) and (c) of this section for reasons beyond the control of the parties to the agreement (e.g., because of mechanical problems with a lift), boarding assistance shall be provided by any available means to which the passenger consents, except hand-carrying as defined in §382.39(a)(2) of this part.

(6) The agreement shall ensure that all lifts and other accessibility equipment are maintained in proper working condition.

(d) (1) The training of carrier personnel required by §382.61 shall include, for those personnel involved in providing boarding assistance, training to proficiency in the use of the boarding
§ 382.41 Stowage of personal equipment.

(a) All stowage of qualified handicapped individuals' wheelchairs and other equipment covered by this part in aircraft cabins shall be in accordance with 14 CFR 121.589 and 14 CFR 121.285(c) or 14 CFR 135.87, as applicable.

(b) Carriers shall permit qualified individuals with a disability using personal ventilators/respirators to bring their equipment, including non-spillable batteries that meet the requirements of 49 CFR 173.159(d) and any applicable FAA safety regulations, on board the aircraft and use it.

(c) Carriers shall permit qualified individuals with a disability to stow canes and other assistive devices on board the aircraft in close proximity to their seats, consistent with the requirements of FAA safety regulations for carry-on items.

(d) Carriers shall not, in implementing their carry-on baggage policies, count toward a limit on carry-on items any assistive device brought into the cabin by a qualified individual with a disability.

(e) Carriers shall provide for on-board stowage of passengers' wheelchairs (including collapsible or break-down battery-powered wheelchairs, subject to the provisions of paragraph (g)(5) of this section) as carry-on baggage as follows:

(1) Carriers shall permit the stowage of wheelchairs or components of wheelchairs in overhead compartments and under seats, consistent with the requirements of FAA safety regulations for carry-on items.

(2) In an aircraft in which a closet or other approved stowage area is provided in the cabin for passengers' carry-on items, of a size that will accommodate a folding, collapsible, or break-down wheelchair, the carrier shall designate priority stowage space, as described below, for at least one folding, collapsible, or break-down wheelchair in that area. A individual with a disability who takes advantage of a carrier offer of the opportunity to pre-board the aircraft may stow his or her wheelchair in this area, with priority over the carry-on items brought onto the aircraft by other passengers enplaning at the same airport. A individual with a disability who does not take advantage of a carrier offer of the opportunity to preboard may use the area to stow his or her wheelchair on a first-come, first-served basis along with all other passengers seeking to stow carry-on items in the area.

(3) If an approved stowage area in the cabin is not available for a folding, collapsible, or break-down wheelchair, the wheelchair shall be stowed in the cargo compartment.

(f) When a folding, collapsible, or break-down wheelchair cannot be stowed in the passenger cabin as carry-on baggage, carriers shall provide for the checking and timely return of passengers' wheelchairs and other assistive devices as close as possible to the door of the aircraft, so that passengers may use their own equipment to the extent possible, except where this practice would be inconsistent with DOT regulations governing the transportation of hazardous materials.

(1) At the request of the passenger, the carrier may return wheelchairs or other assistive devices to the passenger at the baggage claim area instead of at the door of the aircraft.

(2) In order to achieve the timely return of wheelchairs, passengers' wheelchairs and other assistive devices shall be among the first items retrieved from the baggage compartment.

(3) Wheelchairs and other assistive devices shall be stowed in the baggage compartment with priority over other cargo and baggage. Where this priority results in passengers' baggage being unable to be carried on the flight, the carrier shall make its best efforts to
ensure that the other baggage reaches the passengers' destination within four hours of the scheduled arrival time of the flight.

(g) Whenever baggage compartment size and aircraft airworthiness considerations do not prohibit doing so, carriers shall accept a passenger's battery-powered wheelchair, including the battery, as checked baggage, consistent with the requirements of 49 CFR 175.10(a)(19) and (20) and the provisions of paragraph (f) of this section.

(1) Carriers may require that qualified individuals with a disability wishing to have battery-powered wheelchairs transported on a flight (including in the cabin) check in one hour before the scheduled departure time of the flight. If such an individual checks in after this time, the carrier shall nonetheless carry the wheelchair if it can do so by making a reasonable effort, without delaying the flight.

(2) If the battery on the individual's wheelchair has been labeled by the manufacturer as non-spillable as provided in 49 CFR 173.159(d)(2), or if a battery-powered wheelchair with a spillable battery is loaded, stored, secured and unloaded in an upright position, the carrier shall not require the battery to be removed and separately packaged. Notwithstanding this requirement, carriers may remove and package separately any battery that appears to be damaged or leaking.

(3) When it is necessary to detach the battery from the wheelchair, carriers shall, upon request, provide packaging for the battery meeting the requirements of 49 CFR 175.10(a)(19) and (20) and package the battery. Carriers may refuse to use packaging materials or devices other than those they normally use for this purpose.

(4) Carriers shall not drain batteries.

(5) At the request of a passenger, a carrier shall stow a folding, breakdown or collapsible battery-powered wheelchair in the passenger cabin stowage area as provided in paragraph (e) of this section. If the wheelchair can be stowed in the cabin without removing the battery, the carrier shall not remove the battery. If the wheelchair cannot be stowed in the cabin without removing the battery, the carrier shall remove the battery and stow it in the baggage compartment as provided in paragraph (g)(3) of this section. In this case, the carrier shall permit the wheelchair, with battery removed, to be stowed in the cabin.

(h) Individuals with disabilities shall be permitted to provide written directions concerning the disassembly and reassembly of their wheelchairs.

§ 382.45 Passenger information.

(a) A carrier shall make available, on request, the following information concerning facilities and services related to the provision of air transportation to qualified individuals with a disability. This information shall pertain to the type of aircraft and, where feasible, the specific aircraft scheduled for a specific flight:

(1) The location of seats, if any, with movable armrests and any seats which the carrier, consistent with this part, does not make available to qualified individuals with a disability;

(2) Any limitations on the ability of the aircraft to accommodate qualified individuals with disabilities, including limitations on the availability of boarding assistance to the aircraft,
§ 382.47 Accommodations for persons with hearing impairments.

(a) Each carrier providing scheduled air service, or charter service under section 401 of the Federal Aviation Act, and which makes available telephone reservation and information service available to the public shall make available a telecommunications device for the deaf (TDD) service to enable persons with hearing impairments to make reservations and obtain information. The TDD service shall be available during the same hours as the telephone service for the general public and the response time for answering calls shall be equivalent. Users of the TDD service shall not be subject to charges for a call that exceed those applicable to other users of the telephone information and reservation service.

(b) In aircraft in which safety briefings are presented to passengers on video screens, the carrier shall ensure that the video presentation is accessible to persons with hearing impairments.

(1) Except as provided in paragraph (b)(2) of this section, the carrier shall implement this requirement by using open captioning or an inset for a sign language interpreter as part of the video presentation.

(2) A carrier may use an equivalent non-video alternative to this requirement only if neither open captioning nor a sign language interpreter inset could be placed in the video presentation without so interfering with it as to render it ineffective or would be large enough to be readable.

(3) Carriers shall implement the requirements of this section by substituting captioned video materials for uncaptioned video materials as the uncaptioned materials are replaced in...
the normal course of the carrier’s operations.

§ 382.49 Security screening of passengers.

(a) Qualified individuals with a disability shall undergo security screening in the same manner, and be subject to the same security requirements, as other passengers. Possession by a qualified individual with a disability of an aid used for independent travel shall not subject the person or the aid to special screening procedures if the person using the aid clears the security system without activating it. Provided, that this paragraph shall not prohibit security personnel from examining a mobility aid or assistive device which, in their judgment, may conceal a weapon or other prohibited item. Security searches of qualified individuals with a disability whose aids activate the security system shall be conducted in the same manner as for other passengers. Private security screenings shall not be required for qualified individuals with a disability to a greater extent, or for any different reason, than for other passengers.

(b) Except as provided in paragraph (c) of this section, if a qualified handicapped person requests a private screening in a timely manner, the carrier shall provide it in time for the passenger to enplane.

(c) If a carrier employs technology that can conduct an appropriate screening of a handicapped passenger without necessitating a physical search of the person, the carrier is not required to provide a private screening.

§ 382.51 Communicable diseases.

(a) Except as provided in paragraph (b) of this section, a carrier shall not take any of the following actions, with respect to a person who is otherwise a qualified individual with a disability, on the basis that the individual has a communicable disease or infection:

(1) Refuse to provide transportation to the person;

(2) Require the person to provide a medical certificate; or

(3) Impose on the person any condition, restriction, or requirement not imposed on other passengers.

(b)(1) The carrier may take the actions listed in paragraph (a) of this section with respect to an individual who has a communicable disease or infection only if the individual’s condition poses a direct threat to the health or safety of others.

(2) For purposes of this section, a direct threat means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services.

(3) In determining whether an individual poses a direct threat to the health or safety of others, a carrier must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: the nature, duration, and severity of the risk; that the potential harm to the health and safety of others will actually occur; and whether reasonable modifications of policies, practices, or procedures will mitigate the risk.

(4) In taking actions authorized under this paragraph, carriers shall select the alternative, consistent with the safety and health of other persons, that is least restrictive from the point of view of the passenger with the communicable disease. For example, the carrier shall not refuse to provide transportation to an individual if provision of a medical certificate or reasonable modifications to practices, policies, or procedures will mitigate the risk of communication of the disease to others to an extent that would permit the individual to travel.

(5) If an action authorized under this paragraph results in the postponement of a passenger’s travel, the carrier shall permit the passenger to travel at a later time (up to 90 days from the date of the postponed travel) at the fare that would have applied to the passenger’s originally scheduled trip without penalty or, at the passenger’s discretion, provide a refund for any unused flights, including return flights.

(6) Upon the passenger’s request, the carrier shall provide to the passenger a written explanation of any action taken under this paragraph within 10 days of the request.
(c) If a qualified individual with a disability with a communicable disease or infection of the kind described in paragraph (b) of this section presents a medical certificate to the carrier, as provided in §382.53(c)(2), the carrier shall provide transportation to the individual, unless it is not feasible for the carrier to implement the conditions set forth in the medical certificate as necessary to prevent the transmission of the disease or infection to other persons in the normal course of a flight. It shall be dated within ten days of the date of the flight for which it is presented.

§ 382.55 Miscellaneous provisions.

(a) Carriers shall not require a person who is otherwise a qualified handicapped person to have a medical certificate as a condition for being provided transportation.

(b)(1) A carrier may require a medical certificate for a qualified individual with a disability—

(i) Who is traveling in a stretcher or incubator;

(ii) Who needs medical oxygen during a flight, as provided in 14 CFR 121.574;

(iii) Whose medical condition is such that there is reasonable doubt that the individual can complete the flight safely, without requiring extraordinary medical assistance during the flight.

(2) Carriers shall permit a service animal to accompany a qualified individual with a disability in any seat in which the person sits, unless the animal obstructs an aisle or other area that must remain unobstructed in order to facilitate an emergency evacuation.

(3) In the event that special information concerning the transportation of animals outside the continental United States is either required to be or is provided by the carrier, the information shall be provided to all passengers traveling with animals outside the continental United States with the carrier, including those traveling with service animals.

(b) Carriers shall not require qualified individuals with a disability to sit on blankets.

(c) Carriers shall not restrict the movements of handicapped persons in terminals or require them to remain in a holding area or other location in order to be provided transportation, to receive assistance, or for other purposes, or otherwise mandate separate treatment for handicapped persons, except as permitted or required in this part.

§ 382.57 Charges for accommodations prohibited.

Carriers shall not impose charges for providing facilities, equipment, or services that are required by this part to be provided to qualified individuals with a disability.
§ 382.61 Training.

(a) Each carrier which operates aircraft with more than 19 passenger seats shall provide training, meeting the requirements of this paragraph, for all its personnel who deal with the traveling public, as appropriate to the duties of each employee.

(1) The carrier shall ensure training proficiency concerning:

(i) The requirements of this part and other DOT or FAA regulations affecting the provision of air travel to handicapped persons; and

(ii) The carrier's procedures, consistent with this part, concerning the provision of air travel to handicapped persons, including the proper and safe operation of any equipment used to accommodate handicapped passengers.

(2) The carrier shall also train such employees with respect to awareness and appropriate responses to handicapped persons, including persons with physical, sensory, mental, and emotional disabilities, including how to distinguish among the differing abilities of individuals with a disability.

(3) The carrier shall consult with organizations representing persons with disabilities in developing its training program and the policies and procedures concerning which carrier personnel are trained.

(4) The carrier shall ensure that personnel required to receive training shall complete the training by the following times:

(i) For crewmembers subject to training required under 14 CFR part 121 or 135, who are employed on the date the carrier's program is established under § 382.63, as part of their next scheduled recurrent training;

(ii) For other personnel employed on the date the carrier's program is established under § 382.63, within 180 days of that date;

(iii) For crewmembers subject to training requirements under 14 CFR part 121 or 135 whose employment in any given position commences after the date the carrier's program is established under § 382.63, before they assume their duties; and

(iv) For other personnel whose employment in any given position commences after the date the carrier's program is established under § 382.63, within 60 days of the date on which they assume their duties.

(b) Each carrier operating only aircraft with 19 or fewer passenger seats shall provide training for flight crewmembers and appropriate personnel to ensure that they are familiar with the matters listed in paragraphs (a)(1) through (a)(5) of this section.

(c) Each carrier shall ensure that all personnel required to receive training receive refresher training on the matters covered by this section, as appropriate to the duties of each employee, as needed to maintain proficiency.

(d) Each carrier shall provide, or require its contractors to provide, training to the contractors' employees concerning travel by handicapped persons. This training is required only for those contractor employees who deal directly with the traveling public at airports, and it shall be tailored to the employees' functions. Training for contractor employees shall meet the requirements of paragraphs (a)(1) through (a)(5) of this section.

(e) Current employees of each carrier designated as complaints resolution officials, for purposes of § 382.65 of this part, shall receive training concerning the requirements of this part and the duties of a complaints resolution official within 60 days of the effective date of this part. Employees subsequently designated as complaints resolution officials shall receive this training before assuming their duties under § 382.65. All employees performing the complaints resolution official function shall receive annual refresher training concerning their duties and the provisions of this regulation.

§ 382.63 Carrier programs.

(a)(1) Each carrier that operates aircraft with more than 19 passenger seats shall establish and implement, within 180 days of the effective date of this part, a written program for carrying out the requirements of this part.
§ 382.65 Compliance procedures.

(a) Each carrier providing scheduled service shall establish and implement a complaint resolution mechanism, including designating one or more complaints resolution official(s) (CRO) to be available at each airport which the carrier serves. (1) The carrier shall make a CRO available to any person who complains of alleged violations of this part during all times the carrier is operating at the airport.

(b) The carrier may make the CRO available via telephone, at no cost to the passenger, if the CRO is not present in person at the airport at the time of the complaint. If a telephone link to the CRO is used, TDD service shall be available so that persons with hearing impairments may readily communicate with the CRO.

(c) Each CRO shall be thoroughly familiar with the requirements of this part and the carrier’s procedures with respect to handicapped passengers.

(d) Other carriers shall maintain their programs on file, and shall make them available for review by the Department on the Department’s request.

§ 382.65 Compliance procedures.

(2) Carriers are not excused from compliance with the provisions of this part during the 180 days before carrier programs are required to be established.

(b) The program shall include the following elements:

(1) The carrier’s schedule for training its personnel in compliance with § 382.61;

(2) The carrier’s policies and procedures for accommodating handicapped passengers consistent with the requirements of this part.

(c) (1) Major and National carriers (as defined in the DOT publication Air Carrier Traffic Statistics), and every U.S. carrier that shares the designator code of a Major or National carrier (as described in 14 CFR 399.88), shall submit their program to the Department for review within 180 days of the effective date of this part.

(2) The Department shall review each carrier’s program, which the carrier shall implement without further DOT action at the time it is submitted to the Department.

(3) If the Department determines that any portion of a carrier’s plan must be amended, or provisions added or deleted, in order for the carrier to comply with this part, DOT will direct the carrier to make appropriate changes. The carrier shall incorporate these changes into its program and implement them.

(d) Other carriers shall maintain their programs on file, and shall make them available for review by the Department on the Department’s request.

If, upon such review, the Department determines that any portion of a carrier’s plan must be amended, or provisions added or deleted, in order for the carrier to comply with this part, DOT will direct the carrier to make appropriate changes. The carrier shall incorporate these changes into its program and implement them.

(1) The carrier shall make a CRO available to any person who complains of alleged violations of this part during all times the carrier is operating at the airport.

(2) The carrier may make the CRO available via telephone, at no cost to the passenger, if the CRO is not present in person at the airport at the time of the complaint. If a telephone link to the CRO is used, TDD service shall be available so that persons with hearing impairments may readily communicate with the CRO.

(3) Each CRO shall be thoroughly familiar with the requirements of this part and the carrier’s procedures with respect to handicapped passengers.

(4) Each CRO shall have the authority to make dispositive resolution of complaints on behalf of the carrier.

(5) When a complaint is made to a CRO, the CRO shall promptly take dispositive action as follows:

(i) If the complaint is made to a CRO before the action or proposed action of carrier personnel has resulted in a violation of a provision of this part, the CRO shall take or direct other carrier personnel to take action, as necessary, to ensure compliance with this part. Provided, That the CRO is not required to be given authority to countermand a decision of the pilot-in-command of an aircraft based on safety.

(ii) If an alleged violation of a provision of this part has already occurred, and the CRO agrees that a violation has occurred, the CRO shall provide to the complainant a written statement setting forth a summary of the facts and what steps, if any, the carrier proposes to take in response to the violation.

(iii) If the CRO determines that the carrier’s action does not violate a provision of this part, the CRO shall provide to the complainant a written statement including a summary of the facts and the reasons, under this part, for the determination.

(iv) The statements required to be provided in paragraph (a)(5) of this section shall inform the complainant of his or her right to pursue DOT enforcement action under this section. This statement shall be provided in person to the complainant at the airport if
possible; otherwise, it shall be forwarded to the complainant within 10 calendar days of the complaint.

(b) Each carrier shall establish a procedure for resolving written complaints alleging violation of the provisions of this part.

(1) A carrier is not required to respond to a complaint postmarked more than 45 days after the date of the alleged violation.

(2) A written complaint shall state whether the complainant has contacted a CRO in the matter, the name of the CRO and the date of the contact, if available, and include any written response received from the CRO.

(3) The carrier shall make a disposition of the complaint within 30 days of its receipt.

(i) If the carrier agrees that a violation has occurred, the carrier shall provide to the complainant a written statement setting forth a summary of the facts and what steps, if any, the carrier proposes to take in response to the violation.

(ii) If the carrier denies that a violation has occurred, the response shall include a summary of the facts and the carrier's reasons, under this part, for the determination.

(iii) The statements required to be provided in paragraph (b)(3) of this section shall inform the complainant of his or her right to pursue DOT enforcement action under this section.

(c) Any person believing that a carrier has violated any provision of this part may contact the following office for assistance: Department of Transportation, Office of Consumer Affairs, 400 7th Street, SW., Washington, DC 20590, (202) 366-2220.

(d) Any person believing that a carrier has violated any provision of this part may file a formal complaint under the applicable procedures of 14 CFR part 302.

PART 383—CIVIL PENALTIES

§ 383.1 Basis and purpose.

(a) Basis. This part implements the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101-410), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104-134, section 31001). The Debt Collection Improvement Act of 1996 (Act) requires each agency head to adjust by regulation each civil monetary penalty provided by law by the inflation adjustment described under section 5 of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.

(b) Purpose. This part increases the civil penalty liability amount listed under subsection (a)(1) of section 46301 of Title 49 of the United States Code.

§ 383.2 Amount of penalty.

A person is liable to the United States Government for a civil penalty of not more than $1,100 for violations covered by this chapter and listed under subsection (a)(1) of section 46301 of Title 49 of the United States Code.\(^1\)

\(^1\)As adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101-140), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104-143, section 31001).
PART 385—STAFF ASSIGNMENTS AND REVIEW OF ACTION UNDER ASSIGNMENTS

Subpart A—General Provisions

§ 385.1 Definitions.

Department means Department of Transportation.

Petition for review means a petition asking the appropriate Reviewing Official to exercise his or her discretionary right of review of staff action.

Precedent means applicable judicial decisions and decisions by the Department, or by the Board where consistent with Department policy.

Reviewing Official means the Assistant Secretary for Aviation and International Affairs, the General Counsel, or the Director of the Bureau of Transportation Statistics, as appropriate to the subject matter under review, but not with regard to Deputy General Counsel and Administrative Law Judge decisions made under this part.

Staff action means the exercise of a function under Subparts I, II and IV of Subtitle VII of Title 49 of the United States Code (Transportation) by a staff member pursuant to assignment under this part.

Staff members means officers and employees of the Department who are assigned authority under this part.

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


§ 385.2 Applicability.

This part describes the organization of the Department insofar as, pursuant to authority conferred on it by section 40113 of the Statute, the Department has adopted rules herein or elsewhere which make continuing assignments of authority with respect to any of its functions of making orders or other determinations, many of which are not required to be made on an evidentiary record upon notice and hearing or which are not the subject of contest, and Department personnel have been assigned to perform such functions.
§ 385.5 Procedures prescribed in other regulations.

Procedures set forth in this part do not supersede procedures applicable to matters on which decision has been assigned unless otherwise specifically provided herein: Provided, however, That any provisions in other regulations which provide for reconsideration of nonhearing determinations are not applicable to decisions made under authority assigned herein or to decisions made upon review thereof by the Reviewing Official.
§ 385.6 Referral to the Reviewing Official.

When the staff member finds that the public interest so requires, or that, with respect to other than matters requiring immediate action as hereafter specified, there will be insufficient time for discretionary review of his or her decision upon petition, the staff member shall, in lieu of exercising the authority, submit the matter to the Reviewing Official for decision. In any case in which the staff member finds that immediate action is required with respect to any matter assigned herein, the disposition of which is governed by prior precedent and policy, the staff member may take appropriate action and specify that the filing of a petition for review shall not preclude such action from becoming effective.

§ 385.7 Exercise of authority by superiors.

Any assignment of authority to a staff member other than the Chief Administrative Law Judge, the Administrative Law Judge, and the Deputy General Counsel, shall also be deemed to be made, severally, to each such staff member’s respective superiors. In accordance with the Department’s principle of management responsibility, the superior may choose to exercise the assigned power personally. Moreover, the Secretary may at any time exercise any authority assigned herein.

§ 385.8 Exercise of authority in “acting” capacity.

Unless the assignment provides otherwise, staff members serving in an “acting” capacity may exercise the authority assigned to the staff members for whom they are acting.

Subpart B—Assignment of Functions to Staff Members

§ 385.10 Authority of Chief Administrative Law Judge, Office of Hearings.

The Chief Administrative Law Judge has authority to:

(a) Consolidate, upon recommendation of the Director, Office of International Aviation (or such staff member of the Office of International Aviation as he or she may designate), into one proceeding cases involving the investigation of a tariff or of complaints concerned with related tariffs.

(b) With respect to matters to be decided after notice and hearing: (1) Dismiss applications or complaints (except those falling under subpart B of part 302 of this chapter (Procedural Regulations)) when such dismissal is requested or consented to by the applicant or complainant, or where such party has failed to prosecute such application or complaint; (2) dismiss proceedings upon his or her finding that the proceeding has become moot or that no further basis for continuation exists; and (3) dismiss an application subject to dismissal as stale under part 302 of this chapter.


§ 385.11 Authority of the Administrative Law Judges, Office of Hearings.

The Administrative Law Judges, Office of Hearings, have authority to take the following actions in matters to which they are respectively assigned:

(a) Grant or deny intervention in formal proceedings.

(b) With respect to matters to be decided after notice and hearing, dismiss applications or complaints (except those falling under subpart B of part 302 of this chapter (Procedural Regulations)) when such dismissal is requested or consented to by the applicant or complainant, or where such party has failed to prosecute such application or complaint.

(c) Grant requests for consolidation of applications for route authority within the scope of the proceeding before him or her, and deny requests for consolidation of applications for route authority not within the scope of the proceeding.

(d) Approve or disapprove proposed settlements of enforcement proceedings submitted under §302.215 of this chapter.

§ 385.12 Authority of the Director, Office of Aviation Analysis.

The Director, Office of Aviation Analysis, has authority:
(a) With respect to applications filed under section 41102 to engage in interstate or foreign scheduled or charter air transportation, section 41103 to engage in all-cargo air transportation, or section 41738 to engage in certain commuter air transportation:

(1) To issue an order stating the Department’s intention to process the application through show-cause procedures or other expedited procedures, where that course of action is clear under current policy and precedent.

(2) To issue an order to show cause proposing to grant such application in those cases where no objections to the application have been filed, and where the Department has already found the applicant to be fit, willing and able to provide service of the same basic scope and character.

(3) To issue an order, subject to any Presidential review required under section 41307 of the Statute, making final an order to show cause issued under paragraph (a)(2) of this section, where no objections to the order to show cause have been filed.

(4) To issue an order dismissing an application:

(i) When dismissal is requested or consented to by the applicant;

(ii) For lack of prosecution; or

(iii) When the application has become moot.

(5) To review Air Carrier Certificates and Operations Specifications issued by the Federal Aviation Administration to carriers that have been granted certificate or commuter air carrier authority, and information concerning those carriers’ fitness to operate under that authority that emerged following the issuance of orders establishing their fitness, and—

(i) To amend orders issuing the certificate or commuter air carrier authority to advance the effective dates of the authority if the review is satisfactory;

(ii) To stay the effectiveness of such orders for up to 30 days if the review is unsatisfactory;

(iii) To lift the stay of effectiveness imposed under paragraph (a)(5)(ii) of this section when the unsatisfactory conditions that required issuance of the stay have been resolved; or

(iv) To issue notices announcing the effective date of the certificate or commuter air carrier authority.

(b) To approve or deny applications of air carriers:

(1) For exemptions from section 41102 or 41103 of the Statute, and from orders issued thereunder, and from applicable regulations under this chapter where the course of action is clear under current policy or precedent.

(2) For waivers of the Department’s filing fee requirements under part 389 of this chapter, in accordance with current policy or precedent.

(3) For relief under section 40109 of the Statute to hold out, arrange, and coordinate the operation of air ambulance flights as indirect air carriers in accordance with established precedent.

(c) To waive the deadlines in §377.10(c) of this chapter for filing applications for the renewal of temporary authorizations when, in the Director’s judgment, the public interest would be served. The provisions of §377.10(d) of this chapter shall apply in the same manner as to a timely filed application.

(d) With respect to air carrier names:

(1) To register names and trade names of certificated and commuter air carriers pursuant to part 215 of this chapter.

(2) To reissue certificates issued under sections 41102 or 41103 of the Statute when revisions thereof are necessitated by a change in the name of a carrier, provided that no issue of substance concerning the operating authority of the carrier is involved.

(e) To approve, deny, or cancel registrations filed with the Department by air taxi operators and commuter air carriers pursuant to part 298 of this chapter.

(f) With respect to Canadian charter air taxi operations:

(1) To approve applications for registration, or require that a registrant submit additional information, or reject an application for registration for failure to comply with part 294 of this chapter.

(2) To cancel, revoke, or suspend the registration of any Canadian charter air taxi operator using small aircraft registered under part 294 of this chapter.
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(i) Filed with the Department a written notice that it is discontinuing operations;

(ii) No longer is designated by its home government to operate the services contemplated by its registration;

(iii) Holds a foreign air carrier permit under section 41302 to operate large aircraft charters between the United States and Canada;

(iv) Fails to keep its filed certificate of insurance current;

(v) No longer is substantially owned or effectively controlled by persons who are:

(A) Citizens of Canada;

(B) The Government of Canada; or

(C) A combination of both;

(vi) No longer holds current effective Operations Specifications issued by the FAA.

(3) To grant or deny requests for a waiver of part 294 of this chapter, where grant or denial of the request is in accordance with established precedent.

(g) To approve certificates of insurance filed with the Department on behalf of U.S. and foreign air carriers in accordance with the provisions of part 205 of this chapter.

(h) With respect to foreign air freight forwarders:

(1) To approve applications for registration, or require that a registrant submit additional information, or reject an application for registration for failure to comply with part 297 of this chapter.

(2) To cancel the registration of any foreign air freight forwarder or foreign cooperative shippers association that files a written notice with the Department indicating the discontinuance of common carrier activities.

(3) To exempt the registrant from the requirement contained in §297.20 of this chapter that substantial ownership and effective control reside in citizens of the country that the applicant claims as its country of citizenship, where the course of action is clear under current precedent or policies.

(i) With respect to charter operations:

(1) To grant or deny requests for waiver of parts 207, 208, 212, 372, and 380 of this chapter, where grant or denial of the request is in accordance with established precedent.

(2) To approve or disapprove direct air carrier escrow agreements filed pursuant to parts 207, 208, and 212 of this chapter.

(3) To reject or accept Public Charter prospectuses filed under part 380 of this chapter.

(4) With respect to the procedures for the registration of foreign charter operators under subpart F of part 380 of this chapter:

(i) To approve applications for registration, or require that a registrant submit additional information, or reject an application for registration for failure to comply with part 380 of this chapter.

(ii) To notify the applicant that its application will require further analysis or procedures, or is being referred to the Assistant Secretary for Aviation and International Affairs for formal action.

(iii) To cancel the registration of a foreign charter operator if it files a written notice with the Department that it is discontinuing its charter operations.

(iv) To waive provisions of subpart F of part 380 of this chapter.

(j) With respect to mail rates:

(1) To issue show-cause orders proposing to make modifications of a technical nature in the mail rate formula applicable to temporary or final service mail rate orders.

(2) To issue final orders establishing temporary and final service mail rates:

(i) In those cases where no objection has been filed following release of the show-cause order, and where the rates established are the same as those proposed in the show-cause order; and

(ii) In those cases where it is necessary to make modifications of a technical nature in the rates proposed in the show-cause order.

(3) To issue final orders amending mail rate orders of air carriers to reflect changes in the names of the carriers subject to the orders.

(4) To issue a letter, in the case of air mail contracts filed with the Department under part 302 of this chapter against which no complaints have been filed, stating that the contract will not
(k) With respect to essential air service proceedings:

(1) To establish procedural dates.

(2) To issue orders setting interim rates of compensation for carriers required to provide essential air service.

(3) To issue orders approving a carrier’s alternate service pattern if:

(i) The resulting level of service at the eligible place would be equal to or greater than the level of service earlier determined to be essential for that place;

(ii) The community concerned does not object to the carrier’s implementation of the alternate service pattern; and

(iii) The carrier is not receiving a subsidy for the service or implementation of the alternate service pattern would not increase the carrier’s subsidy.

(4) To issue orders adjusting the operational and/or financial unit rates of the payout formula for a carrier receiving subsidy under section 41732 of the Statute where the adjustment will not increase the total amount of compensation that the carrier will receive.

(5) To renew, up to five times in succession, an order under section 41734 of the Statute to an air carrier to continue providing essential air service while the Department attempts to find a replacement carrier.

(6) To request service and subsidy proposals from carriers interested in providing essential air service to an eligible place that is not receiving essential air service and for which no appeal of its essential air service determination is pending.

(7) To request service and subsidy proposals from carriers interested in providing essential air service when no proposals were filed in response to a previous request for proposals.

(8) To issue final orders establishing interim or final subsidy rates under section 41732 or final adjustments of compensation for continued service under section 41732 in those cases where no objection has been filed to a show-cause order, and where the rates established are the same as or less than those proposed in the approved show-cause order.

(9) With respect to provisions for terminations, suspensions, or reductions of service under part 323 of this chapter:

(i) To require any person who files a notice, objection, or answer to supply additional information.

(ii) To require service of a notice, objection, or answer upon any person.

(iii) To accept late-filed objections or answers, upon motion, for good cause shown.

(iv) To extend the time for filing objections for answers, when the initial notice has been filed earlier than required under §323.5.

[Doc. No. OST-96-1268, 61 FR 19167, May 1, 1996]

§ 385.13 Authority of the Director, Office of International Aviation.

The Director, Office of International Aviation, has authority to:

(a) Approve or deny applications for exemptions, where the course of action is clear under current policy or precedent:

(1) For air carriers, from chapter 411 of the Statute and from certificates and orders issued under that chapter;

(2) For foreign air carriers, from section 41301 and from permits and related orders issued under chapter 413;

(3) For air carriers and foreign air carriers, from chapter 415 and from orders issued and tariffs filed under that chapter; and

(4) From orders and applicable regulations under this chapter.

(b) With respect to applications for certificates of public convenience and necessity under section 41102 and foreign air carrier permits under section 41302:

(1) Issue an order to show cause proposing to grant such application in those cases where no objections to the application have been filed, and the applicant has already been found fit, willing, and able by the Department to provide service of the same basic scope and character;

(2) Issue an order stating the Department’s intention to process the application through show-cause procedures;

(3) Issue an order, subject to Presidential review under section 41307, to make final an order to show cause
issued under the circumstances of paragraph (b)(1) of this section, where no objections to the show-cause order have been filed; and

(4) Reissue certificates of public convenience and necessity and foreign air carrier permits when revisions are necessitated by a change in the name of the carrier or of points specified, provided that no issue of substance concerning the operating authority of a carrier is involved.

(c) With respect to an application under section 41102 for a certificate to engage in foreign scheduled air transportation, issue an order instituting an investigation of the applicant's fitness and other issues related to the application, where no person has already filed an objection to the application and the investigation will be conducted by oral hearing procedures.

(d) Issue an order to show cause why a foreign air carrier permit should not be revoked under section 41304 when:

(1) The government of the permit holder's home country represents that it does not object to revocation of the permit; and

(2) The permit holder—

(i) Has ceased operations; or

(ii) No longer holds valid authority from its own government to operate the services in its permit.

(e) Approve or disapprove requests by foreign air carriers for authorizations provided for, or waivers of restrictions contained, in any agreement or in any permit or order of the Department, when no person disclosing a substantial interest objects or where the course of action is clear under current policy or precedent.

(f) Waive the deadlines in §377.10(c) of this chapter for filing applications for renewal of unexpired temporary authorizations when, in the Director's judgment, the public interest would be served. The provisions of §377.10(d) of this chapter shall apply in the same manner as to a timely filed application.

(g) Extend the time allowed for action on a complaint of unfair or discriminatory practices, filed under section 41310, for an additional period or periods of 30 days each, not to exceed the 180th day after filing unless that deadline has been waived by the complainant.

(h) Grant or deny applications for statements of authorization under parts 207, 208, and 212 of this chapter, and requests for waivers of the requirements of parts 207, 208, and 212 of this chapter, where grant or denial of the request is in accordance with current policy or precedent.

(i) Approve or disapprove charter trips by foreign air carriers, and those by air carriers that are predominantly in foreign air transportation, when prior authorization is required by:

(1) Any provision of this chapter; or

(2) An order of the Department.

(j) Approve or disapprove requests by foreign air carriers for waivers of the 30-day advance filing requirement for proposed schedules whose filing the Department has ordered under part 213 of this chapter.

(k) Approve, when no person disclosing a substantial interest objects, or disapprove requests by foreign air carriers for special authorizations provided for in part 216 of this chapter.

(l) With respect to applications for statements of authorization to conduct intermodal cargo services under part 222 of this chapter:

(1) Approve applications under part 222 of this chapter where no person with a substantial interest raises objections citing specific facts of nonreciprocity or of restraints on competition by U.S. air carriers;

(2) Reject applications under part 222 of this chapter where there is no agreement by the United States permitting the proposed services; or

(3) Require that an applicant under part 222 of this chapter submit additional information.

(m) Approve or disapprove issuance of foreign aircraft permits provided for in part 375, subparts E and H, of this chapter.

(n) Grant or deny applications of foreign air carriers for renewal of emergency exemptions granted under 49 U.S.C. 40109(g).

(o) Grant or deny applications by air carriers and foreign air carriers under part 389 of this chapter for waivers of the Department's filing fee requirements, in accordance with current policy or precedent.
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(p) Determine matters in proceedings under section 40109 and chapters 411, 413 and 415, that have not been set for oral evidentiary hearing, in addition to those authorized under §385.3, such matters to include, inter alia, filing times, service of documents, submissions of additional information, filing of otherwise unauthorized documents, access to information for which confidential treatment has been requested, rejection of incomplete or otherwise defective applications, and solicitation of applications for authority.

(q) Approve or disapprove applications under part 223 of this chapter for permission to furnish free or reduced-rate foreign air transportation.

(r) With respect to International Air Transport Association (IATA) agreements filed with the Department pursuant to sections 41309 and 41308 of the Statute, or pursuant to Civil Aeronautics Board Order E-9305 of June 15, 1955:
   (1) Issue orders approving or disapproving IATA agreements relating to fare and rate matters under section 41309, and granting or denying antitrust immunity under section 41308, where the course of action is clear under current policy and precedent.
   (2) Issue orders describing filed agreements, establishing procedural dates for submission of justification, comments and replies, which support or oppose agreements, and prescribing the particular types of data to be included in such submission.

(s) Reject any tariff, supplement, or revised page that is filed by any U.S. air carrier or foreign air carrier, and that is subject to rejection because it is not consistent with chapter 415 of the Statute or with part 221 or 222 of this chapter. Where a tariff, supplement or loose-leaf page is filed on more than 60 days’ notice and is not rejected within the first 30 days (including the filing date), it shall not be rejected after such 30-day period under this authority unless the issuing carrier is given an opportunity to remove the cause for rejection by the effective date, by special tariff permission if necessary, and fails to take such corrective action.

(t) Approve or disapprove any application for special tariff permission under part 221, subpart P, of this chapter to make tariff changes upon less than statutory notice.

(u) Approve or disapprove applications for waiver of part 221 of this chapter.

(v) Institute an investigation of, or institute an investigation and suspend the effectiveness of, a tariff or change in a tariff which:
   (1) Is substantially similar to a prior tariff under investigation or suspension; and
   (2) Is filed by or on behalf of one or more of the parties to the prior tariff; and
   (3) Is filed within 90 days after the expiration, modification, or cancellation of the prior tariff, or within 90 days after the effective date of an order requiring its cancellation or modification.

(w) In instances when an investigation of a tariff is pending, or the tariff is under suspension, or when a complaint requesting investigation or suspension of a tariff has been filed:
   (1) Permit cancellation of the tariff; or
   (2) If the grounds for the investigation or complaint have been removed through cancellation, expiration or modification of the tariff, either dismiss the investigation or complaint, or terminate the suspension.

(x) Extend the period of suspension of a tariff when the proceedings concerning the lawfulness of such tariff cannot be concluded before the expiration of the existing suspension period, provided that the aggregate of such extensions may not be for a longer period than permitted under section 41509.

(y) Cancel the suspension of and/or dismiss an investigation of a tariff relating to service predominantly in foreign air transportation where the course of action is clear under current policy and precedent.

[Doc. No. OST-96-1268, 61 FR 19169, May 1, 1996]

§ 385.14 Authority of the General Counsel.

(a) The General Counsel has authority to:
   (1) Issue proposed or final regulations for the purpose of making editorial
changes or corrections in the Department’s rules and regulations to carry out Titles IV and X of the Act, with the concurrence of the staff offices primarily responsible for the parts or sections involved: Provided, That any final regulation so issued shall have an effective date not less than 20 days after its date of publication in the Federal Register, and shall include a brief reference to the review procedures established in subpart C of this part.

(2) Where a petition for review is duly filed, reverse any rulemaking action taken by him or her pursuant to paragraph (a) of this section by withdrawing a proposed or final regulation issued thereunder, in which case the petition for review will not be submitted to the Reviewing Official involved. (Such a withdrawal is not subject to the review procedures of subpart C of this part.)

(3) Issue, upon request therefor, interpretations of facts bearing upon disqualifications of former members and employees, and Department employees under §300.13 or §300.14 of this chapter (Procedural Regulations).

(4) Issue orders requiring air carriers to prepare and submit within a specified reasonable period, special reports, copies of agreements, records, accounts, papers, documents, and specific answers to questions upon which information is deemed necessary. Special reports shall be under oath whenever the Deputy General Counsel so requires.

(5) Reissue existing regulations for the purpose of incorporating prior amendments adopted by the Department.

(b) Issue orders initiating and terminating informal nonpublic investigations under part 305 of this chapter (Procedural Regulations).

(c) Issue orders requiring air carriers to prepare and submit within a specified reasonable period, special reports, copies of agreements, records, accounts, papers, documents, and specific answers to questions upon which information is deemed necessary. Special reports shall be under oath whenever the Deputy General Counsel so requires.

(d) Institute and prosecute in the proper court, as agent of the Department, all necessary proceedings for the enforcement of the provisions of the act or any rule, regulation, requirement, or order thereunder, or any term, condition, or limitation of any certificate or permit, and for the punishment of all violations thereof. Any action taken by the Deputy General Counsel, pursuant to the authority of this section shall not be subject to the review procedures of this part.

(e) Make findings regarding the reasonable necessity for the application of the Department’s authority to obtain access to lands, buildings and equipment, and to inspect, examine and make notes and copies of accounts, records, memorandums, documents, papers and correspondence of persons having control over, or affiliated with, any person subject to regulation under Titles IV or X of the Act, through issuance of an appropriate order, letter or other transmittal.

(f) Issue orders denying or granting conditional or complete confidential treatment of information supplied by any person to the Office of Aviation Enforcement and Proceedings. Confidential treatment may only be granted upon a finding that, if the information were in the Department’s possession and a Freedom of Information Act (FOIA) request were made for the information:

(1) At the time of the confidentiality request, the FOIA request would be denied on the basis of one or more of the FOIA exemptions; and

(2) At any later time, the FOIA request would also be denied, absent a material change in circumstances (which may include a demonstration
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§ 385.19 Authority of the Director, Office of Aviation Information, Bureau of Transportation Statistics.

The Director, Office of Aviation Information, Bureau of Transportation Statistics (BTS) has authority to:

(a) Conduct all rulemaking proceedings concerning accounting, reporting, and record retention requirements for carrying out Subparts I, II, and IV of the Statute, except the issuance of final rules and the disposition of petitions for reconsideration.

(b) Interpret the accounting, reporting, and record retention requirements used to carry out Subparts I, II, and IV of the Statute.

(c) Waive any of the accounting, reporting, and record retention requirements upon a showing of the existence of such facts, circumstances or other grounds, and subject to such limitations or conditions as may be prescribed for waivers in the applicable regulations, unless such authority is otherwise specifically assigned.

(d) Dismiss petitions for Department or BTS action with respect to accounting, reporting, and record retention matters when such dismissal is requested or consented to by the petitioner.

§ 385.20 Authority of the Inspector General.

The Inspector General has authority to:

(a) Require special reports, including documentation, from any air carrier regarding audits and other examinations of carrier facilities, operations, and accounting and statistical records.

(b)(1) For accounting purposes, make findings regarding the reasonable necessity for the application of the Department authority to obtain access to lands, buildings, and equipment, and to inspect, examine, and make notes and copies of accounts, records, documents, papers, and correspondence of persons having control over, or affiliated with, any person subject to regulation used to carry out titles IV and X of the Act through issuance of an appropriate order, letter, or other transmittal.

(2) Authorize one or more auditors or special agents to conduct audits, inspections, and examinations and to make notes and copies in accordance with such findings.

(c) Release to the carrier that is the subject of a financial audit the audit report and other information developed during the audit.
(d) Require submission by carriers of special statements necessary to an explanation of any carrier accounting practice.


§ 385.31 Petitions for review.

(a) Time for filing. Petitions for review shall be filed and served within ten (10) days after the date of the staff action to which they relate, but a different period may be fixed in such staff action consistent with effective preservation of the right to petition for discretionary review and the exigencies of the situation.

(b) Contents. Petitions for review shall demonstrate that (1) a finding of material fact is clearly erroneous; (2) a legal conclusion is contrary to law, Department rules, or precedent; (3) a substantial and important question of policy is involved; (4) a prejudicial procedural error has occurred; or (5) the staff action is substantially deficient on its face. The petition shall briefly and specifically state the alleged grounds for review and the relief sought. If persons who participated at the staff action level set forth any new facts, arguments, or other new matter, an explanation must be furnished as to why said matter was not previously adduced at the staff action level. In the absence of a valid explanation, the Department may disregard such new matter.

(c) Form and filing. Petitions shall comply with the form and filing requirements of §§302.3 (a), (b), and (c), and 302.4 of this chapter. (Rules of practice in Economic Proceedings). Petitions shall not exceed 10 pages in length. A greater length, however, may be specified in the staff action taken. The petitions shall be accompanied by proof of required service. However, persons who seek review of a civil penalty proposed by the Assistant General Counsel for Aviation Enforcement and Proceedings pursuant to §385.15(a) may submit their request therefor by letter to the Department with a copy to the Assistant General Counsel for Aviation Enforcement and Proceedings and need not comply with the above form and filing requirements.

(d) Service. A petition filed by a person other than the applicant shall be
served on the applicant. Petitions shall also be served on any persons who have served documents on the petitioner at the staff action level; and on such other persons as may be directed by the Department or the staff member who took the action to be reviewed.

(e) Answers. The applicant and such other persons as disclose a substantial interest which would be adversely affected by the relief sought in the petition may, within ten (10) days after filing the petition, file an answer thereto. A different period for the filing of answers may be fixed in the staff action. Such answers shall comply with the form and filing requirements applicable to petitions and shall be served on the applicant and any other person who has theretofore served a document in the matter on such respondent.


§ 385.33 Review by the staff.

Where a petition for review is duly filed, the staff member may, upon consideration of all documents properly filed, reverse his or her decision. Except in the case of Administrative Law Judges, action taken by a staff member other than an office head or Assistant General Counsel may be reversed by the respective office head or Assistant General Counsel who is in the supervisory chain of command with respect to the staff member who took the initial action. If the initial action is reversed, the petition for review will not be submitted to the Reviewing Official. Staff action reversing the initial action shall be subject to petition for Department review as any other staff action.


§ 385.34 Decision by the Reviewing Official.

(a) Decline of right to review. If the Reviewing Official declines the right to exercise discretionary review, the staff action stayed by the petition for review shall become effective on the second business day following the date of service of the order, unless the order provides otherwise.

(b) Exercise of right to review. The Reviewing Official will exercise his or her discretionary right of review either upon petition or on his or her own motion. The Reviewing official may affirm, modify or set aside the staff action, may order the matter remanded, or may order further submittals or other proceedings before making a decision on the merits. In case the Reviewing Official affirms the staff action, staff action stayed by the petition for review shall become effective on the second
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business day following the date of service of the Reviewing Official's order, unless the order provides otherwise. Decisions by the Reviewing Official under this part are final and are not subject to petitions for reconsideration.


PART 389—FEES AND CHARGES FOR SPECIAL SERVICES

Subpart A—General Provisions

Sec.
389.1 Policy and scope.

Subpart B—Fees for Special Services

389.10 Applicability of subpart.
389.11 Services available.
389.12 Payment of fees and charges.
389.13 Fees for services.
389.14 Locating and copying records and documents.
389.15 Certification of copies of documents.
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Subpart C—Filing and Processing License Fees

389.20 Applicability of subpart.
389.21 Payment of fees.
389.22 Failure to make proper payment.
389.23 Application for waiver or modification of fees.
389.24 Foreign air carriers.
389.25 Schedule of processing fees.
389.26 Special rules for tariff page filings.

§ 389.14 Locating and copying records and documents.

Public records and documents on file with the Civil Aeronautics Board and prescribes the fees to be paid for these and various other services.

Subpart B—Fees for Special Services

§ 389.10 Applicability of subpart.

This subpart describes certain special services made available by the Board and prescribes the fees and charges for these services.

§ 389.11 Services available.

Upon request and payment of fees as provided in subsequent sections, there are available, with respect to documents subject to inspection, services as follows:

(a) Locating and copying records and documents.
(b) Certification of copies of documents under seal of the Board.
(c) Subscriptions to publications of the Board.
(d) Transcripts of hearings.

§ 389.12 Payment of fees and charges.

The fees charged for special services may be paid by check, draft, or postal money order, payable to the Civil Aeronautics Board, except for charges for reporting services which are performed under competitive bid contracts with non-Government firms. Fees for reporting are payable to the firms providing the services.

§ 389.13 Fees for services.

Except for photocopy work, the basic fees set forth below provide for documents to be mailed with ordinary first class postage prepaid. If copy is to be transmitted by registered, certified, air, or special delivery mail, postal fees therefor will be added to the basic fee. Also, if special handling or packaging is required, costs therefor will be added to the basic fee. For photocopy work, postage will be in addition to the fee for copying.

§ 389.14 Locating and copying records and documents.

Pursuant to the provisions of Title V of the Independent Offices Appropriation Act of 1952 (5 U.S.C. 140) as implemented by Bureau of Budget Circular A-25, dated September 23, 1959, the Board sets forth in this regulation the special services made available by the Board and prescribes the fees to be paid for these and various other services.


be located and copied upon request and payment of fees as set forth below:

(a) There shall be no charge in connection with searches for records or documents under this chapter.

(b) Photocopies of records or documents shall be made using the Board’s facilities or by contractors.

(1) The fee for photocopying will be 15 cents per page.

(2) The fee for copying by contractors will be that established in the contracts with the Board and will be billed directly by those contractors.

(c) Copies of board data on magnetic tapes, or extractions of data from Board data tapes, will be made by the National Archives and Records Service (NARS) of the General Services Administration or by computer service bureaus.

(1) The Director, Bureau of Accounts and Statistics, furnishes many public records and documents contained on magnetic tape to NARS. Initial requests for data should be made directly to the Machine Readable Archives Division, National Archives and Records Services, General Services Administration, Washington, D.C. 20408, with the applicant directly reimbursing NARS for its copying or data extraction charges. When NARS does not have the requested data, the Director, Bureau of Accounts and Statistics, upon written request, will furnish the tapes for a reasonable length of time to a computer service bureau chosen by the applicant subject to the Director’s approval. The computer service bureau shall assume the liability for the cost of replacing any tape that may be damaged or destroyed by it.

(2) The fee for data copying by NARS will be determined by NARS.

(3) The fee for data copying by a computer service bureau shall be established by agreement between the requesting party and the computer service bureau.

(d) When the Board’s fee for service requested will exceed $100, the service will not be performed until payment has been received. In such cases, the requester will be notified promptly of the amount of the fee, and the requested service will be performed as expeditiously as practicable following receipt of payment.

(e) Applications for waivers or modifications of any fees required to be paid to the Board under this section may be filed in accordance with the following:

(1) Each applicant shall set forth briefly and succinctly the relief that it seeks and the reasons why such relief should be granted. Waivers or modifications of stated fees shall be granted only where it is demonstrated that such action is in the public interest because furnishing of the information requested can be considered as primarily benefiting the general public.

(2) Applications requesting waivers or modifications of fees under this section shall be addressed to the Managing Director, who has been delegated authority by the Board to decide such applications in §385.12 of this chapter, and shall accompany the request for service under this section.

(3) The Managing Director shall either rule on the application or, at his discretion, pass the matter on to the Board for its determination. In acting upon such applications the Managing Director and the Board, where applicable, shall be guided by the procedures and requirements of §310.9(d) of this chapter.

(4) A decision by either the Managing Director or the Board pursuant to paragraph (d)(3) of this section is final and will not be subject to petitions for reconsideration.


§389.15 Certification of copies of documents.

The Secretary of the Board will provide, on request, certifications of documents filed with or issued by the Board. Copies of tariffs filed with the Board will be certified only when such copies have been made under the Board’s supervision upon request of the applicant. Charges for this service are as follows:

(a) Certification of the Secretary, $2. This fee includes clerical services involved in checking the authenticity of records to be certified. If copying of the documents to be certified is required, the copying charges provided for in §389.14 will be in addition to the charges specified in this section.
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§ 389.16 Board publications.

(a) Charges for publications. Charges have been established by the Superintendent of Documents for subscriptions to certain Board publications. A list of these publications together with information on how they can be ordered is contained in the "List of Publications", which is available on request from the Board’s Publications Services Division, B-22, Washington, D.C., 20428.

(b) Free services. No charge will be made by the Board for notices, decisions, orders, etc., required by law to be served on a party to any proceeding or matter before the Board. No charge will be made for single copies of Board publications individually requested in person or by mail, except where a charge is specifically fixed for a publication at the time of its issuance.

(c) Reciprocal services. Arrangements may be made with the Board’s Bureau of International Aviation for furnishing publications to a foreign country or to an international organization on a reciprocal basis.

[OR—178, 46 FR 8445, Jan. 27, 1981]

§ 389.17 Transcripts of proceedings.

Transcripts of testimony and oral argument are furnished to the Board by a non-Government contractor for any proceeding in which the presiding officer has determined that such transcript should be made, and copies thereof may be purchased directly from the reporting firm, at prices and upon other terms and conditions specified in the contract made between the Board and the reporting firm, and currently in effect pursuant to section 11 of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App. 1).

Any person may obtain from the Director, Office of Facilities and Operations, the name and address of the reporting firm with which the Board currently has such contract, as well as the contract prices then in effect for the various types of transcript and copying services covered by such contract.

[OR—84, 39 FR 22417, June 24, 1974]

Subpart C—Filing and Processing License Fees

§ 389.20 Applicability of subpart.

(a) This subpart applies to the filing of certain documents and records of the Department by non-government parties, and prescribes fees for their processing.

(b) For the purpose of this subpart, record means those electronic tariff records submitted to the Department under subpart W of 14 CFR part 221, and contains that set of information which describes one (1) tariff fare, or that set of information which describes one (1) related element associated with such tariff fare.

[Amdt. 389–37, 54 FR 2099, Jan. 19, 1989]

§ 389.21 Payment of fees.

(a) Any document or record for which a filing fee is required by § 389.25 shall be accompanied by either (1) a check, draft, or postal money order, payable to the Civil Aeronautics Board, in the amount prescribed herein, or (2) a request for waiver or modification of the filing fee.

(b) [Reserved]

(c) Where a document seeks authority or relief in the alternative and therefore would otherwise be subject to more than one filing fee, only the highest fee shall be required.

(d) Where a document relating to a single transaction or matter seeks multiple authorities or relief and therefore would otherwise be subject to more than one filing fee, only the highest fee shall be required. Where a document relating to more than one transaction or matter seeks multiple authorities or relief, the required filing fee shall be determined by combining the highest fees for each transaction or matter. For purposes of this paragraph, a specific number of charters or inclusive tours described in one application will be regarded as a single transaction or matter.

(e) No fee shall be returned after the document has been filed with the
§ 389.22 Failure to make proper payment.

(a)(1) Except as provided in §389.23, documents (except tariff publications) which are not accompanied by filing fees shall be returned to the filing party, and such documents shall not be considered as filed by the Board.

(2) Except as provided in §389.23, records which are not accompanied by the appropriate filing fees shall be retained and considered filed with the Department. The Department will notify the filer concerning the nonpayment or underpayment of the filing fees, and will also notify the filer that the records will not be processed until the fees are paid.

(b) The filing fee tendered by a filing party shall be accepted by the Board office to whom payment is made, subject to post audit by the Chief of the Board's Finance Division and notification to the filing party within 30 days of any additional amount due. Not more than 5 days after receipt of the notification, the determination of the Chief, Finance Division, may be appealed to the Managing Director of the Board, who has been delegated authority by the Board to decide such appeals in §385.12 of this chapter. The filing party may submit to the Board a petition for review of the Managing Director's decision pursuant to §385.50 of this chapter, and proceedings thereon will be governed by part 385, subpart C, of this chapter.

(c) The amount found due by the Chief, Finance Division, shall be paid within 10 days of notification except that (1) if that decision is appealed to the Managing Director, the amount due shall be paid within 10 days after the Managing Director notifies the filing party that he has affirmed or modified the staff decision. If the amount due is not paid, the document (except a tariff publication) shall be returned to the filing party along with the fee tendered, and such document shall be deemed to have been dismissed or withdrawn.

§ 389.23 Application for waiver or modification of fees.

(a) Applications may be filed asking for waiver or modification of fees paid under this subpart. Each applicant shall set forth the reasons why a waiver or modification should be granted, and by what legal authority.

(b) Applications asking for a waiver or modification of fees shall be sent to the Managing Director of the Board, and shall accompany the document filed. Applicants may appeal the decision of the Managing Director to the Board under §385.50 of this chapter. When no petition for review is filed with the Board, or when the Board reviews the Managing Director's decision, if the amount found due is not paid within 10 days after receipt of notification of the final determination, the document shall be returned to the filing party.

(Approved by the Office of Management and Budget under control number 3024-0071)

§ 389.24 Foreign air carriers.

A foreign air carrier, or such carriers, if from the same country, acting jointly, may apply for a waiver of the requirements of this part based on reciprocity for U.S. air carriers contained in the requirement of their home governments, or as provided in a treaty or agreement with the United States. To apply for a waiver under this section, foreign air carriers shall send waiver requests to the Director, Bureau of International Aviation. The request should include applicable official government rules, decisions, statements of policy, or comparable evidence concerning filing fees for U.S. air carriers, or for all carriers serving that country. Once a waiver has been granted for a
specific country, no further waiver applications need be filed for that country.

(Approved by the Office of Management and Budget under control number 3024-0071)


§ 389.25 Schedule of processing fees.

(a) Document-filing fees.

<table>
<thead>
<tr>
<th>Code</th>
<th>Document</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Charter</td>
</tr>
<tr>
<td>2</td>
<td>Scheduled Service</td>
</tr>
<tr>
<td>3</td>
<td>Dormant Authority</td>
</tr>
<tr>
<td>4</td>
<td>Air-Cargo under sec. 418</td>
</tr>
<tr>
<td>5</td>
<td>Transfer</td>
</tr>
<tr>
<td>6</td>
<td>Air Taxi Registration</td>
</tr>
<tr>
<td>7</td>
<td>Scheduled Passenger Commuter Registration</td>
</tr>
<tr>
<td>8</td>
<td>Change of Name (registration of trade name or reissuance of certificate)</td>
</tr>
<tr>
<td>9</td>
<td>Exemption Request (General)</td>
</tr>
<tr>
<td>10</td>
<td>Section 403</td>
</tr>
<tr>
<td>11</td>
<td>Section 401 (domestic)</td>
</tr>
<tr>
<td>12</td>
<td>Section 419</td>
</tr>
<tr>
<td>13</td>
<td>Service Mail Rate Petition</td>
</tr>
<tr>
<td>14</td>
<td>Certificate of Public Convenience and Necessity (sec. 401):</td>
</tr>
<tr>
<td>15</td>
<td>Amendment to application</td>
</tr>
<tr>
<td>16</td>
<td>Charter Service</td>
</tr>
<tr>
<td>17</td>
<td>Amendment to application</td>
</tr>
<tr>
<td>18</td>
<td>Transfer</td>
</tr>
<tr>
<td>19</td>
<td>Change of Name (registration of trade name or reissuance of certificate)</td>
</tr>
<tr>
<td>20</td>
<td>Foreign Air Carrier Permit (sec. 402):</td>
</tr>
<tr>
<td>21</td>
<td>Initial</td>
</tr>
<tr>
<td>22</td>
<td>Amendment/Renewal of permit</td>
</tr>
<tr>
<td>23</td>
<td>Amendment to application for a permit</td>
</tr>
<tr>
<td>24</td>
<td>Section 403</td>
</tr>
<tr>
<td>25</td>
<td>Section 401/402:</td>
</tr>
<tr>
<td>26</td>
<td>10 or fewer flights</td>
</tr>
<tr>
<td>27</td>
<td>More than 10 flights</td>
</tr>
<tr>
<td>28</td>
<td>Filed less than 10 days before effective date requested</td>
</tr>
<tr>
<td>29</td>
<td>Other (U.S. and foreign air carriers)</td>
</tr>
<tr>
<td>30</td>
<td>Relief for U.S. (sec. 101) and foreign (sec. 416) indirect air carriers</td>
</tr>
<tr>
<td>31</td>
<td>Undocketed Items:</td>
</tr>
<tr>
<td>32</td>
<td>Canadian Charter Air Taxi Registration</td>
</tr>
<tr>
<td>33</td>
<td>Foreign Freight Forwarder Registration</td>
</tr>
<tr>
<td>34</td>
<td>Foreign Tour Operator Registration</td>
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<tr>
<td>35</td>
<td>Foreign Aircraft Permit (part 375)</td>
</tr>
<tr>
<td>36</td>
<td>Special Authorization (part 375)</td>
</tr>
<tr>
<td>37</td>
<td>Charter Statement of Authorization</td>
</tr>
<tr>
<td>38</td>
<td>Intermodal Statement of Authorization</td>
</tr>
<tr>
<td>39</td>
<td>Special Authority (part 216)</td>
</tr>
<tr>
<td>40</td>
<td>IATA resolutions</td>
</tr>
<tr>
<td>41</td>
<td>Other (U.S. AND FOREIGN AIR CARRIERS)</td>
</tr>
</tbody>
</table>

(b) (1) If the tariff is issued for one or more air carriers exclusively, the fee will be charged for each page.

(2) If the tariff is issued for one or more air carriers and one or more foreign air carriers, the fee will be charged for each page, except for those pages that the issuing agent states contain only:

(i) Matters pertaining exclusively to foreign air carriers that have been granted a waiver, or

(ii) Changes in matters pertaining to foreign air carriers that have been granted a waiver and that are included

1 Additional.
§ 389.27 Refund of fee.

(a) Any fee charged under this part may be refunded in full or in part upon request if the document for which it is charged is withdrawn before final action is taken. Such requests shall be filed in accordance with §389.23.

(b) Any person may file an application for refund of a fee paid since April 28, 1977, on the grounds that such fee exceeded the Board's cost in providing the service. The application shall be filed with the Board's Comptroller and shall contain: the amount paid, the date paid, and the category of service.

(Approved by the Office of Management and Budget under control number 3024-0071)

PART 398—GUIDELINES FOR INDIVIDUAL DETERMINATIONS OF BASIC ESSENTIAL AIR SERVICE

Sec.
398.1 Purpose.
398.2 Number and designation of hubs.
398.3 Specific airports.
398.4 Equipment.
398.5 Frequency of flights.
398.6 Seat guarantees.
398.7 Timing of flights.
398.8 Number of intermediate stops.
398.9 Load factor standards.
398.10 Overflights.
398.11 Funding reductions.


SOURCE: Docket No. OST±95±397, 60 FR 43529, Aug. 22, 1995, unless otherwise noted.

§ 398.1 Purpose.

The purpose of this part is to establish general guidelines for the determination of basic essential air service for each eligible place under 49 U.S.C. 41731 and 41732. Procedures for the determination of the essential air service level for a place are contained in part 325 of this chapter.

§ 398.2 Number and designation of hubs.

(a) What is a hub? The Department considers hubs as belonging to any one of three classifications:

(1) A large hub is a place accounting for at least 1.00 percent of the total enplanements in the United States;
(2) A medium hub is a place accounting for at least 0.25 percent but less than 1.00 percent of the total enplanements in the United States; and
(3) A small hub is a place accounting for at least 0.05 percent but less than 0.25 percent of the total enplanements in the United States.

(b) How many hubs? (1) As a general matter, the Department will require service to one large or medium hub.

(2) In Alaska or when the nearest large or medium hub is more than 400 miles from the eligible place, the Department may instead require service to a small hub or nonhub.

(3) In some cases, the Department may require service to two hubs, of which at least one will be a large or medium hub. The Department will require service to two hubs if an eligible place has close commercial, geographic, and political ties to both hubs and if there is sufficient traffic from the eligible place to support two round trips a day to both hubs. If traffic is not sufficient, the Department may require one round trip a day to both hubs if the community requests such service.

(4) In no event will essential air service consist of service to more than two hubs.

(c) Which hub? (1) In designating hubs, the Department will weigh all of the following factors:

(i) The extent to which candidate hubs provide access to the national air transportation system;
(ii) The commercial, geographic, and political ties of candidate hubs to the eligible place;
(iii) The traffic levels to candidate hubs, as shown by traffic studies and origin and designation data;
(iv) The distance of candidate hubs from the eligible place; and
(v) The size of candidate hubs. Large size will be a positive factor, but principally as substantiating the access and community-ties factors.

(2) For Alaska, rather than requiring service to a hub, the Department may instead require that service from an eligible place be provided to a nearby focal point for traffic which, in turn, has service to a hub.

§ 398.3 Specific airports.

(a) At an eligible place, essential air service may be specified as service to a particular airport. In the case of hyphenated places, essential air service will be specified as service to more than one airport only if clearly necessary and if the multi-airport service is economically feasible and justified on the basis of traffic levels at those airports.
§ 398.4  
(b) At a hub, essential air service is not usually specified as service to a particular airport.

§ 398.4  Equipment.
(a) Except in Alaska, service will be provided by aircraft offering at least 15 passenger seats, unless:
(1) Average daily enplanements at the place did not exceed 11 passengers for any fiscal year from 1976 through 1986;
(2) The requirement would necessitate the payment of compensation in a fiscal year for service at the place when compensation would otherwise not be necessary; or
(3) The affected community agrees in writing to the use of smaller aircraft to provide service at the place.
(b) The aircraft must have at least two engines and use two pilots, unless scheduled air transportation has not been provided to the place in aircraft with at least two engines and using two pilots for at least 60 consecutive operating days at any time since October 31, 1978.
(c) The aircraft must be pressurized when the service regularly involves flights above 8,000 feet in altitude.
(d) All aircraft must meet the applicable safety standards of the Federal Aviation Administration.
(e) The aircraft must be conveniently accessible to passengers by stairs rather than over the wing.

§ 398.5  Frequency of flights.
(a) Except in Alaska, at least two round trips each weekday and two round trips each weekend.
(b) In Alaska, a level of service at least equal to that provided in 1976, or two round trips each week, whichever is greater, except that the Department and the appropriate State authority of Alaska may agree to a different level of service after consulting with the affected community.
(c) An essential air service level may be set at more than that stated in paragraphs (a) and (b) of this section if:
(1) Historical traffic data and studies of traffic-generating potential for the place indicate that more frequent service is needed to accommodate passengers and accompanying baggage with the aircraft used at that place;
(2) More flights are needed because the capacity available to the eligible place is being shared with traffic destined for an intermediate stop or for a place beyond the eligible place;
(3) More flights are needed to accommodate passengers because smaller aircraft are being used at the place;
(4) More flights are needed in order to ensure adequate connecting opportunities as provided for by § 398.7; or
(5) For Alaska, the appropriate state agency agrees that more frequent service is needed to accommodate cargo traffic with the aircraft used at the eligible place.
(d) For eligible places where traffic levels vary substantially with the season, a two-tier level of essential air service may be established with required flight frequencies changing accordingly.

§ 398.6  Seat guarantees.
(a) The number of seats guaranteed at the eligible place will be sufficient to accommodate the estimated passenger traffic at an average load factor of 60 percent, except that an average load factor of 50 percent will be used when service is provided with aircraft having fewer than 15 passenger seats.
(b) Only under unusual circumstances will an eligible place’s essential air service level be set at a number of flights that will accommodate more than 40 passengers a day in each direction (a total of 80 inbound and outbound passengers). Generally, 40 passengers can be accommodated by guaranteeing 67 seats a day in each direction (a total of 134 inbound and outbound seats).
(c) The Department may guarantee an eligible place more than 67 seats a day if:
(1) The number of stops between or beyond the eligible place and the hub results in available aircraft capacity being shared with passengers at those other places;
(2) The distance between the eligible place and the designated hub requires the use of large aircraft;
(3) The eligible place has suffered an abrupt and significant reduction in its service that warrants a temporary increase in the maximum guaranteed capacity; or
(4) Other unusual circumstances warrant guaranteeing the eligible place more than 67 seats a day.

§ 398.7 Timing of flights.
To qualify as essential air service, flights must depart at reasonable times, considering the needs of passengers with connecting flights at the hub. It is the policy of the Department to consider the reasonableness of the time in view of the purpose for which the local passengers are traveling. If travel is primarily to connect with other flights at the hub, local flight times should be designed to link with those flights. If travel is primarily local (i.e., to and from the hub), there should be at least one morning flight in each direction and one late-afternoon or evening flight in each direction.

§ 398.8 Number of intermediate stops.
(a) Except in Alaska, no more than one intermediate stop is permitted in providing essential air service between the eligible place and its hub, unless otherwise agreed to with the community. In cases where an eligible place receives service to two hubs, however, more than one intermediate stop is permitted between that place and its secondary hub.

(b) In Alaska, more than one intermediate stop is permitted if required by low traffic levels at the eligible place or by the long distance between the eligible place and its hub.

(c) The Department may specify non-stop service when necessary to make the service viable.

(d) Where an eligible place normally is an intermediate stop that shares available capacity with another place, it is the policy of the Department either to require additional capacity (more flights or larger aircraft) between the eligible place and its hub or to specify some turnaround operations on that route segment.

§ 398.9 Load factor standards.
The load factor standards used in this part may be raised for individual eligible places under either of the following circumstances:
(a) The place is served by the carrier as part of a linear route; or
(b) It would be in the interest of the community, the carrier, or the general public to raise the load factor standard for that place.

§ 398.10 Overflights.
The Department considers it a violation of 49 U.S.C. 41732 and the air service guarantees provided under this part for an air carrier providing essential air service to an eligible place to overfly that place, except under one or more of the following circumstances:
(a) The carrier is not compensated for serving that place and another carrier is providing by its flights the service required by the Department’s essential air service determination for that place;
(b) Circumstances beyond the carrier’s control prevent it from landing at the eligible place;
(c) The flight involved is not in a market where the Department has determined air service to be essential; or
(d) The eligible place is a place in Alaska for which the Department’s essential air service determination permits the overflight.

§ 398.11 Funding reductions.
(a) If, in any fiscal year, appropriations for payments to air carriers remain at or below the amounts estimated as necessary to maintain subsidy-supported essential air service at the places receiving such service, and Congress provides no statutory direction to the contrary, appropriations shall not be available for essential air service to otherwise eligible places within the 48 contiguous States and Puerto Rico that have a rate of subsidy per passenger in excess of $200.00, or are located:
(1) Less than 70 highway miles from the nearest large or medium hub airport;
(2) Less than 55 miles from the nearest small hub airport; or
(3) Less than 45 highway miles from the nearest nonhub airport that has enplaned, on certificated or commuter carriers, 100 or more passengers per day in the most recent year for which the Department has obtained complete data.
(b) The rate of subsidy per passenger shall be calculated by dividing the annual subsidy in effect as of July 1 of the prior fiscal year by the total origin-and-destination traffic during the most recent year for which the Department has obtained complete data.

**PART 399—STATEMENTS OF GENERAL POLICY**

**Subpart A—Applicability and Effects of Policy Statements**

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399.2 Exclusions.
399.3 Statements in other Board documents.
399.4 Nature and effect of policy statements.
399.5 Arrangement of policy statements.

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399.12 Negotiation by air carriers for landing rights in foreign countries.
399.13–399.17 [Reserved]
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**14 CFR Ch. II (1–1–99 Edition)**

399.61 Presentations of public and civic bodies in route proceedings.
399.62 Target dates in hearing cases.
399.63 Role of staff in route proceedings.

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399.73 Definition of small business for Regulatory Flexibility Act.

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399.81 Unrealistic or deceptive scheduling.
399.82 Passing off of carrier identity by affiliation between carriers.
399.83 Unfair or deceptive practice of air carrier, foreign air carrier, or ticket agent in orally confirming to prospective passenger reserved space on scheduled flights.
399.84 Price advertising.
399.85 [Reserved]
399.86 Payments for non-air transportation services for air cargo.
399.87 [Reserved]
399.88 Policy on airline designator code-sharing.

**Subpart H—Other Policies Relating to Interests, Activities, and Relationships of Air Carriers**

399.91 Air carrier participation in programs of technical assistance to airlines of less developed countries.

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399.101 Public release of Board decisions in cases where the action of the Board is subject to the review or approval of the President.

**Subpart J—Policies Relating to Federal Preemption of State Economic Regulations**

399.110 State economic regulation of federally authorized carriers prohibited.
399.111 All operations of federally authorized carriers to be regulated by the Board.

**Subpart K—Policies Relating to Certificate Duration**

399.120 Duration of certificates in limited-entry markets.

**Authority:** 5 U.S.C. 551 et seq., 49 U.S.C. 40101 et seq.
Subpart A—Applicability and Effects of Policy Statements

§ 399.1 Applicability.

All statements of general policy adopted by the Board for the guidance of the public will be published in this part, except as provided in §399.2.

§ 399.2 Exclusions.

The following types of policies are generally not included in this part:

(a) Policies relating solely to the internal management of the Board;
(b) Policies requiring secrecy in the public interest or in the interest of national defense;
(c) Policies that are repetitive of section 102 of the Act;
(d) Policies that are fully expressed in a procedural or substantive rule of the Board, or in any opinion, decision, order, certificate, permit, exemption, or waiver of the Board;
(e) Expressions of encouragement or admonition to industry to follow a certain course of action;
(f) Positions on legislative items and on other matters that are outside the scope of the Board's current statutory powers and duties.

§ 399.3 Statements in other Board documents.

No statement contained in any Board opinion, decision, order, certificate, permit, exemption, or waiver shall be considered a statement of policy within the meaning of this part, even though such statements may constitute a precedent in future cases or declare future policy to be followed in like cases. Similarly, a denial by the Board or relief sought, or statements of the Board's reasons for failure to issue a rule upon which rulemaking proceedings have been commenced shall not be considered statements of policy, except to the extent that it is specifically stated that such denial or failure is based upon a policy thereafter to be followed.

§ 399.4 Nature and effect of policy statements.

Policy statements published in this part will be observed by the Board until rescinded, but any policy may be amended from time to time as experience or changing conditions may require. Changes in policy may be made with or without advance notice to the public and will become effective upon publication in the Federal Register unless otherwise provided. If it appears to the Board, in its consideration of any matter before it, that the application of a policy published in this part would run counter to an express provision of law or policy enunciated by Congress in the Act, the published policy shall not be applicable to such matter.

§ 399.5 Arrangement of policy statements.

The statements of general policy relating to the various duties and functions of the Board are grouped according to subject matter in the following subparts; the titles of the subparts indicate the general subject matter included therein.

Subpart B—Policies Relating to Operating Authority

§§ 399.10–399.11 [Reserved]

§ 399.12 Negotiation by air carriers for landing rights in foreign countries.

(a) It is the policy of the Board (jointly with the Department of State) that, as a general rule, landing rights abroad for United States flag air carriers will be acquired through negotiation by the U.S. Government with foreign governments rather than by direct negotiation between an air carrier and a foreign government.

(b) It is corollary to the foregoing policy that no United States air carrier may avail itself of representations by one foreign government to further its interest with another foreign government, especially with respect to landing rights, except insofar as such representations have been specifically authorized by the U.S. Government.
§ 399.18 Maximum duration of fixed-term route authorization granted by exemption; renewal of such authority.

It is the policy of the Board to limit the duration of exemptions which authorize fixed-term route service to a maximum period of two years, and to entertain requests for renewal of such authority only when incorporated in a duly filed application for substantially equivalent certificate authority under section 401 of the Act. (See §302.909 of this chapter (Procedural Regulations) and §377.10(c) of this chapter (Special Regulations).)

§ 399.19 Charter exemptions (except military).

In deciding applications for exemptions from section 41102 of Title 49 of the United States Code by air carriers seeking to perform charter service in air transportation, we will give primary weight to the chartering public's own assessment of the air carrier services that best meet its transportation needs. Therefore, we will not, as a general rule, consider as relevant to our decision on such applications, objections based upon (1) offers by the objectors to perform the charter service, and/or (2) estimates of revenue or traffic diversion, unless in the latter case the objectors demonstrate that the diversion resulting from grant of the exemption would threaten their ability to fulfill their certificate obligations.

[PS-78, 43 FR 31886, July 24, 1978, as amended at 60 FR 43531, Aug. 22, 1995]

Subpart C—Policies Relating to Rates and Tariffs

§ 399.30 Definitions.

As used in this subpart:

DPFI formula fare means the trunk coach formula fare on July 1, 1977, as established by the Board in Phase 9 of the Domestic Passenger Fares Investigation (Docket 21866-9).

SIFL means the standard industry fare level, as set forth in §399.31.

[PS-92, 45 FR 24118, Apr. 9, 1980]

§ 399.31 Standard industry fare level.

(a) Generally. Except as set forth in paragraph (d) of this section, the standard industry fare level ("SIFL") for coach/standard service in a market is equal to the predominant fare in effect in that market on July 1, 1977, as adjusted by the Board for cost increases.

(b) Predominant fare. For each market, the predominant fare in effect on July 1, 1977, is presumed to be as set forth below. The presumption may be rebutted, however, by showing that more passengers used a higher fare.

(1) For U.S. Mainland-Puerto Rico/Virgin Islands markets where the Board has specified day-of-week fare differentials: the peak-season midweek fare appearing in tariffs in effect on July 1, 1977.

(2) For U.S. Mainland-Puerto Rico/Virgin Islands markets where the Board has specified only seasonal fare differentials: the off-peak-season fare appearing in tariffs in effect on July 1, 1977.

(3) For U.S. Mainland-Hawaii markets: the peak-season second class fare appearing in tariffs in effect on July 1, 1977.

(4) For all other interstate and overseas markets: the lowest unrestricted fare in effect on July 1, 1977.

(c) Adjustments for cost increases. The Board adjusts the SIFL at least once every 6 months by the percentage change, since the previous adjustment, in the actual operating cost per available seat-mile for interstate and overseas transportation combined. The method of adjustment is illustrated in the example set out at the end of this subpart.

(d) Intrastate markets in California, Florida, and Texas. For each of these markets, the SIFL is equal to the level that it would be if the market were an interstate one whose predominant fare on July 1, 1977, was the DPFI formula fare.

(e) Intra-Hawaii markets. For Intra-Hawaii markets, the Board's flexibility zones are based not on the SIFL, but on the standard Hawaiian fare level ("SHFL"), which is equal to 110 percent of the first class fare in effect on
Office of the Secretary, DOT § 399.33

July 1, 1977, as adjusted by the Board for cost increases.

[PS-92, 45 FR 24118, Apr. 9, 1980, as amended by PS-96, 45 FR 48604, July 21, 1980]

§ 399.32 Zone of limited suspension for domestic passenger fares.

(a) Applicability. This section sets forth the Board’s policy on passenger fares for scheduled service by certificated air carriers in the following areas, except to the extent that greater flexibility is set forth in §399.33:

(1) Within the 48 contiguous States and the District of Columbia (“the Mainland”); and

(2) Between the Mainland and Puerto Rico, the Virgin Islands, Hawaii, or Alaska.

(b) Downward flexibility. Each carrier may set fares in each market at any amount below the SIFL. The Board will not suspend such a fare on the ground that its level is unreasonable, except in the following extraordinary circumstances:

(1) There is a high probability that the fare would be found to be unlawful after investigation;

(2) There is a substantial likelihood that the fare is predatory so that there would be an immediate and irreparable harm to competition if the fare were allowed to go into effect;

(3) The harm to competition is greater than the injury to the traveling public if the proposed fare were unavailable; and

(4) The suspension is in the public interest.

(c) [Reserved]

(d) Upward flexibility. Each carrier may set fares above the SIFL as follows, and where they are so set, the Board will not suspend them on the grounds that their level is unreasonable except upon a clear showing of abuse of market power that the Board does not expect to be corrected through marketplace forces:

(1) For service on the Mainland: Up to 30 percent above the sum of the SIFL plus $14. Each time after January 13, 1981, that the Board adjusts the SIFL for cost increases in accordance with §399.33(c), it will adjust the $14 figure by the same percentage rounded to the nearest whole dollar. The Board order announcing the adjustment will be published in the Federal Register and served on all certificated carriers, and copies will be available through the Domestic Fares and Rates Division, Bureau of Domestic Aviation, Civil Aeronautics Board, Washington, D.C. 20428.

(2) For service between the Mainland and Puerto Rico, the Virgin Islands, Hawaii, or Alaska: Up to 30 percent above the SIFL.

(e) Fares above the zone. Tariff filings that state fares above the applicable zone must include the data and information set forth in §221.165 of this chapter. For peak fares, this must include a description of the carrier’s off-peak fares that are available in the market. The Board will suspend a fare above the zone that it finds not to be justified by cost or competitive factors.


§ 399.33 Additional fare flexibility.

For scheduled service in the areas set forth in §399.32(a), certificated air carriers have the following fare flexibility in addition to that set forth in §399.32:

(a) First class. Carriers may without restriction set the level of first class fares.

(b) Small aircraft. Carriers may without restriction set the level of fares for service with aircraft designed to have a maximum passenger capacity of 60 or fewer seats.

(c) Through service and on-line connecting service. For through service and on-line connecting service, carriers may set their fares up to the sum of the local fares minus one tax-rounded coach ceiling terminal charge for each local fare after the first, if that level is higher than the ceiling set forth in §399.32(d). The Board will not suspend such a fare on the ground that its level is unreasonable except upon a clear showing of abuse of market power that the Board does not expect to be corrected through marketplace forces.

[PS-92, 45 FR 24119, Apr. 9, 1980, as amended by PS-96, 45 FR 48604, July 21, 1980]

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§ 399.34  *Intra-Hawaii and Intra-Puerto Rico/Virgin Islands fare flexibility.*

For scheduled service within Hawaii, and within and between Puerto Rico and the Virgin Islands, certificated air carriers have the fare flexibility set forth in §§ 399.32 and 399.33, except that:

(a) Instead of the limits set forth in § 399.32(d), the upper limit of the zone for Puerto Rico/Virgin Islands is 30 percent above the SIFL, and for Hawaii is 30 percent above the SHFL; and

(b) The fare flexibility set forth in § 399.33(a) (first class) does not apply to service within Hawaii.
### APPENDIX A TO § 399.34—UNITED STATES-PUERTO RICO ENTITY

[Normal fares in selected markets—comparison with SIFL]

<table>
<thead>
<tr>
<th>Market</th>
<th>Rate-making mileage</th>
<th>DPFI formula fare July 1977</th>
<th>July 1977 normal fare level</th>
<th>DPFI formula fare May 1980</th>
<th>May 1980 normal fare level</th>
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<td></td>
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<td>Offpeak</td>
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### APPENDIX B TO § 399.34—SELECTED FARE AND SERVICE DATA FOR SEATTLE-ALASKA MARKETS

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1 $25.14 plus 13.75¢ per mile (0-500); 10.49¢ per mile (501-1500); 10.08¢ per mile (1501 and over). See Order 80–4–211.
2 Domestic Tariffs.
4 AS=Alaska Airlines; NW=Northwest Orient Airlines; WA=Western Airlines; WC=Wien Air Alaska.
5 Via Anchorage ($15.28).
6 Via Anchorage ($48.94).
7 Via Fairbanks ($59.74).
8 Local WA Fare.
9 Via Kodiak ($24.40).
10 July 1977 fare increased by cumulative adjustment factor of 1.5558% per Order 80–4–211.
APPENDIX C TO § 399.34—ADJUSTMENT OF THE INTRA-HAWAIIAN FARE LEVEL JULY 1, 1977, TO REFLECT COST AT 12.35 PERCENT RETURN

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<td></td>
<td>Aloha</td>
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<td>ASM's (000)</td>
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<td>Load Factor (percent)</td>
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</tr>
<tr>
<td>Investment</td>
<td>$16,192</td>
<td>$47,326</td>
</tr>
<tr>
<td>Return on Investment (percent)</td>
<td>10.04</td>
<td>5.30</td>
</tr>
<tr>
<td>Increase Factor</td>
<td>10.27</td>
<td>5.30</td>
</tr>
</tbody>
</table>

1. Cost inflation to July 1, 1977: 1.047 percent for Aloha, 1.026 for Hawaiian. The differing rates for the two carriers, having equivalent aircraft and duplicate route structures, is due primarily to a shift by Hawaiian to larger DC-9-50 aircraft starting in the fourth quarter of 1976.

2. Passenger revenue divided by RPMs.


[PS–94, 45 FR 48604, July 21, 1980]

§ 399.36 Unreasonable discrimination.

(a) As used in this section:

(1) Unreasonable discrimination means unjust discrimination or unreasonable preference or prejudice; and

(2) Rate means rate, fare, or charge.
§ 399.37  Joint fares.

There should be joint fares in all markets over all routings within the contiguous 48 states and the District of Columbia as follows:

(a) Level. The level shall not exceed the sum of the maximum local fares permitted by this subpart minus one tax-rounded coach ceiling terminal charge for each interline connection, and in any event shall not exceed the sum of the actual local fares.

(b) Division. Joint fares shall be divided according to the relative costs of the mileage flown by each carrier participating in the interline movement. However, where a joint fare is equal to the sum of the actual local fares, each carrier shall get the local fare as its share.

§ 399.39  Equipment purchase deposits.

Equipment purchase deposits are advance payments made by air carriers to manufacturers for the purchase of equipment to be delivered in the future, or funds segregated by air carriers for this purpose. It is the policy of the Board not to recognize equipment purchase deposits in an air carrier's investment base for ratemaking purposes. When equipment is secured by an air carrier and placed in air-transport service, the Board will recognize in the air carrier's investment base interest on purchase deposits on such equipment capitalized and amortized in accordance with the Uniform System of Accounts and Reports for Certified Air Carriers (part 241 of this chapter).

[PS-93, 45 FR 36062, May 29, 1980]

§ 399.40  Tariffs for domestic air transportation on or after January 1, 1983.

The Board will not approve or accept any tariff filings for interstate or overseas air transportation to be performed on or after January 1, 1983. Any tariffs for such transportation that do not specify an earlier expiration date shall expire at midnight on December 31, 1982.

[PS-107, 47 FR 14893, Apr. 7, 1982]

§ 399.41  Zones of limited suspension for international cargo rates.

(a) Applicability. This section states the Board's policy for suspending rate changes for the transportation of property in foreign air transportation. It does not affect the Board's authority to suspend any rate as unjustly discriminatory, unduly preferential, or unduly prejudicial. This section applies to rate changes by all direct air carriers and direct foreign air carriers.

(b) Standard foreign rate levels. For each market in foreign air transportation, the standard foreign rate level for the carriage of property shall be the bulk general commodity rates in effect in that market on April 1, 1982, as adjusted in accordance with paragraph (f) of this section. However, the general commodity rate for shipments larger than 500 kg. shall be deemed to be the same as the 500 kg. rate for the purposes of this paragraph, regardless of any different rate in effect in the market.
Office of the Secretary, DOT § 399.42

(c) Ceilings of limited rate suspension. Except as provided in paragraph (d) of this section, the Board will not suspend as unreasonable any proposed rate for foreign air transportation of property equal to or less than the following levels:

1. For all bulk rates (GCR's and SCR's) in the Atlantic region, 20 percent above the standard foreign rate level.
2. For all bulk rates (GCR's and SCR's) in the Pacific region, 15 percent above the standard foreign rate level.
3. For all bulk rates (GCR's and SCR's) in the Western Hemisphere region (except Mexico and Canada), 5 percent above the standard foreign rate level.
4. For all bulk rates (GCR's and SCR's) in Canada/Mexico transborder markets, 10 percent above the standard foreign rate level for the Western Hemisphere.
5. For all container rates, no maximum level.

(d) Extraordinary circumstances. The Board may suspend any tariff if it finds that:

1. The suspension is in the public interest because of unreasonable regulatory action by a foreign government with respect to rate proposals of an air carrier, or
2. All of the following extraordinary circumstances are present:
   (i) It is highly probable that the fare would be found unreasonable after investigation;
   (ii) There is a substantial likelihood of immediate and irreparable harm to the public if the rate is allowed to go into effect; and
   (iii) The suspension is required by the public interest.

(e) Burden of proof. Persons requesting tariff suspension under paragraph (d) of this section shall have the burden of producing convincing evidence that the conditions of that paragraph are present.

(f) Standard foreign rate level adjustments. (1) The Board will periodically adjust the standard foreign rate levels to reflect the percentage change in average operating costs per available ton-mile since the previous adjustment.
(2) Costs will be averaged for three regions—the Atlantic, the Pacific, and Western Hemisphere—and applied equally among all markets in each region.

(3) Cost computations will be based on scheduled freighter and combination service by U.S. air carriers.

(4) Adjustments will be made on April 1 and October 1 of each year, or more frequently as the Board finds appropriate.

(5) In computing costs under this section, the Board will make no adjustments for load factors, aircraft utilization, or other matters due to operational decisions made solely by carrier management. However, the Board retains the discretion to normalize costs for strikes, mandatory aircraft groundings, and other occurrences not solely due to management decisions.

(g) Definitions. For the purpose of this section:

1. GCR means general commodity rate.
2. SCR means specific commodity rate.
3. Container rate means any rate specifically applicable to property tendered to the carrier in a unit load devise.

[PS–109, 48 FR 4279, Jan. 31, 1983]

§ 399.42 Flight equipment depreciation and residual values.

For rate-making purposes, for air carriers receiving subsidy under section 406 of the Act, it is the policy of the Board that flight equipment depreciation will be based on the conventional straight-line method of accrual, employing the service lives and residual values set forth below:

<table>
<thead>
<tr>
<th>Service life in years</th>
<th>Residual value as percent of cost</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Turbofan equipment:</strong></td>
<td></td>
</tr>
<tr>
<td>4-engine</td>
<td>14</td>
</tr>
<tr>
<td>3-engine</td>
<td>14</td>
</tr>
<tr>
<td>2-engine</td>
<td>14</td>
</tr>
<tr>
<td><strong>Turbojet equipment:</strong></td>
<td></td>
</tr>
<tr>
<td>4-engine</td>
<td>10</td>
</tr>
<tr>
<td>2-engine</td>
<td>10</td>
</tr>
<tr>
<td><strong>Turboprop equipment:</strong></td>
<td></td>
</tr>
<tr>
<td>4-engine</td>
<td>12</td>
</tr>
<tr>
<td>2-engine</td>
<td>10</td>
</tr>
<tr>
<td><strong>Wide-body equipment:</strong></td>
<td></td>
</tr>
<tr>
<td>4-engine</td>
<td>16</td>
</tr>
<tr>
<td>3-engine</td>
<td>16</td>
</tr>
</tbody>
</table>
§ 399.43 Treatment of leased aircraft.

In determining the appropriate treatment of leased aircraft for ratemaking purposes, it is the Board's policy to recognize actual rental expenses. In unusual circumstances where the leased aircraft value (determined on a constructive depreciable basis) in relation to net book value of owned aircraft operated by the same air carrier is significantly in excess of the ratio for the aggregate of the domestic trunklines and local service carriers (computed on the same basis), a reasonable profit element may be added which shall reflect the additional risks of operations with the leased aircraft, to the extent that such risks are not compensated by the return on investment. Such profit element would be determined by applying the standard rate of return, less 6 percentage points, to the value of the leased aircraft, on a constructive depreciable basis, to the extent that the recognized capitalization for ratemaking purposes, it is the Board's policy to recognize actual rental expenses. In unusual circumstances where the leased aircraft value (determined on a constructive depreciable basis) in relation to net book value of owned aircraft operated by the same air carrier is significantly in excess of the ratio for the aggregate of the domestic trunklines and local service carriers (computed on the same basis), a reasonable profit element may be added which shall reflect the additional risks of operations with the leased aircraft, to the extent that such risks are not compensated by the return on investment. Such profit element would be determined by applying the standard rate of return, less 6 percentage points, to the value of the leased aircraft, on a constructive depreciable basis, to the extent that the ratio of such value to depreciable cost of owned aircraft plus the value of leased aircraft exceeds the average for the domestic air carriers. Rental cost plus allowable profit, if any, will not be recognized in amounts exceeding depreciation plus return on investment computed as if the aircraft had been purchased by the carrier.

[PS–44, 36 FR 7229, Apr. 16, 1971]

§ 399.44 Treatment of deferred Federal income taxes for rate purposes.

For rate-making purposes other than the determination of subsidy under section 406(b), it is the policy of the Board that Federal income tax expense should be based on the normal taxes that would be paid under the depreciation standards used for rate making, and that accumulated reserves for deferred taxes should be excluded from the recognized capitalization for rate-base purposes.

[PS–46, 36 FR 7232, Apr. 16, 1971]

**EXAMPLE OF SIFL ADJUSTMENT**

[Methodology for determining change in operating expense per available seat-mile]

[See footnotes at end of table]

<table>
<thead>
<tr>
<th>Year ended September 1979</th>
<th>Trunks</th>
<th>Locals</th>
<th>Trunk plus locals</th>
<th>Total passenger/cargo</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total operating expense 1 (millions)</td>
<td>$16,455</td>
<td>$2,522</td>
<td>$18,977</td>
<td>$19,384</td>
</tr>
<tr>
<td>Less:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>All-cargo expenses 2</td>
<td>269</td>
<td></td>
<td>269</td>
<td>269</td>
</tr>
<tr>
<td>Belly offset 3</td>
<td>1,105</td>
<td></td>
<td>1,105</td>
<td>1,105</td>
</tr>
<tr>
<td>Nonscheduled 4</td>
<td>187</td>
<td></td>
<td>187</td>
<td>187</td>
</tr>
<tr>
<td>Transport related 5</td>
<td>416</td>
<td></td>
<td>416</td>
<td>416</td>
</tr>
<tr>
<td>Plus: Capitalized lease adjustment 16</td>
<td>121</td>
<td></td>
<td>121</td>
<td>121</td>
</tr>
<tr>
<td>Passenger operating expense</td>
<td>14,833</td>
<td>2,294</td>
<td>17,127</td>
<td>17,462</td>
</tr>
<tr>
<td>Passenger fuel cost 11</td>
<td></td>
<td></td>
<td>4,103</td>
<td>N.A.</td>
</tr>
<tr>
<td>Scheduled service ASM's (mils)</td>
<td>281,671</td>
<td>33,051</td>
<td>314,722</td>
<td>318,459</td>
</tr>
<tr>
<td>Passenger nonfuel operating expense per ASM (dollars)</td>
<td></td>
<td></td>
<td>.04138</td>
<td>N.A.</td>
</tr>
<tr>
<td>Passenger fuel expense per ASM (dollars)</td>
<td></td>
<td></td>
<td>.01364</td>
<td>N.A.</td>
</tr>
<tr>
<td>Total passenger expense per ASM (dollars)</td>
<td></td>
<td></td>
<td>.05502</td>
<td>.05483</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Year ended September 1978</th>
<th>Trunks</th>
<th>Locals</th>
<th>Trunk plus locals</th>
<th>Total passenger/cargo</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total operating expense 1 (millions)</td>
<td>14,081</td>
<td>2,033</td>
<td>16,114</td>
<td>16,448</td>
</tr>
<tr>
<td>Less:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>All-cargo expenses 2</td>
<td>262</td>
<td></td>
<td>262</td>
<td>262</td>
</tr>
<tr>
<td>Belly offset 3</td>
<td>1,021</td>
<td></td>
<td>1,021</td>
<td>1,021</td>
</tr>
<tr>
<td>Nonscheduled 4</td>
<td>246</td>
<td></td>
<td>246</td>
<td>246</td>
</tr>
<tr>
<td>Transport related 5</td>
<td>454</td>
<td></td>
<td>454</td>
<td>454</td>
</tr>
<tr>
<td>Plus: Capitalized lease adjustment 16</td>
<td>79</td>
<td></td>
<td>79</td>
<td>79</td>
</tr>
<tr>
<td>Passenger operating expense</td>
<td>12,396</td>
<td>1,799</td>
<td>14,195</td>
<td>14,470</td>
</tr>
<tr>
<td>Passenger fuel cost 11</td>
<td></td>
<td></td>
<td>3,129</td>
<td>N.A.</td>
</tr>
<tr>
<td>Scheduled service ASM's (mils)</td>
<td>262,068</td>
<td>27,067</td>
<td>289,135</td>
<td>292,255</td>
</tr>
<tr>
<td>Passenger nonfuel operating expense per ASM (dollars)</td>
<td></td>
<td></td>
<td>.03827</td>
<td>N.A.</td>
</tr>
<tr>
<td>Passenger fuel expense per ASM (dollars)</td>
<td></td>
<td></td>
<td>.01062</td>
<td>N.A.</td>
</tr>
<tr>
<td>Total passenger expense per ASM (dollars)</td>
<td></td>
<td></td>
<td>.04909</td>
<td>.04951</td>
</tr>
</tbody>
</table>
### Example of SIFL Adjustment—Continued

**Methodology for determining change in operating expense per available seat-mile**

**[See footnotes at end of table]**

#### Year ended September 1979

<table>
<thead>
<tr>
<th></th>
<th>Trunks per ASM</th>
<th>Locals per ASM</th>
<th>Trunks plus Locals per ASM</th>
<th>Total passenger/cargo per ASM</th>
</tr>
</thead>
<tbody>
<tr>
<td>Percent change in nonfuel operating expense per ASM (percent)</td>
<td>8.13</td>
<td>N.A.</td>
<td>8.13</td>
<td>N.A.</td>
</tr>
<tr>
<td>Estimated change in fuel cost, year ended September 1979</td>
<td>73.06</td>
<td>N.A.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Nonfuel operating expense per ASM at April 1, 1980 (dollars)</td>
<td>0.06731</td>
<td>0.06782</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fuel expense per ASM at April 1, 1980 (dollars)</td>
<td>0.01211</td>
<td>0.01284</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

#### Year ended March 1977

<table>
<thead>
<tr>
<th></th>
<th>$11,726</th>
<th>$1,520</th>
<th>$13,236</th>
<th>$13,601</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total operating expense (millions)</td>
<td>Less:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>All-cargo expense</td>
<td>238</td>
<td>238</td>
<td>238</td>
<td></td>
</tr>
<tr>
<td>Belly offset</td>
<td>729</td>
<td>96</td>
<td>825</td>
<td>865</td>
</tr>
<tr>
<td>Nonscheduled</td>
<td>220</td>
<td>35</td>
<td>225</td>
<td>266</td>
</tr>
<tr>
<td>Passenger operating expense</td>
<td>10,112</td>
<td>1,348</td>
<td>11,460</td>
<td>11,678</td>
</tr>
<tr>
<td>Passenger fuel cost</td>
<td>2,190</td>
<td>230</td>
<td>2,420</td>
<td>N.A.</td>
</tr>
<tr>
<td>Scheduled service ASM’s (mils)</td>
<td>239,593</td>
<td>23,428</td>
<td>263,021</td>
<td>265,837</td>
</tr>
<tr>
<td>Operating expense per ASM (dollars)</td>
<td>0.04221</td>
<td>0.0754</td>
<td>0.04357</td>
<td>0.04393</td>
</tr>
<tr>
<td>Projected expense per ASM (dollars) as at July 1, 1977</td>
<td></td>
<td></td>
<td>0.04593</td>
<td></td>
</tr>
<tr>
<td>Projected operating expense per ASM as at April 1, 1980 (page 1) (dollars)</td>
<td></td>
<td></td>
<td></td>
<td>0.06782</td>
</tr>
<tr>
<td>Ceiling adjustment factor (percent)</td>
<td>47.66</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**D.P.F.I. formula effective July 15, 1977**

**Terminal charge**

<table>
<thead>
<tr>
<th></th>
<th>$16.16</th>
</tr>
</thead>
<tbody>
<tr>
<td>Plus</td>
<td>0.084/mile (0–500 miles).</td>
</tr>
<tr>
<td>Plus</td>
<td>0.0674/mile (501–1,500 miles).</td>
</tr>
<tr>
<td>Plus</td>
<td>0.0648/mile (over 1,500 miles).</td>
</tr>
<tr>
<td>Ceiling formula through April 30, 1980</td>
<td>$23.86</td>
</tr>
<tr>
<td>Plus</td>
<td>1.305/mile (0–500 miles).</td>
</tr>
<tr>
<td>Plus</td>
<td>0.995/mile (501–1,500 miles).</td>
</tr>
<tr>
<td>Plus</td>
<td>0.957/mile (over 1,500 miles).</td>
</tr>
</tbody>
</table>

---

1. Total operating expense for all operations and service (in millions).
2. Scheduled all-cargo operations expense.
3. Total scheduled-service cargo revenue, less scheduled all-cargo operations revenue, carried as a by-product in aircraft bellies.
4. Total non-scheduled revenues times 0.95, assuming charter operations would only be conducted at a profit.
5. Total transport-related expense, less any excess of expense over total transport-related revenues.
6. We here project costs from April 1, 1979 (the midpoint of the data year ended September 1979) to April 1, 1980 the resultant increase factor effective through April 30, 1980.
7. Operating expense per ASM for year-ended September, 1979, times projected change.
8. Projected operating expense per ASM on April 1, 1980 divided by the operating expense as at July 1, 1977.
9. Adjustment results in a 2.5 percent increase in level over current January 1, 1980 factor.
10. Additional rental expense that would have been incurred had leases not been capitalized under FASB–13, less actual amortization of capitalized lease expense.
11. Total fuel cost, scheduled service, times complement of rate of All-Cargo expense to total Operating Expense.
14. Estimated average cost per gallon for the trunk plus local service carriers at April 1, 1980, divided by the average for the year ended September, 1979 (46.33¢).
15. Change in Trunks plus Locals cost per ASM as at April 1, 1980, to year ended September, 1979 times total Psg/Cargo cost for the year ended September, 1979.
16. Includes Alaskan, Hawaiian and other regional carriers.
Subpart E—Policies Relating to Hearing Matters

§ 399.60 Standards for determining priorities of hearing.

(a) General. This policy statement describes the general standards which will be used by the Board in determining the order in which it will designate for hearing those matters on its docket which are to be decided after notice and hearing. Among such matters are applications for certificates of public convenience and necessity or for foreign air carrier permits; applications under section 408 of the Act for approval of consolidations or acquisitions of control; complaint cases; and various rate-making proceedings.

(b) Standards. Matters will be assigned for hearing in accordance with the degree of relative priority which each matter is entitled to on the basis of the comparative public interest involved therein. Among other things, the Board will take into account:

(1) Statutory requirements for preference or statutory limitations on the time within which the Board shall act;
(2) The impact of delay on the public or particular persons;
(3) The need for promptly securing compliance with the provisions of the Act;
(4) The time for which the matter has already been pending and which would be required to dispose of it;
(5) Whether the application requests renewal of an existing temporary authorization; and
(6) In matters relating to operating authority:
   (i) Whether a proposal might reduce subsidy or increase economy of operations;
   (ii) Whether an application proposes new service;
   (iii) The volume of traffic that might be affected by the grant or denial of the proposal;
   (iv) The period that has elapsed since the Board considered the service needs of the places or areas involved; and
   (v) The relative availability of necessary staff members of the carriers, communities and the Board, in the light of other proceedings already in progress, to handle the processing of the case.

Interested persons may urge upon the Board such considerations as they believe should lead it to accord a particular application a priority different from that which the Board has given it.

§ 399.61 Presentations of public and civic bodies in route proceedings.

For the purpose of implementing the Board’s policy to provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence and otherwise to expedite route proceedings, and in light of experience, the following guidelines are hereby established:

(a) Public and civic bodies which represent the same geographic area or community should consolidate their presentation of evidence, briefs or oral argument to the examiner and the Board;
(b) A public body or a civic organization, or several such bodies or organizations whose presentation of evidence is consolidated, should keep to a minimum the number of witnesses used to present the factual evidence in support of the community’s position;
(c) Exhibits offered in evidence by a public body or civic organization should be limited to evidence of the economic characteristics of the community and area involved, data as to community of interest and traffic, evidence with respect to the sufficiency of existing service, and airport data, and should not include data relating to number of electricity, water and gas meters, telephones, schools, freight car loadings, building permits, sewer connections, or volume of bank deposits in the community.

§ 399.62 Target dates in hearing cases.

(a) Applicability. This section applies to initial and recommended decisions of administrative law judges, final decisions, and decisions on petitions for review or reconsideration in cases in which the Board has ordered a trial type hearing before an administrative law judge.

(b) Issuance of target dates. In cases to which this section applies, the Board or the administrative law judge, as the situation calls for, shall issue a notice of the target date for the completion of
the initial or recommended decision, final decision, or decision on a petition for review or reconsideration. The Board or the administrative law judge shall endeavor to render the pending decision not later than the target date.

(c) Time for promulgating target dates.

(1) In the case of initial, recommended, or final decisions, notice of target dates shall be issued, served, and filed within 20 days of the submission of closing briefs, or the conclusion of oral argument to the administrative law judge or the Board, as may be appropriate.

(2) In the case of petitions for review or for reconsideration, notices of target dates shall be issued, served, and filed within 20 days of the date for the filing of answers: Provided, That, in the case of petitions for reconsideration of Board decisions awarding new route authority, the Board shall, in lieu of issuing individual target dates, endeavor to render its decision no later than the day preceding the effective date of the new authority awarded.


§ 399.63 Role of staff in route proceedings.

(a) General. This policy statement establishes the standards applicable to staff participation in oral hearing cases involving award of route authority.

(b) Standards. The staff's role during such hearings, primarily because it acts in the broad public interest, and not for a particular private or local interest, is to assure that essential evidence is introduced to resolve the public interest issues; that the evidence submitted by the parties is subject to adversary testing, and that decisional options are developed with the public interest in mind. In route cases designated by the Board that offer the opportunity for developing new policies, the staff shall make a prehearing presentation of the decisional options available, and describe the kinds of evidence needed or available to develop each option. The staff need not and should not be required to develop evidence on each option. In every case, after the close of the hearing, however, the staff shall advocate a position based upon one or more of the decisional options identified in its prehearing presentation or developed at trial.

(1) In route cases designated by the Board that offer the opportunity for developing new policies, the staff shall make a prehearing presentation of the decisional options available, and describe the kinds of evidence needed or available to develop each option. The staff need not and should not be required to develop evidence on each option. In every case, after the close of the hearing, however, the staff shall advocate a position based upon one or more of the decisional options identified in its prehearing presentation or developed at trial.

(2) In any route case in which the administrative law judge finds that there exists unusual policy or evidentiary issues clearly requiring a prehearing presentation, the staff shall submit a prehearing statement of the decisional options available.

(3) To the extent possible, the Board, in its instituting orders, will identify or designate the cases which involve the development of new policies or unusual evidentiary issues that will require the type of staff participation described in §399.63(b)(1).

[PS-76, 43 FR 19354, May 5, 1978]

Subpart F—Policies Relating to Rulemaking Proceedings

§ 399.70 Cross-references to the Office of the Secretary’s Rulemaking Procedures.

The rules and policies relating to the disposition of rulemaking petitions by the Department of Transportation Office of the Secretary are located in its rulemaking procedures contained in 49 CFR part 5. The criteria for identifying significant rules and determining whether a regulatory analysis will be
§ 399.73 Definition of small business for Regulatory Flexibility Act.

For the purposes of the Department's implementation of chapter 6 of title 5, United States Code (Regulatory Flexibility Act), a direct air carrier or foreign air carrier is a small business if it provides air transportation only with small aircraft as defined in §298.3 of this chapter (up to 60 seats/18,000 pound payload capacity).

[Doc. No. OST-96-1429, 61 FR 29019, June 7, 1996]

Subpart G—Policies Relating to Enforcement

§ 399.80 Unfair and deceptive practices of ticket agents.

It is the policy of the Board to regard any of the following enumerated practices (among others) by a ticket agent as an unfair or deceptive practice or unfair method of competition:

(a) Misrepresentations 1 which may induce members of the public to believe that the ticket agent is an air carrier.

(b) Using or displaying or permitting or suffering to be used or displayed the name, trade name, slogan or any abbreviation thereof, of the ticket agent, in advertisements, on or in places of business, or on aircraft in connection with the name of an air carrier with whom it does business, in such manner that it may mislead or confuse the traveling public with respect to the agency status of the ticket agent.

(c) Misrepresentations as to the quality or kind of service, type or size of aircraft, time of departure or arrival, points served, route to be flown, stops to be made, or total trip-time from point of departure to destination.

(d) Misrepresentation as to qualifications of pilots or safety record or certification of pilots, aircraft or air carriers.

(e) Misrepresentations that passengers are directly insured when they are not so insured; for example, where the only insurance in force is that protecting the air carrier in event of liability.

(f) Misrepresentations as to fares and charges for air transportation or services in connection therewith.

(g) Misrepresentation that special discounts or reductions are available, when such discounts or reductions are not specific in the lawful tariffs of the air carrier which is to perform the transportation.

(h) Advertising or otherwise offering for sale or selling air transportation or services in connection therewith at less than the rates, fares and charges specified in the currently effective tariffs of the air carrier or air carriers who are engaged to perform such air transportation or services, or offering or giving rebates or other concessions thereon, or assisting, suffering or permitting persons to obtain such air transportation or services at less than such lawful rates, fares and charges.

(i) Misrepresentations that special priorities for reservations are available when such special considerations are not in fact granted to members of the public generally.

(j) Selling air transportation to persons on a reservation or charter basis for specified space, flight, or time, or representing that such definite reservation or charter is or will be available or has been arranged, without a binding commitment with an air carrier for the furnishing of such definite reservation or charter as represented or sold.

(k) Selling or issuing tickets or other documents to passengers to be exchanged or used for air transportation knowing or having reason to know or believe that such tickets or other documents will not be or cannot be legally honored by air carriers for air transportation.

(l) Failing or refusing to make proper refunds promptly when service cannot

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1The word "misrepresentation" used in this list includes any statement or representation made in advertising or made orally to members of the public which is false, fraudulent, deceptive or misleading, or which has the tendency or capacity to deceive or mislead.
be performed as contracted or representing that such refunds are obtainable only at some other point, thus depriving persons of the immediate use of the money to arrange other transportation, or forcing them to suffer unnecessary inconveniences and delays or requiring them to accept transportation at higher cost, or under less desirable circumstances, or on less desirable aircraft than that represented at the time of sale.

(m) Misrepresentations regarding the handling, forwarding or routing of baggage or other property, or the loss or tracing thereof, or failing or refusing to honor proper claims for loss of or damage to baggage or other property.

(n) Misrepresentation as to the requirements that must be met by persons or organizations in order to qualify for charter or group fare flights.

§ 399.81 Unrealistic or deceptive scheduling.

(a) It is the policy of the Board to consider unrealistic scheduling of flights by any air carrier providing scheduled passenger air transportation to be an unfair or deceptive practice and an unfair method of competition within the meaning of section 411 of the Act.

(b) With respect to the advertising of scheduled performance, it is the policy of the Board to regard as an unfair or deceptive practice or an unfair method of competition the use of any figures purporting to reflect schedule or on-time performance without indicating the basis of the calculation, the time period involved, and the pairs of points or the percentage of systemwide operations, thereby represented and whether the figures include all scheduled flights or only scheduled flights actually performed.


§ 399.82 Passing off of carrier identity by affiliation between carriers.

(a) Applicability. This policy shall apply to proceedings in which the Board, in exercising its regulatory powers with respect to air carriers and foreign air carriers, is required to determine whether carriers have engaged in unfair or deceptive practices, or unfair methods of competition. The standards herein shall not be construed to supersede any action previously taken by the Board in a particular proceeding dealing with the subject matter of this statement, but to the extent not inconsistent therewith shall provide standards which supplement, or implement such specific Board action. The limitation of this policy statement to certain affiliated carriers should not be construed as an indication that the Board will permit other carriers to pass off by means of activities which are inconsistent with the minimum safeguards set forth in paragraph (c) of this section. In such cases the Board may determine in an adjudicatory proceeding that the activities engaged in have a tendency to pass off and constitute an unfair or deceptive practice or an unfair method of competition.

(b) Definition. For the purpose of this statement, the term affiliation, as between an air carrier and a foreign air carrier, shall mean that one of the carriers directly or indirectly has one of the following relationships to the other:

1. Owns or controls 10 percent or more of the securities of the other, with or without an accompanying power to vote;

2. Is in control of the other within the meaning of section 408 of the Act;

3. Has any of the interlocking relationships described in section 409 of the Act;

4. Is jointly controlled with the other carrier, directly or indirectly by a third person;

5. Provides general agency services for the other carrier.

For the purpose of this statement, general agency services shall mean services performed under an agreement between an air carrier and a foreign air carrier which provides for the general representation of one by the other in a specified area or point, in relation to services such as the following: Solicitation and sale of passenger, express, and cargo transportation; airport transportation and hotel accommodations; local advertising and publicity; local sales offices; passenger services; local government representation; purchase,
§ 399.83 Unfair and deceptive practice of
air carrier, foreign air carrier, or
ticket agent in orally confirming to
prospective passenger reserved
space on scheduled flights.

It is the policy of the Board to con-
sider the practice of an air carrier, for-
eign air carrier, or ticket agent, of
stating to a prospective passenger by
telephone or other means of commu-
nication that a reservation of space on
a scheduled flight in air transportation
is confirmed before a passenger has re-
ceived a ticket specifying thereon his
confirmed reserved space, to be an un-
fair or deceptive practice and an unfair
method of competition in air transpor-
tation or the sale thereof within the
meaning of section 411 of the Act, un-
less the tariff of the particular air car-
rier or foreign air carrier provides for
confirmation of reserved space by the
means so used.

§ 399.84 Price advertising.

The Board considers any advertising
or solicitation by a direct air carrier,
indirect air carrier, or an agent of ei-
ther, for passenger air transportation,
a tour (i.e., a combination of air trans-
portation and ground accommoda-
tions), or a tour component (e.g., a
hotel stay) that states a price for such
air transportation, tour, or tour com-
ponent to be an unfair or deceptive
practice, unless the price stated is the
entire price to be paid by the customer
to the air carrier, or agent, for such air
transportation, tour, or tour component.

§ 399.85 [Reserved]

§ 399.86 Payments for non-air transportation services for air cargo.

The Board considers that payments by air carriers and foreign air carriers to shippers, indirect air carriers, or foreign indirect air carriers for non-air transportation preparation of air cargo shipments are for services ancillary to the air transportation, and are not prohibited under section 403 of the Act.

§ 399.87 [Reserved]

§ 399.88 Policy on airline designator code-sharing.

It is the policy of the Department of Transportation to consider the use of a single air carrier designator code by two or more air carriers to be unfair and deceptive and in violation of section 411 of the Act unless, in conjunction with the use of such codes, the air carriers give reasonable and timely notice of the existence of such code-sharing arrangements. Reasonable notice shall as a minimum require code-sharing air carriers to:

(1) Identify, with an asterisk or other means, each flight in which the airline code is different from the code of the carrier actually providing the service, in written or electronic schedule information provided by the air carrier to the public, the Official Airline Guide and, where applicable, computer reservations system vendors;

(2) Provide information in any direct oral communication with a consumer concerning a code-sharing flight sufficient to alert the consumer that the flight will occur on an airline different from the carrier whose code is used and identify the carrier(s) actually providing the service; and

(3) Provide frequent, periodic notice in advertising media that can reasonably be expected to convey to potential passengers and travel agents the existence of a code-sharing relationship and the identities of the carriers actually providing the service.

§ 399.91 Air carrier participation in programs of technical assistance to airlines of less developed countries.

(a) Applicability. This policy shall apply to proceedings under sections 408, 409, and 412 of the Act in which the Board is required to make any determination as to the public interest or consistency with the Act of any agreement or relationship sought to be entered into by an air carrier, or officer or director thereof, with a foreign airline in connection with the performance of some activity pursuant to a technical assistance contract financed by an agency of the U.S. Government.

(b) Policy. It is the policy of the Board that all U.S. air carriers interested in performing contracts for aviation technical assistance to foreign airlines should have equal access to information necessary to bid on such contracts, and should be given equal consideration thereafter in the award of such contracts based upon customary contracting criteria and subject to the considerations set forth below:

(1) The air carrier selected should possess the necessary technical and managerial skills and economic strength to perform the assigned task in the recipient country to the credit of the United States. Where familiarity with the particular language and culture of the recipient country are important to the success of the project, weight should be given to the capabilities of all interested carriers in this regard, including particularly those which a route carrier may have acquired through service to the country or area.

(2) Where a single U.S. route carrier is serving or is certificated to serve the recipient country or the region in which it is located, and where initiation or continued operation of the route by such carrier is an important national interest objective of the United States, weight should be given
§ 399.101

to any evidence that an award of the contract to the route carrier as opposed to any other U.S. carrier would be held to achieve this objective.

(3) An air carrier performing a technical assistance contract will necessarily occupy a close special relationship with the airline and government of the recipient country. Over and above the terms of any specific contract, there is latent in such relationship the possibility of a relative preference for such carrier over a competing U.S. air carrier in matters of interline traffic, governmental restrictions, etc. Accordingly, where more than one U.S. route carrier is certificated to serve the recipient country and more than one such carrier wishes to perform the technical assistance, none of such carriers should be awarded the contract over the objection of any other except under very unusual circumstances.

(4) Technical assistance contracts should contain realistic objectives and require competent performance at reasonable cost and within a reasonable period of time consistent with the ability of the foreign airline to become self-sufficient.

(5) Technical assistance contracts should not be awarded to a U.S. route carrier with major economic interests hostile to those of the U.S. route carrier serving the country.

(6) Technical assistance contracts should not be awarded to subsidized carriers except under special circumstances. Such circumstances should include at least a showing (i) that the subsidized carrier has special qualifications, the utilization of which is required in the national interest by the circumstances of a particular program, and (ii) that performance of the contract will not interfere with the primary business of the subsidized carrier which is to provide air transportation in the United States. In the latter connection, it is to be recognized that participation with maximum effectiveness in a technical assistance program would not only divert the attention of top management from certificated services but might also involve the assignment of the most competent senior operational and technical personnel, the diversion of funds at least on a short-term basis, and the possible transfer from certificated services of aircraft and related equipment. Normally, therefore, unless substantial evidence and arguments are produced to the contrary, participation by subsidized carriers in technical assistance programs will be considered inconsistent with the public interest.

[PS-22, 29 FR 5788, May 1, 1964]

Subpart I—Policies Relating to Disclosure of Information

§ 399.101 Public release of Board decisions in cases where the action of the Board is subject to the review or approval of the President.

(a) By Executive Order 11920, 41 FR 23665 (June 11, 1976), effective July 11, 1976, the President has authorized the issuance for public inspection of Board decisions by the Board in cases where the action of the Board is subject to the review or approval of the President in accordance with section 801 of the Federal Aviation Act. In the interest of national security, and in order to allow for consideration of appropriate action under Executive Order 11652, Executive Order 11920 provides that decisions shall be withheld from public disclosure for five days after submission to the President but may be released on or after the sixth day following receipt by the President as to all unclassified portions of the text if the Board is not notified by the Assistant to the President for National Security Affairs or his designee that all or part of the decision shall be withheld from public disclosure.

(b) It is the policy of the Board to release to the public all decisions by the Board in section 801 cases as promptly as possible following submission of such decision to the President. Upon receipt of notice by the Assistant to the President for National Security Affairs as required by the Executive Order, the Board shall promptly provide one copy for public inspection in the Docket Section and one copy for public inspection and copying in the Public Reference Room, and shall promptly thereafter print and process the decision for more general distribution in accordance with Board procedures. Where the Board is required to
withhold portions of the text of its decision it shall make public those portions of its decision which may be publicly released. Where the Board is required to withhold public release of its decision in its entirety it shall nonetheless publicly indicate that its decision has been transmitted to the President. The Board shall not publicly indicate that its decision has been transmitted to the President in those cases in which the Assistant to the President for National Security Affairs or his designee determines that classification of the existence of the decision is appropriate and so informs the Board. The provisions are also applicable to decisions submitted to the President for review pursuant to section 801(b) of the Act.

[PS-72, 41 FR 46291, Oct. 20, 1976]

Subpart J—Policies Relating to Federal Preemption of State Economic Regulations


SOURCE: PS-83, 44 FR 9951, Feb. 15, 1979, unless otherwise noted.

§ 399.110 State economic regulation of federally authorized carriers prohibited.

(a) Section 105 of the Act states, that except as provided in paragraph (b) of this section, no State or political subdivision thereof and no interstate agency of two or more States shall enact or enforce any law, rule, regulations, standard, or other provision having the force and effect of law relating to rates, routes, or services of any air carrier having authority under Title IV of the Act to provide interstate air transportation. (c) Except for air transportation conducted wholly within the State of Alaska, any air carrier holding an effective certificate of public convenience and necessity issued pursuant to section 401 or 418 of the Act, an exemption from those sections pursuant to part 298 of this chapter, or any other authority under Title IV of the Act to provide interstate air transportation qualifies as a federally authorized carrier for purposes of the preemption of State regulation under this subpart.

(b) When any intrastate air carrier that in August 1, 1977, was operating primarily in intrastate air transportation regulated by a State receives the authority to provide interstate air transportation, any authority received from such State shall be considered to be part of its authority to provide air transportation (other than charter air transportation) provided pursuant to a certificate issued by the Board under section 401 of the Act, the provisions of paragraph (a) shall not apply to any transportation by air of persons, property, or mail conducted wholly within the State of Alaska.

(e) [Reserved]

(f) This subpart shall not limit the authority of any State or political subdivision thereof or any interstate agency or other political agency of two or more States, as the owner or operator of any airport served by any air carrier certificated by the Board, to exercise its proprietary powers and rights, when such exercise is reasonable, nondiscriminatory, nonburdensome to interstate commerce, and designed to accomplish a legitimate State objective in a manner that does not conflict with the provisions and policies of the Act.

[PS-83, 44 FR 9951, Feb. 15, 1979, as amended by Docket No. 47939, 57 FR 40106, Sept. 2, 1992]

§ 399.111 All operations of federally authorized carriers to be regulated by the Board.

(a) All operations of Federally authorized carriers are subject to the requirements of Title IV of the Act, including certification and tariff-filing requirements, unless otherwise exempted from one or more of those requirements by Board order or regulation.

(b) When any intrastate air carrier that in August 1, 1977, was operating primarily in intrastate air transportation regulated by a State receives the authority to provide interstate air transportation, any authority received from such State shall be considered to be part of its authority to provide air transportation.
Subpart K—Policies Relating to Certificate Duration

§ 399.120 Duration of certificates in limited-entry markets.

All certificate authority that the Department grants to U.S. air carriers in carrier selection proceedings will be awarded in the form of experimental certificates of five years’ duration pursuant to section 401(d)(8) of the Federal Aviation Act. This provision does not alter or amend permanent certificates issued prior to January 1, 1985.

[Doc. No. 43403, 51 FR 43188, Dec. 1, 1986]
CHAPTER III—COMMERCIAL SPACE
TRANSPORTATION, FEDERAL AVIATION
ADMINISTRATION, DEPARTMENT OF
TRANSPORTATION

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PART 400—BASIS AND SCOPE

Sec.
400.1 Basis.
400.2 Scope.

S O U R C E : 53 FR 11013, Apr. 4, 1988, unless otherwise noted.

§ 400.1 Basis.
The basis for the regulations in this chapter is the Commercial Space Launch Act of 1984, and applicable treaties and international agreements to which the United States is party.

§ 400.2 Scope.
These regulations set forth the procedures and requirements applicable to the authorization and supervision of all space launch activities conducted from United States territory or by United States citizens. The regulations in this chapter do not apply to amateur rocket activities or to space activities carried out by the United States Government on behalf of the United States Government.

PART 401—ORGANIZATION AND DEFINITIONS

Sec.
401.1 The Office of Commercial Space Transportation.
401.3 The Director of Commercial Space Transportation.
401.5 Definitions.

S O U R C E : 53 FR 11013, Apr. 4, 1988, unless otherwise noted.

§ 401.1 The Office of Commercial Space Transportation.
The Office of Commercial Space Transportation, referred to in these regulations as the "Office," is a unit within the Office of the Secretary of Transportation and is located in the Department of Transportation Headquarters, 400 Seventh Street, SW., Washington, DC 20590.

§ 401.3 The Director of Commercial Space Transportation.
The Office is headed by a Director appointed by the Secretary of Transportation to exercise the Secretary's authority to license and otherwise regulate commercial space launch activities and to discharge the Secretary's responsibility to encourage, facilitate and promote commercial space launches by the United States private sector.

§ 401.5 Definitions.

As used in this chapter—


Amateur rocket activities means launch activities conducted at private sites involving rockets powered by a motor or motors having a total impulse of 200,000 pound-seconds or less and a total burning or operating time of less than 15 seconds, and a rocket having a ballistic coefficient—i.e., gross weight in pounds divided by frontal area of rocket vehicle—less than 12 pounds per square inch.

Director means the Director of the Office of Commercial Space Transportation, or any person designated by the Director to exercise the authority or discharge the responsibilities of the Director.

Launch means to place, or attempt to place, a launch vehicle and/or payload in a suborbital trajectory, in Earth orbit in outer space, or otherwise in outer space.

Launch activity means the launch of a launch vehicle and any payload, the operation of a launch site, or both.

Launch vehicle means any vehicle constructed for the purpose of operating in, or placing a payload in, outer space, and any suborbital rocket.

Licensee means the person authorized by a license to conduct specified commercial launch activities and responsible for conducting such activities in conformance with applicable requirements.

Mission means the objective to be accomplished by a proposed launch and
includes the general plan for achieving that objective.

Operation of a launch site means the conduct of approved safety operations at a permanent site to support the launching of vehicles and payloads.

Payload means an object which a person undertakes to place in outer space by means of a launch vehicle, and includes subcomponents of a launch vehicle specifically designed or adapted for that object.

Person means any individual and any corporation, partnership, joint venture, association, or other entity organized or existing under the laws of any State or Nation.

Safety operations means the personnel, equipment, facilities, documented plans and procedures, and any other resource needed for safe preparation and launch of a launch vehicle and its payload.

State and United States when used in a geographical sense, mean the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, The United States Virgin Islands, Guam, and any other commonwealth, territory, or possession of the United States; and

United States citizen means:
(a) Any individual who is a citizen of the United States;
(b) Any corporation, partnership, joint venture, association, or other entity organized or existing under the laws of the United States or any State; and
(c) Any corporation, partnership, joint venture, association, or other entity which is organized or exists under the laws of a foreign nation, if the controlling interest in such entity is held by an individual or entity described in paragraph (a) or (b) of this definition. Controlling interest means ownership of an amount of equity in such entity sufficient to direct management of the entity or to void transactions entered into by management. Ownership of at least fifty-one percent of the equity in an entity by persons described in paragraph (a) or (b) of this definition creates a rebuttable presumption that such interest is controlling.
SUBCHAPTER B—PROCEDURE

PART 404—REGULATIONS AND LICENSING REQUIREMENTS

Subpart A—General

Sec. 404.1 Scope.
404.3 Filing of petitions to the director.
404.5 Action on petitions.

Subpart B—Rulemaking

404.11 General.
404.13 Petitions for extension of time to comment.
404.15 Consideration of comments received.
404.17 Additional rulemaking proceedings.
404.19 Hearings.

Source: 53 FR 11013, Apr. 4, 1988, unless otherwise noted.

Subpart A—General

§ 404.1 Scope.

Pursuant to sections 8 and 13 of the Act, this part sets forth the procedures for issuing regulations to implement the Act and for eliminating or waiving requirements of Federal law otherwise applicable to the licensing of commercial space launch activities.

§ 404.3 Filing of petitions to the director.

(a) Any interested person may petition the Director to issue, amend or repeal a regulation, to eliminate as a requirement for a license any requirement of Federal law otherwise applicable to the licensing of commercial space launch activities.

(b) Each petition filed under this section shall:

(1) Be submitted in duplicate to the Documentary Services Division, Attention Docket Section, Room 4107, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590;

(2) Set forth the text or substance of the regulation or amendment proposed, the regulation to be repealed, or the licensing requirement to be eliminated or waived;

(3) In the case of a petition for a waiver, explain the nature and extent of the relief sought;

(4) Contain any facts, views, and data available to the petitioner to support the action requested; and

(5) In the case of a petition for a waiver, be submitted at least 60 days before the proposed effective date of the waiver unless good cause for later submission is shown in the petition.

(c) A petition for rulemaking filed under this section shall contain a summary, which the Director may cause to be published in the Federal Register, which includes:

(1) A brief description of the general nature of the action requested; and

(2) A brief description of the pertinent reasons presented in the petition for instituting the rulemaking.

§ 404.5 Action on petitions.

(a) General. No public hearing, argument or other proceeding is held on a petition before its disposition under this section.

(b) Grants. In the case of a petition for a waiver, the Director may grant the waiver if the Director determines that the waiver is in the public interest and will not jeopardize public health and safety, the safety or property, or any national security or foreign policy interest of the United States. In all other cases, if the Director determines that the petition contains adequate justification, the Director initiates a rulemaking action under Subpart B of this part.

(c) Denials. If the Director determines that the petition does not justify initiating rulemaking action or granting the waiver, the petition is denied.

(d) Notification. Whenever the Director determines that a petition should be granted or denied, the petitioner is notified of the Director's action and the reasons supporting it.
§ 404.11

Subpart B—Rulemaking

§ 404.11 General.

(a) Unless the Director finds, for good cause, that notice is impractical, unnecessary, or contrary to the public interest, a notice of proposed rulemaking is issued and interested persons are invited to participate in proceedings related to each substantive rule proposed.

(b) Unless the Director determines that notice and comment is necessary or desirable, interpretive rules, general statements of policy, and rules relating to organization, procedure, or practice are issued as final rules without notice or other proceedings.

(c) In the Director's discretion, interested persons may be invited to participate in the rulemaking proceedings described in § 404.19 of this Subpart.

§ 404.13 Petitions for extension of time to comment.

(a) Any person may petition the Director for an extension of time to submit comments in response to a notice of proposed rulemaking. The petition shall be submitted in duplicate not less than three days before expiration of the time stated in the notice. The filing of the petition does not automatically extend the time for petitioner's comments.

(b) The Director grants the petition only if the petitioner shows a substantial interest in the proposed rule and good cause for the extension, and if the extension is in the public interest. If an extension is granted, it is granted as to all persons and is published in the FEDERAL REGISTER.

§ 404.15 Consideration of comments received.

All timely comments are considered before final action is taken on a rulemaking proposal. Late filed comments may be considered to the extent possible, provided they do not cause undue additional expense or delay.

§ 404.17 Additional rulemaking proceedings.

The Director may initiate any additional rulemaking proceedings, if necessary or desirable. For example, the Director may invite interested persons to present oral arguments, participate in conferences, appear at informal hearings, or participate in any other proceedings.

§ 404.19 Hearings.

(a) Sections 556 and 557 of Title 5, United States Code, do not apply to hearings held under this part. As a fact-finding forum, each hearing held under this part is nonadversarial and there are no formal pleadings or adverse parties. Any rule issued in a proceeding in which a hearing is held is not based exclusively on the record of the hearing, but on the entire record of the rulemaking proceeding.

(b) The Director designates a representative to conduct any hearing held under this part. The General Counsel designates a legal officer for the hearing.

PART 405—INVESTIGATIONS AND ENFORCEMENT

Sec.
405.1 Monitoring of licensed and other activities.
405.3 Authority to modify, suspend or revoke.
405.5 Emergency orders.
405.7 Civil penalties.


Source: 53 FR 11014, Apr. 4, 1988, unless otherwise noted.

§ 405.1 Monitoring of licensed and other activities.

Each licensee shall allow and cooperate with Federal officers or employees or other individuals authorized by the Director to observe licensed activities, including launch sites, production facilities or assembly sites used by any contractor or a licensee in the production or assembly of a launch vehicle and in the integration of a payload with its launch vehicle. Such observations are conducted in order to monitor the activities of the licensee or contractor at such time and to such extent as the Director considers reasonable and necessary to determine compliance with the license or to carry out the Director's responsibilities pertaining to payloads for which no Federal license, authorization, or permit is required.
§ 405.3 Authority to modify, suspend or revoke.

(a) Upon application by the licensee or upon the Office’s own initiative, the Office may modify a license issued under this chapter if the Office finds that the modification is consistent with the requirements of the Act.

(b) If the Office finds that a licensee has substantially failed to comply with any requirement of the Act, any regulation issued under the Act, the terms and conditions of a license, or any other applicable requirement, or that public health and safety, the safety of property or any national security or foreign policy interest of the United States so require, the Office may suspend or revoke any license issued to such licensee under this chapter.

(c) Unless otherwise specified by the Office, any modification, suspension or revocation made by the Office under this section:

(1) Takes effect immediately; and

(2) Continues in effect during any review of such action under Part 406 of this chapter.

(d) Whenever the Office takes any action under this section, the Office immediately notifies the licensee in writing of the Office’s finding and the action which the Office has taken or proposes to take regarding such finding.

§ 405.5 Emergency orders.

The Office may immediately terminate, prohibit or suspend a licensed launch or launch site operation if the Office determines that—

(a) Such launch or operation is detrimental to public health and safety, safety of property, or any national security or foreign policy interest of the United States; and

(b) The detriment cannot be eliminated effectively through the exercise of other authority of the Office.

§ 405.7 Civil penalties.

(a) Pursuant to section 19 of the Act, any person found by the Office, after notice and opportunity to be heard on the record in accordance with section 554 of Title 5, United States Code, to have violated a requirement of the Act, a regulation issued under the Act, or any term, condition or restriction of any license issued or transferred by the Office, shall be liable to the United States for a civil penalty. Each day of a continuing violation shall constitute a separate violation. The amount of such civil penalty shall be assessed by the Office by written notice. The Office may compromise, modify, or remit with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section.

(b) If any person fails to pay a civil penalty assessed against such person after the penalty has become final or if such person appeals an order of the Office, and the appropriate court has entered final judgment in favor of the Office, the Office shall recover the civil penalty assessed in any appropriate district court of the United States.

(c) For purposes of conducting any hearing under this section, the Office may:

(1) Issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, documents, and other records;

(2) Seek enforcement of such subpoenas in the appropriate district court of the United States; and

(3) Administer oaths and affirmations.

PART 406—ADMINISTRATIVE REVIEW

Sec. 406.1 Hearings.

406.3 Submissions; oral presentation.

406.5 Administrative law judge’s recommended decision.


SOURCE: 53 FR 11015, Apr. 4, 1988, unless otherwise noted.

§ 406.1 Hearings.

(a) Pursuant to section 12 of the Commercial Space Launch Act, the following are entitled to a determination on the record after an opportunity for a hearing in accordance with section 554 of Title 5, United States Code:

(1) An applicant for a license and a proposed transferee of a license regarding any decision to issue or transfer a license with conditions or to deny the issuance or transfer of such license;
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(2) An owner or operator of a payload regarding any decision to prevent the launch of such payload;

(3) A licensee regarding any decision to suspend, modify, or revoke a license, or to terminate, prohibit, or suspend any licensed launch activity; and

(4) A person found by the Office to have violated a requirement of the Act, a regulation issued under the Act, or any term, condition or restriction of any license issued or transferred by the Office if the Office seeks civil penalties.

(b) An administrative law judge will be designated to preside over any hearing held under this part.

§ 406.3 Submissions; oral presentation.

(a) Determinations under this part will be made on the basis of written submissions unless the administrative law judge, on petition or on his or her own initiative, determines that an oral presentation is required.

(b) Submissions shall include a detailed exposition of the evidence or arguments supporting the petition.

(c) Petitions shall be filed as soon as practicable, but in no event more than 30 days after issuance of the Office's decision or finding under §406.1.

§ 406.5 Administrative law judge's recommended decision.

(a) The recommended decision of the administrative law judge shall be reviewed by the Director, who shall make the final decision on the matter at issue. The Director shall make such final decision within thirty days of issuance of the recommended decision.

(b) The authority and responsibility to review and decide rests solely with the Director and may not be delegated.
PART 411—POLICY

§ 411.1 General.

The Office of Commercial Space Transportation may issue and transfer licenses authorizing launches, the operation of launch sites, or both.

§ 411.3 Review procedures.

(a) The evaluation of license requests for unmanned launches involves two reviews, Safety Review and Mission Review, designed to address in the most effective and least burdensome manner the two general areas of Federal concern: (1) the efficacy of the proposed safety operations to support safe preparation and launch of a launch vehicle and any payload; and (2) significant issues affecting United States national security interests, foreign policy interests, or international obligations which might be associated with the proposed launch. These reviews may be conducted independently of each other and in whichever order, sequential or concurrent, is more appropriate to the needs of the applicant.

(b) Requests for licenses authorizing the operation of a launch site are reviewed on the basis of the applicant's capability to operate a facility where safety operations are conducted on a continuing basis as support for the launching of a specified class of launch vehicles.

§ 411.5 Safety approval.

(a) Applicants proposing to conduct all of their own safety operations at a private launch site must demonstrate that they possess the resources needed for safe preparation and launch of a launch vehicle and any payload to be carried by such vehicle. In these circumstances, a comprehensive review of the applicant's proposed safety operations must be performed in order to determine whether safety approval can be granted.

(b) If an applicant proposes to launch from a Federal range, as the Act encourages, it is the Office's view that reliance on safety-related launch property and services found at these ranges is an appropriate means of ensuring that the applicant's launch activities can be conducted safely. As a general matter, a commercial launch site operated under the authority of a license issued by the Office should also be capable of providing such an assurance of safety. If an applicant proposes to contract for the services of a Federal range or a private launch site operated under the authority of a license issued by the Office, safety approval will ordinarily be given once the applicant has been accepted by a range or site capable of handling the launch activity proposed. All launch licenses issued under these circumstances shall be conditioned by the requirements that the applicant:

(1) Comply with all specified safety requirements and procedures of the range or launch site in question and

(2) Inform the Office of and obtain approval for any planned or proposed deviations from or alternatives to such requirements or procedures.

§ 411.7 Mission approval.

(a) General. Mission approval is granted unless some element of the proposed launch poses a threat to U.S. national security or foreign policy interests, constitutes a hazard to public health and safety or safety of property, or is inconsistent with international obligations of the United States. The Office shall work with applicants to correct or eliminate any defect in a proposal which impedes granting mission approval.

(b) Payloads. A proposal to launch any foreign payload or a payload not covered by existing FCC or NOAA regulation must be reviewed in consultation with other appropriate Federal...
§ 411.9 Information requirements.

The Office shall make available current compilations of the basic information an applicant is required to submit in order to initiate an appropriate review of any proposed commercial launch activity subject to the Office’s authority. These information requirements are not intended to be all-inclusive and the submission of the required information does not, in itself, demonstrate the qualifications of an applicant. The nature of individual proposals may require the submission of additional information.

PART 413—APPLICATIONS

§ 413.1 Scope.
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413.1 Scope.
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413.11 Modifications.
413.13 Issuance of license.
413.15 Terms and conditions of license.
413.17 Certain rights not conferred by license.
413.19 Substantial and significant changes in information furnished to the Office.


§ 413.3 Pre-application consultation.
Applicants are encouraged to consult with the Office of Commercial Space Transportation at the earliest possible planning stages. Such consultation may reveal potential problems with a proposal and allow changes to be made when they are less likely to result in significant delay or costs to the applicant.

§ 413.5 Application.
(a) Form. Applications shall be in writing and filed in duplicate with the Office of Commercial Space Transportation, S-50, 400 Seventh Street, SW., Washington, DC 20590. Attention: Applications Review Branch.

(b) Types. Applications to the Office may request issuance or transfer of a license authorizing a launch or the operation of a launch site. Applications may also be made, separately and in advance of a license application, requesting an approval or determination that must be secured before a license can be issued or transferred.

(c) Signature. Applications shall be signed as follows:
(1) For a corporation: By an officer authorized to act for the corporation in licensing matters.
(2) For a partnership or a sole proprietorship: By a general partner or proprietor, respectively; or
(3) For an association or other entity: By a principal executive officer.

§ 413.7 Confidentiality.
(a) Information or data submitted to the Office may be designated as confidential by the person or agency furnishing such data or information.

(b) A request that information or data be treated confidentially should be made in writing at the time the information is submitted and should state the period of time for which confidential treatment is desired.

(c) A request for confidential treatment will be associated with previously submitted information to the extent that it is practicable in light of prior distribution of such information.
§ 413.17 Certain rights not conferred by license.

No license shall confer any proprietary, property, or exclusive right in the use of any airspace, Federal launch facility, or Federal launch support facility. Issuance of a license does not affect the authority of the Federal Communications Commission under the Communications Act of 1934 (47 U.S.C. 151 et seq.) or the authority of the Secretary of Commerce under the Land Remote-Sensing Commercialization Act of 1984 (15 U.S.C. 4201 et seq.).
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Substantial and significant changes in information furnished to the Office.

(a) Each applicant is responsible for the continuing accuracy and completeness of information furnished to the Office to support a pending application or which formed the basis for any approval, determination or licensing action by the Office. Whenever such information is no longer substantially accurate and complete in all significant respects, or whenever there has been a substantial change as to any matter of decisional significance to the Office, the applicant shall, as promptly as possible, submit a statement furnishing such additional or corrected information as may be appropriate.

(b) Willful false statements made in applications and documents relating to applications or licenses are punishable by fine and imprisonment, U.S. Code, Title 18, Section 1001, and by appropriate administrative sanctions, including license revocation and civil penalties.

PART 415—LAUNCH LICENSES

Subpart A—General

§ 415.1 Scope.

This part contains the procedures and information requirements which apply exclusively to launch license applications and supplements the general application procedures in part 413.

§ 415.3 When a launch license is required.

(a) The launch of a launch vehicle from U.S. territory by any person, or from outside U.S. territory by any individual or any corporation, partnership, joint venture, association or other entity organized or existing under the laws of the United States or any state, must be authorized by a license issued under this part.

(b) The launch of a launch vehicle by a foreign corporation or other entity controlled by a United States citizen, as defined in section 401.5 of this Chapter, at any place which is both outside the United States and outside of the territory of any foreign nation when there is no agreement in force between the United States and a foreign nation which provides that such foreign nation shall exercise jurisdiction over such launch, must be authorized by a license issued under this part.

(c) The launch of a launch vehicle by any foreign corporation or other entity described in paragraph (b) of this section from the territory of a foreign nation, when there is in force an agreement between the United States and such foreign nation concerning the exercise of jurisdiction by the United States over such launch, must be authorized by a license issued under this part.

§ 415.5 Approvals required for a license.

A license authorizing an unmanned launch is issued or transferred after the Office grants an applicant both mission and safety approvals. These approvals may be requested separately and in advance of a license request, as provided in §§415.15 and 415.23 of this subpart.

§ 415.7 Incorporation of approvals.

(a) Any approval or determination made by the Office before a license has
been requested, as provided in §413.5 of this subpart, is made part of the record upon which the Office makes a decision to issue a launch license with conditions or to deny a launch license.

(b) An approval or determination remains valid, and the Office does not re-open any part of a review which formed the basis for an approval or determination, as long as the information submitted as part of the review and other matters of decisional significance to the Office remain accurate and valid.

§415.9 Standard conditions.
All launch licenses shall contain those conditions which the Office determines to be necessary and appropriate to protect public health and safety, the safety of property, and national security and foreign policy interests of the United States. Failure to comply with any license condition may be cause for revocation of the license or the initiation of other enforcement actions by the Office. Standard conditions in licenses include requirements for the licensee to do the following:

(a) Secure at least the minimum amount of third-party liability insurance specified by the Department;
(b) Adhere strictly to specified range safety regulations and procedures;
(c) Comply with requirements concerning pre-launch record keeping and notifications, including those pertaining to Federal airspace restrictions and military tracking operations; and
(d) Comply with Federal inspection, verification and enforcement requirements.

§415.10 Registration of space objects.
(a) In accordance with Article IV of the 1975 Convention on Registration of Objects Launched Into Outer Space, each licensee is responsible for registering all objects placed in space in the course of conducting activities authorized by its license, except for objects owned by a foreign entity. Registration of objects owned by a foreign entity is the responsibility of that foreign entity.
(b) Each licensee shall, within 30 days after launch, submit to the Office the following information concerning any vehicle or other object it has launched into outer space:
   (1) The international designator of the space object(s);
   (2) Date and location of launch;
   (3) Basic programmed orbital parameters, including:
      (i) Nodal period,
      (ii) Inclination,
      (iii) Apogee;
   (4) General function of the space object.

Subpart B—Safety Review

§415.11 Scope.
Safety Review is the procedure for determining whether an applicant can safely conduct the preparation and launch of the proposed launch vehicle and any payload. This review focuses on the elements of an applicant’s safety operations, including the proposed launch site, procedure, personnel, and equipment. A safety approval granted by the Office does not confer any approval or authorization an applicant or licensee must obtain from the operator of a Federal or licensed range, or create any presumption or inference that such approval or authorization will be granted.

§415.13 General standards for reviewing safety operations.
(a) Launch Site. The location, size and design configuration of the proposed site shall ensure that off-site persons and property are not exposed to an unreasonable risk of harm.
(b) Procedures. User and range operator procedures must be appropriate for assuring pre-launch check-out and validation of all launch safety systems (ground or flight); control of pre-launch and launch hazards to the public; trajectory flight safety analysis; and safe flight operations from ignition through impact for suborbital launches and through orbital injection or escape velocity for orbital launches.
(c) Personnel. Range safety personnel shall be qualified and possess appropriate training and experience.
(d) Equipment. Range safety equipment and instrumentation and vehicle safety systems shall be adequate and appropriate to support safe operations.
§ 415.15 When to request safety approval.

An application for safety approval may be made as a part of a launch license request or, in the alternative, in advance of a launch license request.

§ 415.17 Incorporation of safety approval.

A safety approval made by the Office under this part may be made part of a licensing record pursuant to §415.7 of this Subpart.

Subpart C—Mission Review

§ 415.21 Scope.

Mission Review is the procedure for identifying significant issues affecting United States national interests and international obligations that may be associated with a proposed launch. Except for safety operations covered by §§415.11-415.17 of this part, Mission Review covers all aspects of a proposed launch, including any payload to be launched. For a payload not subject to FCC or NOAA regulation, the Office must determine whether to prevent launch of the payload because to launch it would jeopardize public health and safety, the safety of property, or any national security or foreign policy interest of the United States.

§ 415.23 When to request mission approval.

An application for mission approval, may be made as part of a launch license request or, in the alternative, in advance of a launch license request. Application for a determination on a payload not regulated by the FCC or NOAA may be made as part of or in advance of any other request.

§ 415.25 Incorporation of mission approval.

A mission approval or payload determination made by the Office under this part is made part of a licensing record pursuant to §415.7 of this subpart.

Subpart D—Environmental Impacts of Launch Activities

§ 415.31 General.

In accordance with the requirements of the National Environmental Policy Act, 42 U.S.C. 4321, et seq., (NEPA), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA, 40 CFR parts 1500-1508, and the Department of Transportation's Procedures for Considering Environmental Impacts, DOT Order 5610.1C1, the environmental impacts of licensing commercial launch activities are required to be considered by the Office. The effects of most projected commercial launch activities are already addressed in the Office's programmatic environmental assessment or in environmental impact statements for existing launch sites. The Office will determine whether a proposed launch activity is adequately addressed in these documents. Applicants may be required to provide additional information concerning the environmental effects of a proposed launch activity.

§ 415.33 Environmental information.

Applicants will be required to submit environmental information concerning:
(a) Proposed new launch sites not covered by existing environmental documentation;
(b) A proposed new launch vehicle with characteristics falling measurably outside the parameters of existing environmental documentation;
(c) Proposed launches from established sites involving vehicles with characteristics falling measurably outside the parameters of the existing environmental impact statement covering those sites;
(d) A proposed payload that may have significant environmental impacts in the event of a launch accident; and

1This order is available from the Office of Commercial Space Transportation, Department of Transportation, S-50, 400 7th Street SW., Washington, DC 20590.
(e) Other factors as determined by the Office.

PART 440—FINANCIAL RESPONSIBILITY

Subpart A—Financial Responsibility for Licensed Launch Activities

§ 440.1 Scope of part.

This part sets forth financial responsibility and allocation of risk requirements applicable to commercial space launch activities that are authorized to be conducted under a launch license issued pursuant to this subchapter.

§ 440.3 Definitions.

(a) For purposes of this part—

(1) Bodily injury means physical injury, sickness, disease, disability, shock, mental anguish, or mental injury sustained by any person, including death.

(2) Contractors and subcontractors means those entities that are involved at any tier, directly or indirectly, in licensed launch activities, and includes suppliers of property and services, and the component manufacturers of a launch vehicle or payload.

(3) Customer means the person who procures launch services from the licensee, any person to whom the customer has sold, leased, assigned, or otherwise transferred its rights in the payload (or any part thereof) to be launched by the licensee, including a conditional sale, lease, assignment, or transfer of rights, any person who has placed property on board the payload for launch or payload services, and any person to whom the customer has transferred its rights to the launch services.

(4) Federal range facility means a Government-owned installation at which launches take place.

(5) Financial responsibility means statutorily required financial ability to satisfy liability as required under 49 U.S.C. 70101-70119.

(6) Government personnel means employees of the United States, its agencies, and its contractors and subcontractors, involved in launch services for licensed launch activities. Employees of the United States include members of the Armed Forces of the United States.

(7) Hazardous operations means activities, processes, and procedures that, because of the nature of the equipment, facilities, personnel, or environment involved or function being performed, may result in bodily injury or property damage.

(8) Liability means a legal obligation to pay claims for bodily injury or property damage resulting from licensed launch activities.

(9) License means an authorization to conduct licensed launch activities, issued by the Office under this subchapter.

(10) Licensed launch activities means the launch of a launch vehicle as defined in a regulation or license issued by the Office and carried out pursuant to a launch license.

(11) Maximum probable loss (MPL) means the greatest dollar amount of loss for bodily injury or property damage that is reasonably expected to result from licensed launch activities;

(i) Losses to third parties, excluding Government personnel and other
§ 440.5 General.

(a) No person shall commence or conduct launch activities that require a license unless that person has obtained a license and fully demonstrated compliance with the financial responsibility and allocation of risk requirements set forth in this part.

(b) The Office shall prescribe the amount of financial responsibility a licensee is required to obtain and any additions to or modifications of the amount in a license order issued concurrent with or subsequent to the issuance of a license.

(c) Demonstration of financial responsibility under this part shall not relieve the licensee of ultimate responsibility for liability, loss, or damage sustained by the United States resulting from licensed launch activities, except to the extent that:

(1) Liability, loss, or damage sustained by the United States results from willful misconduct of the United States or its agents;

(2) Covered claims of third parties for bodily injury or property damage arising out of any particular launch exceed the amount of financial responsibility required under §440.9(c) of this part and do not exceed $1,500,000,000 (as adjusted for inflation occurring after January 1, 1989) above such amount, and are payable pursuant to 49 U.S.C. 70113 and §440.19 of this part. Claims of employees of entities listed in §440.3(a)(15)(i)(B) and (C) of this part for bodily injury or property damage are not covered claims;

(3) Covered claims for property loss or damage exceed the amount of financial responsibility required under §440.9(e) of this part and do not result from willful misconduct of the licensee; or

(4) The licensee has no liability for covered claims by third parties for bodily injury or property damage arising out of any particular launch that exceed $1,500,000,000 (as adjusted for inflation occurring after January 1, 1989) above the amount of financial responsibility required under §440.9(c) of this part.

(d) A licensee's failure to comply with the requirements in this part may result in suspension or revocation of a license, and subjects the licensee to civil penalties as provided in part 405 of this chapter.

§ 440.7 Determination of maximum probable loss.

(a) The Office shall determine the maximum probable loss (MPL) from covered claims by a third party for
bodily injury or property damage, and the United States, its agencies, and its contractors and subcontractors for covered property damage or loss, resulting from licensed launch activities. The maximum probable loss determination forms the basis for financial responsibility requirements issued in a license order.

(b) The Office issues its determination of maximum probable loss no later than ninety days after a licensee or transferee has requested a determination and submitted all information required by the Office to make the determination. The Office shall consult with Federal agencies that are involved in, or whose personnel or property are exposed to risk of damage or loss as a result of, licensed launch activities before issuing a license order prescribing financial responsibility requirements and shall notify the licensee or transferee if interagency consultation may delay issuance of the MPL determination.

(c) Information requirements for obtaining a maximum probable loss determination are set forth in Appendix A of this part. Any person requesting a determination of maximum probable loss must submit information in accordance with Appendix A requirements, unless the Office has waived requirements. In lieu of submitting required information, a person requesting a maximum probable loss determination may designate and certify certain information previously submitted under this part and shall promptly report any changes in writing.

(d) The Office shall amend a determination of maximum probable loss required under this section at any time prior to completion of licensed launch activities as warranted by supplementary information provided to or obtained by the Office after the MPL determination is issued. Any change in financial responsibility requirements as a result of an amended MPL determination shall be set forth in a license order.

(e) The Office may make a determination of maximum probable loss at any time other than as set forth in paragraph (b) of this section upon request by any person.


§ 440.9 Insurance requirements for licensed launch activities.

(a) As a condition of each launch license, the licensee must comply with insurance requirements set forth in this section and in a license order issued by the Office, or otherwise demonstrate the required amount of financial responsibility.

(b) The licensee must obtain and maintain in effect a policy or policies of liability insurance, in an amount determined by the Office under paragraph (c) of this section, that protects the following persons as additional insureds to the extent of their respective potential liabilities against covered claims by a third party for bodily injury or property damage resulting from licensed launch activities:

1. The licensee, its customer, and their respective contractors and subcontractors, and the employees of each, involved in licensed launch activities;
2. The United States, its agencies, and its contractors and subcontractors involved in licensed launch activities; and

(c) The Office shall prescribe for each licensee the amount of insurance required to compensate the total of covered third-party claims for bodily injury or property damage resulting from licensed launch activities in connection with any particular launch. Covered third-party claims include claims by the United States, its agencies, and its contractors and subcontractors for damage or loss to property other than property for which insurance is required under paragraph (d) of this section. The amount of insurance required is based upon the Office's determination of maximum probable loss; however, it will not exceed the lesser of:

1. $500 million; or
2. The maximum liability insurance available on the world market at a reasonable cost, as determined by the Office.
(d) The licensee must obtain and maintain in effect a policy or policies of insurance, in an amount determined by the Office under paragraph (e) of this section, that covers claims by the United States, its agencies, and its contractors and subcontractors involved in licensed launch activities for property damage or loss resulting from licensed launch activities. Property covered by this insurance must include all property owned, leased, or occupied by, or within the care, custody, or control of, the United States and its agencies, and its contractors and subcontractors involved in licensed launch activities, at a Federal range facility. Insurance must protect the United States and its agencies, and its contractors and subcontractors involved in licensed launch activities.

(e) The Office shall prescribe for each licensee the amount of insurance required to compensate claims for property damage under paragraph (d) of this section resulting from licensed launch activities in connection with any particular launch. The amount of insurance is based upon a determination of maximum probable loss; however, it will not exceed the lesser of:

1. $100 million; or
2. The maximum available on the world market at a reasonable cost, as determined by the Office.

(f) In lieu of a policy of insurance, a licensee may demonstrate financial responsibility in another manner meeting the terms and conditions applicable to insurance as set forth in this part. The licensee must describe in detail the method proposed for demonstrating financial responsibility and how it assures that the licensee is able to cover claims as required under this part.

§ 440.11 Duration of coverage; modifications.

(a) Insurance coverage required under §440.9, or other form of financial responsibility, shall attach upon commencement of licensed launch activities, and remain in full force and effect as follows:

1. Until completion of licensed launch activities at the launch site; and
2. For orbital launches, until the later of—
   i. Thirty days following payload separation, or attempted payload separation in the event of a payload separation anomaly; or
   ii. Thirty days from ignition of the launch vehicle.
3. For suborbital launches, until the later of—
   i. Motor impact and payload recovery; or
   (ii) The Office’s determination that risk to third parties and Government property as a result of licensed launch activities is sufficiently small that financial responsibility is no longer necessary, as determined by the Office through the risk analysis conducted before the launch to determine MPL and specified in a license order.

(b) Financial responsibility required under this part may not be replaced, canceled, changed, withdrawn, or in any way modified to reduce the limits of liability or the extent of coverage, nor expire by its own terms, prior to the time specified in a license order, unless the Office is notified at least 30 days in advance and expressly approves the modification.

§ 440.13 Standard conditions of insurance coverage.

(a) Insurance obtained under §440.9 shall comply with the following terms and conditions of coverage:

1. Bankruptcy or insolvency of an insured, including any additional insured, shall not relieve the insurer of any of its obligations under any policy.
2. Policy limits shall apply separately to each occurrence and, for each occurrence to the total of claims arising out of licensed launch activities in connection with any particular launch.
3. Except as provided herein, each policy must pay claims from the first dollar of loss, without regard to any deductible, to the limits of the policy. A licensee may obtain a policy containing a deductible amount if the amount of the deductible is placed in an escrow account or otherwise demonstrated to be unobligated, unencumbered funds of the licensee, available to compensate claims at any time claims may arise.
(4) Each policy shall not be invalidated by any action or inaction of the licensee or any additional insured, including nonpayment by the licensee of the policy premium, and must insure the licensee and each additional insured regardless of any breach or violation of any warranties, declarations, or conditions contained in the policies by the licensee or any additional insured (other than a breach or violation by the licensee or an additional insured, and then only as against that licensee or additional insured).

(5) Exclusions from coverage must be specified.

(6) Insurance shall be primary without right of contribution from any other insurance that is carried by the licensee or any additional insured.

(7) Each policy must expressly provide that all of its provisions, except the policy limits, operate in the same manner as if there were a separate policy with and covering the licensee and each additional insured.

(8) Each policy must be placed with an insurer of recognized reputation and responsibility that is licensed to do business in any State, territory, possession of the United States, or the District of Columbia.

(9) Except as to claims resulting from the willful misconduct of the United States or its agents, the insurer shall waive any and all rights of subrogation against each of the parties protected by required insurance.

(b) [Reserved.]

§ 440.15 Demonstration of compliance.

(a) A licensee must submit evidence of financial responsibility and compliance with allocation of risk requirements under this part, as follows, unless a license order specifies otherwise due to the proximity of the licensee's intended date for commencement of licensed launch activities:

(i) The three-party reciprocal waiver of claims agreement required under §440.17(c) of this part must be submitted at least 30 days before commencement of licensed launch activities; and

(ii) Evidence of renewal of insurance or other form of financial responsibility shall be submitted at least 30 days in advance of its expiration date.

(b) Upon a complete demonstration of compliance with financial responsibility and allocation of risk requirements under this part, the requirements shall preempt any provisions in agreements between the licensee and an agency of the United States governing access to or use of United States launch property or launch services for licensed launch activities which address financial responsibility, allocation of risk and related matters covered by 49 U.S.C. 70112, 70113.

(c) A licensee must demonstrate compliance as follows:

(i) The licensee must provide proof of insurance required under §440.9 by:

(A) Certifying to the Office that it has obtained insurance in compliance with the requirements of this part and any applicable license order;

(B) Filing with the Office one or more certificates of insurance evidencing insurance coverage by one or more insurers under a currently effective and properly endorsed policy or policies of insurance, applicable to licensed launch activities, on terms and conditions and in amounts prescribed under this part, and specifying policy exclusions;

(C) In the event of any policy exclusions or limitations of coverage that may be considered usual under §440.19(c) of this part, or for purposes of implementing the Government's waiver of claims for property damage under 49 U.S.C. 70112(b)(2), certifying that insurance covering the excluded risks is not commercially available at reasonable cost; and

(ii) Submitting to the Office, for signature by the Department on behalf of the United States Government, the waiver of claims and assumption of responsibility agreement required by
§ 440.17 Reciprocal waiver of claims requirements.

(a) As a condition of each launch license, the licensee shall comply with reciprocal waiver of claims requirements as set forth in this section.

(b) The licensee shall implement reciprocal waivers of claims with its contractors and subcontractors, its customer(s) and the customer’s contractors and subcontractors, under which each party waives and releases claims against the other parties to the waivers and agrees to assume financial responsibility for property damage sustained by its own employees, and to hold harmless and indemnify each other from bodily injury or property damage sustained by its employees, resulting from licensed launch activities, regardless of fault.

(c) For each licensed launch in which the U.S. Government, its agencies, or its contractors and subcontractors is involved in licensed launch activities or where property insurance is required under §440.9(d) of this part, the Federal Aviation Administration of the Department of Transportation, the licensee, and its customer shall enter into a three-party reciprocal waiver of claims agreement in the form set forth in Appendix II to this part or that satisfies its requirements.

(d) The licensee, its customer, and the Federal Aviation Administration of the Department of Transportation on behalf of the United States and its agencies but only to the extent provided in legislation, must agree in any waiver of claims agreement required under this part to indemnify another party to the agreement from claims by the indemnifying party’s contractors and subcontractors arising out of the indemnifying party’s failure to implement properly the waiver requirement.

§ 440.19 United States payment of excess third-party liability claims.

(a) The United States pays successful covered claims (including reasonable expenses of litigation or settlement) of a third party against the licensee, the customer, and the contractors and subcontractors of the licensee and the customer, and the employees of each involved in licensed launch activities, and the contractors and subcontractors of the United States and its agencies, and their employees, involved in licensed launch activities to the extent provided in an appropriation law or other legislative authority providing for payment of claims in accordance with 49 U.S.C. 70113, and to the extent the total amount of such covered claims arising out of any particular launch:

(1) Exceeds the amount of insurance required under §440.9(b); and

(2) Is not more than $1,500,000,000 (as adjusted for inflation occurring after January 1, 1989) above that amount.

(b) Payment by the United States under paragraph (a) of this section shall not be made for any part of such claims for which bodily injury or property damage results from willful misconduct by the party seeking payment.

(c) The United States shall provide for payment of claims by third parties for bodily injury or property damage that are payable under 49 U.S.C. 70113 and not covered by required insurance under §440.9(b), without regard to the limitation under paragraph (a)(1) of this section, because of an insurance
policy exclusion that is usual. A policy exclusion is considered usual only if insurance covering the excluded risk is not commercially available at reasonable rates. The licensee must submit a certification in accordance with §440.15(c)(1)(iii) of this part for the United States to cover the claims.

(d) Upon the expiration of the policy period prescribed in accordance with §440.11(a), the United States shall provide for payment of claims that are payable under 49 U.S.C. 70113 from the first dollar of loss up to $1,500,000,000 (as adjusted for inflation occurring after January 1, 1989).

(e) Payment by the United States of excess third-party claims under 49 U.S.C. 70113 shall be subject to:

(1) Prompt notice by the licensee to the Office that the total amount of claims arising out of licensed launch activities exceeds, or is likely to exceed, the required amount of financial responsibility. For each claim, the notice must specify the nature, cause, and amount of the claim or lawsuit associated with the claim, and the party or parties who may otherwise be liable for payment of the claim;

(2) Participation or assistance in the defense of the claim or lawsuit by the United States, at its election;

(3) Approval by the Office of any settlement, or part of a settlement, to be paid by the United States; and

(4) Approval by Congress of a compensation plan prepared by the Office and submitted by the President.

(f) The Office will:

(1) Prepare a compensation plan outlining the total amount of claims and meeting the requirements set forth in 49 U.S.C. 70113;

(2) Recommend sources of funds to pay the claims; and

(3) Propose legislation as required to implement the plan.

(g) The Office may withhold payment of a claim if it finds that the amount is unreasonable, unless it is the final order of a court that has jurisdiction over the matter.

APPENDIX A TO PART 440—INFORMATION REQUIREMENTS FOR OBTAINING A MAXIMUM PROBABLE LOSS DETERMINATION FOR LICENSED LAUNCH ACTIVITIES

Any person requesting a maximum probable loss determination shall submit the following information to the Office, unless the Office has waived a particular information requirement under 14 CFR 440.7(c):

I. GENERAL INFORMATION

A. Mission description.

1. A description of mission parameters, including:
   a. Launch trajectory;
   b. Orbital inclination; and
   c. Orbit altitudes (apogee and perigee).

2. Flight sequence.

3. Staging events and the time for each event.

4. Impact locations.

5. Identification of the launch range facility, including the launch complex on the range, planned date of launch, and launch windows.

6. If the applicant has previously been issued a license to conduct launch activities using the same launch vehicle from the same launch range facility, a description of any differences planned in the conduct of proposed activities.

B. Launch Vehicle Description.

1. General description of the launch vehicle and its stages, including dimensions.

2. Description of major systems, including safety systems.

3. Description of rocket motors and type of fuel used.

4. Identification of all propellants to be used and their hazard classification under the Hazardous Materials Table, 49 CFR 172.101.

5. Description of hazardous components.

C. Payload.

1. General description of the payload, including type (e.g., telecommunications, remote sensing), propellants, and hazardous components or materials, such as toxic or radioactive substances.

D. Flight Termination System.

1. Identification of any flight termination system (FTS) on the launch vehicle, including a description of operations and component location on the vehicle.

II. PRE-FLIGHT PROCESSING OPERATIONS

A. General description of pre-flight operations including vehicle processing consisting of an operational flow diagram showing the overall sequence and location of operations, commencing with arrival of vehicle components at the launch range facility.
through final safety checks and countdown sequence, and designation of hazardous operations, as defined in 14 CFR 440.3. For purposes of these information requirements, payload processing, as opposed to integration, is not a hazardous operation.

B. For each hazardous operation, including but not limited to fueling, solid rocket motor build-up, ordnance installation, ordnance checkout, movement of hazardous materials, and payload integration:

1. Identification of location where each operation will be performed, including each building or facility identified by name or number.
2. Identification of facilities adjacent to the location where each operation will be performed and therefore exposed to risk, identified by name or number.
3. Maximum number of Government personnel and individuals not involved in licensed launch activities who may be exposed to risk during each operation. For Government personnel, identification of his or her employer.
4. Identification of launch range facility policies or requirements applicable to the conduct of operations.

III. FLIGHT OPERATIONS

A. Identification of launch range facilities exposed to risk during launch vehicle lift-off and flight.
B. Identification of accident failure scenarios, probability assessments for each, and estimation of risks to Government personnel, individuals not involved in licensed launch activities, and Government property, due to property damage or bodily injury. The estimation of risks for each scenario shall take into account the number of such individuals at risk as a result of lift-off and flight of a launch vehicle (on-range, off-range, and down-range) and specific, unique facilities exposed to risk. Scenarios shall cover the range of launch trajectories, inclinations and orbits for which authorization is sought in the license application.
C. On-orbit risk analysis assessing risks posed by a launch vehicle to operational satellites.
D. Reentry risk analysis assessing risks to Government personnel and individuals not involved in licensed launch activities as a result of reentering debris or reentry of the launch vehicle or its components.
E. Trajectory data as follows: Nominal and 3-sigma lateral trajectory data in x, y, z and x (dot), y (dot), z (dot) coordinates in one-second intervals, data to be pad-centered with x being along the initial launch azimuth and continuing through impact for suborbital flights, and continuing through orbital insertion or the end of powered flight for orbital flights.
F. Tumble-turn data for guided vehicles only, as follows: For vehicles with gimbaled nozzles, tumble turn data with zeta angles and velocity magnitudes stated. A separate table is required for each combination of fail times (every two to four seconds), and significant nozzle angles (two or more small angles, generally between one and five degrees).
G. Identification of debris lethal areas and the projected number and ballistic coefficient of fragments expected to result from flight termination, initiated either by command or self-destruct mechanism, for lift-off, land overflight, and reentry.

IV. POST-FLIGHT PROCESSING OPERATIONS

A. General description of post-flight ground operations including overall sequence and location of operations for removal of vehicle components and processing equipment from the launch range facility and for handling of hazardous materials, and designation of hazardous operations.
B. Identification of all facilities used in conducting post-flight processing operations.
C. For each hazardous operation:
1. Identification of location where each operation is performed, including each building or facility identified by name or number.
2. Identification of facilities adjacent to location where each operation is performed and exposed to risk, identified by name or number.
3. Maximum number of Government personnel and individuals not involved in licensed launch activities who may be exposed to risk during each operation. For Government personnel, identification of his or her employer.
4. Identification of launch range facility policies or requirements applicable to the conduct of operations.

APPENDIX B TO PART 440—AGREEMENT FOR WAIVER OF CLAIMS AND ASSUMPTION OF RESPONSIBILITY

THIS AGREEMENT is entered into this day of ____, by and among [Licensee] (the “Licensee”), [Customer] (the “Customer”) and the Federal Aviation Administration of the Department of Transportation, on behalf of the United States Government (collectively, the “Parties”), to implement the provisions of section 440.17(c) of the Commercial Space Transportation Licensing Regulations, 14 CFR Ch. III (the “Regulations”).

In consideration of the mutual releases and promises contained herein, the Parties hereby agree as follows:

1. DEFINITIONS

Customer means the above-named Customer on behalf of the Customer, any person to whom the Customer has sold, leased, assigned, or otherwise transferred its rights in
the payload (or any part thereof) to be launched by the licensee, including a conditional sale, lease, assignment, or transfer of rights, any person who has placed property on board the payload for launch or payload services, and any person to whom the Customer has transferred its rights to the launch services.

License means License No. _______ issued on _______, by the Associate Administrator for Commercial Space Transportation, Federal Aviation Administration, Department of Transportation, to the Licensee, including all license orders issued in connection with the License.

License means the Licensee and any transferee of the Licensee under 49 U.S.C. Subtitle IX, ch. 701.

United States means the United States and its agencies involved in Licensed Launch Activities.

Except as otherwise defined herein, terms used in this Agreement and defined in 49 U.S.C. Subtitle IX, ch. 701—Commercial Space Launch Activities, or in the Regulations, shall have the same meaning as contained in 49 U.S.C. Subtitle IX, ch. 701 or the Regulations, respectively.

2. WAIVER AND RELEASE OF CLAIMS

(a) Licensee hereby waives and releases claims it may have against Customer and the United States, and against their respective Contractors and Subcontractors, for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Launch Activities, regardless of fault.

(b) Customer hereby waives and releases claims it may have against Licensee and the United States, and against their respective Contractors and Subcontractors, for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Launch Activities, regardless of fault.

(c) The United States hereby waives and releases claims it may have against Licensee and Customer, and against their respective Contractors and Subcontractors, for Property Damage it sustains, and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Launch Activities, regardless of fault, to the extent that claims it would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under sections 440.9(c) and (e), respectively, of the Regulations, 14 CFR 440.9(c) and (e).

3. ASSUMPTION OF RESPONSIBILITY

(a) Licensee and Customer shall each be responsible for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Launch Activities, regardless of fault. Licensee and Customer shall each hold harmless and indemnify each other, the United States, and the Contractors and Subcontractors of each Party, for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Launch Activities, regardless of fault.

(b) The United States shall be responsible for Property Damage it sustains, and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Launch Activities, regardless of fault, to the extent that claims it would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under section 440.9(c) and (e), respectively, of the Regulations, 14 CFR 440.9(c) and (e).

4. EXTENSION OF ASSUMPTION OF RESPONSIBILITY AND WAIVER

(a) Licensee shall extend the requirements of the waiver and release of claims, and the assumption of responsibility, hold harmless, and indemnification, as set forth in paragraphs 2(a) and 3(a), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against Customer and the United States, and against the respective Contractors and Subcontractors of each, and to agree to be responsible, for Property Damage they sustain and to be responsible, hold harmless and indemnify Customer and the United States, and the respective Contractors and Subcontractors of each, for Bodily Injury or Property Damage sustained by their own employees, resulting from Licensed Launch Activities, regardless of fault.

(b) Customer shall extend the requirements of the waiver and release of claims, and the assumption of responsibility, hold harmless, and indemnification, as set forth in paragraphs 2(b) and 3(a), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against Licensee and the United States, and against the respective Contractors and Subcontractors of each, and to agree to be responsible, for Property Damage they sustain and to be responsible, hold harmless and indemnify Licensee and the United States, and the respective Contractors and Subcontractors of each, for Bodily Injury or Property Damage sustained by their own employees, resulting from Licensed Launch Activities, regardless of fault.

(c) The United States shall extend the requirements of the waiver and release of claims, and the assumption of responsibility as set forth in paragraphs 2(c) and 3(b), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against Licensee and Customer, and against the respective Contractors and Subcontractors of each,
and to agree to be responsible, for any Property Damage they sustain and for any Bodily Injury or Property Damage sustained by their own employees, resulting from Licensed Launch Activities, regardless of fault, to the extent that claims they would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under sections 440.9(c) and (e), respectively, of the Regulations, 14 CFR 440.9(c) and (e).

5. INDEMNIFICATION

(a) Licensee shall hold harmless and indemnify Customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any or any of them, and the United States and its agencies, servants, agents, subsidiaries, employees and assignees, or any or any of them, from and against liability, loss or damage arising out of claims that Licensee’s Contractors and Subcontractors may have for Property Damage sustained by them and for Bodily Injury or Property Damage sustained by their employees, resulting from Licensed Launch Activities.

(b) Customer shall hold harmless and indemnify Licensee and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any or any of them, and the United States and its agencies, servants, agents, subsidiaries, employees and assignees, or any or any of them, from and against liability, loss or damage arising out of claims that Customer’s Contractors and Subcontractors, or any person on whose behalf Customer enters into this Agreement, may have for Property Damage sustained by them and for Bodily Injury or Property Damage sustained by their employees, resulting from Licensed Launch Activities.

(c) To the extent provided in advance in an appropriations law or to the extent there is enacted additional legislative authority providing for the payment of claims, the United States shall hold harmless and indemnify Licensee and Customer and their respective directors, officers, servants, agents, subsidiaries, employees and assignees, or any or any of them, from and against liability, loss or damage arising out of claims that Contractors and Subcontractors of the United States may have for Property Damage sustained by them, and for Bodily Injury or Property Damage sustained by their employees, resulting from Licensed Launch Activities, to the extent that claims they would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under sections 440.9(c) and (e), respectively, of the Regulations, 14 CFR 440.9(c) and (e).

6. ASSURANCES UNDER 49 U.S.C. 70112(e)

Notwithstanding any provision of this Agreement to the contrary, Licensee shall hold harmless and indemnify the United States and its agencies, servants, agents, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims for Bodily Injury or Property Damage, resulting from Licensed Launch Activities, regardless of fault, except to the extent that: (i) as provided in section 7(b) of this Agreement, claims result from willful misconduct of the United States or its agents; (ii) claims for Property Damage sustained by the United States or its Contractors and Subcontractors exceed the amount of insurance or demonstration of financial responsibility required under section 440.9(c) of the Regulations (14 CFR 440.9(c)), and do not exceed $1,500,000,000 (as adjusted for inflation after January 1, 1989) above such amount, and are payable pursuant to the provisions of 49 U.S.C. 70113 and section 440.19 of the Regulations (14 CFR 440.19); or (iv) Licensee has no liability for claims exceeding $1,500,000,000 (as adjusted for inflation after January 1, 1989) above the amount of insurance or demonstration of financial responsibility required under section 440.9(c) of the Regulations (14 CFR 440.9(c)).

7. MISCELLANEOUS

(a) Nothing contained herein shall be construed as a waiver or release by Licensee, Customer or the United States of any claim by an employee of the Licensee, Customer or the United States, respectively, including a member of the Armed Forces of the United States, for Bodily Injury or Property Damage, resulting from Licensed Launch Activities.

(b) Notwithstanding any provision of this Agreement to the contrary, any waiver, release, assumption of responsibility or agreement to hold harmless and indemnify herein shall not apply to claims for Bodily Injury or Property Damage resulting from willful misconduct of any of the Parties, the Contractors and Subcontractors of any of the Parties, and in the case of Licensee and Customer and the Contractors and Subcontractors of each of them, the directors, officers, agents and employees of any of the foregoing, and in the case of the United States, its agents.

(c) In the event that more than one customer is involved in Licensed Launch Activities, references herein to Customer shall apply to, and be deemed to include, each such customer severally and not jointly.

(d) This Agreement shall be governed by and construed in accordance with United States Federal law.
to be duly executed by their respective duly authorized representatives as of the date written above.

**LICENSEE**
By: 
Its: 

**CUSTOMER**
By: 

**DEPARTMENT OF TRANSPORTATION**
By: 
Its: 


**PARTS 441-1199 [RESERVED]**
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All changes in this volume of the Code of Federal Regulations which were made by documents published in the Federal Register since January 1, 1986, are enumerated in the following list. Entries indicate the nature of the changes effected. Page numbers refer to Federal Register pages. The user should consult the entries for chapters and parts as well as sections for revisions.


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**1993**

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**1994**

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271.4 | (a) introductory text, (1)(i), (2)(i), (ii), (4) introductory text, (ii) and (b) amended | 43524 |
271.5 | (a) introductory text, (1) and (2) amended | 43524 |
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271.7 | (a) and (b)(1) amended | 43524 |
271.8 | (b) introductory text revised; (b)(3) amended; (c) removed; (d) redesignated as (c) | 43525 |
271.9 | (a)(2), (3) and (c) amended | 43525 |
272 | Heading revised | 43525 |

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291.24 Amended

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291.10 (Subpart B) Heading revised

291.9 Heading; (a) through (e), (f) introductory text, (1), (2), (g), (h) introductory text, (2), (3) and (5)(i) amended

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296 Authority citation revised

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297 Authority citation revised

297.1 Amended

297.2 Amended

297.10 Heading revised; (a) introductory text, (1) through (6) and (b) amended

297.12 (a), (b) and (c) amended

297.20 (b) amended

297.21 Amended

297.22 (e) amended

297.24 (a) amended

297.25 Amended

298 Heading revised

298.1 Amended; Footnote 1 removed

298.2 (a) removed; (b) through (x) redesignated as (a) through (w); new (b), (d±1) and (d±2) revised

298.11 Introductory text, (a), (b)(1), (c) introductory text, (d), (e) and (f) amended

298.13 Amended

298.21 (c)(1) footnote 6, (4) and (d) amended

298.36 (a) amended

298.60 (a), (b), (c) and (e) amended

298.61 (a) and (g) amended

298.62 (c)(1) amended

298.80 Amended

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