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Subtitle B—Other Regulations Relating to Transportation (Continued)

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SUBCHAPTER C—ACCOUNTS, RECORDS AND REPORTS

PARTS 1200–1219—UNIFORM SYSTEMS OF ACCOUNTS

PART 1200—GENERAL ACCOUNTING REGULATIONS UNDER THE INTERSTATE COMMERCE ACT

Sec.

1200.1 Financial statements released by carriers.

1200.2 Adoption of generally accepted accounting principles issued by the Financial Accounting Standards Board (FASB).

AUTHORITY: 49 U.S.C. 721, 11142, 11143, 11144, 11145.

§ 1200.1 Financial statements released by carriers.

Carriers desiring to do so may prepare and publish financial statements in reports to stockholders and others, except in reports to this Board, based on generally accepted accounting principles for which there is authoritative support, provided that any variance from this Board's prescribed accounting rules contained in such statements is clearly disclosed in footnotes to the statements.

[32 FR 20123, Dec. 20, 1967]

§ 1200.2 Adoption of generally accepted accounting principles issued by the Financial Accounting Standards Board (FASB).

(a) *Accounting Series Circulars*. Following the release of a Statement of Financial Accounting Standards by the FASB, and provided that the Office of Economics, Environmental Analysis, and Administration of the Board considers such standards appropriate for the Board's accounting regulations, the Office of Economics, Environmental Analysis, and Administration shall issue an Accounting Series Circular (ASC) requiring carriers under the Board's jurisdiction to follow the new standards in their accounts and reports filed with the Board. The Office shall also specify in the ASC the proper accounting procedures that the carriers shall follow.

(b) *Carriers' and Interested Parties' Comments on the ASC*. The ASC issued by the Office of Economics, Environmental Analysis, and Administration will remain effective until revoked by the Office of Economics, Environmental Analysis, and Administration. After an ASC is issued, the Office of Economics, Environmental Analysis, and Administration shall allow carriers and interested parties 45 days following the service date of the ASC during which the respondents may submit to the Office their comments and reasons either supporting or opposing the ASC.

(c) *Formal Adoption of the New Accounting Standards*. After considering the comments submitted in response to the ASC, and based on the proposal of the Office of Economics, Environmental Analysis, and Administration, the Board will decide whether or not to adopt the new accounting standards specified in the ASC by revising the Uniform Systems of Accounts, (49 CFR 1201 through 1210).

(d) *Accounting Standards Not Appropriate for Board's Use*. The Office of Economics, Environmental Analysis, and Administration may determine that a new FASB Statement of Financial Accounting Standards is not appropriate for use by carriers under the Board's jurisdiction. In such instances, the Office shall issue an ASC to advise the carriers that the new standards shall not be used in their reports filed with the Board. The carriers and interested parties shall be allowed 45 days following the ASC's service date to submit comments to the Board. The Board will then determine whether or not to revise the Uniform Systems of Accounts to conform to the new accounting standards.

[43 FR 26314, June 19, 1978, as amended at 67 FR 57533, Sept. 11, 2002]

PART 1201—RAILROAD COMPANIES

Subpart A—Uniform System of Accounts

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17 Roadway buildings.
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24 Coal and ore wharves.
25 TOFC/COFC terminals.
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APPENDIX I TO PART 1201—CERTIFICATION OF BRANCH LINE ACCOUNTING SYSTEM RECORDS

AUTHORITY: 49 U.S.C. 11142 and 11164.

Subpart A—Uniform System of Accounts

SOURCE: 42 FR 35017, July 7, 1977, unless otherwise noted.

LIST OF INSTRUCTIONS AND ACCOUNTS

REGULATIONS PRESCRIBED

(i) *Regulations prescribed.* Carriers by railroad subject to provisions of the Interstate Commerce Act and not independently operated as electric lines, and each lessor of such a carrier, shall comply with regulations in this part as presented hereinafter.

(ii) *Definitions.*

1. *Abandonment* means the withdrawal from transportation service of a branch line or other track segment or facility, representing a permanent reduction in plant.

2. *Accounts* means the accounts prescribed in this system of accounts.

3. *Actually issued* as applied to funded debt securities or capital stock issued or assumed by the company, means those which have been sold to bona fide purchasers or holders for a valuable consideration (including those issued in exchange for other securities or other property) and such purchasers or holders secured them free from control by the carriers. Also securities issued as dividends on stock.

4. *Actually outstanding* as applied to funded debt securities or capital stock issued or assumed by the carrier means those which have been actually issued and are neither retired and canceled nor reacquired and held by or for the accounting company.

5. (a) *Affiliated companies* means companies or persons that directly, or indirectly through one or more intermediaries control, or are controlled by, or are under common control with, the accounting carrier.

(b) *Control* (including the terms *controlling*, *controlled by*, and *under common control with*) means the possession directly or indirectly, of the power to direct or cause the direction of the management and policies of a company, whether such power is exercised 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 of 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.

6. *Amortization* means the gradual extinguishment of an amount in an account by distributing such amount over a fixed period dependent on the requirements of regulatory bodies, 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.

7. *Carrier* as used herein and when not otherwise indicated in the context means any carrier to which this system of accounts is applicable.

8. *Consolidation* means the formation of a new company. See instruction 2–15.

9. *Board* means the Surface Transportation Board.

10. *Compensating balance* means the portion of any demand deposit (or any time deposit or certificate of deposit) maintained by a carrier (or by any person on behalf of the carrier) which constitutes support for existing borrowing arrangements of the carrier with a lending institution. Such arrangements include both outstanding borrowings and the assurance of future credit availability. (The compensating balance requirement should be adjusted by the amount of float unless such adjustment would cause the compensating

balance to be greater than the cash balance per carrier's books.) The float adjustment is made by subtracting the float from the compensating balance requirement if the collected bank ledger balance exceeds the cash balance per carrier's books or by adding the float to the compensating balance requirement if the collected bank ledger balance is less than the cash balance per carrier's books.

(a) *Float* means deposits and withdrawals in transit which constitute a difference between the collected bank ledger balance and the cash balance per carrier's books.

11. *Cost center* refers to an organizational subdivision for which cost data are desired and for which provision is made to accumulate costs such as a terminal, yard, or track segment. A cost center may correspond to a given area of responsibility for which costs are presently accumulated for planning and control. A cost center is the smallest segment of activity or area of responsibility for which costs are accumulated and directly traceable.

12. *Cost of renewal* means the cost of additional material applied (other than the value assigned second-hand parts remaining in the rebuilt unit) plus the cost of labor used in the rebuilding process, exclusive of the portion applicable to dismantling and repair of old parts reused.

13. *Cost of removal* means cost of demolishing, dismantling, tearing down or otherwise removing property.

14. *Debt issue cost* means all costs in connection with the issuance and sale of evidences of debt, such as fees for drafting mortgages and trust deeds; fees for issuing or recording evidences of debt; cost of engraving and printing bonds and certificates of indebtedness; fees paid trustees, specific costs of obtaining governmental authority; fees for legal services; fees and commissions paid underwriters, brokers and salespeople for marketing such evidences for debt; fees and costs of listing on exchanges; and other like costs.

15. *Discount* as applied to funded debt securities or capital stock issued or assumed by the carrier, means the excess of the par or face value of the securities plus interest or dividends accrued at the date of the sale over the cash value of the consideration received from their sale.

16. *Equity security* encompasses any instrument representing ownership shares (e.g., common, preferred and other capital stock), or the right to acquire (e.g., warrants, rights, and call options) or dispose of (e.g., 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.

(a) *Marketable*, as applied to an equity security, means an equity security as to which sales prices or bid and ask prices are currently available on a national securities exchange (i.e., those registered with the Securities and Exchange Commission) or in the over-the-counter market. In the over-the-counter market, an equity security shall be considered marketable when a quotation is publicly reported by the National Association of Securities Dealers Automatic Quotations System or by the National Quotations Bureau, Inc. (provided, in the latter case, that quotations are available from at least three dealers). Equity securities traded in foreign markets shall be considered marketable when such markets are of a breadth and scope comparable to those referred to above. This definition is not met by restricted stock (securities for which sale is restricted by a governmental or contractual requirement except where such requirement terminates within one year or where the holder has the power to cause the requirement to be met within one year). Any portion of the stock which can reasonably be expected to qualify for sale within one year, such as may be the case under Rule 144 or similar rules of the Securities and Exchange Commission, is not considered restricted.

(b) *Market value* refers to the aggregate of the market price of a single share or unit times the number of shares or units of each marketable equity security in the portfolio. When an equity has taken positions involving short sales, sales of calls, and purchases of puts for marketable equity securities and the same securities are

included in the portfolio, those contracts shall be taken into consideration in the determination of market value of the marketable equity securities.

(c) *Cost*, as applied to a marketable equity security, refers to the original cost unless a new cost basis has been assigned based on recognition of an impairment of value that was deemed other than temporary or as the result of a transfer between current and noncurrent classifications. In such cases, the new cost basis assigned shall be considered cost.

17. (a) *Income taxes* means 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.

(b) *Income tax expense* means the amount of income taxes (whether or not currently payable or refundable) allocable to a period in the determination of net income.

(c) *Pretax accounting income* means income or loss for a period, exclusive of related income tax expense.

(d) *Taxable income* means the excess of revenues over deductions or the excess of deductions over revenue to be reported for income tax purposes for a period.

(e) *Timing differences* means differences between the periods in which transactions affect taxable income and the periods in which they enter into the determination of pretax accounting income. Timing differences originate in one period and reverse or *turn around* in one or more subsequent periods. Some timing differences reduce income taxes that would otherwise be payable currently; others increase income taxes that would otherwise be payable currently.

(f) *Permanent differences* means differences between taxable income and pretax accounting income arising from transactions that, under applicable tax laws and regulations, will not be offset by corresponding differences or *turn around* in other periods.

(g) *Tax effects* means 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 and direct entries to other stockholders' equity accounts which enter into the determination of taxable income in a period but 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 that term is used in this definition.

(h) *Deferred taxes* means tax effects which are deferred for allocation to income tax expense of future periods.

(i) *Interperiod tax allocation* means the process of apportioning income taxes among periods.

(j) *Tax allocation within a period* means the process of apportioning income tax expenses applicable to a given period between income before extraordinary items and extraordinary items, and of associating the income tax effects of adjustments of prior periods and direct entries to other stockholders' equity accounts with these items.

18. (a) *Investor* means a business entity that holds an investment in voting stock of another company.

(b) *Investee* means a corporation that issued voting stock held by an investor.

(c) *Corporate joint venture* is a company owned and operated as a separate and specific business or project for the mutual benefit of the members of the group. Joint facilities for purposes of this system of accounts are not considered corporate joint ventures.

(d) *Dividends* when applied to distributions received from investees unless otherwise specified, means dividends received or receivable in cash, other assets, or another class of stock and does not include stock dividends or stock splits.

(e) *Earnings or losses of an investee* and *financial position of an investee* refer to net income (or net loss) and financial position of an investee determined in accordance with generally accepted accounting principles.

(f) *Undistributed earnings of an investee* means net income less dividends declared whether received or not.

(g) *Date of acquisition* is the date on which the investor assumes the rights of ownership. Ordinarily, this is the date assets are received and other assets are given or securities issued.

19. *Joint facility* means any owned or leased carrier operating property occupied or operated jointly by the carrier and one or more other carriers, under an arrangement whereby the cost and income are apportioned to the parties to the joint agreement. Portions of a structure or other property used exclusively by each of two or more carriers are not joint facilities.

20. *Ledger value* of an account means the undepreciated or unamortized cost of acquisition of the item to the carrier, recorded in the general ledger. In case the cost of any item of property is not shown separately in the ledger, the ledger value of that item shall be its proportionate share of the value of the entire group in which the particular property is included.

21. *Merger* means the acquisition of one company by another. See instruction 2–15.

22. *Minor items of property* means the associated parts or items of which units of property are composed.

23. *Net railway operating income:* Operating revenue remaining after deducting operating expenses, income taxes on ordinary income, and the provision for deferred income taxes. Also, in arriving at NROI, deduct the Income from Lease of Road and Equipment and add the Rent for Leased Road and Equipment, formerly accounts 509 and 542, respectively.

24. *Net salvage value* means salvage value of property retired less the cost of removal.

25. *Nominally issued* as applied to funded debt securities or capital stock issued or assumed by the carrier, means those which have been signed, certified by trustees, or otherwise executed, and placed with the proper officer for sale and delivery, or pledged, or otherwise placed in some special fund of the accounting company, but which have not been sold or issued directly to the trustees of such fund in accordance with contractual requirements.

26. *Nominally outstanding* as applied to funded debt securities or capital stock issued or assumed by the carrier, means those which, after being actually issued, have been reacquired by or for the accounting company under such circumstances which require them to be considered as held alive and not retired and canceled.

27. *Premium* as applied to funded debt securities or capital stock issued or assumed by the carrier, means the excess of the cash value of the consideration received from their sale over the sum of their par (stated value of no par stock) or face value and interest or dividends accrued at the date of sale.

28. *Programmed track replacements* are costs incurred as part of a track replacement program or planned expenditures. Programmed track replacements are generally performed by relatively large work gangs which, on the basis of programmed and authorized work orders, use heavy mechanized equipment to replace rail, ties and other track material. For guidance on what not to capitalize, see the notes to the text of Accounts 8, 9 and 11.

29. *Property retired* means units of property which have been removed, sold, abandoned, destroyed, or which for any cause have been permanently withdrawn from service; also minor items of property not replaced.

30. *Rail Transportation Property*. Rail transportation property is all property and other assets, irrespective of ownership, that comprise the entire operating unit devoted to rail transportation service. This definition comprises the following accounts:

701 Cash
703 Special deposits
704 Loans and notes receivable
705 Accounts receivable—interline and other balances
706 Accounts receivable—customers
707 Accounts receivable—other
708.5 Receivable with affiliated companies
709 Accrued accounts receivable
710 Working funds
711 Prepayments
712 Material and supplies
713 Other current assets
714 Deferred income tax charges
731 Road and equipment property
732 Improvements on leased property

31. *Salvage value* means the amount received from the sale of operating property retired less any expenses in connection with the sale or in preparing the property for sale. If the

property is retained for reuse, the salvage value shall be recorded in account 712, Materials and Supplies, or other appropriate account at an amount not to exceed its recorded cost (actual or average), or current market value, whichever is lower.

32. *Segment of a business* refers to a component of an entity whose activities represent a separate major line of business or class of customer. A segment may be in the form of a subsidiary, a division, or a department, and in some cases a joint venture or other non-subsidiary investee, provided that its assets, results of operations, and activities can be clearly distinguished, physically and operationally and for financial reporting purposes, from the other assets, results of operations, and activities of the entity. The fact that the results of operations of the segment being sold or abandoned cannot be separately identified strongly suggests that the transaction should not be classified as a disposal of a segment of business.

(a) *Measurement date* means the date on which the management having authority to approve the action commits itself to a formal plan to dispose of a segment of the business, whether by abandonment or sale. The measurement date for disposals requiring Commission approval shall be the service date of the Order authorizing the disposal.

(b) *Disposal date* refers to the date of closing the sale, if the disposal is by sale or the date that operations cease if the disposal is by abandonment.

33. *Service life* means the period between the date when operating property is placed in service and the date of its retirement.

34. *Service value* means the ledger value of operating property less its salvage value (see definition 17).

35. *Track maintenance* is material and labor costs of routine track repairs such as sporadic tie replacement, repair of broken rails, tightening track bolts and track spikes. A more complete list of maintenance items are included in notes to the text of Accounts 8, 9 and 11.

36. *Work equipment* means equipment which can be coupled in a train for movement over the carrier's tracks, and which is used in the carrier's work service. See equipment listing for account 57, *Work equipment*.

[42 FR 35017, July 7, 1977, as amended at 44 FR 3493, Jan. 19, 1979; 45 FR 31110, May 12, 1980; 48 FR 7183, Feb. 18, 1983; 48 FR 33718, July 25, 1983; 49 FR 2254, Jan. 19, 1984; 52 FR 4321, Feb. 11, 1987]

GENERAL INSTRUCTIONS

1–1 *Classification of carriers.* (a) For purposes of accounting and reporting, carriers are grouped into the following three classes:

Class I: Carriers having annual carrier operating revenues of $250 million or more after applying the railroad revenue deflator formula shown in Note A.

Class II: Carriers having annual carrier operating revenues of less than $250 million but in excess of $20 million after applying the railroad revenue deflator formula shown in Note A.

Class III: Carriers having annual carrier operating revenues of $20 million or less after applying the railroad revenue deflator formula shown in Note A.

(b)(1) The class to which any carrier belongs shall be determined by annual carrier operating revenues after the railroad revenue deflator adjustment. Families of railroads operating within the United States as a single, integrated rail system will be treated as a single carrier for classification purposes. Upward and downward reclassification will be effected as of January 1 in the year immediately following the third consecutive year of revenue qualification.

(2) If a Class II or Class III carrier's classification is changed based on three years' adjusted revenues the carrier shall complete and file the Classification Index Survey Form with the Board by March 31 of the year following the end of the period to which it relates.

(3) Newly organized carriers shall be classified on the basis of their annual carrier operating revenues after railroad revenue deflator adjustment for the latest period of operation. If actual data are not available, new carriers shall be classified on the basis of their carrier operating revenues known and estimated for a year (after railroad revenue deflator adjustment).

(4) When a business combination occurs, such as a merger, reorganization, or consolidation, the surviving carrier shall be reclassified effective January 1 of the next calendar year on the basis of the combined revenue for the year when the combination occurred (after railroad revenue deflator adjustment).

(5) In unusual circumstances, such as partial liquidation and curtailment or elimination of contracted services, where regulations will unduly burden the carrier, the carrier may request the Board for an exception to the regulations. This request shall be in writing specifying the conditions justifying an exception.

(c) Class I carriers shall keep all of the accounts of this system which are applicable to their operations. Class II and III carriers are not required to maintain the accounts of this system.

(d) All switching and terminal companies, regardless of their operating revenues will be designated Class III carriers.

(e) Unless provided for otherwise, all electric railway carriers, regardless of operating revenues, will be designated Class III carriers.

NOTE A: The railroad revenue deflator formula is based on the Railroad Freight Price Index developed by the Bureau of Labor Statistics. The formula is as follows:

Current Year's Revenues × (1991 Average Index/Current Year's Average Index)

NOTE B: See related regulations 49 CFR 1241.15 Railroad classification survey form.

[57 FR 27185, June 18, 1992; 57 FR 31754, July 17, 1992; 66 FR 56245, Nov. 7, 2001; 67 FR 57533, Sept. 11, 2002]

1–2 *Classification of accounts.* (a) Accounts are prescribed to cover cost of property used in transportation operations and operations incidental thereto and for revenues, expenses, taxes, rents, and other items of income for such operations. Separate accounts are prescribed for investment in property not used in transportation operations and for other investments and income therefrom; for unusual and infrequent items; for operations and disposal of discontinued segments; for extraordinary items and accounting changes; and for assets, liabilities and capital includable in the balance sheet statement. Retained earnings accounts form the connecting link between the income account and the equity section of the balance sheet. They are provided to record the transfer of net income or loss for the year; certain capital transactions; and, when authorized by the Board, other items.

(b) The cost of property, and the revenues, expenses, taxes and rents for miscellaneous operations involving the use of such facilities as hotels, restaurants, grain elevators, storage warehouses, power plants, cold storage plants, etc., shall not be included in the accounts prescribed for transportation operations unless the operation of the facilities is conducted by the railway companies in connection with furnishing transportation services. Likewise, the cost of property, the revenues, expenses, taxes, and rents arising from the operation of stockyards shall not be included in accounts prescribed for transportation operations unless operation of the facilities is conducted in connection with transportation of livestock. It is not intended that cost of property and income arising from incidental public stockyards service rendered by stockyards primarily devoted to transportation services shall be excluded from transportation operation accounts.

(c) Joint facility accounts are provided for the joint users of tracks, bridges, yards, wharves, stations, and other facilities in which to record items in settlement for use of such facilities. When the compensation for the use of facilities is a fixed amount or is based upon a charge per passenger, ton, car or other unit, the amount shall be fairly apportioned by the operating company among the joint facility operating expense and income accounts. The creditor shall show the distribution of these charges upon its bills, and such distribution shall be adhered to by the debtor. Train service in connection with the line haul of traffic, including that operated under a joint arrangement for the benefit of two or more carriers, is not considered a joint facility operation.

(d)(1) *Extraordinary Items.* All items of profit and loss recognized during the year are includable in ordinary income unless evidence clearly supports their classification as extraordinary items.

Extraordinary items are characterized by both their unusual nature and infrequent occurrence taking into account the environment in which the firm operates; they must also meet the materiality standard.

Unusual means the event or transaction must possess a high degree of abnormality and be of a type clearly unrelated to, or only incidentally related to the ordinary and typical activities of the entity.

Infrequent occurrence means the event or transaction shall be of a type not reasonably expected to recur in the foreseeable future.

(2) *Unusual or Infrequent Items.* Material events unusual in nature or infrequent in occurrence but not both, thus not meeting both criteria for classification as extraordinary, shall be includable in the accounts provided as separate components of income/expense from continuing operations.

(3) *Discontinued Operations.* The results of continuing operations shall be reported separately from discontinued operations and any gain or loss resulting from disposal of a segment of a business (see definition 23(a)) shall be reported in conjunction with the related results of discontinued operations and not as an extraordinary item. The disposal of a segment of a business shall be distinguished from other disposals of assets incident to the evolution of the entity's business, such as the disposal of part of a line of business, the shifting of production or marketing activities for a particular line of business from one location to another, the phasing out of a product line or class of service, and other changes occasioned by technological improvements. If a loss is expected from the proposed sale or abandonment of a segment, the estimated loss shall be provided for at the measurement date (see definition 23(b)). If a gain is expected, it shall be recognized when realized, which ordinarily is the disposal date (see definition 23(c)).

(4) *Prior period adjustments.* Only the following two items of profit and loss shall be accounted for and reported as prior period adjustments and excluded from the determination of net income for the current period:

(1) Correction of an error in the financial statements of a prior period, and

(2) Adjustments that result from realization of income tax benefits of preacquisition operating loss carryforwards of purchased subsidiaries.

With the exception of the two items just mentioned, all items of profit and loss recognized during a period shall be included in the determination of net income for that period.

NOTE: The carrier shall follow generally accepted accounting principles where an interpretation of the rules is needed or obtain an interpretation from its public accountant or the Board.

(5) *Accounting Changes.* Errors in financial statements result from mathematical mistakes, mistakes in the application of accounting principles, or oversight or misuse of facts that existed at the time the financial statements were prepared. In contrast, a change in an accounting estimate results from new information or subsequent developments and from better insight or judgment. Correction of an error should be accomplished through a prior period adjustment [See Instruction 1–2(d)(4)]. Changes in an accounting estimate should be accounted for in the period of change (and future period if the change affects both)(See Instruction 1–7). A change in an accounting principle or accounting entity should be referred to this Board for approval. The cumulative effect of a change in accounting principle should ordinarily be reflected in the account provided for in determining net income.

(6) *Materiality.* As a general standard an item shall be considered material when it exceeds 10 percent of annual income (loss) before extraordinary items. An item may also be considered in relation to the trend of annual earnings before extraordinary items or other appropriate criteria. Items shall be considered individually and not in the aggregate in determining materiality. However, the effects of a series of related transactions arising from a single specific and identifiable event or plan of action shall be aggregated to determine materiality.

(7) *Board Approval and Accountant's Letter.* Items shall be included in the accounts provided for extraordinary

items, unusual or infrequent items, discontinued operations, prior period adjustments and cumulative effect of changes in accounting principles only upon approval of the Board. If the carrier retains the service of an independent accountant, a request for using these accounts shall be accompanied by a letter from the independent accountant approving or otherwise commenting on the request.

NOTE: The carrier may refer to generally accepted accounting principles for further guidance in applying paragraph (d) above.

[42 FR 35017, July 7, 1977 as amended at 43 FR 37455, Aug. 23, 1978; 52 FR 4321, 4324, Feb. 11, 1987]

1–3 *Records.* (a) Each carrier shall keep its books of account, and all other books, records, and memoranda which support the entries in such books of account so as to be able to furnish readily full information as to any item included in any account. Each entry shall be supported by such detailed information as will permit ready identification, analysis, and verification of all facts relevant thereto.

(b) All expenditures including the expense accounts of officers and employees shall be supported by vouchers, payrolls, receipted bills, canceled checks, receipts for petty cash payments, or other evidences of the expenditures incurred.

(c) The books referred to herein include not only books of accounts in a limited technical sense but all other records such as minute books, stock books, reports, correspondence, memoranda, etc., which will be useful in developing the history of or facts regarding any transaction.

(d) No carrier shall destroy any books, records, memoranda, etc., which support entries to its accounts unless destruction is permitted by the regulations governing preservation of records, Part 1220 of this chapter.

(e) In addition to prescribed accounts, clearing accounts, temporary accounts, and subdivisions of any accounts may be kept, provided the integrity of the prescribed accounts is not impaired.

(f) Cost detail shall be maintained by cost centers for purposes of cost assignments effective 1-1-79. This provides for cost control and cost planning at any designated area of responsibility. These cost centers shall be similarly defined as the railroads' existing responsibility centers. Cost center information shall therefore be kept at the same level of detail presently collected, categorized, and maintained in railroad internal managerial accounting systems. This detailed information shall not be reported to the Board on an ongoing basis. However, the carrier shall keep the detailed information to provide a ready analysis and verification of the costs collected by cost center.

[42 FR 35017, July 7, 1977, as amended at 52 FR 4324, Feb. 11, 1987; 61 FR 9113, Mar. 7, 1996]

1–4 *Accounting period.* (a) Each carrier shall keep its books on a monthly basis so that known transactions, as nearly as may be ascertained, shall be entered in the accounts not later than 60 days after the last day of the period for which the accounts are stated, except that the time within which the final entries for the year ending December 31 shall be made may be extended to such date in the following March as shall not interfere with the preparation and filing of annual report.

(b) A trial balance of the general ledger accounts shall be prepared at the close of each month setting out the account number, title, and amount of each ledger account. (Mechanical, electronic or automatic data processing printout documentation producing the equivalent of manually prepared trial balances shall identify balances by account numbers.) At the end of the calendar year, the revenue, expense, and other income accounts shall be closed into retained earnings account, and the balance sheet account balances shall be brought forward to the general ledger for the succeeding year.

(c) No changes shall be made in the accounts for periods covered by quarterly and annual reports that have been filed with the Board unless the changes have first been authorized by the Board.

1–5 *Accrual method of accounting.* The accounting for operating revenues, operating expenses, income and other items each month and year shall be, as nearly as practicable, upon the basis of accruals consistently applied. Any change in practice of accounting for

accruals or any unusual accruals involving material amounts shall be reported promptly to the Board.

1–6 *Charges to be just and reasonable.* All charges to the accounts prescribed in this system of accounts for carrier property, operating revenues, operating and maintenance expenses, and other carrier expenses, shall be just, reasonable and not exceed amounts necessary to the honest and efficient operation and management of carrier business. Payments shall not exceed the fair market value of goods and services acquired in an arm's length transaction. Any payments in excess of such just and reasonable charges shall be included in account 551, *Miscellaneous income charges.*

1–7 *Changes in accounting estimates.* Changes in accounting estimate arising during the current year which are applicable to prior years shall be included in the same account which would have been charged or credited if the item had been taken up or the adjustment made in the year to which it pertained. [See Instruction 1–2(d)(5) for Accounting Changes].

[42 FR 35017, July 7, 1977, as amended at 52 FR 4324, Feb. 11, 1987]

1–8 *Accounting for computer systems and word processing costs.* (a) Capitalized costs for computer systems and word processing equipment shall be charged to property account 59, when such costs are not dedicated to a particular function (See Account 59). Related depreciation expenses for capitalized costs shall be charged to account 62–23–00, Depreciation, Other Equipment.

(b) Repair and maintenance costs related to computer systems and word processing equipment shall be charged to function 46 of the Other equipment subactivity by appropriate natural expense (labor, material, purchased services, other). Repairs performed by an outside company shall be charged to operating expense account 39–23–46.

(c) Operating costs related to computer systems and word processing equipment shall be charged to function 87, Management services and data and word processing, when the equipment benefits more than one activity. When the equipment benefits one activity only, such operating costs shall be charged to the activity/function benefited.

[52 FR 4324, Feb. 11, 1987]

1–9 *Transactions with affiliated companies.* (a) The records and supporting data of all transactions with affiliated companies shall be maintained in a separate file. The types of transactions referred to in this paragraph are for management services or any other type of services rendered, sale or use of facilities or any other type of assets or property. The file shall be maintained so as to enable the carrier, upon a Board request, to furnish accurate information with supporting documentation about particular transactions within 15 days of the request. We do not intend the file to include data relating to ordinary carrier operations (e.g. lawful tariff charges or interchange of equipment).

(b) Each bill rendered by an affiliated company shall state specifically the basis used for determining charges, unless the file contains the information to support the specific basis for charges.

(c) Punched cards, magnetic tapes, discs, or other machine-sensible devices used for recording, consolidating, and summarizing accounting transactions and records with a carrier's electronic or automatic data processing system may constitute a file within the meaning of this instruction.

(d) The carrier shall record, as the cost of assets or services received from an affiliated supplier, the invoice price (plus any incidental costs related to those transactions) in those cases where the invoice price can be determined from a prevailing price list of the affiliated supplier available to the general public in the normal course of business. If no such price list exists, the charges shall be recorded at the lower of their cost to the originating affiliated supplier (less all applicable valuation reserves in case of asset sales, or their estimated fair market value determined on the basis of a representative study of similar competitive and arm's-length or bargained transaction. Any difference between actual transaction price and the above,

as well as charges that are not transportation related, shall be considered of a financing nature and shall be recorded, accordingly, as nonoperating charges or credits. (See instruction 1–6.)

(e) Nothing contained herein shall be construed as restraining the carrier from subdividing accounts (see instruction I–3(e)) for the purpose of recording separately transactions with affiliated companies.

(f) Carriers reporting information on a consolidated or combined basis in railroad Annual Report Form R–1 shall maintain a file with appropriate records and supporting data. This shall include work sheets showing revenues, expenses, earnings, investment in assets and accumulated depreciation for all affiliated railroads and rail-related affiliated companies. The work sheets shall also disclose any eliminations. Carriers shall also disclose the methodology used to support segregation of rail-related or other items as appropriate. Further, a file shall be maintained to support and reconcile entity sales, transfers and reclassifications as well as taxes deducted from gains or losses.

[42 FR 35017, July 7, 1977, as amended at 53 FR 46620, Nov. 18, 1988]

1–10 *Accounting for income taxes.* (a) The interperiod tax allocation method of accounting shall be applied where material timing differences (see definition 17(e)) occur between pretax accounting income and taxable income. Carriers may elect, as provided by the Revenue Act of 1971, to account for the investment tax credit by either the flow through method or the deferred method of accounting. See paragraphs (d) and (e) below. All income taxes (Federal, state and other) currently accruable for income tax return purposes shall be charged to account 556, *Income taxes on ordinary income,* and account 590, *Income Taxes on Extraordinary Items,* as applicable.

(b) Under the interperiod tax allocation method of accounting the tax effect of timing differences (see definition 17) originating in the current accounting period are allocated to income tax expense of future periods when the timing differences reverse. Similar timing differences originating and reversing in the current accounting period should be combined into groups and the current tax rates applied to determine the tax effect of each group. A carrier shall not apply other than current tax rates in determining the tax effect of reversing differences except upon approval of the Board. When determining the amount of deferred taxes, rather than computing state and other taxes individually by jurisdiction, the Federal income tax rate may be increased by a percent equivalent to the effect of taxes imposed by the jurisdictions. In classifying a deferred charge or credit as current or noncurrent a carrier shall follow the classification criteria used for the related asset or liability which caused the timing difference. A deferred charge or credit that is not related to an asset or liability because (a) there is no associated asset or liability or (b) reduction of an associated asset or liability will not cause the timing difference to reverse shall be classified based on the expected reversal date of the specific timing difference. Such classification disregards any additional timing differences that may arise and is based on the criteria used for classifying other assets and liabilities.

(c) The future tax benefits of loss carryforwards shall normally be recognized in the year in which such loss is applied to reduce taxes. Only in those unusual instances when realization is assured beyond any reasonable doubt should the future tax benefits of loss carryforwards be recognized in the year of loss. The tax effects of any realizable loss carrybacks shall be recognized in the determination of net income (loss) of the loss periods; appropriate adjustments of existing net deferred tax credits may also be necessary in the loss period.

(d) Carriers electing to account for the investment tax credit by the flow through method shall credit account 556 *Income taxes on ordinary income,* or account 590, *Income taxes on extraordinary items,* as applicable, and charge account 760, *Federal income taxes accrued,* with the amount of investment tax credit utilized in the current accounting period. When the flow

through method is followed for the investment tax credit, account 557, *Provision for Deferred Taxes*, shall reflect the difference between the tax payable (after recognition of allowable investment tax credit) based on taxable income and tax expense (with full recognition of investment tax credit that would be allowable based on accounting income) based on accounting income.

(e) Carriers electing to account for the investment tax credit by the deferred method shall concurrently with making the entries prescribed in (d) above charge account 557, *Provision for deferred taxes*, or account 591, *Provision for deferred taxes—extraordinary item*, as applicable, and shall credit account 786, *Accumulated deferred income tax credits*, with the investment tax credit utilized as a reduction of the current year's tax liability but deferred for accounting purposes. The investment tax credit so deferred shall be amortized by credits to account 557, *Provision for deferred taxes*.

NOTE A: Any change in practice of accounting for the investment tax credit shall be reported promptly to the Board. Carriers desiring to clear deferred investment tax credits because of a change from the deferral method to the flow though method shall submit the proposed journal entry to the Board for consideration and advice.

NOTE B: The carrier shall follow generally accepted accounting principles where an interpretation of the accounting rules for income taxes is needed or obtain an interpretation from its public accountant or the Board.

[42 FR 35017, July 7, 1977, as amended at 47 FR 12350, Mar. 23, 1982; 52 FR 4321, Feb. 11, 1987; 67 FR 57533, Sept. 11, 2002]

1–11 *Items in texts of accounts*. The items appearing in the texts of the accounts or elsewhere herein are for the purpose of more clearly indicating the application of the prescribed accounting. The items are intended to be representative, but not exhaustive. The appearance of an item in the text of a primary account warrants the inclusion of the item in the account mentioned only when the whole text also indicates inclusion inasmuch as the same item frequently appears in more than one primary account. The proper entry in each instance must be determined by the entire text of each primary account.

1–12 *Distribution of pay and expenses of employees*. (a) The pay and expenses of officers or employees regularly assigned to specific duties who perform incidental services of a different nature involving small expense may be included in the appropriate expense accounts for the duties to which such officers or employees are regularly assigned.

(b) When it is necessary to apportion the pay of officers and employees among various accounts, the carrier shall apportion the pay on the basis of the directly assignable pay to the various accounts.

1–13 *Payroll related expenses*. (a) Fringe benefits (account series 12–00–00) distributed to the activities using one of the following techniques (in order of preference):

(1) Apply appropriate factors to the total of the fringe expense account, in such a way as to distribute an equitable proportion of cost to each activity. These factors shall be developed to take into account variables such as the following:

(i) The effect of seniority on the expense. For example, profit sharing or pensions may be available to only certain categories of employees, which may be more predominant in one activity than another.

(ii) The effect of the type of work performed. For example, workmen's compensation expense may vary for each category of employees because of the rate charged or the claims experience of the category.

(iii) Any other variable which may have an appreciable effect on the equity of the apportionment.

(2) Distribute the amount in the same proportion as the pay charged to each activity in account series 11–00–00 (salaries and wages).

(3) Distribute the amounts using any other equitable basis which the carrier can substantiate.

(b) All carriers shall be prepared to describe the basis of apportionment used to distribute expenses included in this instruction.

(c) Any carrier which finds it impracticable to distribute expenses as required by this instruction should furnish the Board with full particulars of

the conditions which prevent the proper distribution. Upon receipt of such information carrier will be advised of the procedure to be followed.

1–14 *Submission of questions.* To maintain uniformity of accounting, carriers shall submit questions of doubtful interpretation to the Board for consideration and decision.

1–15 *Transfers from government authorities.* When a Federal, State, or municipal government transfers cash or other assets to a railroad, the transaction shall be accounted for in accordance with the provisions set forth hereunder.

(a) The following forms of government transfers shall be included in account 502, *Railway Operating Revenues—Transfers from Government Authorities for Current Operations* when received:

(1) Payments as reimbursement for operating losses sustained on a specific line, or in a certain region. Examples include support of commuter operations of a railroad, and local rail service assistance subsidies granted to a railroad under authority of the Railroad Revitalization and Regulatory Reform Act of 1976;

(2) Subsidies designated by the donor to offset operating expenses of the railroad, and

(3) Subsidies which may be applied at the discretion of the recipient to operating expenses and/or operating property.

(b) Government transfers relating to the acquisition, addition to, or improvement of depreciable operating property shall be included in account 783, *Deferred Revenues—Transfers from Government Authorities* when received. Account 783 shall be periodically charged, and account 503, *Railway Operating Revenues—Amortization of Deferred Transfers from Government Authorities* shall be credited with amounts equal to the depreciation costs of the assets to which they apply.

(c) Government transfers in the form of, or designated for the purchase of nondepreciable operating property shall be included in account 796, *Other Capital Surplus* in the manner described in the text of that account.

(d)(1) Transfers from the Federal Government to Amtrak and ConRail relating to the acquisitions, addition to, or improvement of depreciable or nondepreciable operating property shall be included in account 796 in the manner described in the text of that account.

(2) Transfers from the Federal Government to Amtrak and ConRail other than those described in paragraph (d)(1) shall be accounted for in accordance with paragraph (a) of this section.

(e) The provisions of this section do not apply to the following forms of government transfers:

(1) Government contributions in connection with construction projects in which government agencies and railroads participate. Transfers of this type shall be accounted for in accordance with the provisions of instruction 2–17. Paragraph (b) of that instruction lists applicable construction projects.

(2) Government payment for specific services rendered by the carrier in transporting property or persons by rail line other than services described in paragraph (a)(1) of this section. Such payments shall be included in account 501, *Railway Operating Revenues (Exclusive of Transfers from Government Authorities).*

(3) Government transfers relating to other than carrier operations.

(4) Government transfers in exchange for debt and/or equity securities of recipients.

(f) Government transfers shall generally be recorded when made available to the railroad. However, transfers relating to specific operations shall be recorded as earned.

(g) Government transfers in the form of assets other than cash shall be recorded at fair value when received.

[43 FR 30558, July 17, 1978, as amended at 52 FR 4321, Feb. 11, 1987]

1–16 *Business entertainment expenses.* (a) Business entertainment expenses are to be accounted for as operating expenses when incurred in conjunction with sales or marketing related activities. Sales or marketing related activities are those that emphasize a carrier's ability to provide efficient, timely and competitive service. These activities include outlays designed to promote new business as well as outlays incurred in maintaining existing

business. The entertainment expenditures must be reasonable in relation to the business conducted and the business purpose for the entertainment must be adequately supported. Examples of this type of activity include the following:

(1) Salespersons' salaries and travel expenses, advertising, promotional and educational material;

(2) The conduct of shipper symposiums, conferences, meetings and traffic related functions;

(3) The use of direct mail solicitations and the publication and distribution of routing guides and service directories;

(4) Incidental promotional materials such as road atlases, calendars, pens, scratchpads, and other materials of nominal value;

(5) The conduct of business oriented lunches and dinners, public affairs programming, conferences and customer service calls;

(6) Sponsoring sales promotion functions, involving a number of customers or potential customers.

It must be noted that an activity listed above is not to be automatically accounted for as an operating expense. A carrier must be able to justify that an activity was primarily sales or marketing related.

(b) Business entertainment expenses are to be accounted for as non-operating expenses when they cannot be shown to be related to the sales or marketing activity. These are expenses that are primarily related to recreation or to the convenience and comfort of the individuals rather than to the transaction of business. Examples of this type of activity include the following:

(1) Recreational or resort entertainment, including but not limited to, fishing, hunting, tennis, golfing, skiing or other sporting or recreational trips or outings;

(2) Expense paid transportation in any carrier owned, leased or furnished vehicles, planes, helicopters, boats, yachts, or other methods;

(3) Expense paid lodging in any carrier owned, leased or furnished motels, hotels, apartments, condominiums, lodges, rooms and other places of overnight accommodation;

(4) Paid admission to any sporting, cultural, educational, recreational, or entertaining occurrence or event;

(5) Gifts such as athletic equipment, food or liquor, beverages of all types, smoking materials, clothing and personal accessories;

(6) The furnishing of lunches, dinners, appetizers or beverages where there is no true business purpose;

(7) Social occasions such as holiday parties.

It must be noted that an activity listed above is not to be automatically accounted for as a non-operating expense. If a carrier can justify that the activity was primarily sales or marketing related, it may be accounted for as an operating expense.

NOTE: The examples listed above are not inclusive, but are intended as a guide to give carriers an indication of what will or will not be permitted to be recovered through the rate structure. In all instances the burden of proof will fall on the carrier involved.

[47 FR 9467, Mar. 5, 1982, as amended at 52 FR 4321, Feb. 11, 1987]

1–17 *Disclosure guideline*. In addition to the accounting policies presented in these regulations, all disclosures relating to APB Opinions and FASB Statements adopted by the Board are required.

[52 FR 4324, Feb. 11, 1987]

1–18 *Distribution of expenses for material, tools, fuel, lubricants, purchased services and general*. (a) These expenses shall be assigned directly to activities based on usage whenever possible.

(b) When it is necessary to apportion these expenses to two or more activities they shall be equitably apportioned only to the activities in which they are actually used or to the activities they support.

[67 FR 57533, Sept. 11, 2002]

INSTRUCTIONS FOR PROPERTY ACCOUNTS

2–1 *Items to be charged*. (a) To the road and equipment property accounts shall be charged the cost of purchasing land, the cost of purchasing and constructing buildings, facilities and equipment, and the cost of additions and betterments to property, *Cost*

means the amount of cash disbursed, or the fair value of other assets distributed, or the present value of amounts to be paid. Where the fair market value of resources given up (assets, services or items of stockholder's equity) is not clearly determinable, the cost may be determined by the fair market value of the resources acquired. The carrier shall be prepared to furnish the Board with the particulars of its method of determining cash value when the consideration is other than monetary. The amount of liabilities incurred with suppliers in the normal course of business, which are due in customary trade terms not exceeding approximately one year, shall be recorded at the maturity value. Acquisition date is the date title passes to the carrier.

(b) The cost of road and equipment purchased under a plan involving other deferred payments (debt or capital lease) shall be recorded at the discounted present value of the payment, net of executory costs such as insurance, maintenance, and taxes. The interest rate used to discount the payments should be the prevailing market rate for similar debt instruments of issues with similar credit ratings. In any event, the rate used for valuation purposes will normally be at least equal to the rate at which the carrier can obtain financing of a similar nature from other sources at the date of the transaction (the carrier's incremental borrowing rate). In the case of a capital lease, when it is practical to ascertain the implicit rate computed by the lessor, and that rate is less than the carrier's incremental borrowing rate, the carrier should use the implicit rate. Acquisition date for a capital lease is the date the lease agreement is signed. If the property covered by the lease has yet to be constructed or has not been acquired by the lessor at the date the lease agreement or commitment is signed, the acquisition date shall be the date the property under construction is completed or the date the property not yet acquired is acquired by the lessor. (See Instruction 2–20.)

(c) Where actually incurred, interest cost is to be added to the cost of road and equipment deemed *qualifying assets* during the period of time required to get them ready for their intended use (acquisition period). *Qualifying assets* are those that are (1) either constructed or otherwise produced for a carrier's own use (including assets constructed or produced for the carrier by others for which deposits or progress payments have been made) or (2) assets intended for sale or lease that are constructed or otherwise produced as discrete projects. The amount of interest to be capitalized for qualifying assets shall be based upon the average amount of accumulated expenditures for the asset during the acquisition period at the rate used on specific new borrowings associated with the qualifying asset. If average accumulated expenditures for the asset exceed the amount of specific new borrowings associated with the asset, the rate to be applied to such excess shall be a weighted average of the rates applicable to other borrowings of the enterprise. The total amount of interest cost capitalized in an accounting period shall not exceed the total amount of interest cost incurred by the enterprise during that period.

(d) Suitable records shall be maintained showing expenditures during the year for original road and equipment and road extensions; for merger and purchase of existing lines and reorganizations; for additions and betterments; and credits for property retirement.

(e) When the carrier exchanges road and equipment for other road and equipment with no other consideration involved, the road and equipment received shall be recorded at the ledger value of the road and equipment relinquished. Where the carrier receives a monetary consideration in the exchange, the carrier shall recognize gain on the exchange to the extent that the consideration received exceeds a proportionate share of the recorded cost of the road and equipment surrendered. The portion of the cost applicable to the realized amount shall be based on the ratio of the monetary consideration to the total consideration received (monetary consideration plus the estimate fair value of the road and equipment received) or, if more clearly evident, the fair value of the road and

equipment transferred. Where the carrier pays a monetary consideration in the exchange, it shall not recognize any gain on the transaction but shall record the road and equipment received at the amount of the monetary consideration paid plus the recorded costs of the road and equipment surrendered. If a loss is indicated by the terms of an exchange transaction, the carrier shall recognize the entire loss on the exchange. Immaterial gains and losses on these exchanges shall be included in account 519, Miscellaneous Income, or 551, Miscellaneous Income Charges, as appropriate. Material amounts shall be recorded in accordance with Instruction 1–2(d).

[52 FR 4324, Feb. 11, 1987]

2–2 *Minimum rule applicable to additions to property.* An exception to the rule in Instruction 2–1 is that when the cost of acquisition of units of road property and of additions to existing units of road property (other than land and tracks) is less than $5,000, such costs may be charged to operating expenses. This amount (rounded to the nearest $100) will be adjusted by the June Producer Price Index for all commodities when an aggregate adjustment is $500 or more. The revision will be published in the Federal Register and be effective as of January 1 of the following year. The carrier shall not parcel expenditures under a general plan bringing the accounting for such expenditures within this minimum rule. An amount of less than the current minimum capitalization level, for the railroad as a whole or for individual property accounts may be adopted for purposes of this rule provided the carrier first notifies the Board of the amount it proposes to adopt and thereafter makes no change in the amount unless authorized by the Board. An amount adopted shall be adhered to in reporting property changes for valuation purposes.

[55 FR 42016, Oct. 17, 1990]

2–3 *Land.* (a) Accounts are provided for the cost of land used in transportation operations and also for land used in other than transportation operations. When land is retired from transportation operations but is retained by the carrier the original cost (estimated, if not known) shall be transferred to the account prescribed for property used in other than transportation operations. It is not contemplated that irregular parcels of land acquired in connection with acquisition of right-of-way which have no value as commercial property shall be thus transferred, either for the purpose of making right-of-way boundaries run more or less regular or for the purpose of eliminating from transportation property account the cost of unoccupied lands between tracks in yards and terminals. When any land, the cost of which is included in the accounts, is sold or otherwise retired, the ledger value shall be credited to the appropriate property investment account. The profit or loss from sale or loss from retirement or land shall be included in the accounts prescribed for such amounts.

(b) [Reserved]

[42 FR 35017, July 7, 1977, as amended at 52 FR 4324, Feb. 11, 1987]

2–4 *Structures.* Accounts are provided for the cost of several classes of buildings and facilities, including fixtures permanently attached to and made a part thereof. When a building or other structure is used or held primarily for transportation operations and is an integral part of the carrier's transportation plant, but a part thereof is used or held for commercial purposes such as for rental to others or for use in other than transportation operations by the carrier, the entire cost of the building or other structure is includable in the accounts for transportation property. When a building or other structure is used or held primarily for commercial purposes or for use in other than transportation operations by the carrier, the entire cost of the building or structure is includable in account 737, *Property used in other than carrier operations.* Reclassification of property from its primary classification as transportation or other than transportation property, as the case may be, to the other classification is not required where changes in use are of a temporary nature or for a short period of time. The accounting for costs of maintenance, taxes, other operating

costs, and for revenues and rentals shall be consistent with the classification of the building or other structure.

2–5 *Equipment.* Accounts are provided for several classes of equipment, such as locomotives, passenger-train cars, freight-train cars, highway revenue equipment, work equipment, floating equipment, and the necessary appurtenance, furniture, and fixtures first to equip for service, including the cost of inspection, setting up, and trying out, and transportation over foreign lines; also the cost of additions and betterments, such as improved appliances, parts, or appurtenances. When retired equipment is held without being torn down, the estimated value of the salvage therefrom shall be included in account 741, *Other assets,* until the salvage is recovered, except that the estimated scrap value of retired equipment held for sale in the ordinary course of business, and on which sale and realization of the proceeds within one year is assured, is includable in account 713, *Other current assets.*

2–6 *Components of construction cost.* The cost of constructing property includable in the property accounts shall include the direct and other costs as described hereunder.

(a) *Cost of labor.* This includes the amount paid for labor expended by the carrier's own employees, including the cost of labor expended for preliminary work, such as sinking test holes or making soundings for tunnels, grading, buildings, and other structures; and cost of labor expended in laying and taking up tracks for temporary use in construction, except the cost of labor expended on tracks provided for the protection of traffic during the progress of addition and betterment work. The cost of labor shall also include the accounting company's expenditures for associated fringe benefits, such as vacation and holiday pay, health and welfare group insurance, pensions and retirement plans, payroll taxes and unemployment insurance. Office expenses and traveling and other personal expenses of employees, when borne by the carrier, shall be considered a part of the cost of the labor, as shall also the cost of fidelity bonds and employer's liability insurance premiums. When officers or employees are especially assigned to construction work their pay and their traveling and incidental expenses while thus engaged shall be included in the cost of the work. No charge shall be made against road and equipment accounts for the pay of officers and employees who merely render services incidentally in connection with extensions, additions, or betterments, although traveling and incidental expenses incurred by such officers and employees solely on account of such work shall be included in the account to which the cost of the work is chargeable.

(b) *Cost of materials and supplies.* This includes the purchase price of materials and supplies, including small tools, at the point of free delivery plus the cost of inspection and loading assumed by the carrier; a suitable proportion of store expenses; also sales and excise taxes on materials and supplies except as otherwise provided in the text of account 712, *Material and supplies.* In calculating the cost of materials used, proper allowance shall be made for the value of unused portions and of cuttings, turnings, borings, etc.; for the value of the material recovered from temporary tracks, scaffolding, cofferdams, and other temporary structures used in construction; and for the value of small tools recovered and used for other purposes.

(c) *Cost of work-train service.* This includes amounts paid to others for rent and maintenance of equipment used; cost of labor of enginemen, trainmen, and enginehousemen, including wages of engine crews and train crews held in readiness for such service; and cost of fuel and other supplies consumed in connection with the operation of work trains. It shall also include the cost of maintaining the carrier's own equipment used in construction service. Amounts representing constructive rent or return upon the investment in owned equipment shall not be included as a part of the cost of work-train service.

(d) *Cost of special machine service.* This includes the cost of labor expended and of materials and supplies consumed in maintaining and operating power shovels, scrapers, rail unloaders, ballast unloaders, pile drivers, dredges, ditchers, weed burners, and other

labor-saving machines; also rents paid for use of such machines.

(e) *Cost of transportation.* This includes the amounts paid to other companies or individuals for the transportation of men, materials and supplies, special machine outfits, appliances, and tools in connection with construction. Freight charges paid foreign lines for the transportation of construction material to the carrier's line shall be included, so far as practicable, as a part of the cost of the material.

(f) *Cost of contract work.* This includes amounts paid for work performed under contract by other companies, firms, or individuals, and costs incident to the award of the contract.

(g) *Cost of protection from casualties.* This includes expenditures for protection against fire, such as payments for discovery or extinguishment of fires, cost of detecting and prosecuting incendiaries, witness fees in relation thereto, amounts paid to municipal corporations and other for fire protection, and other analogous items of expenditure incurred directly in connection with construction work.

(h) *Cost of injuries and damages.* This includes expenditures on account of injuries to persons or damage to property when incurred directly as a result of construction projects, and shall be included in the cost of the work in connection with which the injury or damage occurs. It also includes that portion of premiums paid for insuring property applicable to the period prior to the completion or coming into service of the property insured. Insurance recovered on account of compensation paid for injuries to persons incident to construction shall be credited to the accounts to which such compensation is charged, and insurance recovered on account of damages to property incident to construction shall be credited to the accounts chargeable with the expenditures necessary for restoring the damaged property. The cost of injuries and damages incident to the removal of old structures, or parts thereof, shall be charged to operating expenses, except that such costs in connection with the removal of old structures which are incumberances on newly acquired lands shall be included in accounts 2, *Land for transportation purposes*, or 3, *Grading*, as appropriate.

(i) *Cost of privileges.* This includes compensation for temporary privileges, such as the use of public property or streets, in connection with the construction of the property of the carrier.

(j) *Material excavated.* The cost of disposing of material excavated in connection with construction shall be considered as a part of the cost of work, except that when such material is used for filling, the cost of removal and dumping shall be equitably apportioned between the work in connection with which the removal occurs and the work in connection with which the material is used.

(k) *Interest cost.* [See Instruction 2–1(c)].

[42 FR 35017, July 7, 1977, as amended at 52 FR 4325, Feb. 11, 1987]

2–7 *Additions to and retirements of property—General.* (a) In accounting for additions to and retirements and replacements of road and equipment property (excluding land) used in transportation operations, such property changes shall be considered as consisting of: (1) Units of property, and (2) other than units of property as prescribed in Instruction 2–19. Track property changes will be distinguished by units of property as approved by the Commission.

(b) The cost of removal of retired property, both depreciable and other than depreciable, when borne by the carrier, shall be charged, as appropriate, to account 11–13–39, *Personnel—Salaries and Wages—Way and Structures—Other—Dismantling retired property*, or 11–23–39. *Personnel—Salaries and Wages—Equipment—Other Equipment—Dismantling retired property*, and other appropriate accounts (including subactivities 11 and 12).[1]

(c) An equitable proportion of a balance in property accounts 76, *Interest*

[1] The references to solely related freight operating expense activity/subactivity numbers and titles used throughout the system are for convenience and brevity. Refer to the specific account texts to determine the appropriate solely related passenger and/or common expense activity/subactivity numbers.

During Construction, and 80, *Other elements of investment*, applicable to retired property shall be cleared from these accounts concurrently with the retirement accounting. Unless provided for otherwise, interest costs shall be capitalized in accordance with generally accepted accounting principles.

(d) When retired property is held and not removed, the estimated value of the salvage therefrom shall be included in account 741, *Other assets*, until the salvage is recovered, except that the estimated scrap value of retired property held for sale in the ordinary course of business, and on which sale and realization of the proceeds within one year is assured, is includible in account 713, *Other current assets*.

(e) The accounting for track additions and retirements (with and without replacement) shall be guided by Instruction 2–10.

[42 FR 35017, July 7, 1977, as amended at 46 FR 10920, Feb. 5, 1981; 48 FR 7183, Feb. 18, 1983; 49 FR 2254, Jan. 19, 1984; 52 FR 4321, Feb. 11, 1987]

2–8 *Additions to and retirements of units of property*. (a) When a unit of road or equipment property is added to the plant, the cost thereof shall be included in the appropriate primary account. When a unit of property is retired, with or without replacement, the cost thereof shall be written out of the property account at time of retirement.

(b) When a unit of road or equipment property (or a minor item not replaced) classified as depreciable and included in the accounts prescribed for depreciable property is retired the service value shall be charged to account 735, *Accumulated depreciation; Road and equipment property*.

(c) When road property (other than a minor item constituting repairs) classified as other than depreciable property is retired, the cost thereof shall be cleared from the property account and the service value shall be charged to account 61–13–99, *General—Other Expenses—Way and Structures—Other—Other*. When the retirement requires Board approval, the carrier shall clear the cost from the property account upon the effective date of the abandonment. Subactivities 11 and 12 also apply.

(d) When property included in the depreciable accounts but excluded from the depreciation base is retired, the service value (including engineering expenditures assignable to retired property but not included in the depreciation base) shall be charged to operating expense.

2–9 *Additions and retirements of other than units of property*. (a) When an item of road or equipment property, other than a complete unit, is added to the plant and the addition is not a replacement, the cost thereof shall be accounted for in the same manner as an addition of a complete unit of property, subject to the minimum rule applicable to road property (see Instruction 2–2). When an item of property other than a complete unit (minor item) is replaced, independent of the complete unit of which it is a part, the cost of replacement shall be treated as maintenance and charged to operating expenses. If the replacement constitutes an improvement then the cost of replacement should be accounted for as a rebuilding expenditure under Instruction 2–12.

(b) When second-hand property acquired is in such physical condition that it is necessary to rehabilitate the property to bring it up to the standard required by the carrier, the cost of such rehabilitation shall be included in the appropriate account for the property.

[42 FR 35017, July 7, 1977, as amended at 55 FR 42016, Oct. 17, 1990]

2–10 *Additions to and retirements of track*.

(a) When track or its components are added to the plant, the cost shall be included in the track primary account. When track components are replaced as part of a track replacement program, the replacement cost shall be accounted for as an addition to the track property account. The cost of track components which are retired with or without replacement shall be written out of the track property account at the time of retirement.

(b) When track is retired the service value (ledger value less net salvage) shall be charged to account 735, *Accumulated depreciation; Road and equipment property*.

(c) All repairs of tracks shall be accounted for as operating expenses.

(d) Track investment written out of the accounts shall be at original cost or estimated standard or average cost for that density category. Material to be reused shall be put in an investment pool at unrecovered cost and, when reused, included in the appropriate density category at the average cost of the investment pool.

[48 FR 7183, Feb. 18, 1983]

2–11 *Expenses in connection with additions and betterments.* The cost of removing old material from equipment and from buildings, bridges, wharves, tracks, and other fixed improvements, shall be charged to the appropriate operating expense accounts. Such charges shall include the cost of removing old foundations and filling old excavations, and restoring condition of grounds after addition and betterment work; and maintaining or protecting traffic during the progress of addition and betterment work, including the cost of constructing, maintaining, and removing temporary tracks required for maintaining traffic during the progress of the work.

[42 FR 35017, July 7, 1977. Redesignated at 48 FR 7183, Feb. 18, 1983]

2–12 *Units of property rebuilt or converted*—(a) *Rebuilding expenditures.* Carriers shall be governed by the following provisions when determining and accounting for depreciable road and equipment property rebuilding expenditures:

(1) Rebuilding expenditures are those cost actually incurred which substantially extend the service life or substantially increase the utility of depreciable road and equipment property. The rebuilding expenditures shall be material in nature relative to the current replacement cost of a similar new unit of road or equipment property. Expenses resulting from delayed maintenance and repairs shall not be considered in determining materiality.

(2) The phrase *extend the service life* means to extend the life of a property unit past its estimated service life.

(3) The term *increased utility* means that the road or equipment property has become more useful, more efficient, more durable, or has greater capacity.

(4) Rebuilt or converted road or equipment property shall be accounted for as an addition to the appropriate property accounts, with the old units accounted for as retired from service. The charge to the appropriate property accounts shall be composed of (i) the cost (estimated if necessary) less a fair allowance for depreciation, or salvage value, whichever is lower, of the parts reused, (ii) the cost of labor expended in rebuilding or in the conversion process, (iii) the cost of additional materials applied, and (iv) any other expenses incurred directly with the rebuilding or conversion. In no case shall the total amount charged to the property accounts for these units exceed the current replacement costs of similar new units that would be used for the same purpose. When a unit of road property or equipment is transferred from one class of service to another, with or without physical conversion, the unit shall be accounted for as retired from its original account and be recorded in a primary investment account appropriate to its new class of service.

(5) If it is necessary to repair the secondhand or reused parts remaining in a rebuilt unit, the repair cost may be added to the value assigned parts in determining the related cost to be capitalized. Associated dismantling costs shall be included in operating expenses.

(b) *Repair expenses.* Expenses pertaining to road and equipment property, which represent normal or delayed repairs and maintenance, shall be expensed in the year incurred.

(c) *File and Storage.* Carriers shall keep records of each rebuilding program readily available. These records shall be provided to representatives of the Board when requested. The retention period shall be as required by 49 CFR part 1220, Preservation of Records.

[44 FR 67426, Nov. 26, 1979. Redesignated at 48 FR 7183, Feb. 18, 1983, and amended at 52 FR 4321, Feb. 11, 1987]

2–13 *Changes in line of road and relocation of yard tracks.*

(a) When changes are made in a line of road for the purpose of reducing curves or grades, or to eliminate

bridges, tunnels, tracks in the installation of a centralized traffic control system, or other physical features, the part of the line so changed shall be considered property retired and its ledger value credited to the property accounts. The new line of road, including land, grading, ballast, track elements, and other transportation facilities serving the road shall be considered an addition and the cost charged to the property accounts. The cost of track changes which do not involve change in the existing roadbed shall be charged to operating expenses, even though the tracks may be dismantled in the process, but the resulting track extensions or reductions shall be accounted for as additions or retirements as appropriate.

(b) The cost of shifting or rearranging tracks within a yard shall be charged to operating expenses, even though the tracks may be dismantled in the process, but resulting increases or decreases in grading, ballast, or track length shall be accounted for as additions or retirements, as appropriate. Where tracks in whole or in part within a yard are determined to be no longer permanently used, the ledger value of such tracks shall be eliminated from the property account. If yard tracks and facilities are constructed in another location to take the place of tracks retired, such tracks and facilities shall be accounted for as additions and the cost thereof shall be included in the property account.

[48 FR 7183, Feb. 18, 1983]

2–14 *Track connections.* (a) When the accounting carrier bears the construction cost of a connecting track situated on the property of another carrier, but acquires the salvage rights to the track, the cost of the track construction shall be charged to account 731, *Road and equipment property*.

(b) When carriers (1) share the cost of constructing a connecting track of which a portion is situated on each carrier's right-of-way, and (2) own and obtain the salvage rights to the track segment located on their respective properties, the construction cost borne by each carrier shall be charged to account 731, *Road and equipment property*.

(c) The cost of constructing a track connection on the right-of-way of another carrier which acquires the ownership of and salvage rights to the track, shall be charged by the carrier bearing such cost to accounts 37–11–00, *Purchased service—Joint facility—Debit—Way and Structures—Running*, or 37–12–00, *Purchased services—Joint facility—Debit—Way and Structures—Switching*. The owner carrier shall charge the amount of the construction cost to account 731, *Road and equipment—property*, with contra credit to accounts 38–11–00, *Purchases services—Joint facility—Credit—Way and Structures—Running*, or 38–12–00, *Purchases services—Joint facility—Credit—Way and Structures—Switching*. Material amounts for such costs shall be referred to the Board for consideration and decision.

(d) The cost of constructing a side track under a deposit refund agreement shall be charged to account 731, *Road and equipment property*. The deposit shall be credited to account 782, *Other liabilities*. Deposit amounts refunded during the agreement period shall be charged to account 782, *Other liabilities*. Upon termination of the agreement, the amount of any unrefunded deposit shall be credited to the applicable primary property accounts on an equitable basis.

2–15 *Merger, consolidation, and purchase of a railway operating entity or system.* (a) When a railway or portion thereof constituting an operating unit or system is acquired by merger or consolidation in a pooling of interests or by purchase the cost of acquisition represented by cash, capital stock or other securities issued or assumed, liabilities assumed, and other consideration, shall be recorded in the accounts in the manner stated hereunder. Separate instructions are provided for a merger of subsidiaries.

(b) Pooling of interests:

(1) When the acquisition results from a merger or consolidation constituting a pooling of interests, in which all or substantially all of the equity interest in predecessor companies continue, as such, in a surviving company or a new company created for the purpose, the road and equipment, the other assets, and the liabilities of the predecessor companies, together with the balances

in the accumulated amortization and depreciation accounts and the retained earnings accounts shall be recorded in the appropriate balance sheet accounts at the amounts shown in the accounts of predecessor companies, adjusted as may be necessary to conform with the accounting rules of the Board. Such adjustments shall be included in retained earnings or the other accounts that would have been appropriate had the adjustments been made in the books of account of the predecessor company.

(2) When the total par or the stated value of no par capital stock issued or outstanding pursuant to the pooling of interests is more than the aggregate amount of the capital stock of the separate companies before such pooling of interests, the excess shall be charged to account 795, *Other capital*, if unrestricted capital is available for such purpose; otherwise, the excess shall be charged to retained earnings.

(3) When the total par or stated value of no par capital stock issued or outstanding pursuant to the pooling of interests is less than aggregate amount of the capital stock of the separate companies before such pooling of interests, the difference for reduction in capital stock shall be credited to account 795, *Other capital*.

(c) Purchase:

(1) When the acquisition results from a purchase (except from subsidiaries controlled through ownership of the majority share of voting stock) including mergers or consolidations other than pooling of interests, the amount includible in account 731, *Road and equipment property*, shall be the cost at the date of acquisition to the purchaser of the transportation property acquired. The cost assigned the property, as well as other assets acquired, shall be the amount of the cost consideration given. Where property and other assets are acquired for other than cash, including liabilities assumed and shares of stock issued, cost shall be determined by either the fair value of the consideration given or the fair value of the assets acquired, whichever is more clearly evident. In addition to any liabilities assumed, provision shall be made for such estimated liabilities as may be necessary.

(2) When the costs of individual units or classes of transportation property are not specified in the agreement, the cost assigned such property shall be apportioned among the appropriate primary accounts using the percentage relationship between the fair values for each class of property acquired and the total of such values.

(d) Merger of subsidiaries:

The acquisition and merger of property of subsidiaries controlled through ownership of the majority shares of voting stock is to be accounted for as a pooling of interests or as a purchase depending on the circumstances in each case. Where control was initially acquired through issuance of capital stock to stockholders of the subsidiary the rule applicable to pooling of interests ordinarily is applicable. Where control was initially acquired through purchase of stock the rule applicable to purchase of property may be appropriate even though the shares were purchased gradually from time to time over a period of years, in which event recognition of retained earnings since date of acquisition assignable to such shares may be proper. The journal entry pertaining to acquisition of property of subsidiaries shall be submitted to the Board for consideration based on the principles herein and procedures for which there is authoritative support, and the accounting for the merger shall become final only after approval by the Board.

2–16 *Reorganization of railway*. (a) When a railway reorganization or receivership has been consummated, the assets acquired, liabilities assumed, and the capital stock or other securities issued or assumed, and other consideration, shall be recorded in the accounts in the manner stated hereunder. An adjustment of capitalization resulting in modification and reformation of classes of securities pursuant to voluntary action of the holders of securities but not resulting in a formal reorganization following a bankruptcy or other receivership proceedings (sometimes called a quasi-reorganization) is not covered by this instruction 2–16. Reduction of capital stock and other contributions to capital by stockholders shall be recorded in accordance

with the instructions in the text of account 795, *Other capital*.

(b) The amounts includable in primary road and equipment property accounts shall be recorded at cost as shown in the predecessor companies' accounts except as otherwise provided in paragraphs (c) and (d) of this instruction 2–16. The remaining assets and the liabilities of the predecessor companies, adjusted as necessary to conform with the accounting rules of the Board, together with the balances in the accumulated amortization and depreciation accounts, shall be recorded in the appropriate balance sheet accounts.

(c) When the amount recorded for assets acquired is more than the par or stated value of no par capital stock issued and other consideration paid, including liabilities assumed, the difference shall be applied to such extent as necessary and is available to provide first for any deficiency in past accrued depreciation on property classified as depreciable; and, second, for any estimated loss from retirement of a branch line, segment of track or other important facility indicated by supporting records to be imminent. The remaining amount of the difference, if any, shall be applied proportionately to reduce the amounts includable in the property accounts in accordance with paragraph (b) of this instruction 2–16, based on the percentage relationship between such difference and the aggregate cost of the property shown in the predecessor companies' accounts.

(d) When the amount applicable to the assets acquired is less than the par or stated value of no par capital stock issued and other consideration paid, including liabilities assumed, the accounting shall be referred to the Board for consideration and decision.

2–17 *Construction projects in which governmental agencies, individuals, or others, and the carrier participate.* (a) The amount includible in the property account for construction projects in which the carrier and governmental agencies, individuals, or others participate shall be (1) the payment made by the carrier for its share of the cost of construction plus (2) the recorded cost (estimated if unknown) of property relinquished as a direct result of the arrangement and retired from service less the value of salvage recovered therefrom by the carrier and less depreciation accrued on depreciable property, which is part of the carrier's cost of the project. The amount so includable in the property account shall be distributed equitably among the primary accounts applicable to railway property constructed. This amount shall first be applied to railway facilities includable in accounts other than 4, *Other right-of-way expenditures*, or 39, *Public improvements—Construction*, then any remaining balance shall be included in account 4 or 39, as appropriate. In no case shall the amount included in the primary accounts for the railway facilities acquired exceed the actual cost of constructing such facilities. The property account shall not include any cost or value for facilities or land contributed or paid for by governmental agencies, individuals or others. Property acquired as a specific contribution to capital by stockholders does not come under this rule. (See text of account 795, *Other capital*.)

(b) Construction projects as used in this section means widening of highways, construction of spillways, drainage canals, farm and other private passes, pipelines, drains or other facilities across the right-of-way; construction of overhead highway bridges, and railroad bridges over public highways and across streams, which provide a railroad use in the operation of trains and a public use in the uninterrupted passage of highway and river traffic; installation of warning signals to protect highway traffic; and industrial side tracks. Also, reconstruction and relocation of tracks and appurtenant facilities such as occur in connection with carrying out flood control, reclamation, and other public improvement projects where it becomes necessary to abandon part of the line of railroad and relocate the tracks.

2–18 *Leased property improvements and retirements.* The cost to lessee of structures, facilities, additions and betterments on leased property and for retirement of property the cost of which is included in account 732 *Improvements on leased property*, shall be accounted for in conformity with the

principles in the instructions for property owned. When lessor's property is retired and replaced and lessee is not obligated to reimburse the lessor for the retired property other than through the replacement, the lessee shall (1) charge the cost of the replacement to account 732, *Improvements on leased property*, (2) discontinue accruing depreciation for lessor's retired property, and (3) when recording final settlement with the lessor, consider jointly the amount accrued in account 772, *Accrued liability; Leased property*, for lessor's retired property and the respective amounts for the replacement included in accounts 732, *Improvements on leased property*, and 733, *Accumulated depreciation; Improvements on leased property*. When lessee is obligated to reimburse the lessor currently or at the termination of the lease for property retired other than through replacement, the lessee shall include the amount of the obligation in the appropriate liability account. The lessee shall furnish the lessor such information as is required to enable the lessor to perform necessary accounting. The accounting by the lessee and the lessor shall be consistent with contractual arrangements.

[47 FR 26635, June 21, 1982, as amended at 52 FR 4321, Feb. 11, 1987]

2–19 *List of units of property*. (a) This list of units is established for the purpose of designating the units of property to be used in accounting for additions to and retirements and replacements of property. Detailed information is included in instructions 2–7 and 2–8. Items listed under road property accounts are subject to the minimum rule applicable to additions to property. See instruction 2–2 pertaining to the minimum rule.

(b) This list of units will be revised from time to time as may be necessary to meet conditions. A carrier desiring to include in any account an appropriate unit not now specified therein may, upon approval of the Board, make such authorized addition to this list of units.

(c) Rules applicable to units of property rebuilt or converted and to changes in line of road or tracks which involve accounting for units or property retired are set forth in instructions 2–12 and 2–13.

[42 FR 35017, July 7, 1977, as amended at 48 FR 7183, Feb. 18, 1983]

Account 3, Grading

A retaining wall, riprap (hand placed), a protecting dyke, a protecting crib, a wing dam, a revetment, mattress, pipe or other structures to provide drainage. Each entire installation.

Account 5, Tunnels and Subways

The entire masonry, entire timber, and entire metal lining of a tunnel or subway, including portals and wing walls.

Drainage. Entire installation.
Lighting. Each entire installation.
Ventilation. Each entire installation.

Account 6, Bridges, Trestles, and Culverts

A steel superstructure.
A concrete or stone substructure.
A concrete trestle, a complete bridge or approach.
A timber trestle, a complete bridge or approach.
Complete machinery for operating a movable span.
A protecting dyke, a protecting crib (a fender), a wing dam, a complete culvert. Each entire installation.

Account 7, Elevated Structures

Any applicable units listed under account 6, *Bridges, trestles, and culverts*.

Account 13, Fences, Snowsheds, and Signs

A complete snowshed.
One continuous mile of right-of-way fence.
One continuous mile of permanent sand or snow fence.

Account 16, Station and Office Buildings

A complete building, including attached platform.
A complete platform structurally detached from a building.
Each retaining wall installation.
Each timber trestle installation.
Each outside steam, water, air, etc., pipe line installation.
Each storm or sanitary sewer installation.
A complete fence.
Paving. Each complete installation.
A station stockyard. Each complete installation.
A track scale.
A track scale pit.
An outside crane or conveying system for handling freight.
A motor truck.
A motor tractor.

Any applicable units listed under other accounts.

Account 17, Roadway Buildings

Any applicable units listed under account 16, *Station and office buildings*, and 44, *shop machinery*.

Account 18, Water Stations

A complete water supply piping system.
A dam or reservoir.
A pump house.
Pumping machinery. Each complete installation.
A water tank. Each complete installation.
A complete track trough at one location.
A water crane. Complete with pit.
A water treating plant.

Account 19, Fuel Stations

A complete fuel supply system, including appurtenances.
A pump house.
A fuel oil storage tank (large).

Account 20, Shops and Enginehouses

A complete building, including attached platform.
A complete platform structually detached from a building.
A turntable.
A turntable pit.
A transfer table with machinery.
A transfer table pit.
A sand storage and handling and drying apparatus.
Outdoor bins. Each complete installation.
A lorry track system (outside).
A boiler washing plant. Each complete installation.
An overhead crane, outside.
Each outside pipe installation, steam, air, water, etc.
Each sewer installation, storm or sanitary.
Paving. Each complete installation.
Each shop fence or wall installation.
Any applicable unit under account 16, *Station and office buildings*.

Account 22, Storage Warehouses

A complete building, including attached platform.
A complete platform structurally detached from a building.
For additional items, see accounts 16 *Station and office buildings*, and 44, *Shop machinery*.

Account 23, Wharves and Docks

A timber float bridge.
A steel float bridge.
A wharf (including pile clusters).
A timber incline.
A bulkhead.
Jetties or breakwater.
Ferry racks (including pile clusters).
Float racks.
Each complete machinery installation.
For additional items, see accounts 3, *Grading*, 6, *Bridges, testles and culverts*, and 44, *Shop machinery*.

Account 24, Coal and Ore Wharves

Car dumper complete.
Timber bridges.
Steel bridges.
Each complete machinery installation.
A loading or unloading machine complete.
Each coal or ore pocket installation.
For additional items, see accounts 6, *Bridges, trestles and culverts*, 16, *Station and office buildings*, 20, *Shops and enginehouses*, 23, *Wharves and docks*, and 44, *Shop machinery*.

Account 25, TOFC/COFC Terminals

A complete building.
A complete building, including attached platform and ramp.
A complete platform and attached ramp, structurally detached from a building.
A portable ramp.
A complete fence.
Paving, each complete installation.
An overhead crane, complete.
Each sewer installation.
A truck or tractor used exclusively at TOFC/COFC terminals.
Each floodlighting pole or tower installation.
Each floodlighting installation.
A power distribution system, complete.
Any applicable units listed under all other accounts.

Account 26, Communication Systems

A complete mile section or complete installation if less than a mile of pole line including cross arms, wires and appurtenances.
Each mile or complete installation of cable with associated parts.
Each mile or complete installation of conduit with associated parts.
A complete tower.
A complete installation at each location constituting a separate means of communication, such as radio, radar, carrier telephone, teletype, or other communication systems.
For additional items see account 16, *Station and office buildings*.

Account 27, Signals and Interlockers

A signal system installation complete, or section thereof, with associated parts, including masts, batteries, relays, ladder, etc.
A complete mile section or complete installation if less than a mile, or pole line including cross arms, wires and appurtenances.

Each mile or complete installation if less than one mile of cable with associated parts.
Each mile or complete installation if less than one mile of conduit with associated parts.
Switch movement with associated parts.
A complete building.
An interlocking plant complete (excluding machine).
An interlocking machine.
Signal bridge complete.
Each highway crossing protection installation complete.
Each car retarder installation complete.
A traffic control or C.T.C. system installation complete.

Account 29, Power Plants

Any applicable units listed under accounts 16, *Station and office buildings*, and 20, *Shops and enginehouses*.

Account 31, Power Transmission Systems

A continuous mile, or a separate installation if less than a mile, of catenary complete including catenary hangers, trolley wire and appurtenances.
A continuous mile, or a separate installation if less than a mile, of transmission line, including poles, wires, transformers, switches, and other appurtenances.
Each outside steam, air, etc., pipe line installation.
A manhole.
Substation or switching station complete.
Each mile, or installation if less than a mile, of third rail.
A catenary bridge or support.
A high-tension transmission tower.
Any applicable units listed under accounts 26, *Communication systems*, and 27, *Signals and interlockers*.

Account 35, Miscellaneous Structures

A complete building, including attached platform.
A complete platform structurally detached from a building.
A conveyor system complete.
An elevator system complete.
A blowing system complete.
Any applicable units listed under other accounts.

Account 37, Roadway Machines

Each roadway machine complete including accessories.
Each on and/or off-track automotive vehicle complete, including appurtenant special-purpose machinery.

Account 39, Public Improvements—Construction

Any applicable units listed under other accounts.

Account 44, Shop Machinery

A machine (including foundation and motor, if any), such as lathes, shapers, slotters, boring machines.
A furnace.
A boiler installation complete.
A motor vehicle used in shops only.
Testing equipment.
Overhead crane, complete.

Account 45, Power Plant Machinery

A power plant machine, including foundation, such as a turbine, rectifier, dynamo, generator.
Any applicable unit listed under account 44, *Shop machinery*.

Account 52, Locomotives

Diesel electric, lead or booster, i.e., ''A'' or ''B'' units.
Diesel electric. Extra or spare engines.
Electric locomotive.
Radio control locomotive.

Account 53, Freight-Train Cars

A complete car.
Motor equipment of a motor driven car.
A propulsion motor, including generator.
A freight container, complete.

Account 54, Passenger-Train Cars

A complete car, including interior furnishings.
Motor equipment of a motor driven car.
A propulsion motor, including generator.

Account 55, Highway Revenue Equipment

A complete vehicle.
A chassis.
A container.
A bogie.

Account 56, Floating Equipment

A complete vessel or boat, exclusive of machinery.
Machinery: a boiler, a motor, an engine.

Account 57, Work Equipment

(a) Rail equipment: (1) A complete car or machine, (2) A boiler, (3) An engine, (4) A motor, (5) Machinery equipment (with or without tractive machinery) such as concrete mixer, snow plow, derrick, steam shovel, or pile driver, (6) A complete motor equipment.
(b) Floating equipment—Work: (1) A complete vessel or boat, (2) A boiler, (3) An engine, (4) A motor. Any applicable units listed under other accounts.

Account 58, Miscellaneous Equipment

An airplane.
A complete vehicle.

Account 59, Computer Systems and Word Processing Equipment

A Mainframe
A Mini-computer
A Word processing system
A Printer
A Monitor
A Modem
A Storage device

[42 FR 35017, July 7, 1977, as amended at 52 FR 4325, Feb. 11, 1987]

2–20 *Accounting for leases.* (a) Leases shall be accounted for as capital leases whenever the lease meets one or more of the following four criteria:

(1) The lease transfers ownership of the property to the lessee by the end of the lease term,

(2) The lease contains a bargain purchase option,

(3) The lease term is equal to 75 percent or more of the estimated economic life of the property, and,

(4) The present value at the beginning of the lease term of the minimum lease payments equals or exceeds 90 percent of the fair value of the leased property to the lessor at the inception of the lease less any related investment tax credit retained by the lessor.

(b) If the lease does not meet any of the four criteria, the lease shall be classified and accounted for as an operating lease.

(c) When accounting for capital leases the lessee shall record the asset and the related obligation. The amount recorded as the asset and the obligation shall be the present value at the beginning of the lease term of the minimum lease payments during the lease term, excluding that portion of the payments representing executory costs such as insurance, maintenance, and taxes to be paid by the lessor. However, if that amount exceeds the fair value of the leased property, the amount recorded as the asset and the obligation shall be the fair value. The lessee shall compute the present value of the minimum lease payments using its incremental borrowing rate unless (1) it is practicable to learn the implicit rate computed by the lessor and (2) the implicit rate computed by the lessor is less than the lessee's incremental borrowing rate. If both of those conditions are met, the lessee shall use the implicit rate.

(d) Leased assets that meet the criteria for classification as a capital lease shall be subject to depreciation over their useful lives in the same manner as assets owned. If the capital lease meets the criteria of either Instruction 2–20(a)(1) or 2–20(a)(2), the asset shall be amortized in a manner consistent with the lessee's normal depreciation policy for owned assets. If the lease does not meet either of these two criteria, the asset shall be amortized in a manner consistent with the lessee's normal depreciation policy except that the period of amortization shall be the lease term.

(e) The accounting accorded the lease shall be subject to the same considerations as other obligations in classifying them with current and noncurrent liabilities in the classified balance sheet. Leases that meet the criteria requiring capitalization shall be recorded in those accounts that provide for carrier operating property or property used in other than carrier operations, as appropriate. The accounts shall segregate the amounts pertaining to capital leases.

(f) If the lease qualifies as an operating lease it should be accounted for by charging the rent to expense over the lease term. The rental expense should be recognized on a straight line basis over the lease term unless another method is more representative of the use and the benefits derived.

(g) The criteria specified in paragraph (a) should be applied to all leases regardless of the relationship between the lessor and the lessee unless it is clear that the terms of the lease transaction have been significantly affected by their relationship. In this situation, the accounting should be modified to recognize economic substance rather than legal form.

(h) In the case of subsidiary companies or companies under common control whose principal business activity is leasing property or facilities to the carrier, the carrier is encouraged to request special authority to file consolidated or combined financial statements. If the carrier does not wish to file consolidated or combined financial statements, capitalization of the lease will be required if the lease meets the

criteria that would require capitalization.

NOTE: The carrier shall follow generally accepted accounting principles where an interpretation of the rules for lease accounting is needed or obtain an interpretation from its public accountant or the Board.

[42 FR 56611, Oct. 27, 1977, as amended at 52 FR 4321, 4325, Feb. 11, 1987]

2–21 *Freight train car repair costing.* Class I railroads shall report the costs of repairing freight train cars by car types.

(a) The accounting for freight train car repair costs shall agree with the applicable instructions and texts of accounts in 49 CFR Part 1201 relating to the equipment repair process (see Note A).

(b) Railroads may assign either actual costs, standard costs, or a combination of both to the accounting process. Standard costs, if used, shall recognize the differences in performing repairs on various types of equipment, and the differences related to specific repair facilites. Standard costs shall be based on adequate operational data which are reviewed at least annually. The resulting variances (price, efficiency, capacity, etc.) shall be reasonably allocated back to the car types to derive the amounts reported in Form R–1.

(c) Railroads shall report repair costs by the freight train car types shown in Schedule 415 of Form R–1. In assigning repair costs, railroads may use either one of the following methodologies:

Level I: Job Order Cost System

Railroads may use a job order cost system for assigning repair costs to the car types for freight train cars. Under this methodology, railroads shall directly match direct labor and materials with the specific unit of equipment that was repaired. Actual costs, standard costs, or a combination of both may be used as stated above.

Level II: Alternative Repair Costs Methodology

Railroads not using the job order cost system shall report freight train car repair costs by using the methodology described below:

(1) The repair costs relating to heavy, program, or project repairs of freight train cars shall be directly assigned to the car types repaired by using actual or standard costs. A heavy repair is defined as a repair that is relatively so material in cost, repair time, or physical damage that management's involvement in the determination of the repair to be made is necessary and relatively greater than usual. Program or project repairs are those repairs which are performed under a predetermined plan where estimates costs, time periods, and car types to be repaired are identified.

(2) The repair costs relating to light and running repairs of system cars shall be allocated to the car types by using the Association of American Railroads' Car Repair Billing System (CRBS) as the process for distributing light and running repairs. The CRBS will be the tracking system for recording the number of repairs, the car types and types of repairs. Then by applying the CRBS standard costs to the particular repairs, standard costs relationships by car type can be developed and used to distribute actual light and running repair cost pools to the car types.

(3) Railroads shall match repair costs billed by and paid to foreign roads with the car types that were repaired. Foreign billings for light and running repairs are usually conducted through CRBS, and therefore, the car types can be identified. For heavy off-line repairs, car type identification is possible because system management is generally involved with the authorization of such heavy repairs and car identification numbers are generally included in the billing process.

(4) Repair costs relating to foreign freight train cars shall also be reported by car types. However, a separate breakdown between foreign and system repair costs is not required for Board reporting purpose. Car type identification for light and running repairs to foreign cars can be obtained from CRBS tapes. The cost of heavy repairs to foreign cars should be accumulated by car types. The resulting expense credits from foreign railroads should be assigned to the car types to which they relate.

(5) Railroads shall match any resulting expense credits with the car types to which they relate. This can occur, for example, when a railroad is charged with the repair costs of system cars,

but the responsibility of the repair ultimately rests with and is paid by a foreign road.

(d) Railroads shall submit to the Board any repair cost by car type methodology which does not agree with item (c) above. The Board shall review the methodology and determine if it is acceptable for reporting purposes.

(e) Railroads may submit justification and supporting documents requesting waiver from provisions required by this instruction. This provision is intended to provide relief for those smaller Class I railroads that might be unduly burdened by the cost of developing and maintaining the required system. Waivers shall be directed to the Board's Accounting and Valuation Board.

(f) Equipment repair cost records, including the allocation methods used, shall be maintained and made available to the Board upon request.

NOTE A: The following accounts and reference pertain to the freight train car repair process:

11–22–42
21–22–42
39–22–42
40–22–42
41–22–42
61–22–42

Instruction 2–12, *Units of property rebuilt or converted.*

[46 FR 52951, Dec. 4, 1981, as amended at 52 FR 4321, 4325, Feb. 11, 1987]

2–22 *Map specifications.*

(a) Class I Railroad companies shall maintain current maps of its property and shall promptly record any changes that may take place.

(b) Class I companies shall furnish, on request, copies of maps showing its property as it exists on such date or dates as may be fixed by the Board.

(c) Class I companies shall maintain planimetric maps that show right-of-way, track and other important facilities at a scale to show sufficient detail.

(d) Maps shall be indexed and titled to clearly indicate the specific area depicted.

(e) All maps shall be prepared in accordance with generally accepted mapping practices.

[47 FR 50267, Nov. 5, 1982; 48 FR 32833, July 19, 1983]

2–23 *Accounting for engineering costs.*

(a) The pay and expenses of engineers, assistants and clerks engaged in the survey and construction of new lines and extensions shall be included in the cost of the particular property involved. This accounting treatment also applies in making additions to and improvements of the carriers road, including wharves and docks.

List of Officers and Employees

Chief engineer.
Assistant engineers.
Bridge and signal engineer.
Architects and draftsmen.
Chief clerk and other clerks.
Transitmen and levelmen.
Rodmen and chainmen.
Cooks and porters on business cars.

ITEMS OF EXPENSE AND SUPPLIES

Atlases and maps.
Barometers.
Books for office use.
Business car service.
Cameras; compasses.
Camp equipage.
Chains for surveyors.
Drawing boards.
Drawing instruments.
Field glasses.
Furniture repairs and renewals.
Heating and lighting.
Magnets and magnifiers.
Official train service.
Paper, blue-print.
Periodicals and newspapers.
Photographic supplies.
Printing and stationery.
Provisions for business cars.
Rent and repairs of offices.
Rods for surveyors.
Sextants and slide rules.
Telegraph and telephone service.
Traveling expenses.
Triangles and tripods.

(b) When employees listed in (a) above are engaged in the repair and maintenance of the roadway, their pay and expenses shall be charged to the appropriate operating expense accounts.

(c) Expenditures for tentative or preliminary surveys shall be carried in account 743, *Other deferred debits,* until it is determined whether or not to continue the work. If the project is continued, expenditures for all surveys shall be transferred to the appropriate property account and, if abandoned, to appropriate income accounts.

(d) The cost of designing, making plans and specificaitons, and supervising the construction of equipment shall be included in the cost of the particular equipment.

(e) Fees and expenses of architects specially employed for designing or supervising the construction of buildings shall be included in the accounts appropriate for the cost of the buildings constructed.

[49 FR 2254, Jan. 19, 1984, as amended at 52 FR 4321, Feb. 11, 1987]

2–24 *Accounting for other general expenditures.*

Expenditures of a general nature that are attributable but not directly assignable to original construction or important expansion of road shall be equitably assigned to the cost of specific units or segments of property. These expenditures include the pay and expenses of executive and general officers and their assistants engaged exclusively with such construction, law expenses (other than organization expenses), stationery and printing, and taxes before property is used in transportation operations.

[49 FR 2255, Jan. 19, 1984, as amended at 52 FR 4321, Feb. 11, 1987]

INSTRUCTIONS FOR MAINTENANCE EXPENSES

3–1 *Items to be charged.* (a) The accounts provided for maintenance of road property and of equipment are designed to show the cost of repairs and also the loss through depreciation of the property used in transportation operations, including expenses resulting from ordinary wear and tear of service, exposure to the elements, inadequacy, obsolesence, or other depreciation, or from accident, fire, flood, or other casualty.

(b) These accounts shall include the cost of labor, materials and supplies, work-train service, floating equipment work service, special machine service, contract work, privileges, protection from casualties, and other analogous items of expense in connection with the maintenance of the plant used in railway service. The cost of materials and supplies, which shall include small tools, shall include the cost at the point of free delivery plus freight charges of foreign lines, and the costs of inspection and loading assumed by the carrier; also a proportion of store expenses. Such costs shall not include expenses of transportation over the carrier's line. Royalties for patent rights on mechanical appliances used in repairs of equipment shall be included in the cost of the repairs. The cost of boarding, traveling, and other incidental expenses of employees shall be included in the accounts to which the pay of the employees is chargeable, except where otherwise specified in the text of the accounts. In calculating the cost of materials used proper allowance shall be made for the value of unused portions and of cuttings, turnings, borings, etc., and for the value of the material recovered from property repaired and from temporary tracks, scaffolding, cofferdams, and other temporary structures used in repair work.

(c) The cost of repairs shall include the cost of inspecting to determine the repairs necessary, and of adjusting or repairing parts, both of road property and of equipment, such as the repairing of locomotives, cars, frogs, switches, rails, etc.; the cost of inspecting and testing after repairs have been made such as the testing of locomotives after repairs to determine whether the repairs have been properly made, and the running of repaired locomotives light in order to break them in for regular service; incidental costs of repairs, such as the construction or removal of false work in connection with maintenance, cost of demolishing retired road property and disposing of the wreckage therefrom when the property is dismantled by or for the carrier; cost of maintaining or protecting traffic during the progress of construction work, including the cost of constructing, maintaining and removing temporary tracks required for maintaining traffic during the progress of the work; cost of mowing and beautifying grounds around buildings; repairing fences, sidewalks, driveways, and streets within or adjacent to such grounds; cost of removing snow from roofs of buildings (when not removed by those employed in the buildings); cost of periodical restorations of seasonal features, such as gardens, shrubbery, and lawns; cost of

operating hothouses in connection with the work of beautifying grounds; and cost of clearing and removing casual incumbrances, such as ice, snow, and fallen timber.

(d) An employee's job classification shall not govern the accounting for work performed. Charges to a particular expense function shall be based on the nature of the work performed.

[42 FR 35017, July 7, 1977, as amended at 52 FR 4325, Feb. 11, 1987]

INSTRUCTIONS FOR DEPRECIATION ACCOUNTS

4–1 *Method.* (a) There shall be charged monthly to operating expenses or other appropriate accounts and credited to account 735, *Accumulated depreciation; Road and equipment property*, during the service life of depreciable road and equipment property, includable in accounts classed as depreciable, amounts which will approximate the loss in service value not restored by current repairs or covered by insurance. The charges for accruing depreciation currently shall be computed in conformity with the group plan by applying to the cost of property such percentage rates as will distribute the service value by the straight-line method in equal annual charges to operating expenses or other accounts during the estimated life of the property. In the case of track accounts 8, 9 and 11, service value shall reflect net salvage value. For road property, the cost shall be original cost or estimated original cost, as used in the valuation records, adjusted to current date. If a carrier submits proof that the actual cost of depreciable property is substantially different from cost figures in the valuation records, the carrier may, with the approval of the Board, use such cost figures as the depreciation base.

(b) The term group plan means the plan under which depreciation charges are accrued upon the basis of the cost of depreciable property includable in accounts classed as depreciable using the service lives of the individual depreciable units in the accounts and properly weighing to determine the composite annual rate of depreciation.

(c) For the purpose of the group plan of depreciation accounting, the following primary accounts are classed as depreciable accounts:

Road accounts:
3. Grading.
4. Other right-of-way expenditures.
5. Tunnels and subways.
6. Bridges, trestles and culverts.
7. Elevated structures.
8. Ties.
9. Rails and other track material.
11. Ballast.
13. Fences, snowsheds, and signs.
16. Station and office buildings.
17. Roadway buildings.
18. Water stations.
19. Fuel stations.
20. Shops and enginehouses.
22. Storage warehouses.
23. Wharves and docks.
24. Coal and ore wharves.
25. TOFC/COFC terminals.
26. Communication systems.
27. Signals and interlockers.
29. Power plants.
31. Power transmission systems.
35. Miscellaneous structures.
37. Roadway machines.
39. Public improvements-construction.
44. Shop machinery.
45. Power plant machinery.

Equipment accounts:
52. Locomotives.
53. Freight-train cars.
54. Passenger-train cars.
55. Highway revenue equipment.
56. Floating equipment.
57. Work equipment.
58. Miscellaneous equipment.
59. Computer systems and word processing equipment.

(d) When abandonment of a branch line or other important segment of the track structure or other part of the plant for which depreciation charges are not includable in the accounts as foreseeable within a reasonable period of time due to exhaustion of traffic, obsolescence or other causes, application may be made to the Board for authority to record a suitable provision in anticipation of a probable loss.

[42 FR 35017, July 7, 1977, as amended at 48 FR 4183, Feb. 18, 1983; 52 FR 4325, Feb. 11, 1987]

4–2 *Rates of depreciation.* (a) A separate composite annual percentage rate for each depreciable property account, or a subgroup in that account, shall be used in computing annual depreciation

expenses and accumulated depreciation. The composite rates shall be based on the results of a depreciation study performed by each railroad. A depreciation study shall, in general, contain the following components:

(i) Actuarial or semiactuarial methods for determining service lives for road and equipment properties;

(ii) Salvage value calculations for road and equipment properties;

(iii) Accumulated depreciation for each account or subaccount as appropriate;

(iv) Other factors and related calculations involving the depreciation process; and

(v) A commentary on any adjustments and judgmental factors used in the study.

(b) Railroads shall submit to the Board for review and approval a report on depreciation studies and proposed depreciation rates every three years for equipment property, and every six years for road property. Railroads can, however, submit depreciation studies prior to its scheduled year, in which case a new cycle will begin.

(c) In computing monthly depreciation charges, the annual percentage rates shall be applied to the depreciation base as of the first of each month and the results shall be divided by twelve.

(d) Class II railroads are exempt from the three-year and six-year cyclical reviews, but shall submit depreciation studies when requested by the Board. Class III railroads are not required to submit depreciation studies.

(e) A separate track depreciation rate shall apply to each primary property account in each track density category as provided in Instruction 4–3(d). Track depreciation rates shall be developed by estimating the average life based on an acceptable depreciation methodology, consistently applied, including as an option the units of production method based on gross ton-miles per mile of track.

[42 FR 35017, July 7, 1977, as amended at 46 FR 20210, Apr. 3, 1981; 48 FR 7184, Feb. 18, 1983; 52 FR 4321, Feb. 11, 1987]

4–3 *Depreciation records to be kept.* (a) The carrier shall maintain for each class of property in convenient and accessible form engineering and other data bearing on prospective service lives.

(b) The carrier also shall keep such records of depreciable property and property retirements as will reflect the service life of each class of property which has been retired, or will permit the determination of service life indications by past experience of useful life tenure of comparable property, turnover, or other appropriate methods; also such records as will reflect the percentage of value of the salvage for property retired from each class of depreciable property.

(c) For purposes of analysis the carrier shall maintain subsidiary records in which the accumulated depreciation account is broken down into component parts corresponding to each primary account to show the current credits and debits and the balance for each account. Such detailed information shall be reported annually to this Board. For balance sheet purposes, the accumulated depreciation account shall be treated as a single composite account for depreciable property.

(d) Carriers shall be prepared to justify all track depreciation rates by keeping appropriate data on the service lives and salvage values of track components which went into the life and net salvage computation of each primary account in each density category.

(e) The investment and related accumulated depreciation for accounts 3, 4, 5, 8, 9, 11 and 39 must be maintained by distinct traffic density categories. Each line segment shall be identified on January 1 of each year as belonging to one of the following traffic density classes, based on the average traffic density in the preceding three years:

DENSITY

Class	*Description*
I	Lines carrying at least 20 million gross ton-miles per mile on an annual basis and not designated as belonging to Density Class III.
II	Lines carrying less than 20 million gross ton-miles per mile on an annual basis and not designated as belonging to Density Class III.
III	Lines identified as potentially subject to abandonment pursuant to Section 10904 of the Interstate Commerce Act.
IV	Yard and way switching tracks.
V	Electronic yards.

NOTE A: For purposes of designating line segments as belonging to one of the density

classes, the carrier shall consider all traffic carried over the segment whether in the carrier's trains or in the trains of other carriers (estimated if not known).

NOTE B: When a carrier operates systems of parallel tracks on a single roadbed, the density associated with the related segment of a rail route shall be the aggregate gross ton-miles on all individual tracks.

[42 FR 35017, July 7, 1977, as amended at 46 FR 20210, Apr. 3, 1981; 48 FR 7183, Feb. 18, 1983; 52 FR 4321, Feb. 11, 1987]

4–4 *Leased property—depreciation.* (a) The carrier shall include in operating expenses charges for depreciation on road property and equipment used but not owned, the rent for which is includable in the lease rental accounts, and shall maintain the same records of service lives, salvage values, etc., as provided for owned road property and equipment. The excess of the total compensation paid over the amount chargeable for depreciation shall be included in the rent account. If settlement between the carrier and the lessor is not currently made, the amount of the depreciation accrued during the period of the lease shall be credited by the carrier to account 772. *Accrued liability; Leased property.* The necessary adjustments of the difference between the balance thus accrued in that account and the actual amount of settlement shall be made appropriately through accounts 519, *Miscellaneous income,* or 551, *Miscellaneous income charges,* at the time settlement for depreciation on the property is made with the lessor.

(b) The carrier shall not include in the depreciation account in operating expenses any charges for depreciation of equipment used but not owned when the rents therefor are not included in the lease rental accounts but shall include such charges in the appropriate other rent expense accounts.

4–5 *Jointly used property—depreciation.* The owning carrier shall include in the depreciation accounts in operating expenses the charges for depreciation on units of depreciable property jointly used with one or more other carriers. The owning carrier shall credit and each using carrier shall charge the appropriate joint facility accounts in operating expenses with the amounts billed by the owning carrier against each using carrier for its proportion of the service loss on property retired from service whether billed currently as depreciation or when retirements occur as the loss in service value. The using carriers shall be required to account for depreciation or retirement of units of road property jointly used but not owned to the extent of their contract liability. The same principle shall apply to terminal companies and their nonowner tenants in accounting for depreciation accruals or retirement charges recorded in the accounts of the terminal companies.

INSTRUCTIONS FOR INCOME AND BALANCE SHEET ACCOUNTS

5–1 *Current assets.* (a) In the group of accounts designated as current assets shall be included cash, those assets which are readily convertible into cash or are held for current use in operations, current claims against others and amounts accruing to the carrier which are subject to settlement in the ordinary course of business within one year. There shall not be included in this group of accounts any amount the collection of which is not reasonably assured within one year because of the known financial conditions of the debtor or otherwise. Such items shall be included in account 741, *Other assets,* at an amount not in excess of a reasonable estimate of realizable value. Items of current character but of doubtful value shall be written down or written off by charge to account 63–61–00, *General—Uncollectible accounts—General and administrative,* or account 553, *Uncollectible accounts,* as appropriate. Adjustment of these items of doubtful value shall be made by direct reduction of the asset account in which such items are carried or by provision in account 709.5, *Allowance for uncollectible accounts,* for the estimated uncollectible amount.

(b) The carrier shall transfer the estimated realizable value of obsolete material to account 741, *Other assets,* equitably distribute the loss due to obsolescence among the accounts ordinarily chargeable for such classes of material, and concurrently credit account 712, *Material and Supplies.*

5–2 *Recorded value of securities owned.* (a)(1) The investment in securities other than those issued or assumed by the accounting company shall be recorded in these accounts at cost, but excluding amounts paid for accrued interest and accrued dividends.

(2) Accounts 702, *Temporary Cash Investments,* 721, *Investments in Affiliated Companies,* and 722, *Other Investments,* shall be maintained in such a manner as to reflect the marketable equity securities' portion (see definition 26) and other securities or investments.

(3) For the purpose of determining net ledger value, the marketable equity securities in account 702 shall be considered the current portfolio and the marketable equity securities in accounts 721 and 722 (combined) shall be considered the noncurrent portfolio. The net ledger value of each portfolio shall be the lower of its aggregate cost or market value. (See definition 26.) The amount by which aggregate cost exceeds market value shall be accounted for as the valuation allowance. Account 702, *Temporary Cash Investments,* shall be subdivided to include the valuation allowance for the marketable equity securities included therein. Account 724, *Allowance for Net Unrealized Loss on Noncurrent Marketable Equity Securities—Cr.,* is the valuation allowance for the marketable equity securities recorded in account 721, *Investments in Affiliated Companies,* and 722, *Other Investments.* Marketable equity securities accounted for by the equity method shall not be combined with other marketable equity securities when determining aggregate cost and market value.

(4) Realized gains and losses (the difference between net proceeds from sale and cost) shall be included in the determination of net income of the period in which they occur. Changes in the valuation allowance for marketable equity securities included in account 702 shall be charged to account 551, *Miscellaneous Income Charges,* or credited to account 519, *Miscellaneous Income,* as appropriate, with a contra entry to the valuation allowance contained within account 702. Changes in the valuation allowance for marketable equity securities included in accounts 721 and 722 shall be recorded in equity account 798.1, *Net Unrealized Loss on Noncurrent Marketable Equity Securities,* with a contra entry to valuation account 724.

(5) If there is a change in the classification of a marketable equity security between current and noncurrent, the security shall be transferred at the lower of its cost or market value at date of transfer. If market value is less than cost, the market value shall become the new cost basis, and the difference shall be accounted for as if it were a realized loss and included in the determination of net income.

(6) The accounting company shall write down the ledger value of any securities to the extent of impairment in their value or write off entirely if there is no reasonable prospect of realizing any value therefrom. For long term investments in marketable equity securities, when the decline in market value below cost is judged to be other than temporary, the cost basis of the individual security shall be writen down to a new cost basis. The amount of the write-down shall be accounted for as realized loss by a charge to account 551, *Other Income Charges,* and a credit to account 723, *Reserve for Adjustment of Investment in Securities.* The new cost basis shall not be changed for subsequent recoveries in value.

(b)(1) For financial statement purposes the carrier shall follow the principles of equity accounting for (1) all investments in corporate joint ventures (see definition 21(c)), and (2) all investments in voting stock of affiliated companies giving the carrier the ability to significantly influence the operating and financial policies of an investee (see definition 21(b)). For purposes of this instruction an investment of 20 percent or more of the outstanding voting stock of an investee will indicate the ability to exercise significant influence over an investee in the absence of evidence to the contrary.

(2) Since the equity method is not to be effected by entries in the books of accounts but is to apply only in financial reports to the Board, the carrier shall establish worksheet or memorandum accounts. Three basic worksheet or memorandum accounts are needed:

(i) An investment account to include (1) equity in the undistributed earnings or losses of the investee since the date of acquisition (see definition 21(g)); (2) accumulated amortization of the difference between cost and net assets at date of acquisition (see (b)(3) below); and other adjustments for disposition or writedown of investments.

(ii) An income account to include (1) the investor's share of the investee's undistributed profits or losses for each reporting period subsequent to acquisition of the investment except that in the year of acquisition such amount shall be determined from the date of acquisition; (2) amortization for the reporting period of the difference between cost and net assets at date of acquisition. This account shall be closed at year-end to the retained earnings memorandum account discussed in paragraph (iii) below.

(iii) A retained earnings account to include (1) equity in the undistributed earnings or losses of the investee since the date of acquisition; (2) accumulated amortization of the difference between cost and net assets acquired at date of acquisition (see (b)(3) below).

(iv) Other memorandum accounts will be needed for such adjustments as gains and losses on disposition of investments, recognition of impairments in value, the investor's share of extraordinary and prior period adjustments reported in the investee's financial statements (see instruction 1–2(d)), and provision for deferred taxes where it is reasonable to assume that undistributed earnings of an investee will be transferred to the investor in a taxable distribution. These memorandum accounts shall be closed at year-end to the retained earnings memorandum account discussed in paragraph (iii) above.

(3) The carrier shall retain the following information for each investee in support of the worksheet or memorandum accounts:

(i) Original cost of investment.

(ii) Equity in net assets of investee at date of acquisition.

(iii) Allocation of difference between cost and equity in net assets, namely, to specific assets of investee or to goodwill.

(iv) Accumulated amortization of difference between cost and equity in net assets.

(v) Unamortized balance of difference between cost and equity in net assets.

(vi) Equity in undistributed earnings/losses for each year since date of acquisition.

(vii) Dividends received since date of acquisition if determinable.

(viii) Proceeds from sale of investments.

(4) Any difference between the investor's cost and its share of the net assets of the investee at date of acquisition shall be allocated to specific assets of the investee to the extent the difference is attributable to them. When the difference is allocated to depreciable or amortizable assets, depreciation and amortization (through the investment and income memorandum accounts) should absorb the difference over the remaining life of the related assets. If the difference is not related to specific accounts, it should be considered goodwill and amortized over a reasonable period not to exceed 40 years. For investments made prior to November 1, 1970, amortization of goodwill is not required in the absence of evidence that the goodwill has a limited term of existence.

(5) The financial statements of the investee that are used for equity accounting should be timely. If the accounting year of the investee differs from that of the investor then the most recent available financial statements may be used. The lag in reporting should be consistent from period to period.

(6) Material profits or losses on transactions between the investor and investee shall be eliminated until realized by either company as if the two were consolidated.

(7) A transaction of the investee of a capital nature that affects the investor's share of the investee's stockholder's equity should be reported in the financial statements as if the two were consolidated.

(8) The investor shall deduct any dividends applicable to outstanding cumulative preferred stock whether or not declared, and any other dividends declared when computing its share of undistributed earnings or losses.

(9) The investor shall suspend application of the equity method when the investment (including the investment memorandum account) together with any net advances made to the investee is reduced to zero. Additional losses shall not be provided for unless the investor has guaranteed obligations of the investee or is otherwise committed to provide further financial support for the investee. If the investee subsequently reports net income the investor shall resume applying the equity method at such time as its share of that net income equals the share of net losses not recognized during the period of suspension.

(10) When the investor's voting stock interest falls below the level of ownership described in paragraph (b)(1) of this instruction, the investment no longer qualifies for the equity method. Should dividends received on the investment in subsequent periods exceed the investor's share of earnings for such periods, the investment memorandum and income memorandum accounts shall be reduced by the excess amount.

(11) When the level of ownership of an investment increases to that described in paragraph (b)(1) of this instruction, the equity method shall be applied. The memorandum accounts for the investment, income (for current year's equity in undistributed earnings less amoritzation), and retained earnings (for prior years' equity in undistributed earnings less amortization) shall be adjusted retroactively on a step-by-step basis determining the equity in net assets at date of acquisition, amortization adjustment, and equity in undistributed earnings or losses at each level of ownership. Where small purchases are made over a period of time and then a purhase is made which qualifies the investment for the equity method, the date of latest purchase may be used as date of acquisition.

(12) Information having significance with respect to the investor's ownership in investees shall be disclosed in notes to financial statements of annual reports filed with the Board in accordance with generally accepted accounting principles.

(c) When securities with a fixed maturity date are purchased at a discount (i.e., when total cost including brokerage fees, taxes, commissions, etc., is less than par), such discounts may be amortized over the remaining life of the securities through periodic debits to the account in which the securities are carried (preferably coincident with entries recording interest accruals) and credits to the same account in which interest income is credited. No debits shall be made in respect to discounts upon securities held as investments or in special funds if there is reason to believe that such securities will be disposed of by redemption or otherwise at less than par or will not be paid at date of maturity. When securities with a fixed maturity date are purchased at a premium (i.e., when the total cost including brokerage fees, taxes, commissions, etc., is in excess of par), such premium may be amortized over the remaining life of the securities through periodic credits to the account in which the securities are carried (preferably coincident with entries recording interest accruals) and debits to the same accounts in which the interest income is recorded.

NOTE: The carrier shall follow generally accepted accounting principles where an interpretation of the rules for equity accounting is needed or obtain an interpretation from its public accountant or the Board.

5–3 *Discounts, expenses, and premiums on debt.* (a) Ledger accounts shall be provided to cover the discounts, expenses, and premiums on the sale or resale of each subclass of funded debt and of receivers' and trustees' securities issued for the benefit of or assumed by the company. (For explanation of *subclass* see account 765, *Funded debt unmatured.*) The net debit balances remaining in the ledger accounts for discount and premium shall be included in account 770.1, *Unamortized debt discount,* and the net credit balances in account 770.2, *Unamortized premium on debt.* Debt expense shall be included in account 743, *Other deferred debits.*

(b) Each fiscal period there shall be charged to account 548, *Amortization of discount on funded debt,* a proportion on a consistent basis of each of the debit balances in the discount and premium accounts and correspondingly there shall be credited to income account 517, *Release of premiums on funding debt,* a similar proportion of each of the credit

balances in these accounts. Related debt expense shall also be charged to account 548 on a proportional and consistent basis. The amounts for the respective debit balances for discount and expenses applicable to a particular issue of obligations may be charged directly to account 548 at time of issue when the aggregate of such amounts does not appreciably affect the accounts. The method of apportioning debt discount, issue costs, and premium to accounts 517 and 548 shall be the *interest method,* where the effective interest rate on the date of issuance is applied to the carrying value (debt, less related discount, and issue cost, plus related premium of each specific issue to the beginning of any given period.) However, other methods of amortization may be used if the results obtained are not materially different from those which would result from the interest method.

(c) When any funded debt which has been actually issued to bona fide holders for value is reacquired by the accounting company, that proportion of the balance remaining in accounts containing discount, expense and premium on funded debt for the subclass of the security reacquired applicable to the portion reacquired shall be credited or charged thereto, as appropriate, and concurrently charged or credited to account 519, *Miscellaneous income,* account 551, *Miscellaneous income charges*; or to account 570, *Extraordinary items,* as appropriate, in accordance with the text of these accounts. Such proportion shall be based upon the ratio of the par value of the security reacquired to the par value of all the securities of the subclass actually outstanding immediately before such reacquirement. Gains and losses from extinguishment of debt (excluding debt maturing serially) which is acquired to satisfy sinking fund requirements, shall not be recorded as extraordinary items regardless of amount, but shall be included in accounts 519 and 551, as appropriate. Such gains and losses shall be separately disclosed in reports to this Board.

[42 FR 35017, July 7, 1977, as amended at 52 FR 4325, Feb. 11, 1987]

5–4 *Discount, premium, and assessment on capital stock.* (a) Separate ledger accounts shall be provided for each subclass of capital stock issued or assumed by the accounting company to cover discount suffered and premium realized at the time of sale of capital stock. General levies or assessments against stockholders shall be credited to the appropriate ledger accounts for the subclass of capital stock against which the levy or assessment is made.

(b) The total of net debit balance in these ledger accounts shall be included in account 793, *Discount on capital stock,* and the total of net credit balances in account 794, *Premiums and assessments on capital stock.*

(c) Discount on each subclass of capital stock may be offset or reduced by charges to account 794, *Premiums and assessments on capital stock,* to the extent that net gains from premiums or assessments have been included therein or to account 795, *Other capital,* to the extent that net gains from reacquisition and resale or retirement of capital stock applicable to such subclass have been included therein. Any remaining discount may be amortized by charge to account 616. *Other debits to retained earnings,* or may be retained and carried in account 793, *Discount on capital stock,* until the stock to which the discount applies is retired.

(d) In case the accounting company is permitted and elects with the approval of the Board, to distribute all or any part of the net balance of other paid-in capital to its stockholders, the amount thus distributed shall be charged to account 795, *Other capital.*

(e) When capital stock is reacquired, either by purchase or donation, and is retired or cancelled, account 791, *Capital stock,* shall be charged with the par value, stated value of no par stock, or if no par stock without stated value, the proportionate amount at which the particular class of stock is included in account 791. Any excess of reacquisition cost over the recorded value of the stock shall be charged to account 795, *Other capital,* to the extent of the accumulated net gains included in this account applicable to reacquisition and resale or retirement of such subclass. Any remaining excess reacquisition cost shall be charged to account 616,

Other debits to retained earnings. Any excess of recorded value over reaquisition cost shall be credited to account 795, *Other capital.*

(f) When capital stock is reacquired, either by purchase or donation, and is not retired or cancelled, nor properly includable in sinking or other funds, the reacquisition cost shall be charged to account 798.5, *Treasury stock.*

(g) When treasury stock is resold, account 798.5, *Treasury stock,* shall be credited with the cost paid for it. Gains shall be credited to account 795, 'Other capital.' Losses shall be charged to account 795, *Other capital,* to the extent that previous net gains from sales or retirements of the same class of stock are included therein; otherwise, to account 616, *Other debits to retained earnings.*

5–5 *Joint liabilities.* The accounting company shall state as a liability in its balance sheet the difference between the total par value of securities jointly or severally issued by it and others and the portion of such liability which, under the joint arrangement, it is expected will be liquidated by the other party or parties to the joint arrangement. The amount of the jointly or severally issued securities expected to be liquidated by the other party or parties shall be shown as a contingent liability in accordance with instruction 5–6 pertaining to contingent assets and liabilities.

5–6 *Contingencies.* (a) The proper accounting treatment for contingencies depends upon whether the contingency is: *Probable:* the event or events are likely to occur; *Reasonably possible:* the chance of occurrence of the future event or events is more than remote, but less than likely; or *Remote:* the chance of occurrence of the future event or events is slight.

(b) Loss contingencies must be accrued when they are probable and the amount of loss can be reasonably estimated. Where they are only reasonably possible, only footnote disclosure is required. Where they are remote, footnote disclosure is not required, but is permitted.

(c) Gain contingencies usually are not reflected in the accounts since to do so might be to recognize revenue prior to its realization. Adequate disclosure shall be made of contingencies that might result in gain, but care shall be exercised to avoid misleading implications as to the likelihood of realization.

[42 FR 35017, July 7, 1977, as amended at 52 FR 4326, Feb. 11, 1987]

5–7 *Long-term obligations.* Commitments under unconditional purchase obligations associated with suppliers' financing arrangements and future payments on long-term borrowings and redeemable stock shall be disclosed in accordance with generally accepted accounting principles. Such disclosures shall not preclude accounting recognition if the substance of a financing arrangement is the acquisition of an asset or incurrence of a liability.

[47 FR 4266, Jan. 29, 1982, as amended at 52 FR 4321, Feb. 11, 1987]

INSTRUCTIONS FOR CLEARING ACCOUNTS

6–1 *Items to be charged.* In recognition of the fact that certain expenditures incident to the construction and the operation of property are not chargeable directly to any particular property investment or expense account, clearing accounts have been provided for the purpose of securing an equitable distribution of such items to the proper primary accounts.

6–2 *Material and stationery store expenses.* (a) To clearing accounts called *Material store expenses* and *Stationery store expenses* shall be charged expenses in connection with purchasing, handling and storing material and stationery in and distributing it from the company's storehouses. Including the pay of officers and employees in the purchasing and store departments and their traveling, office, and other expenses; also expenses, including wages, fuel, and supplies, of operating switching locomotives when exclusively assigned to the service of switching at material storehouses. (Expenses of incidental switching at material yards by locomotives in regular switching service shall be charged to the appropriate transportation accounts.) The pay and expenses of men employed in purchasing or inspecting a single class of material, such as ties, shall be added as

store expenses to the cost of that particular material.

(b) The total amount of storehouse expenses charged to these accounts shall be distributed among the accounts to which material and stationery has been charged, in proportion to the amounts charged to each account for the items issued, except that the amount representing the purchasing department expenses shall be apportioned on the value of the items issued which were purchased by that department. To avoid monthly fluctuations in the ratio of store expenses to the value of material and statonery purchased or issued, carriers may make a monthly apportionment on the basis of fair percentage rates, provided the store expense accounts are adjusted and closed out at the end of each year.

6–3 *Shop expenses.* (a) To a clearing account entitled *Shop expenses* shall be charged items of expense at shops, enginehouses, repair tracks, and other places where mechanical work is performed, not assignable directly to specific accounts. Such expenses shall be apportioned among the various accounts affected. The basis of distribution shall be the relative proportion which the total amount of charges to *Shop expenses* bears to the total of the directly distributed labor. To avoid monthly fluctuations in the ratio of shop expenses to the total of distributed labor, carriers are permitted to make the monthly apportionment on the basis of a percentage of the distributed labor, provided the shop expense account is adjusted and closed out at the end of the year.

(b) The expenses assignable to this account shall include the pay of foremen (who exercise supervision over all departments), their clerks, and other employees engaged in general work in and about shops, cost of heat, light and power; cost of small tools and supplies and water and power purchased; also cost of removal of snow and ice from transfer tables and shop yards, and other incidental shop expenses. To this account shall be charged expenses, including wages, fuel and supplies, of operating switching locomotives when exclusively assigned to switching service at shops (the expenses of incidental switching at shops by locomotives in transportation switching service shall be charged to appropriate transportation accounts).

6–4 *Gravel and sand pits and quarries.* (a) When a gravel or sand pit or quarry is opened for operations likely to extend over a long period, an account shall be set up designated, *Operations of gravel pit at* _____, or *Operations of quarry at* _____, as the case may be. To this account shall be charged cost of the land in excess of its estimated value after the gravel, sand, or stone has been removed (credit to the property account in which the cost of the land is included); payments for right to enter upon and remove ballast from land not owned by the carrier; cost of sinking test holes; and costs preparatory to opening the pit or quarry. To this account shall be charged also the cost, in excess of the estimated salvage value, of rails and fastenings, ties, other material and labor used in constructing tracks to and in the gravel pit or quarry (the estimated salvage being carried in an appropriate suspense account); cost of labor and train service employed in producing, quarrying, and loading ballast, including the cost of operation, repairs, and depreciation of power shovels and other machines and machinery; pay and expenses of watchmen; cost of explosives and hand tools, and miscellaneous expenses; and cost of installing, operating and maintaining signals and interlockers at gravel pits.

(b) Credit to the clearing account shall be made each month to cover the cost of ballast material produced during the month. The cost of production shall include the expenses directly assignable to the monthly output plus a proportion of the expenses not directly assignable, such as cost of land, tracks, machinery, and interlockers. This latter amount shall be computed upon the basis of the ratio which the monthly output bears to the total estimated yardage to be taken from the pit. When any portion of the product of such pits or quarries is sold, the cost thereof shall be credited to this clearing account and any related profit shall be credited to account 110, *Incidental.*

6–5 *Power plant operations.* (a) The accounting for the expenses of maintaining and operating an electric,

steam, or other power plant (both building and machinery) shall be determined by the purpose for which the power produced is used. When a power plant is intended and used for producing power solely for the carrier's own operations and the cost of operating the plant is chargeable to clearing account *Shop expenses,* or to any one specific account for operating expenses, the expenses of maintenance shall be charged to the appropriate maintenance accounts, and the cost of operation to the account appropriate according to the use of the power.

(b) When the power from such a plant is properly chargeable to more than one account, the expenses of maintaining and operating the plant shall be included in clearing account designated *Power plant operations.* The expense of maintenance shall be cleared from that account to the appropriate maintenance accounts. The expenses of operation shall be apportioned to the appropriate accounts upon the basis of quantity of power used for the various purposes.

(c) When a part of the power produced by a power plant is sold and the remainder is used in the carrier's own operations, the cost of maintaining and operating the plant shall be charged to a clearing account. The expense of maintenance shall be cleared from that account to the appropriate maintenance accounts. The proportion of the expenses of operation assignable to the power sold, on the basis of ratio of quantity of power sold to total quantity of power produced, shall be credited to this clearing account and any related profit shall be credited to account 110, *Incidental.* The remainder of the cost of operation shall be distributed to the appropriate expense accounts for the carrier's own operations.

(d) When power plants are intended and used solely for furnishing power to others, their investment cost shall be included in account 737, *Property used in other than carrier operations*, and the revenues and operating expenses shall be included in the accounts provided for operations of such property.

(e) The accounting for the maintenance of transmission systems and distribution systems shall be in accordance with instructions pertaining to power plant operations.

PROPERTY ACCOUNTS

Road

0 Road.

The several primary accounts included in this general account are designed to show the cost of land and road property owned by the carrier and devoted to transportation service.

2 Land for transportation purposes.

This account shall include the cost of land of necessary width acquired for roadway; the cost of land for station, office, shop, and other grounds; for ingress to or egress from such grounds; for borrow pits, waste banks, snow fences, sand fences, and other railway appurtenances; and for storage of material adjoining the right-of-way; the cost of land for wharves and docks and the cost of riparian or water rights necessary therefor; the cost of removing from the right-of-way and locating elsewhere the property of others, and the cost of the necessary land for relocation of the property, when such costs are assumed by the accounting carrier.

The carrier's records shall be kept in such manner as to show separately the cost of land purchased. Proceeds from the sale of timber or of improvements purchased with right-of-way, less any cost of removal, shall be credited to this account.

ITEMS OF EXPENSE

Abstracts.
Appraisals.
Arbitrators in condemnation cases.
Commissions paid to others.
Condemnation expenses, including court costs and special counsel fees.
Damages to property of others.
Deferred payments for right-of-way.
Ditches for waterways when part of consideration.
Judgments and decreed costs to clear or defend titles.
Notarial fees.
Plats.
Premiums on condemnation bonds.
Recording deeds.
Payments for relinquishment of cattle passes and other rights.
Removal and relocation of buildings and other structures not purchased.

Rent of land when part of consideration for purchase.
Right-of-way agents' compensation (engaged solely in acquiring right of way).
Taxes accrued and assumed at time of purchase.

NOTE A: The cost of land acquired in excess of that necessary for transportation operations shall be included in balance sheet account 737, ''Property used in other than carrier operations.'' When the purchase of land acquired for transportation operations involves land not used for such purposes, the charges to this account shall be based upon the estimated cost of only that portion which is used for such purposes, and the cost of the remaining land shall be included in account 737, ''Property used in other than carrier operations.'' Only the actual cost borne by the carrier for right-of-way and other lands acquired through vacation of streets and highways shall be included in this account. No donation should be considered as involved in the acquisition of such property.

NOTE B: Amounts paid for options to purchase land for use in transportation operations shall be charged to account 743, ''Other deferred debits.'' If the carrier subsequently purchases the land, the amount of the option payment shall be transferred to this account. If the carrier does not acquire the land and forfeits the option paid, the amount shall be charged to account 551, ''Miscellaneous income charges.''

3 Grading.

(a) This account shall include the cost of clearing and grading the roadway, and of constructing protection for the roadway, tracks, embankments and cuts.

(b) When a part of a bridge or trestle, or the entire structure, is converted by filling into an earth embankment, and the bridge or trestle is used in lieu of a temporary trestle which would otherwise be required for the filling, the estimated cost of such temporary trestle shall be included in the cost of the filling, and charged to this account. (See note A, under account 6, ''Bridges, trestles, and culverts.'')

(c) When a tunnel is converted into an open cut, the cost of clearing, grubbing, and excavating shall be included in this account. (Also see instruction 2–11.)

DETAILS OF ROADBED AND ITEMS OF EXPENSE

Advertising for contractors' bids.
Berm ditches.
Blasting.
Breakwaters.
Bulkheading.
Clearing land.
Cribbing.
Dikes (including those of earthen construction which are intended to function indefinitely).
Ditches (not required by right-of-way agreement).
Dressing slopes.
Excavation for conversion of tunnels into open cuts.
Filling bridges, trestles, and culverts.
Grading outfits.
Grubbing land.
Material taken from borrow pits.
New channels for streams.
Operations of steam shovels.
Payments for privilege of wasting material on the property of others.
Payments for waste banks off the right-of-way.
Retaining walls.
Revetments.
Riprap.
Spoil banks.
Temporary trestles for fills.
Tools for grading.
Wing dams.

[42 FR 35017, July 7, 1977, as amended at 49 FR 2255, Jan. 19, 1984]

4 Other right-of-way expenditures.

This account shall include the cost (in excess of cost of railway facilities installed, if any) actually borne by the carrier of improvement projects (other than public improvement projects), such as the construction of canals, farm and other private passes, pipe lines, drains, and other facilities across the carrier's right-of-way.

5 Tunnels and subways.

This account shall include the cost of tunnels and subways for the passage of trains, including apparatus for ventilating and lighting and safety devices therein, other than signals.

NOTE A: The cost of tracks, including guard rails, in tunnels shall not be charged to this account.

NOTE B: Station subways not highway crossings are includible in account 16, ''Station and office buildings.''

NOTE C: When a tunnel is converted into an open cut, the ledger value of the tunnel shall be credited to this account. The service value of the tunnel shall be charged to account 735, ''Accumulated depreciation; Road and equipment property.''

[42 FR 35017, July 7, 1977, as amended at 48 FR 7183, Feb. 18, 1983]

6 Bridges, trestles, and culverts.

This account shall include the cost of the substructure and superstructure of bridges, trestles, and culverts which carry the tracks of the carrier over water-courses, ravines, public and private highways, and other railways.

DETAILS OF BRIDGE STRUCTURES

Abutments.
Bridge signs.
Cofferdams.
Concrete and masonry ends for culvert.
Cribs.
Decking, including gravel for fire protection.
Dike protection.
Drainage systems.
Draw protection.
Drawbridge engines and machinery.
False work.
Guard timbers.
Ice breakers.
Painting (except repainting).
Pier protection.
Piers and foundations.
Pipe culverts.
Retaining walls.
Riprap around abutments.
Riprap at culverts ends.
Supports.
Water channels.
Waterproofing.
Wind dams.
Wing walls.

NOTE A: When a part or the entire structure of a bridge or trestle is converted, by filling, into an earth embankment, the ledger value of the structure, or of the portion thereof filled, shall be credited to this account. In case the bridge or trestle is used in lieu of a temporary trestle for the purpose of filling, the estimated cost of such temporary trestle shall be charged to account 3, ''Grading.'' The ledger value of the structure or portion thereof, filled, less the value of the salvage and the estimated cost of trestle charged to account 3 shall be charged to account 735, ''Accumulated depreciation; Road and equipment property.''

NOTE B: The cost of bridges to carry the carrier's tracks over undergrade crossings, including the necessary piers and abutments to sustain them, shall be included in this account.

7 Elevated structures.

This account shall include the cost of elevated structures and foundations of elevated railway systems. This account is applicable to structures other than earthwork, which are for the purpose of elevating tracks above the grade of streets, and which are not properly classifiable as bridges or trestles.

NOTE: The cost of stations and other structures built on elevated structures shall be accounted for according to the class of the structure and not in this account.

8 Ties.

(a) This account shall include the cost of cross, switch, bridge and other track ties used in the construction of tracks for the movement or storage of locomotives and cars (including tracks in shop, fuel station, supply yard areas, etc.), and the cost of additional ties subsequently laid in such tracks. This account should also include the cost of labor for unloading, distributing and placing ties in tracks.

(b) The cost of handling ties in general supply and storage yards shall be included as store expenses.

NOTE: The cost of ties used in the construction of car floats shall be included in the cost of such floating equipment, and the cost of ties used in the construction of temporary tracks, such as gravel-pit and quarry tracks, shall be included in the appropriate clearing accounts.

NOTE: Respacing crossties is to be considered maintenance and expense.

[48 FR 7183, Feb. 18, 1983]

9 Rails and other track material.

(a) This account shall include the cost of rails and other track material used in the construction of tracks for the movement or storage of locomotives and cars (including tracks in shop, fuel station, supply yard areas, etc.); the cost of welding two or more lengths or rail into continuous lengths for use in construction of tracks; and the cost of labor associated with unloading and installation of the rail and other track material.

(b) The cost of handling rails and *other track material* in general supply and storage yards shall be included as store expenses.

ITEMS OF OTHER TRACK MATERIAL

Angle bars.
Anticreepers.
Bumping posts.
Compromise joints.
Connecting rods.
Crossings, including foundations or bases.
Derails.
Frog blocking.
Frogs.
Guard-rail blocking.
Guard-rail clamps.

Guard-rail fasteners.
Guard rails, switch and other.
Main rods.
Nut locks.
Nuts.
Offset bars.
Rail braces.
Rail chairs.
Rail clips.
Rail joints.
Rail rests.
Rail shims.
Rail splices.
Splice bars.
Step chairs.
Switch chairs.
Switch crossings.
Switch lamps.
Switch locks and keys.
Switch points.
Switch stands.
Switch targets.
Switches.
Tie plates.
Tie plugs.
Tie rods.
Track bolts.
Track insulators.
Track spikes.

NOTE A: The cost of rails and other track material used in the construction of car floats shall be included in the cost of such floating equipment and the cost of rails and other track material used in the construction of temporary tracks, such as gravel-pit and quarry tracks, shall be included in the appropriate clearing accounts.

NOTE B: The following activities are considered as maintenance and should be expensed accordingly.

- Rail flaw detection
- Track inspection
- Shifting of existing track
- Removing weeds in track
- Transposing rail
- Restoring chipped and battered rail ends by welding and/or by rail grinding train or other such equipment.
- Gauging track
- Loading scrap track materials
- Lubricating rail
- Tightening bolts
- Resetting spikes and rail anchors in existing track
- Any other maintenance work not involving the placement of track material

[48 FR 7183, Feb. 18, 1983, as amended at 49 FR 2255, Jan 19, 1984; 52 FR 4326, Feb. 11, 1987]

11 Ballast.

(a) This account shall include the cost of gravel, stone, slag, cinders, sand, and like material used in ballasting tracks (including tracks in shop, fuel station, and supply yard areas, etc.) including cost of worktrain service and the cost of labor expended in placing ballast in tracks.

NOTE A: The cost of ballast used in the construction of temporary tracks, such as gravel-pit and quarry tracks, shall be included in the appropriate clearing accounts.

NOTE B: Earth placed to form a crown in the middle of the track is not considered as ballast.

NOTE C: The cost of ballast material placed on the decking of bridges solely for fire-protected purposes shall be included in account 6, ''Bridges, trestles and culverts.''

NOTE D: Surfacing (surface correction of existing ballast) is to be considered maintenance and expensed.

[48 FR 7183, Feb. 18, 1983, as amended at 49 FR 2255, Jan. 19, 1984]

13 Fences, snowsheds, and signs.

This account shall include:

(a) Fences. The cost of right-of-way fences and snow and sand fences, farm gates, cattle guards, wing fences, aprons, and hedges, on property not previously fenced, excluding those around stockyards, fuel stations, station and shop grounds, and building sites.

(b) Snowsheds. The cost of snowsheds, including initial cost of planting trees for protecting tracks from snow.

(c) Signs. The initial cost of signs other than those for identification of bridges, signals, stations and other structures.

SIGN ITEMS

Boundary signs.
Bridge-caution signs.
Crossing signs.
Curve and elevation markers.
Division-limit signs.
Mileposts.
Monuments.
Safety-first signs at crossings.
Section-limit signs.
Slow or stop signs.
Tunnel-caution signs.
Water-station signs.
Whistle signs.
Yard-limit signs.

NOTE A: The cost of fences (other than right-of-way boundary fences) around stockyards, fuel and water stations, and other building sites, shall be charged to the accounts appropriate for the cost of the structures.

NOTE B: The cost of signs for identifying bridges, signals, stations, and other structures shall be included in the account appropriate for the cost of the structures.

NOTE C: The cost of crossing signals, including crossing gates, shall be included in account 27, ''Signals and interlockers.''

NOTE D: This account shall also include the cost of replacing units of such property or substantial parts of fences or snowsheds the original cost of which are charged to this account.

16 Station and office buildings.

This account shall include the cost of station and general office structures, their fixtures, appurtenances, and furniture necessary to equip the buildings ready for use.

STATION AND OFFICE STRUCTURES AND DETAILS

Breakwaters for protection of buildings.
Buildings and rooms for trainmen.
Buildings on piers.
Coal transferring machinery (not on coal and ore wharves).
Coal trestles (not at fuel stations).
Drainage and sewerage systems.
Elevators and machinery.
Fences.
Freight cranes and derricks.
Freight handling machinery.
Gas-supply systems.
General office buildings.
Grain elevators and warehouses.
Heating plants.
Hoisting engines, for handling freight.
Lighting plants.
Ore-transferring machinery.
Pavement within ground limits.
Platforms, passengers, including planking between tracks.
Power distribution systems, interior.
Sidewalks.
Station footbridges (not highway crossings).
Station intertrack fences.
Telegraph offices.
Track scales.
Water-supply systems.
Yard offices.

NOTE A: Office buildings used exclusively in connection with maintenance of way shall be included in account 17, ''Roadway buildings.'' Those used exclusively in connection with maintenance of equipment shall be included in account 20, ''Shops and enginehouses.''

NOTE B: The cost of grading and preparing grounds both before and after the construction of station buildings, the cost of constructing sidewalks, driveways, and fences thereon, and the cost of permanent water rights shall be included in the cost of the buildings. The fees and expenses of architects employed to design or supervise the construction in the buildings shall also be included in the cost of the buildings. However, the cost of restoring the grounds after addition and betterment work shall be included in the appropriate operating expense accounts.

[42 FR 35017, July 7, 1977, as amended at 52 FR 4326, Feb. 11, 1987]

17 Roadway buildings.

This account shall include the cost of roadway shops and other roadway buildings, including drainage, water, gas, and sewer pipes and connections; and all machinery, fixtures, and furniture to equip the building ready for use.

LIST OF ROADWAY BUILDINGS

Breakwaters for protection of buildings.
Carpenters shops.
Fire-engine houses.
Frog shops for repair of track material.
Hand-car houses.
Lighting plants.
Lumber sheds.
Planning mills.
Rail reclamation plant.
Rail shops for repair of track material.
Rail welding plant.
Repair shops.
Scrap bins.
Section dwelling houses.
Tool houses.

NOTE: The cost of grading and preparing grounds both before and after the construction of roadway buildings, the cost of constructing sidewalks, driveways, and fences thereon, and the cost of permanent water rights, shall be included in the cost of the buildings. The fees and expenses of architects, employed to design or supervise the construction of the buildings, shall also be included in the cost of the buildings. However, the cost of restoring the grounds after addition and betterment work shall be included in the appropriate operating expense accounts.

18 Water stations.

This account shall include the cost of structures, facilities, and appliances necessary to equip for service, stations for supplying water. The cost of analyses of water preliminary to the establishment of water stations shall be included in this account.

WATER STATION STRUCTURES AND DETAILS

Boilers.
Breakwaters for protection of buildings.
Buildings on piers.

Cisterns and dams.
Fences.
Pump houses.
Purifying plants.
Reservoirs and wells.
Settling basins.
Stationary engines.
Steam pipes.
Tanks and foundations.
Water pipe lines.
Water-treating plants.

NOTE A: The cost of water stations used solely for supplying water to shops, power plants, stations, hotels, tenement houses, or section houses shall be charged to the appropriate accounts relating to the property so supplied.

NOTE B: The cost of a temporary water station established only for use during the construction period shall be included in the primary accounts to which is charged the cost of the work in connection with which the water station is used.

NOTE C: The cost of grading and preparing grounds both before and after the construction of water station buildings, the cost of constructing sidewalks, driveways, and fences thereon, and the cost of permanent water rights shall be included in the cost of the buildings. The fees and expenses of architects employed to design or supervise the construction of the buildings shall also be included in the cost of the buildings. However, the cost of restoring the grounds after addition and betterment work shall be included in the appropriate operating expense accounts.

19 Fuel stations.

This account shall include the cost of structures, facilities other than tracks, and appliances necessary to equip for service, stations for supplying fuel to locomotives and floating equipment.

FUEL STATION STRUCTURES AND DETAILS

Breakwaters for protection of buildings.
Buildings on piers.
Dumping machinery.
Elevating machinery.
Fences.
Fuel houses or stations.
Fuel-oil plants, pumps, and tanks.
Fuel platforms on wharves.
Stationary engines.
Weighing apparatus.

NOTE A: The cost of fuel stations, coal houses, etc., used solely for supplying fuel to shops, power plants, stations, hotels, tenement houses, or section houses shall be charged to the appropriate accounts relating to the property so supplied.

NOTE B: The cost of a temporary fuel station established only for use during the construction period shall be allocated to the primary accounts charged with the construction costs.

NOTE C: The cost of grading and preparing grounds both before and after the construction of fuel station buildings, the cost of constructing sidewalks, driveways, and fences thereon, and the cost of permanent water rights shall be included in the cost of the buildings. The fees and expenses of architects employed to design or supervise the construction of the buildings shall also be included in the cost of the buildings. However, the cost of restoring the grounds after addition and betterment work shall be included in the appropriate operating expense accounts.

20 Shops and enginehouses.

This account shall include the cost of buildings to be used as shops and enginehouses and storehouses for material for maintenance of equipment; foundations, except those special to particular machines and other apparatus; furniture and fixtures other than equipment chargeable to account 44, *Shop machinery*; drainage, sewerage, and water supply systems; and plants for heat and light.

SHOP AND ENGINEHOUSE STRUCTURES AND DETAILS

Air-compressor houses.
Bins for material.
Blacksmith shops.
Breakwaters for protection of buildings.
Buildings on piers.
Car sheds and shops.
Carpenter shops.
Electric-power distribution systems within buildings.
Enginehouses.
Fire engine houses.
Footbridges (not public highways).
Foundries and machine shops.
Gas-compressor houses.
Heating and lighting plants.
Laboratories.
Lumber sheds.
Material and supply truck tracks.
Motor-crane tracks.
Offices, shop.
Paint shops.
Pipe lines, air, and heat.
Pipe lines, gas, interior.
Planning mills and repair shops.
Platforms, shop and yard.
Scale houses and scales.
Scrap bins.
Sidewalks.
Steam-distribution systems, interior.
Storehouses.
Tanks, gas, and oil.
Test rooms.
Turntables.

Upholstering shops.
Warehouses.

NOTE A: The cost of distinct power plant buildings for shop purposes shall be included in account 29, ''Power plants.'' The cost of distribution systems leading from such power plants to shops shall be included in account 31, ''Power-transmission systems.''

NOTE B: The cost of grading and preparing grounds both before and after the construction of shop buildings, the cost of constructing sidewalks, driveways, and fences thereon, and the costs of permanent water rights shall be included in the costs of the buildings. The fees and expenses of architects employed to design or supervise the construction of the buildings shall also be included in the cost of the buildings. However, the cost of restoring the grounds after addition and betterment work shall be included in the appropriate operating expense accounts.

NOTE C: The cost of shop buildings devoted solely to the maintenance of way and structures shall be included in account 17, ''Roadway buildings.''

22 Storage warehouses.

This account shall include the cost of storage warehouses, including machinery and fixtures therein. The buildings herein referred to are not the ordinary freight warehouses or stations where freight is received for shipment, etc., but warehouses in which merchandise is stored and which the railway companies operate as storage warehouses.

NOTE A: The cost of grading and preparing grounds both before and after the construction of storage warehouse buildings, the cost of constructing sidewalks, driveways, and fences thereon, and the cost of permanent water rights shall be included in the cost of the buildings. The fees and expenses of architects employed to design or supervise the construction of the buildings shall also be included in the cost of buildings. However, the cost of restoring the grounds after addition and betterment work shall be included in the appropriate operating expense accounts.

NOTE B: The cost of warehouses leased to noncarriers shall be charged to account 737, ''Property used in other than carrier operations.''

23 Wharves and docks.

This account shall include the cost of wharves, docks, dry docks, slips, float bridges, and other landings for vessels, including the cost of necessary dredging and the cost of float-bridge machinery; also the cost of piling, pile protection, cribs, cofferdams, walls, and other necessary devices and apparatus for the operation or protection of wharves and docks.

DETAILS OF WHARVES AND DOCKS

Bridge pontoons.
Bulkheads.
Caissons and cribwork.
Dry docks.
Ferry-bridge machinery.
Ferry bridges.
Ferry slips.
Jetties and inclines.
Transfer-bridge machinery.
Transfer bridges.

NOTE A: The cost of coal and ore wharves and docks shall be included in account 24, ''Coal and ore wharves.''

NOTE B: The cost of the land on which wharves are built and cost of riparian or water rights for wharves and docks shall be charged to account 2, ''Land for transportation purposes.''

NOTE C: The cost of buildings located on wharves shall be included in the accounts appropriate for the class of buildings.

NOTE D: The cost of grading and preparing grounds both before and after the construction of wharves (other than coal and ore wharves), the cost of constructing sidewalks, driveways, and fences thereon, and the cost of permanent water rights shall be included in the cost of the wharves. However, the cost of restoring the grounds after addition and betterment work shall be included in the appropriate operating expense accounts.

24 Coal and ore wharves.

This account shall include the cost of wharves and docks for the transfer, treatment, blending, or storage of coal or ore, including the cost of necessary dredging and of conveyors, machinery, and fixtures.

NOTE A: The structures referred to in the account do not include small transfer or storage trestles or wharves at stations where coal is stored or delivered, such trestles being classed as station buildings.

NOTE B: The cost of grading and preparing grounds both before and after the construction of coal and ore wharves, the cost of constructing sidewalks, driveways, and fences thereon, and the cost of permanent water rights shall be included in the cost of the wharves. The fees and expenses of architects employed to design or supervise the construction of whaves shall also be included in the cost of the wharves. However, the cost of restoring the grounds after addition and betterment work shall be included in the appropriate operating expense accounts.

25 TOFC/COFC terminals.

This account shall include the cost of structures, fixtures, machinery and appurtenances comprising terminals used for loading and unloading trailers and containers on and from flat cars.

TOFC/COFC TERMINAL STRUCTURES AND DETAILS

Cranes and hoists, including related machinery and appurtenances.
Drainage and sewerage.
Fences.
Grading and preparing grounds for TOFC/COFC terminals.
Offices, TOFC/COFC terminal.
Lighting system.
Platforms, ramps and appurtenances.
Power distribution systems.
Sidewalks, pavements and driveways on terminal grounds.
Terminal trucks and tractors.

NOTE A: ''Trailer,'' as used in the text and elsewhere in this system of accounts unless otherwise indicated in the context, means trailer bodies used in TOFC/COFC service which are permanently mounted on running gear. ''Containers'' means trailer bodies used in TOFC/COFC service which are not permanently mounted on wheels or chassis, but are separated from such running gear before being loaded on flat cars.

NOTE B: The cost of grading and preparing grounds both before and after the construction of TOFC/COFC terminals, the cost of constructing sidewalks, driveways, and fences thereon, and the cost of permanent water rights shall be included in the cost of the buildings. The fees and expenses of architects employed to design or supervise the construction of the buildings shall also be included in the cost of the buildings. However, the cost of restoring the grounds after addition and betterment work shall be included in the appropriate operating expense accounts.

26 Communication systems.

This account shall include the cost of telegraph, telephone, radio, radar, inductive train communication, and other communication systems, including terminal equipment.

DETAILS OF TELEGRAPH AND TELEPHONE TERMINAL EQUIPMENT

Batteries.
Cables and wires, interior.
Carrier terminating equipment.
Conduits, interior.
Connecting wires.
Current-controlling instruments.
Electric generators and motors.
Electric meters.
Engines, stationary.
Fuses and mechanical protectors.
Rectifiers.
Rheostats.
Sending and receiving instruments.
Switchboards.
Telegraph repeaters.
Telephone repeaters.
Teletypewriters.
Testing outfits.
Transformers.

DETAILS OF TELEGRAPH AND TELEPHONE OUTSIDE PLANT

Aerial attachments.
Braces.
Brackets.
Cable boxes and appurtenances.
Cable and wires, aerial.
Conduits and appurtenances.
Cross arms.
Gas and associated facilities for cables.
Guy stubs.
Guy wires.
Insulators.
Load coils.
Submarine cables and connections.
Telephone pole boxes.
Towers.
Underground cables and connections.

DETAILS OF RADIO, RADAR, AND INDUCTIVE TRAIN COMMUNICATION EQUIPMENT

Aerials or antenna, and attachments.
Buildings or towers used exclusively for wireless.
Control units.
Power generating, converting, or supply equipment.
Radar console and associated equipment.
Roadside or office equipment for all wireless systems operated on special channels between train and train, train and tower or office, or between ship and shore.
Specialized testing and repair equipment.
Transmitters and receivers, including mobile units.

NOTE A: Radio, radar or trainphone equipment (except portable apparatus) which is permanently attached to locomotives, cars, work equipment, or other rolling stock or floating equipment shall be included in the same accounts as the equipment on which installed. Wireless sets for instruction, advertising, or entertainment shall be included in the same accounts as the building in which located.

NOTE B: Communication systems of limited extent, not connected with other systems used for special purposes and usually installed within a single building, group of buildings, or within the limits of a station or shop layout or yard, shall be included in the same account as the building in which located or in the account appropriate for the service with which associated.

ITEMS

Buzzers, bells, dictaphone or other inter-office communication systems in an office or group of buildings.
Loud speakers, bells, or whistles in shop and other yards.
Loud speakers, public address devices, press button control lights, telautograph or other systems in stations or on platforms.
Whistles, klaxons, or horns operated from signals towers.

NOTE C: Test sets shall be classified as tools and included in the account appropriate for their use.

27 Signals and interlockers.

This account shall include the cost of interlocking and other signals apparatus for governing the movements of locomotives, cars, and trains, and for the protection of traffic at crossings, including towers and other buildings, furniture, fixtures, and machinery in connection therewith; roadway installations for train control and remote control including the cost of the initial tests of such installation; also the cost of buildings and machinery of power plants used primarily for the production of power for the operation of signals and interlockers.

ITEMS

Automatic-train control devices other than on equipment.
Call-bell systems along track to call in flagmen.
Call boxes, electric.
Car-retarder systems.
Centralized traffic control.
Crossing flasher-light signals.
Crossing gates, highway and railway.
Crossing signals bells.
Crossing warning signals.
Interlocker buildings and machinery.
Power apparatus primarily for the operation of signals and interlockers.
Power-distribution lines primarily for the operation of signals and interlockers.
Signal buildings.
Signal machinery, poles and foundations.
Train-order signals.

NOTE A: When signal or interlocking apparatus is located in a station building, only the cost of the signal or interlocking apparatus shall be charged to this account. The entire cost of the building shall be included in account 16, ''Station and office buildings.''

NOTE B: The cost of track material, such as switches, special rail braces, special roads, special track fastenings, split rails, derails, derail stands, and frogs, used in connection with interlockers, shall be included in account 9, ''Rail and other track material.''

NOTE C: When derails are arranged so as to be thrown from switch stands, the cost of labor expended in the installation of the connections between the switch stand and derail and the devices for throwing the derail shall be included in account 9, ''Rail and other track material.'' The cost of the material shall be included in account 9, ''Rail and other track material.''

NOTE D: The cost of grading and preparing grounds both before and after the construction of signal and interlocker buildings, the cost of constructing sidewalks, driveways, and fences thereon, and the cost of permanent water rights shall be included in the cost of the buildings. The fees and expenses of architects employed to design or supervise the construction of the buildings shall also be included in the cost of the buildings. However, the cost of restoring the grounds after addition and betterment work shall be included in the appropriate operating expense accounts.

[42 FR 35017, July 7, 1977, as amended at 52 FR 4326, Feb. 11, 1987]

29 Power plants.

This account shall include the cost of power-plant and substation buildings (housing machinery provided for in account 45, ''Power-plant machinery''); all foundations other than those special to particular machines and apparatus; and also dams, canals, pipe lines, and accessories devoted to the utilization of water for power. Gas and sewer pipes and their connections, fixtures (including wiring) for lighting and heating, and furniture and miscellaneous fixtures shall be considered as a part of the power-plant buildings.

POWER-PLANT STRUCTURE ITEMS

Buildings.
Coal bunkers, pockets and trestles.
Fences (other than right-of-way boundary fences).
Fixtures for lighting (including wiring) and heating power-plant buildings.
Foundations (except special foundations for machines and other apparatus).
Fuel-oil tanks.
Furniture.
Hose and appliances for protecting buildings against fire.
Pavement within ground limits.
Permanent rights in water supply.
Platforms.
Smoke stacks and chimneys and their foundations when distinct from and not resting on boilers.
Water, sewer, gas, and drainage, pipes and connections.
Wells (but not pumps).

DAM, CANAL, AND PIPE-LINE ITEMS

Aqueducts.
Bridges.
Fences (other than right-of-way boundary fences).
Footbridges.
Reservoirs.
Roadways.
Sluices.
Valves.
Water rights.

NOTE A: The cost of power-plant machinery, including stacks resting on boilers, and special foundations for machines, shall be included in account 45, ''Power-plant machinery.''

NOTE B: The cost of the buildings and the power machinery and other apparatus of plants used primarily for operating signals and interlockers shall be included in account 27, ''Signals and interlockers.''

NOTE C: Investment in buildings and machinery of detached plants for furnishing power both for operating purposes and for sale shall be included in this account and in account 45, ''Power-plant machinery,'' respectively. When plants are intended and used primarily for generating power for sale to other than common carriers, the investment shall be included in account 737. ''Property used in other than carrier operations.''

31 Power-transmission systems.

This account shall include the cost of systems for conveying electricity, steam, and compressed air from producing plants to place or building where used; also the cost of conduits and of poles, cross arms, insulator pins, brackets, and other pole fixtures, and of other structures for power-transmission and distribution systems, including those for electric railway operation, and lighting systems for general lighting purposes.

POWER-TRANSMISSION SYSTEM ITEMS

Air pipe-line in car yards.
Compressed air pipe-lines.
Compressed air storage tanks (not at power houses or shops).
Cut-outs (not at power houses and substations).
Overhead trolley wires.
Rail-insulating devices.
Steam-heating pipe-lines in car yards.
Switchboards (not at power houses and substations).
Third-rail insulation and protection.
Transformers (not at power houses and substations).
Underground power tubes.

POLE-LINE AND CONDUIT ITEMS

Braces and other support for holding poles in position.
Brackets, cross arms, and other pole fixtures.
Conduits for wires and cables.
Cutting and trimming trees.
Guy stubs and wires.
Manholes.
Poles and towers.
Sewer traps.
Stenciling or painting letters or numbers on poles.

NOTE A: The cost of wire and pipe-distribution systems located within shop buildings and in stations and office buildings shall be included in the cost of the buildings, except that lateral service lines to equipment-shop machines shall be included in account 44, ''Shop machinery.'' The cost of distribution systems used primarily for operating signals and interlockers shall be included in account 27, ''Signals and interlockers.''

NOTE B: The cost of conduits and of poles and fixtures for telegraph and telephone, or signal lines shall be included in account 26, ''Communication systems,'' or account 27, ''Signals and interlockers,'' as appropriate. The cost of poles and conduits used for telegraph and telephone or signal lines and for power-distribution lines shall be included in the account appropriate according to their predominant use.

35 Miscellaneous structures.

This account shall include the cost of all permanent structures not provided for elsewhere, including all fixtures and furniture to equip them for use.

MISCELLANEOUS STRUCTURES ITEMS

Floodlight tower installations in yards.
Grain elevators where grain is stored for owners.
Storehouses for general purpose materials and supplies.

NOTE A: Small storage elevators at way stations where grain is received for shipment are classed as station buildings.

NOTE B: The cost of grading and preparing grounds both before and after the construction of miscellaneous structures and the cost of constructing sidewalks, driveways, and fences thereon, shall be included in the cost of the structures. The fees and expenses of architects employed to design or supervise the construction of the buildings shall also be included in the cost of the structures. However, the cost of restoring the grounds after addition and betterment work shall be included in the appropriate operating expense accounts.

37 Roadway machines.

This account shall include the cost of the initial outfit of roadway machines provided for the maintenance of roadway and structures at the time the road is opened for commercial traffic, and the cost of additional roadway machines acquired subsequently. This account shall also include the cost of on and/or off-track automotive vehicles, permanently equipped with special-purpose machinery such as hydraulic cranes, derricks, ditching apparatus, pile-driving equipment, and similar machines listed below, and used exclusively in maintenance of way and structures.

LIST OF ROADWAY MACHINES

Adzers.
Anchor applicators.
Ballast regulators.
Cars, lever.
Cars, motor inspection.
Cars, push.
Cars (small), crane, for supply yards and general use.
Concrete mixers.
Ditching machines.
Dredging machines.
Engines, portable.
Grading outfits.
Hydraulic outfits.
Jacks, hydraulic.
Pile drivers.
Plows, unloading.
Rail grinders.
Rail unloaders.
Rock crushers.
Scarifier-inserters.
Spike drivers.
Spike pullers.
Tie tampers.
Timber trucks.
Trackliners.

NOTE A: When an important addition and betterment project or the construction of a new line necessitates the purchase of roadway machines to be used exclusively thereon, the cost shall be included in the accounts to which the cost of the work is charged. The amount realized from any subsequent sale, or the appraised value of the machines retained after the completion of the special work for which they were purchased, shall be credited to the accounts charged with the cost thereof. The appraised value of such machines retained shall be debited to this account and thereafter considered as the cost of such property.

NOTE B: The cost of machines for the equipment of roadway shops shall be included in account 17, ''Roadway buildings.''

NOTE C: The cost of roadway machines, such as pile drivers, log loaders, hoist engines, and concrete mixers, when permanently mounted for movement on the carrier's tracks, shall be included in account 57, ''Work equipment.''

39 Public improvements; construction.

This account shall include amounts assessed on carrier property by governmental authority (by mutual agreement or otherwise) to cover the cost of constructing public improvements, when such assessments are made against property within defined areas of taxing districts. The account also shall include carrier's portion of the cost of public improvements constructed under governmental requirements. (See instruction 2–17.) The entire amount of each assessment and other liabilities for public improvements shall be included in this account as soon as the amounts are determined.

ITEMS

Cost of land outside carrier's right-of-way to provide for the relocation of streets or highways or providing slopes therefor.
Cost of removal and relocation of buildings and other structures in connection with the construction of streets and highways.
Curbing streets and highways.
Damage to property of others when incidental to highway construction.
Drainage systems.
Engineering—When such costs apply to items chargeable to this account.
Flood protection.
Grading streets and highways.
Guttering streets and highways.
Irrigation systems.
Levees.
Overhead highway bridges, including approaches.
Paving streets and highways, including such pavings at crossings.
Planking, highway crossings.
Sewer systems.
Sidewalks.
Street-lighting systems.
Water works.

NOTE A: The cost of railway facilities installed in connection with joint public improvement projects if not in excess of total costs borne by the carrier shall be included in accounts other than account 39, ''Public improvements; construction,'' appropriate for the class of property installed. Any costs borne by the carrier in excess of the cost of railway facilities shall be charged to this account. The carrier shall charge the cost of assessments for public improvements which

is borne by joint owner tenants to the appropriate property accounts other than account 39, ''Public improvements; construction,'' assessments from tenant owners shall be credited to account 795, ''Other capital.'' The owner tenants shall charge their proportionate share of the assessment to account 721, ''Investments and advances; affiliated companies.'' The carrier shall charge the appropriate property accounts other than the public improvement account for the cost of public improvement assessments borne by nonowner tenants with contra credit to account 38–00–00, ''Purchased services—Joint facility—Credit,'' and the tenants shall charge their proportionate share of the assessments to account 37–00–00, ''Purchased services—Joint facility—Debit.''

NOTE B: The cost to the carrier of maintaining public improvements shall be included in operating expenses.

NOTE C: Any portion of the cost of public improvements which is included in the general tax levy for a regular taxing district shall be included in the account appropriate for the taxes.

NOTE D: The amount of the deferred payments of assessments for public improvements, if payments are to be made within one year, shall be included in account 763, ''Other current liabilities.'' If the payments are spread over a longer period they shall be credited to account 782, ''Other liabilities.'' The interest paid on such assessments shall be included in account 547, ''Interest on unfunded debt.''

NOTE E: Interest imposed for failure to pay assessments within the allocated time shall be charged to Account 547, Interest on unfunded debt. Any related penalties shall be charged to Account 551, Miscellaneous income charges.

NOTE F: Assessments on noncarrier property for the cost of constructing public improvements shall be charged to account 737, ''Property used in other than carrier operations.''

[42 FR 35017, July 7, 1977, as amended at 52 FR 4326, Feb. 11, 1987]

44 Shop machinery.

This account shall include the cost of machinery and other apparatus in shops and engine houses, including the cost of special foundations and installation and cost of small hand tools necessary first to equip a shop.

LIST OF SHOP MACHINERY

Ash conveyors.
Air compressors.
Belting.
Blowers.
Boilers for furnishing power.
Boring machines.
Cars, motor.
Cars, push.
Cranes.
Drilling machines.
Drop tables.
Forges.
Framing machines.
Furnaces.
Grinding and polishing machines.
Hoists.
Hydraulic jacks.
Lathes.
Lifting magnets.
Metal chimneys.
Milling machines.
Motors.
Pipe cutting and threading machines.
Planers.
Pneumatic hammers.
Power equipment.
Punches.
Riveters.
Saws.
Shafting.
Shapers.
Slotters.
Stationary engines.
Steam hammers.
Vises.
Welding machines.
Woodworking machines.

NOTE A: The cost of power-plant machinery and other apparatus for shop purposes, when located in distinct buildings, shall be included in account 45, ''Power-plant machinery.''

NOTE B: The cost of foundations other than those special to particular machines and other apparatus shall be included in the cost of the building and not in this account.

45 Power-plant machinery.

This account shall include the cost of machinery and other apparatus in power plants and substations for generating and transforming power used for the operation of trains and cars or to furnish power, heat, and light for stations, shops, and general purposes, and also the cost of foundations special to particular machines or other apparatus including the cost of installation.

ITEMS

Air compressors.
Ash-conveying machinery.
Battery-charging apparatus.
Boiler-room appliances and tools.
Boilers and fittings.
Circuit breakers.
Furnaces.
Ice-manufacturing machinery and apparatus.
Lubricating devices.
Mechanical stokers.
Metal stacks on boilers.

Refrigerating—machinery and apparatus.
Rotary converters.
Sewer connection for machinery.
Coal-conveying machinery.
Condensers.
Cranes.
Draft machinery.
Dynamos.
Engine-room appliances and tools.
Feed water heaters.
Special foundations for machines.
Steam-distribution systems within the plant.
Switchboards.
Tanks.
Tractors, trailers, and trucks, permanently assigned to power plants.
Transformers.
Turbines.
Water meters.
Well pumps.

NOTE A: The cost of power machinery and other apparatus installed in a shop as part of the shop equipment shall be included in account 44, ''Shop machinery.''

NOTE B: The cost of power machinery and other apparatus installed in station and office buildings shall be included in account 16, ''Station and office buildings.''

NOTE C: The cost of buildings and the power machinery and other apparatus of plants used primarily for operating signals and interlockers shall be included in account 27, ''Signals and interlockers.''

NOTE D: The cost of foundations other than those special to particular machines and other apparatus shall be included in the cost of the building and not in this account.

NOTE E: The cost of machinery and buildings of detached plants for producing power both for operating purposes and for sale shall be included in this account and in account 29, ''Power plants,'' respectively. When plants are intended and used primarily for generating power for sale to noncarriers the investment shall be included in account 737, ''Property used in other than carrier operations.''

Equipment

50 Equipment.

The several primary accounts included in this general account are designed to show the cost of the several classes of equipment vehicles and shop and power plant equipment owned by the carrier, or held under equipment trust agreements or other contractual obligation for purchase of the property.

52 Locomotives.

(a) This account shall include the cost of locomotives and tenders purchased or built by the carrier, and of appurtenances, furniture, and fixtures necessary to equip them for service, including the cost of inspection, setting up, and trying out after receipt from builders, and transportation charges to the carrier's line. This account may also include the cost of spare engines carried on hand for the purpose of temporarily replacing similar units removed from locomotives for overhaul, repair or other reason.

(b) Records shall be maintained to reflect separately the investment cost of locomotives on the basis of their initial identification for depreciation purposes; i.e., road passenger, road freight, road switching and yard switching.

LIST OF APPURTENANCES TO LOCOMOTIVES

Airbrake equipment and hose.
Arm rests.
Brake fixtures.
Cab cushions.
Clocks.
Fire-extinguishing apparatus.
Gongs.
Headlamps.
Metallic packing.
Pneumatic sanding equipment.
Radio equipment, permanently attached.
Seat boxes.
Signal lamps.
Speed recorders.
Steam-gauge lamps.
Steam-heat equipment and hose.
Storm doors.
Tool boxes.
Train-signal equipment and hose.

NOTE: Cars with motor equipment are not to be classed as locomotives.

53 Freight-train cars.

This account shall include the cost of freight-train cars of all classes, such as motor-driven cars, purchased or built by the carrier, including all appurtenances, furniture, and fixtures necessary to equip them for service, and the cost of inspection and transportation charges to the carrier's line.

LIST OF FREIGHT-TRAIN CARS

Automobile.
Ballast (commercial).
Beer.
Box.
Cabin.
Caboose.
Charcoal.
Coal.
Coke.
Dump (commercial).

Express.
Flat.
Fruit.
Furniture.
Gondola.
Gondola (hopper).
Gondola (long).
Hay.
Lime.
Mail.
Oil tank.
Ore.
Logging.
Platform.
Polling.
Poultry.
Produce.
Rack.
Refrigerator.
Stock.
Tank and water (when used as commercial cars).

LIST OF APPURTENANCES TO FREIGHT-TRAIN CARS

Air-brake equipment, including hose.
Cooking equipment and utensils.
Heating units.
Lamps and fixtures.
Loading devices.
Refrigeration units.
Seats.
Speed recorders.
Train-signal equipment, including hose.
Water tanks.

54 Passenger-train cars.

This account shall include the cost of passenger-train cars of all classes, such as motor-driven cars, purchased or built by the carrier, including all appurtenances, furniture, and fixtures necessary to equip them for service, and cost of inspection and transportation charges to the carrier's line.

LIST OF PASSENGER-TRAIN CARS

Automobile.
Baggage.
Baggage-express.
Baggage-mail.
Baggage-mail-express.
Buffet.
Cafe, chair, and club.
Dining.
Library.
Milk.
Observation.
Parlor.
Parlor-baggage.
Passenger.
Passenger-baggage.
Passenger-baggage-mail.
Postal.
Refrigerator-express.
Sleeping.
Smoking.
Tourists.

LIST OF APPURTENANCES TO PASSENGER-TRAIN CARS

Air-brake equipment including hose.
Bedding.
Chairs.
Coat hooks.
Curtains and fixtures.
Cushions.
Electric bells.
Floor coverings.
Heating equipment.
Ice boxes.
Ice tanks.
Kitchen equipment and utensils.
Lighting equipment.
Mail catchers.
Parcel racks.
Ranges and boilers.
Seats.
Speed recorders.
Steam-heat hose.
Table china.
Table glassware.
Table linen.
Table silver.
Toilet equipment.
Train-signal equipment, including hose.
Water tanks.

55 Highway revenue equipment.

(a) This account shall include the cost of highway vehicles used in revenue transportation service, including pickup and delivery service, substitute line-haul service, and TOFC/COFC service; also the cost of appurtenances (such as radio communication equipment) necessary to equip them for service, and the inspection and transportation costs and charges required for delivery of the vehicles into the carrier's revenue service.

(b) Records shall be maintained to identify the carrier's investment in the following equipment, including appurtenances:

LIST OF HIGHWAY REVENUE EQUIPMENT

Bogies.
Buses.
Chassis.
Containers.
Semi-trailers.
Tractors.
Trailers.
Trucks.

LIST OF APPURTENANCES TO HIGHWAY REVENUE EQUIPMENT

Fire extinguishers.
Heating units.
Radio communication equipment.
Refrigeration units.
Rigging equipment.
Road dollies.
Tarpaulins.

NOTE: The cost of trucks and tractors, which are used exclusively at TOFC/COFC terminals for loading and unloading trailers and containers on and from flat cars shall be charged to account 25, ''TOFC/COFC terminals.''

56 Floating equipment.

This account shall include the cost of marine or floating equipment of all kinds except work equipment, purchased or built by the carrier, including all appurtenances, furniture, and fixtures necessary to equip it for service, and cost of inspection and transportation charges to the carrier's line.

LIST OF FLOATING EQUIPMENT

Barges.
Canal boats.
Car and other floats.
Ferryboats.
Lighters.
Power launches.
Power lighters.
Scows.
Steam boats.
Steamships.
Transfer boats.
Tugboats.

LIST F APPURTENANCES TO FLOATING EQUIPMENT

Anchors.
Barometers.
Beds and bedding.
Binnacle lamps.
Blocks and tackle.
China, crockery, and glassware.
Chronometers.
Compasses.
Desks and furniture.
Engines and foundations.
Fire buckets and extinguishers.
Floor coverings.
Gangplanks.
Heating equipment
Hoisting equipment.
Kitchen equipment.
Life preservers.
Lighting equipment.
Linen.
Logs.
Machinery and foundations.
Masts.
Boilers and foundations.
Cables.
Capstan bars.
Charts.
Pianos and other musical instruments.
Pumps.
Railings.
Rigging.
Scales.
Seats, chairs, and cushions.
Spyglasses and telescopes.
Steam distribution systems.
Steering equipment.
Ticket cases.
Tool boxes and tools.
Tracks on car floats.
Ventilating equipment.

57 Work equipment.

This account shall include the cost of work equipment, including motor-driven equipment, purchased or built by the carrier; cost of appurtenances, furniture, and fixtures necessary to equip it for service; and cost of inspection and transportation charges to the carrier's line.

LIST OF RAIL WORK EQUIPMENT

Air-brake instruction cars.
Ballast cars.
Ballast unloader cars.
Boarding cars.
Bridge cars.
Business cars.
Camp cars.
Cinder cars.
Concrete mixers (mounted).
Derrick cars.
Dirt spreaders (mounted).
Ditching cars.
Dump cars.
Dynamometer cars.
Gas tank cars.
Grading cars.
Gravel cars.
Indicator cars.
Locomotive tanks used permanently as water cars.
Locomotives.
Officers' cars.
Outfit cars.
Painters' cars.
Pay cars.
Pile drivers (mounted).
Rail cars.
Rail saws (mounted).
Salt cars.
Sanding cars.
Scale test cars.
Scraper cars.
Snow dozers.
Snow drags.
Snow plows (moved by but not attached to locomotives).

Sprinkling cars.
Steam shovels.
Steam wrecking derricks.
Supply cars.
Sweeper cars.
Tool cars.
Tool and block cars.
Water cars.
Weed burners (mounted).
Wrecking cars.

LIST OF FLOATING WORK EQUIPMENT

Derricks.
Dredges.
Pile drivers.

58 Miscellaneous equipment.

(a) This account shall include the cost of automobiles, trucks and other highway equipment not used in revenue transportation service and not provided for elsewhere; the cost of airplanes; the cost of appurtenances (such as radio communication equipment) necessary to equip them for service; and the inspection and transportation costs and charges required for delivery of the vehicles to the carrier.

(b) The cost of on and/or off-track automotive vehicles, which are permanently equipped with special-purpose machinery and used exclusively in maintenance of way and structures, shall be charged to account 37, *Roadway machines*.

LIST OF MISCELLANEOUS EQUIPMENT

Airplanes.
Automobiles.
Buses.
Emergency repair vehicles.
Road dollies.
Semi-trailers.
Tractors.
Trailers.
Trucks.
Wreckers.

LIST OF APPURTENANCES TO MISCELLANEOUS EQUIPMENT

Fire extinguisher.
Radio communication equipment.
Rigging equipment.
Tarpaulins.

59 Computer systems and word processing equipment.

This account shall include the cost of mainframe and mini-computers and data processing equipment as well as the cost of word processing equipment that is not dedicated to a particular function. Essentially this account consists of all computer-related equipment that remains under the control of the data processing department. This account shall also include the cost of foundations, power supply, fixtures, appurtenances and other devices to prepare this equipment for use.

ITEMS

Mainframes, Mini-computers, Word processing systems, Printers, Monitors, Modems, Storage devices.

NOTE A: The cost of micro computers, data processing equipment, and word processing equipment which are an integral part of and essential to the operation of a separate facility shall be charged to the appropriate property account for that facility.

NOTE B: Carriers desiring to adopt other methods of accounting for computers and word processing equipment that are considered more suitable for their operational structure shall submit justification and supporting documents to the Board for consideration and decision.

[52 FR 4326, Feb. 11, 1987]

General Expenditures

70 General expenditures.

The primary accounts of this general account are designed to include expenditures made in connection with the acquisition and construction of original road and equipment, and with extension, additions, and betterments to road and equipment property, when such expenditures cannot properly be included in any of the foregoing accounts as a part of the cost of any specific work. When assignable, such expenditures shall be included in the cost of the property for which the expenditures occurred.

76 Interest during construction.

(a) When any bonds, notes, or other evidences of indebtedness are sold, or any interest-bearing debt is incurred for acquisition and construction of original road and equipment, extensions, additions, and betterments, the interest accruing on the part of the debt representing the cost of property chargeable to road and equipment accounts (less interest, if any, allowed by depositaries on unexpended balances) after such funds become available for

use and before the receipt or the completion or coming into service of the property so acquired shall be charged to this account.

(b) When such securities are sold at a premium, the proportion of such premium assignable to the time between the date of the actual issuance of the securities and the time when the property acquired or the improvement made becomes available for service shall be credited to this account.

(c) This account shall also include such proportion of the discount and expense on funded debt issued for the acquisition of original road, original equipment, road extensions, additions, and betterments, as is equitably assignable to the period between the date of the actual issuance of securities and the time when the property acquired or the improvement made become available for the service for which it is intended. The proportion of discount and expense thus chargeable shall be determined by the ratio between the period prior to the completion or coming into service of the facilities or improvements acquired and the period of the entire life of the securities issued.

NOTE A: Interest on bonds, notes, or other evidences of indebtedness accruing before the proceeds from the sale of the securities become available for use shall not be included in this account, nor shall there be included any interest accruing after the property with respect to which the proceeds are expended is received or becomes available for use in connection with commercial service.

NOTE B: If securities issued or assumed by the carrier are subsequently sold or exchanged by or for the carrier, the excess of the par value and accrued interest of the securities over the actual money value of the consideration received shall be deemed a discount. In no case (except as provided in the third paragraph of this account) shall discount be included as part of the cost of items included in the accounts prescribed in this classification.

NOTE C: Whenever interest, premium, or discount assignable to the construction period is incurred in connection with an expenditure covered by some specific road and equipment account or accounts, such interest, premium, or discount shall be charged directly to the specific accounts to which it is related. Unless provided for otherwise, interest costs shall be capitalized in accordance with generally accepted accounting principles.

NOTE D: This account shall not include interest during the construction period on the carrier's own funds expended in connection with the acquisition or construction of original road and equipment, extensions, additions, and betterments.

(5 U.S.C. 553; 49 U.S.C. 10321)

[42 FR 35017, July 7, 1977, as amended at 46 FR 10920, Feb. 5, 1981]

Other Property Accounts

80 Other elements of investment.

(a) This account shall include amounts resulting from adjustment of the primary property accounts to conform with cost of property in valuation records. The amount in this account shall be cleared on a consistent basis as property is retired from service or otherwise in accordance with the rules in paragraphs (b), (c), and (d) of this account. Any material amount in this account assignable to property previously retired from service shall be cleared immediately.

(b) When property is retired from service, an equitable portion of the balance in this account assignable to such property shall be cleared when the retirement entry is made. The amount so cleared, when a debit, shall be charged to account 551, *Miscellaneous income charges*, or, when a credit, shall be recorded in account 519, *Miscellaneous income*. The exception to this general rule with respect to a credit balance assignable to property retired is that when property classified as depreciable is retired from service and the balance in the accumulated depreciation account for the property is materially deficient, because of sudden retirement or other unusual cause, the portion of a credit balance cleared for the retirement, equal to the deficiency, shall be applied to reduce the amount of loss otherwise chargeable to the accumulated depreciation account.

(c) A carrier may apply to the Board for authority to clear the entire balance from this account immediately or amortize the balance over a short period of time by appropriate inclusion in account 616, *Other debits to retained earnings*, or account 606 *Other credits to retained earnings*. Any amount so authorized or directed by the Board to be

cleared and written off to retained income shall be in lieu of amounts includible in accounts indicated in paragraph (b).

(d) Other plans for clearance, disposition, or classification of a balance in this account in conformity with sound accounting principles may be submitted to the Board with suitable details for consideration. This includes application for disposition of a balance in this account attributable to reduction of capitalization in a reorganization. An accounting procedure so applied for shall become effective only after Board approval. Each carrier shall maintain a record of items initially included in and cleared later from this account and the basis used in computing such items.

NOTE: The amounts attributable to past mergers, consolidations and purchases of property included in this account shall be merged with the adjustment made pursuant to paragraph (a) of this text.

90 Construction in progress.

This account shall include expenditures incurred by the carrier in the process of constructing road and equipment with its own forces or under contract during the period prior to the time property is placed in transportation operations, including cost of materials and supplies located at point of use and of necessary land acquired for such projects. When a project is completed or when a segment of a large project is completed and placed in service, the cost of the completed project or the completed segment thereof shall be transferred to the appropriate road and equipment primary accounts. Separate subaccounts may be maintained for road, equipment, or other classes of expenditures. Expenditures for relatively unimportant projects may be included directly in primary accounts.

RAILWAY OPERATING REVENUE ACCOUNTS

Transportation Revenue Accounts

100 Transportation; rail line.

The primary accounts included in this general account are designed to show amounts of money which the carrier becomes entitled to receive or which accrue to its benefit from services rendered in transporting property or persons by rail line. The detail accounts include in this general account series are summarized in account 501, Railway Operating Revenues.

[42 FR 35017, July 7, 1977, as amended at 52 FR 4326, Feb. 11, 1987]

101 Freight.

(a) This account shall include revenue from the transportation of freight and from transit, stop, and reconsigning privileges, upon the basis of lawful tariff rates.

(b) This account shall include collections in excess of tariff charges, except where such amounts are segregated and held subject to refund.

(c) Proceeds derived from the sale of unclaimed and refused freight which has been transported in accordance with the contract of shipment shall be credited to this account in cases where such items can be readily identified. Uncollected tariff charges on such shipments shall be charged to this account.

(d) Amounts determined to be uncollectible shall be accounted for in accordance with the text of account 63–61–00 *General—Uncollectible accounts*.

ITEMS TO BE CREDITED

(a) Revenue upon the basis of local freight tariff rates, regardless of class of train in which the freight is transported.

(b) The carrier's proportion of revenue upon the basis of through freight tariff rates, regardless of class of train on which the freight is transported.

(c) Revenue from transportation of mail matter, and empty mail pouches, at freight rates.

(d) Revenue from transportation of freight on special trains at rates based on weights of shipments.

(e) Revenue on basis of classifications and freight tariffs from transportation of caretakers of freight shipments.

(f) Revenue from reconsigning privileges.

(g) Revenue from stop privileges.

(h) Revenue from transit privileges.

(i) Revenue upon the basis of arbitraries out of freight, rates for water transfers (ferriage, lighterage, and floatage).

(j) Revenue from transportation of trailers and containers on flat cars in TOFC/COFC service upon the basis of all-rail line-haul freight tariff rates and under arrangements for motor carrier-railroad joint haul, and from the loading and unloading of trailers and containers on and from flat cars upon

the basis of tariff rates and under arrangements for motor carrier-railroad joint haul.

ITEMS TO BE CHARGED

(a) Amounts paid as bridge and ferry arbitraries on freight.

(b) Amounts paid for completing a haul.

(c) Amounts paid for elevation of freight.

(d) Amounts paid for switching services, in connection with the transportation of freight, on the basis of switching tariffs, and allowances out of through rates, including amounts paid for switching empty cars in connection with a freight revenue movement.

(e) Amounts paid for transferring freight between stations.

(f) Arbitraries and allowances to others for lighterage and wharfage.

(g) The carrier's proportion of overcharges resulting from the use of erroneous rates, weights, classifications or computations.

(h) The carrier's proportion of refunds on account of errors in routing and billing.

(i) The carrier's proportion of uncollected revenue on freight lost or destroyed in transit.

(j) The carrier's proportion of uncollected tariff charges on damaged shipments for which charges neither shipper nor consignee is liable.

(k) Amounts paid on basis of tariff rates for loading and unloading livestock.

(l) Amounts paid to motor truck companies for hauling trailers and containers to and from TOFC/COFC terminals, and allowances to shippers who perform such service on the basis of tariff rates.

NOTE A: Amounts paid for switching empty cars other than in connection with loaded movements shall be charged to operating expense account 61–32–XX, ''General—Other Expenses—Transportation—Yard—Freight,'' except that amounts paid for switching equipment for repairs shall be included in the appropriate equipment repair accounts.

NOTE B: Other carriers' proportion of revenue and of uncollectible undercharges paid by the carrier on account of its errors in routing and billing shall be charged to operating expense account 61–35–76, ''General—Other Expenses—Transportation—Administrative Support.''

NOTE C: When a lessee company transports freight over the tracks of another carrier on the basis of a proportion of revenues under a joint arrangement, it shall include the entire compensation in its revenues and statistics, charging the appropriate joint facility expense and rental accounts with the amounts paid the lessor company, and the lessor company shall credit the corresponding accounts.

NOTE D: Revenue from the transportation of caretakers of freight shipments, when not included as a part of the freight charges on the waybill covering the freight shipments, shall be credited to account 102, ''Passenger.''

NOTE E: This account shall be maintained so as to show separately payments and allowances for (a) terminal collection and delivery services when performed in connection with line-haul transportation of freight on the basis of freight tariff rates, further separated between (1) TOFC/COFC service, and (2) all other freight service; also (b) payments for switching services when performed in connection with line-haul transportation of freight on the basis of switching tariffs and allowances out of freight rates, including the switching of empty cars in connection with a revenue movement, and (c) payments on basis of tariff rates for loading and unloading livestock.

102 Passenger.

This account shall include the revenue from transportation of passengers at passenger tariff fares, from the transportation of passengers at special fares as provided by law, and from incidental charges in connection therewith.

ITEMS TO BE CREDITED

(a) Revenue from local passenger fares.

(b) The carrier's proportion of revenue from interline passenger fares.

(c) Revenue from extra fares.

(d) Revenue from additional fares or charges for exclusive use of a passenger car, drawing room, compartment, bedroom, etc.

(e) Revenue from mileage and scrip coupons honored for all services covered by this account.

(f) Revenue from transportation of passengers in special cars or on special trains when charge is based on passenger fare per capita, regardless of the number of passengers actually transported.

(g) Revenue from a guaranteed minimum amount not based on per capita fare, for transportation of passengers on special or chartered trains.

(h) Cash fare penalty collections.

(i) Unclaimed collections and deposits for transportation of passengers.

(j) Passenger fare overcharges.

(k) Revenue from transportation of corpses, based on passenger fares.

(l) Revenue from water transfers (ferriage), bridge tolls, and transfers between railway stations or between railway stations and docks, received as arbitraries in divisions of passenger fares.

ITEMS TO BE CHARGED

(a) Amounts paid as bridge tolls, and also for ferry, depot to depot and depot to dock passenger transfer service.

(b) Amounts paid for switching in completing a passenger transportation movement.

(c) Amounts paid for switching empty passenger-train cars in connection with transportation of passengers. (See note C.)

(d) Redemptions of unused and partially unused local tickets and redemptions of carrier's proportions of unused and partially unused interline tickets.

(e) Refund of extra fares, cash fare penalty collections, and overcharges in excess of tariff fares.

(f) Uncollectible undercharges.

NOTE A: Gross receipts from the sale of mileage tickets, and scrip books shall be credited to a suspense account. The suspense account shall be charged and this account credited with the value of coupons as honored, in connection with any of the services provided for in *Items To Be Credited*.

NOTE B: When a lessee company transports passengers over the tracks of another company under a joint arrangement upon the basis of a proportion of the passenger revenue, it shall include the entire compensation in its passenger revenue and statistics, charging the appropriate joint facility expense and rental accounts with the amounts paid the lessor company and the lessor company shall credit the corresponding joint facility accounts.

NOTE C: Amounts paid for switching empty passenger-train cars other than in connection with loaded movements, shall be charged to account 61–42–XX. *General—Other Expenses—Transportation—Yard—Passenger*, except that when switched for repairs, the amounts paid shall be included in account 39–25–45, *Purchased Services—Repairs Billed by Others—Equipment—Other Equipment*.

NOTE D: Amounts determined to be uncollectible shall be accounted for in accordance with the text of account 63–62–00, *General—Uncollectible accounts*.

103 Passenger-related.

This account shall include the revenue from the transportation of baggage, packages, etc. on passenger trains at other than freight or express tariff rates. This account shall also include the revenue from berth and seat accommodations furnished in sleeping, parlor observation, chair, and other special passenger cars, also the revenue derived from the operation of passenger trains not provided for elsewhere, and dining and buffet service.

The amounts recorded in this account shall not include aid in the form of abatement or forgiveness of taxes, assumption by local governments of station maintenance costs, and other similar special indirect benefits, contributed by governmental agencies.

104 Switching.

(a) This account shall include the revenue from switching service upon the basis of lawful tariff rates. To this account shall be credited the carrier's revenue upon the basis of tariff rates, or the carrier's allowance out of through rates, from the switching of cars of all kinds, loaded or empty, either locally at a station or within a switching district, between connecting lines, between local industries, or between connecting lines and local industries; revenue upon the basis of distinct tariff rates for *trapcar* and *ferry-car* service and for spotting cars; also the revenue from interwork switching at industrial plants, and the revenue from *penalty switching* incident to the improper delivery of cars by other carriers.

(b) To this account shall be charged amounts paid others for switching when such switching service is provided for in the switching rate charged by the carrier.

NOTE: *Penalty switching* charges paid by the carrier shall be included in expense account 61–32–XX, *General—Other Expenses—Transportation—Yard—Freight*.

105 Water transfers.

(a) This account shall include the revenue, from the transfer by water (ferriage, lighterage, and floatage) of passenger, freight, vehicles and livestock, upon the basis of lawful local tariff rates.

(b) This account also shall include revenue from water transfers of other traffic, such as the revenue from towing beyond lighterage limits and all other towing for which an extra charge is made; insurance of freight afloat when billed out at other than cost; storage of freight afloat; grain overage in boats; pumping performed for outside parties; and from other similar sources.

(c) To this account shall be charged amounts payable to other companies or individuals for extra lighterage, extra towing, and for all other service when such payments represent revenue collected and credited to this account and not a direct expense.

NOTE: No revenue shall be included in this account for water transfers of passengers or shipments upon the basis of arbitraries out of rates for transportation involving rail line haul.

106 Demurrage.

This account shall include the revenue from the detention of cars incident to loading, unloading, reconsigning, and stops in transit upon the basis of lawful tariffs for demurrage. This account shall also include the revenue from the detention of trailers and containers used in TOFC/COFC service, incident to loading and unloading, upon the basis of tariff rates.

NOTE: This account shall be maintained so as to reflect separately (1) revenue from detention of cars, and (2) revenue from detention of trailers and containers used in TOFC/COFC service.

110 Incidental.

This account is designed to show the amounts which the carrier becomes entitled to receive from services rendered incidentally with rail-line and water-line transportation; for the use of facilities of which the expenses for operation and maintenance are not separable from railway expenses and from incidental sources not provided for elsewhere. Among the items included in this account are revenues derived from (1) hotels and restaurants, (2) operations conducted at stations and on trains by individual or companies other than railway companies, (3) storage, (4) the sale of electric power, (5) renting property operated and maintained in connection with the property used in the carrier's transportation operations and from railway operations not provided for elsewhere.

Joint Facility Revenue Accounts

120 Joint facility.

The primary accounts included in this general account are designed to show the carrier's proportion of revenues collected by others in connection with operation of joint facilities and the amount payable by the carrier to other companies from operation of joint facilities.

121 Joint facility—credit.

This account shall include the carrier's proportion of revenue collected by others in connection with the operation of joint tracks, yards, terminals, and other facilities, including revenue from hotels, restaurants, grain elevators, sale of power, and other miscellaneous operations.

NOTE A: The purpose of this account is to show the amounts of revenue from the operation of joint tracks, yards, terminals and other facilities operated by other companies, which under existing contracts or agreements are credited by the operating company to the tenant companies which participate therein. The bill rendered by any creditor company against a debtor company for the latter's proportion of the expense of maintenance and operation of joint facilities, which includes also a credit covering a proportion of the revenue to be paid over, shall show the distribution of the credit for such proportion of the revenue separately from the distribution of the expense of operation.

NOTE B: No credits shall be made to this account representing amounts creditable by the operating company to primary accounts 101–103, 105 and 110.

122 Joint facility—debit.

This account shall include that proportion of revenue from the operation of joint tracks, yards, terminals, and other facilities, which is creditable to other companies, including revenue from hotels, restaurants, grain elevators, sale of power, and other miscellaneous operations.

NOTE A: The purpose of this account is to show the amount of revenue from operation of a terminal company or other carrier which, under the terms of existing contracts or agreements covering the joint use of tracks, yards, and other facilities, is credited to other carriers that participate in the benefits from such joint use. The bill rendered by a creditor company against a debtor company for the latter's proportion of expense of maintaining and operating joint facilities, which includes a credit covering the debtor company's proportion of the revenues from operation of such joint facilities, shall indicate separately the proper distribution of both the revenues and the expenses included in the bill, and such distribution shall be adhered to by the debtor.

NOTE B: No debits shall be made to this account representing amounts creditable by the operating company to primary accounts 101–103, 105 and 110.

OPERATING EXPENSE ACCOUNTS

SOURCE: 52 FR 4326, Feb. 11, 1987, unless otherwise noted.

INSTRUCTION

(1) The operating expense accounts use a six-digit code. The first two digits denote natural expense, the second two digits denote activity/subactivity, and the third two digits denote detailed functions. [See Table A for an overview of the coding structure and Tables B–E for detailed functions.]

(2) The operating expense account explanations use a three-tier format. Section 1 contains natural expense explanations with applicable activity/subactivity and function assignment. Section 2 details the activity/subactivity explanations. Section 3 explains the functions appropriate for each activity/subactivity. To obtain a complete explanation for a particular account, refer to section 1 to locate the natural expense and activity/subactivity (first four digits) and read the appropriate account text. Accounts that are assigned to functions are appropriately listed. For further information, refer to section 2 and section 3.

(3) All accounts listed in Table A and section 1 are for freight only. Refer to Table F for applicable passenger or common account codes. Account numbers designated with an asterisk in section 1 denote freight only accounts, while other accounts are used for both freight and passenger or common accounts.

(4) All expense assigned to common operating accounts shall be allocated to freight and passenger accounts in accordance with part 1242 of this chapter.

TABLE A—CODING STRUCTURE FOR RAILWAY OPERATING EXPENSE ACCOUNTS [1]

	XX–00	Way and structures XX–10			Equipment XX–20			Transportation XX–30, 40, 50					XX–60
	Control	Running	Switching	Other	Locomotive	Freight cars	Other equipment	Train	Yard	Train and yard common	Specialized SVDS	Administrative support	General and administrative
Freight [2]	XX–00	XX–11	XX–12	XX–13	XX–21	XX–22	XX–23	XX–31	XX–32	XX–33	XX–34	XX–35	XX–61
Personnel	10–00	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Salaries and wages	11–00	[3] 11–11	[3] 11–12	[3] 11–13	[3] 11–21	[3] 11–22	11–23	[3] 11–31	[3] 11–32	[3] 11–33	[3] 11–34	[3] 11–35	[3] 11–61
Fringe benefits	12–00	12–11	12–12	12–13	12–21	12–22	12–23	12–31	12–32	12–33	12–34	12–35	12–61
Materiel	20–00	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Materiel, tools, supp, fuel, lubricants	21–00	[3] 21–11	[3] 21–12	[3] 21–13	[3] 21–21	[3] 21–22	[3] 21–23	[3] 21–31	[3] 21–32	[3] 21–33	[3] 21–34	[3] 21–35	[3] 21–61
Purchased services	30–00	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Lease rentals—DR	31–00	31–11	31–12	31–13	31–21	31–22	31–23	.....	.....	.....	.....	.....	.....
Lease rentals—CR	32–00	32–11	32–12	32–13	32–21	32–22	32–23	.....	.....	.....	.....	.....	.....
Jt. Fac. Rent—DR	33–00	33–11	33–12	33–13	33–21	33–22	33–23	.....	.....	.....	.....	.....	.....
Jt. Fac. Rent—CR	34–00	34–11	34–12	34–13	34–21	34–22	34–23	.....	.....	.....	.....	.....	.....
Other rents—DR	35–00	35–11	35–12	35–13	35–21	35–22	35–23	.....	.....	.....	.....	.....	.....
Other rents—CR	36–00	36–11	36–12	36–13	36–21	36–22	36–23	.....	.....	.....	.....	.....	.....
Jt. facility—DR	37–00	37–11	37–12	37–13	37–21	37–22	37–23	37–31	37–32	.....	37–34	37–35	37–61
Jt. facility—CR	38–00	38–11	38–12	38–13	38–21	38–22	38–23	38–31	38–32	.....	38–34	38–35	38–61
Repairs billed by others—DR	39–00	[3] 39–11	[3] 39–12	[3] 39–13	[3] 39–21	[3] 39–22	[3] 39–23	.....	.....	.....	.....	.....	.....
Repairs billed to others—CR	40–00	[3] 40–11	[3] 40–12	[3] 40–13	[3] 40–21	[3] 40–22	[3] 40–23	.....	.....	.....	.....	.....	.....
Other purchase services	41–00	[3] 41–11	[3] 41–12	[3] 41–13	[3] 41–21	[3] 41–22	[3] 41–23	[3] 41–31	[3] 41–32	[3] 41–33	[3] 41–34	[3] 41–35	[3] 41–61
Claims and insurance	50–00	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Loss damage claims	51–00	.....	.....	.....	.....	.....	.....	51–31	51–32	51–33	51–34	.....	.....
Other casualties	52–00	52–11	52–12	52–13	52–21	52–22	52–23	52–31	52–32	.....	52–34	52–35	52–61
Insurance	53–00	53–11	53–12	53–13	53–21	53–22	53–23	53–31	53–32	.....	53–34	53–35	53–61
General	60–00	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Other expenses	61–00	[3] 61–11	[3] 61–12	[3] 61–13	[3] 61–21	[3] 61–22	[3] 61–23	[3] 61–31	[3] 61–32	.....	[3] 61–34	[3] 61–35	[3] 61–61
Depreciation	62–00	62–11	62–12	62–13	62–21	62–22	62–23	.....	.....	.....	.....	.....	.....
Uncollectible account	63–00	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	63–61
Property taxes	64–00	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	64–61

[1] Each operating expense account has a six-digit code divided into three two-digit groups. The first two-digit group denotes the natural expense [see control column], the second group denotes the activity/subactivity for freight, passenger or common service [see Table F]; and the third group signifies applicable function assignment [see Tables B, C, D & E].

[2] The account numbers shown on this matrix are for freight only. The account numbers for passenger and common are derived by applying the natural expense code (first two digits) to the activity codes shown in Table F. Natural expenses are used only in the same activities as shown for freight.

[3] Expenses shall be reported by applicable functions [see account text].

TABLE B—FUNCTION CODE USE—WAY AND STRUCTURES

Code	Functions	Running			Switching			Other		
		[1] F	P	C	F	P	C	F	P	C
	ADMINISTRATION									
02	Track	.....	.....	.....	.....	.....	.....	X	X	X
03	Bridges and buildings	.....	.....	.....	.....	.....	.....	X	X	X
04	Signals	.....	.....	.....	.....	.....	.....	X	X	X
05	Communications	.....	.....	.....	.....	.....	.....	X	X	X
06	Other	.....	.....	.....	.....	.....	.....	X	X	X
	REPAIRS AND MAINTENANCE									
10	Roadway	X	X	X	X	X	X	.....	.....	.....
11	Tunnels and subways	X	X	X	X	X	X	.....	.....	.....
12	Bridges and culverts	X	X	X	X	X	X	.....	.....	.....
13	Ties	X	X	X	X	X	X	.....	.....	.....
14	Rails and other track material	X	X	X	X	X	X	.....	.....	.....
16	Ballast	X	X	X	X	X	X	.....	.....	.....
19	Signals and interlockers	X	X	X	X	X	X	.....	.....	.....
20	Communication systems	.....	.....	.....	.....	.....	.....	X	X	X
21	Power systems	.....	.....	.....	.....	.....	.....	X	X	X
22	Highway grade crossings	X	X	X	X	X	X	.....	.....	.....
23	Station and office buildings	.....	.....	.....	.....	.....	.....	X	X	X
24	Shop bldgs.—Locomotives	.....	.....	.....	.....	.....	.....	X	X	X
25	Shop bldgs.—Freight cars	.....	.....	.....	.....	.....	.....	X		
26	Shop bldgs.—Other equipment	.....	.....	.....	.....	.....	.....	X	X	X
27	Locomotive servicing facilities	.....	.....	.....	.....	.....	.....	X	X	X
28	Misc. buildings and structures	.....	.....	.....	.....	.....	.....	X	X	X
29	Coal terminals	.....	.....	.....	.....	.....	.....	X		
30	Ore terminals	.....	.....	.....	.....	.....	.....	X		
31	TOFC/COFC terminals	.....	.....	.....	.....	.....	.....	X		
32	Other marine terminals	.....	.....	.....	.....	.....	.....	X		
33	Motor vehicle loading and distribution facilities	.....	.....	.....	.....	.....	.....	X		
35	Facilities—Other specialized services operations	.....	.....	.....	.....	.....	.....	X		
36	Roadway machines	.....	.....	.....	.....	.....	.....	X	X	X
37	Small tools and supplies	.....	.....	.....	.....	.....	.....	X	X	X
38	Snow removal	.....	.....	.....	.....	.....	.....	X	X	X
39	Dismantling retired property	X	X	X	X	X	X	X	X	X
48	Road property damaged	X	X	X	X	X	X	X	X	X
	OTHER									
99	Other	X	X	X	X	X	X	X	X	X

[1] F—Freight; P—Passenger; C—Common.

TABLE C—FUNCTION CODE USE—EQUIPMENT

Code	Functions	Locomotives			Freight Cars			Other Equipment		
		[1] F	P	C	F	P	C	F	P	C
	ADMINISTRATION									
01	Administration	X	X	X	X	.....	.....	X	X	X
	REPAIR AND MAINTENANCE									
39	Dismantling retired property	X	X	X	X	.....	.....	X	X	X
41	Locomotives	X	X	X	.....	.....	.....	.....	.....	.....
42	Freight cars	.....	.....	.....	X	.....	.....	.....	.....	.....
43	Trucks, trailers, containers in revenue service	.....	.....	.....	.....	.....	.....	X	.....	.....
44	Floating equipment in revenue service	.....	.....	.....	.....	.....	.....	X	.....	.....
45	Passenger and other revenue equipment	.....	.....	.....	.....	.....	.....	X	X	X
46	Computer systems and word processing equipment	.....	.....	.....	.....	.....	.....	X	X	X
47	Work and other nonrevenue equipment	.....	.....	.....	.....	.....	.....	X	X	X
48	Equipment damaged	X	X	X	X	.....	.....	X	X	X
49	Shop machinery—locomotives	.....	.....	.....	.....	.....	.....	X	X	X
50	Shop machinery—freight cars	.....	.....	.....	.....	.....	.....	X	X	X
51	Shop machinery—other equipment	.....	.....	.....	.....	.....	.....	X	X	X
99	Other	X	X	X	X	.....	.....	X	X	X

[1] F—Freight; P—Passenger; C—Common.

TABLE D—FUNCTION CODE USE—TRANSPORTATION

Code		Train			Yard			Train and yard common			Specialized services			Administrative support		
		*F	P	C	F	P	C	F	P	C	F	P	C	F	P	C
	ADMINISTRATION															
01		X	X	X	X	X	X	.....	.....	.....	X	.....	.....	X	X	X
	OPERATIONS															
56	Engine	X	X	X	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
57	Train crews	X	X	X	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
58	Dispatching trains	X	X	X	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
59	Operating switches, signals, interlockers, retarders, humps	X	X	X	X	X	X	.....	.....	.....	.....	.....	.....	.....	.....	.....
60	Operating drawbridges	X	X	X	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
61	Highway crossing protection	X	X	X	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
62	Train inspection and lubrication	X	X	X	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
63	Clearing wrecks	X	X	X	X	X	X	.....	.....	.....	.....	.....	.....	.....	.....	.....
64	Switch crews	.....	.....	.....	X	X	X	.....	.....	.....	.....	.....	.....	.....	.....	.....
65	Controlling operations	.....	.....	.....	X	X	X	.....	.....	.....	.....	.....	.....	.....	.....	.....
66	Yard and terminal clerical	.....	.....	.....	X	X	X	.....	.....	.....	.....	.....	.....	.....	.....	.....
67	Locomotive fuel	X	X	X	X	X	X	.....	.....	.....	.....	.....	.....	.....	.....	.....
68	Power purchased/produced for motive power	X	X	X	X	X	X	.....	.....	.....	.....	.....	.....	.....	.....	.....
69	Servicing locomotives	X	X	X	X	X	X	.....	.....	.....	.....	.....	.....	.....	.....	.....
70	Cleaning car interior	.....	.....	.....	.....	.....	.....	X	X	X	.....	.....	.....	.....	.....	.....
71	Adjusting, transferring loads	.....	.....	.....	.....	.....	.....	X	.....	.....	.....	.....	.....	.....	.....	.....
72	Car loading devices and grain doors	.....	.....	.....	.....	.....	.....	X	.....	.....	.....	.....	.....	.....	.....	.....
73	Pick up and delivery, marine haul, rail substitute service	.....	.....	.....	.....	.....	.....	.....	.....	.....	X	.....	.....	.....	.....	.....
74	Loading, unloading, local marine	.....	.....	.....	.....	.....	.....	.....	.....	.....	X	.....	.....	.....	.....	.....
75	Protective services	.....	.....	.....	.....	.....	.....	.....	.....	.....	X	.....	.....	.....	.....	.....
76	Clerks and accounting employees	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	X	X	X
77	Communications systems operations	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	X	X	X
78	Loss and damage claims processing	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	X	X	X
	OTHER															
99	Other	X	X	X	X	X	X	.....	.....	.....	X	.....	.....	X	X	X

TABLE E—FUNCTIONAL CODE USE—GENERAL AND ADMINISTRATIVE

Code	Functions	Freight	Passenger	Common
	ADMINISTRATION			
	Administration	X	X	X
	GENERAL			
86	Accounting, auditing, finance	X	X	X
87	Management services and data and word processing	X	X	X
88	Marketing	X	X	X
89	Sales	X	X	X
90	Industrial development	X		
91	Personnel, labor relations	X	X	X
92	Legal and secretarial	X	X	X
93	Public relations and advertising	X	X	X
94	Research and development	X	X	X
	OTHER			
99	Other	X	X	X

TABLE F—ACTIVITY/SUBACTIVITY CODE USE

Activity/subactivity	Freight	Code passenger	Common
Way and structures:			
Running	11	14	17
Switching	12	15	18
Other	13	16	19
Equipment:			
Locomotives	21	24	26
Freight cars	22	N/A	N/A
Other	23	25	27
Transportation:			
Train	31	41	51
Yard	32	42	52
Train and yard common	33	43	53
Specialized services	34	N/A	N/A
Administrative support	35	45	55
General and administrative	61	62	63

OPERATING EXPENSE ACCOUNTS

*Section 1—Natural Expense Explanations**

Personnel

Control—10–00–00

This account may be used as a control account for all accounts in the PERSONNEL Series: Salaries and Wages. Fringe Benefits Not Included in Compensation.

Salaries and Wages—Control 11–00–00

This account series includes the compensation payable to employees for services performed. It includes amounts payable in connection with profit sharing and stock option plans that are part of employee compensation. This account series also includes amounts of compensation payable to employees for paid time off as a fringe benefit: Vacation pay, holiday pay, sick pay, and other payments considered direct compensation for time not worked. Amounts of labor billed by contractors, other companies, and joint facilities, are not considered salaries and wages of the carrier company and are not to be included in this account group. Its components shall be distributed to the following accounts in accordance with Instruction 1–12.

Salaries and Wages—Way and Structures—Running—11–11–XX

This account includes the compensation payable to all repair and maintenance employees and others who are associated with the repair and maintenance of the carrier's roadway and track on the line of road and outside of classification yards. Compensation payable to officers and technical and clerical employees shall only be assigned to Way and Structures—Other. This account shall be subdivided by the following functions:

Repair and Maintenance:

Roadway	11–11–10
Tunnels and Subways	11–11–11
Bridges and Culverts	11–11–12

Ties	11–11–13
Rails and Other Track Material	11–11–14
Ballast	11–11–16
Signals and Interlockers	11–11–19
Highway Grade Crossings	11–11–22
Dismantling Retired Property	11–11–39
Road Property and Equipment Damaged	11–11–48
Other—Other	11–11–99

Salaries and Wages—Way and Structures—Switching—11–12–XX

This account includes the compensation payable to all repair and maintenance employees and others who are associated with the repair and maintenance of the carrier's roadway and track within classification yards and stations. Compensation payable to officers and technical and clerical employees shall be assigned to Way and Structures—Other. This account shall be subdivided by the following functions:

Repair and Maintenance:	
Roadway	11–12–10
Tunnels and Subways	11–12–11
Bridges and Culverts	11–12–12
Ties	11–12–13
Rails and Other Track Material	11–12–14
Ballast	11–12–16
Signals and Interlockers	11–12–19
Highway Grade Crossings	11–12–22
Dismantling Retired Property	11–12–39
Road Property and Equipment Damaged	11–12–48
Other—Other	11–12–99

Salaries and Wages—Way and Structures—Other—11–13–XX

This account includes the compensation payable to all repair and maintenance employees and others who are associated with the repair and maintenance of the carrier's structures other than roadway and track. Each administration account (functions 02–06) includes the compensation payable to all officers and technical and clerical employees associated with the Way and Structures Activity. This account shall be subdivided by the following functions:

Administration:	
Track	11–13–02
Bridges and Buildings	11–13–03
Signals	11–13–04
Communications	11–13–05
Other	11–13–06
Repair and Maintenance:	
Communication Systems	11–13–20
Power Systems	11–13–21
Station and Office Buildings	11–13–23
Shop Buildings—Locomotives	11–13–24
Shop Buildings—Freight Cars	*11–13–25
Shop Buildings—Other	11–13–26
Locomotive Servicing Facilities	11–13–27
Miscellaneous Buildings and Structures	*11–13–28
Coal Terminals	*11–13–29
Ore Terminals	*11–13–30
TOFC/COFC Terminals	*11–13–31
Other Marine Terminals	*11–13–32
Motor Vehicle Loading and Distribution Facilities	*11–13–33
Facilities for Other Specialized Services Operations	*11–13–35
Roadway Machines	11–13–36
Snow Removal	11–13–38
Dismantling Retired Property	11–13–39
Road Property and Equipment Damaged	11–13–48
Other—Other	11–13–99

Salaries and Wages—Equipment—Locomotives—11–21–XX

This account includes the compensation payable to all officers and technical and clerical employees, repair and maintenance employees, and others who are associated with the repair and maintenance of locomotives, whether owned by the carrier or by others. This account shall be subdivided by the following functions:

Administration—General	11–21–01
Repair and Maintenance:	
Dismantling Retired Property	11–21–39
Locomotives	11–21–41
Road Property and Equipment Damaged	11–21–48
Other—Other	11–21–99

Salaries and Wages—Equipment—Freight Cars—11–22–XX*

This account includes the compensation payable to all officers, technical and clerical employees, repair and maintenance employees, and others, who are associated with the repair and maintenance of freight cars, whether owned by the carrier or by others. This account shall be subdivided by the following functions:

Administration—General	11–22–01
Repair and Maintenance:	
Dismantling Retired Property	11–22–39
Freight Cars	11–22–42
Road Property and Equipment Damaged	11–22–48
Other—Other	11–22–99

Salaries and Wages—Equipment—Other Equipment—11–23–XX

This account includes the compensation payable to all officers, technical and clerical employees, repair and maintenance employees, and others, who are associated with the repair and maintenance of equipment other than locomotives and freight cars, whether

owned by the carrier or by others. This account shall be subdivided by the following functions:

Administration—General	11–23–01
Repair and Maintenance:	
Dismantling Retired Property	11–23–39
Trucks, Trailers, Containers in Revenue Service	*11–23–43
Floating Equipment—Revenue Service	*11–23–44
Passenger and Other Revenue Service	11–23–45
Work and Other Non-Revenue Equipment	11–23–47
Road Property and Equipment Damaged	11–23–48
Shop Machinery—Locomotives	11–23–49
Shop Machinery—Other Equipment	11–23–51
Other—Other	11–23–99

Salaries and Wages—Transportation—Train—11–31–XX

This account includes the compensation payable to all officers, technical and clerical employees, engine and train crews, and other operational employees, who are associated with the dispatching and operation of freight trains over the roadway and outside of classification yards. This account shall be subdivided by the following functions:

Administration—General	11–31–01
Operations:	
Engine Crews	11–31–56
Train Crews	11–31–57
Dispatching Trains	11–31–58
Operating Switches, Signals, Interlockers, Retarders, Humps	11–31–59
Operating Drawbridges	11–31–60
Highway Crossing Protection	11–31–61
Train Inspection and Lubrication	11–31–62
Clearing Wrecks	11–31–63
Locomotive Fuel	11–31–67
Electric Power Purchased/Produced for Motive Power	11–31–68
Servicing Locomotives	11–31–69
Other—Other	11–31–99

Salaries and Wages—Transportation—Yard—11–32–XX

This account includes the compensation payable to all officers, technical and clerical employees, engine and train crews, and other operational employees, who are associated with the movement of freight cars within classification yards and in terminal switching and transfer service. This account shall be subdivided by the following functions:

Administration—General	11–32–01
Operations:	
Operating Switches, Signals, Interlockers, Retarders, Humps	11–32–59
Clearing Wrecks	11–32–63
Switch Crews	11–32–64
Controlling Operations	11–32–65
Yard and Terminal Clerical	11–32–66
Locomotive Fuel	11–32–67
Electric Power Purchased/Produced for Motive Power	11–32–68
Servicing Locomotives	11–32–69
Other—Other	11–32–99

Salaries and Wages—Transportation—Train and Yard—Common—11–33–XX

This account includes the compensation payable to all officers, performing functions incurred on behalf of both train and yard operations. This account shall be subdivided by the following functions:

Operations:	
Cleaning Car Interiors	11–33–70
Adjusting and Transferring Loads	*11–33–71
Car Loading Devices and Grain Doors	*11–33–72

Salaries and Wages—Transportation—Specialized Services—11–34–XX*

This account includes the compensation payable to all officers, technical and clerical employees, and other operational employees who are associated with operating services which are specialized in nature and in cost characteristics. The specialized services designated by the Board appear within the explanation of activities/subactivities. This account shall be subdivided by the following functions:

Administration—General	11–34–01
Operations:	
Pick Up and Delivery, Marine Line Haul, and Rail Substitute Service	11–34–73
Loading, Unloading, and Local Marine	11–34–74
Protective Services	11–34–75
Other—Other	11–34–99

Salaries and Wages—Transportation—Administrative Support—11–35–XX

This account includes the compensation payable to all officers, are associated with providing direct administrative support for the Transportation Activity. For further clarification refer to the explanation of the Administrative Support Operations Subactivity. Each account shall be subdivided by the following functions:

Administration—General	11–35–01
Operations:	
Clerical and Accounting Employees	11–35–76
Communication Systems Operations	11–35–77

Loss and Damage Claims Processing	11–35–78
Other—Other	11–35–99

Salaries and Wages—General and Administrative—11–61–XX

This account includes the compensation payable to all employees who are associated with overall administration or other general support for carrier operations. Overall administration includes executive, legal, financial, treasury, accounting, budgeting, taxation, corporate planning, costing, marketing, advertising, traffic, corporate secretary, public relations, real estate, insurance administration, personnel administration, pension plan administration, general purchasing, labor relations, internal auditing, industrial engineering, and regulatory reporting. For further clarification refer to the explanation of the General and Administrative Activity. This account shall be subdivided by the following functions:

Administration—General	11–61–01
General:	
Accounting, Auditing, Finance	11–61–86
Marketing	11–61–88
Sales	11–61–89
Industrial Development	*11–61–90
Personnel and Labor Relations	11–61–91
Legal and Secretarial	11–61–92
Public Relations and Advertising	11–61–93
Research and Development	11–61–94
Other—Other	11–61–99

Fringe Benefits Not Included in Compensation—Control—12–00–00

This account series includes amounts payable to others, or other costs charged to expense, for employee benefits which are not considered part of direct compensation. These benefits include the carrier portions of Railroad Retirement contributions, pension expense, unemployment taxes, dental plans, health plans, hospitalization insurance, life insurance, subsidies for employee lunchrooms, company entertainment facilities for personal use, and other benefits to employees that are not includible in direct compensation. They exclude travel expense on company business, casualties, workmen's compensation, as well as dues, memberships, and similar items when the direct beneficiary is clearly the company rather than the employee.

Fringe Benefits Not Included in Compensation—Way and Structures—Running	12–11–00
Fringe Benefits Not Included in Compensation—Way and Structures—Switching	12–12–00
Fringe Benefits Not Included in Compensation—Way and Structures—Other	12–13–00
Fringe Benefits Not Included in Compensation—Equipment Locomotives	12–21–00
Fringe Benefits Not Included in Compensation—Equipment—Freight Cars	*12–22–00
Fringe Benefits Not Included in Compensation—Equipment—Other Equipment	12–23–00
Fringe Benefits Not Included in Compensation—Transportation—Train	12–31–00
Fringe Benefits Not Included in Compensation—Transportation—Yard	12–32–00
Fringe Benefits Not Included in Compensation—Transportation—Train and Yard Common	12–33–00
Fringe Benefits Not Included in Compensation—Transportation—Specialized Services	12–34–00
Fringe Benefits Not Included in Compensation—Transportation—Administrative Support	12–35–00
Fringe Benefits Not Included in Compensation—General and Administrative	12–61–00

Materiel Control—20–00–00

This account may be used as a control account for the MATERIEL series: Materials, Tools, Supplies, Fuels, Lubricants.

Materials, Tools, Supplies, Fuels, Lubricants—Control—21–00–00

This account group includes the cost of items installed or commodities consumed which are charged to expense in connection with carrier operations. This account group includes charges to expense for all materials, small tools, supplies, fuels, lubricants, purchased standard stationery and forms, freight-in on materials and supplies, and similar items. This account group excludes purchased services such as utilities, communications, postage and other items of similar nature. Its components shall be distributed to the following accounts:

Materials, Tools, Supplies, Fuels, Lubricants—Way and Structures—Running—21–11–XX

This account includes the cost of items installed or commodities consumed which are charged to expense, where such items are consumed in the performance or support of the repair and maintenance of the carrier's roadway and track on the line of the road and outside of classification yards. Each account includes charges to expense for all materials, small tools, supplies, fuels, lubricants, purchased standard stationery and forms, freight-in on materials, and supplies, and similar items. Its components shall be distributed to the following functions in accordance with Instruction 1–18:

Repair and Maintenance:	
Roadway	21–11–10
Tunnels and Subways	21–11–11
Bridges and Culverts	21–11–12
Ties	21–11–13
Rails and Other Track Material	21–11–14
Ballast	21–11–16
Signals and Interlockers	21–11–19
Dismantling Retired Property	21–11–39
Road Property and Equipment Damaged	21–11–48
Other—Other	21–11–99

Materials, Tools, Supplies, Fuels, Lubricants—Way and Structures—Switching—21–12–XX

This account includes the cost of items installed or commodities consumed which are charged to expense, where such items are consumed in the performance or support of the repair and maintenance of the carrier's roadway and track within classification yards and stations. This account includes charges to expense for all materials, small tools, supplies, fuels, lubricants, purchased standard stationery and forms, freight-in on materials and supplies, and similar items. Its components shall be distributed to the following functions in accordance with Instruction 1–18:

Repair and Maintenance:	
Roadway	21–12–10
Tunnels and Subways	21–12–11
Bridges and Culverts	21–12–12
Ties	21–12–13
Rails and Other Track Material	21–12–14
Ballast	21–12–16
Signals and Interlockers	21–12–19
Highway Grade Crossings	21–12–22
Dismantling Retired Property	21–12–29
Road Property and Equipment Damaged	21–12–48

Materials, Tools, Supplies, Fuels, Lubricants—Way and Structures—Other—21–13–XX

This account includes the cost of items installed or commodities consumed which are charged to expense, where such items are consumed in the performance or support of the repair and maintenance of the carrier's structures not provided for in running or switching. Each account includes charges to expense for all materials, small tools, supplies, fuels, lubricants, purchased standard stationery and forms, freight-in on materials and supplies, and similar items. Its components shall be distributed to the following functions in accordance with Instruction 1–18:

Administration:	
Track	21–13–02
Bridges and Buildings	21–13–03
Signals	21–13–04
Communications	21–13–05
Other	21–13–06
Repair and Maintenance:	
Communication Systems	21–13–20
Power Systems	21–13–21
Station and Office Buildings	21–13–23
Shop Buildings—Locomotives	21–13–24
Shop Buildings—Freight Cars	*21–13–25
Shop Buildings—Other Equipment	21–13–26
Locomotive Servicing Facilities	21–13–27
Coal Terminals	*21–13–29
Ore Terminals	*21–13–30
TOFC/COFC Terminals	*21–13–31
Other Marine Terminals	*21–13–32
Motor Vehicle Loading and Distribution Facilities	*21–13–33
Facilities for Other Specialized Services Operations	*21–13–35
Roadway Machines	21–13–36
Snow Removal	21–13–38
Dismantling Retired Property	21–13–39
Road Property and Equipment Damaged	21–13–48
Other—Other	21–13–99

Materials, Tools, Supplies, Fuels, Lubricants—Equipment—Locomotives—21–21–XX

This account includes the cost of items installed or commodities consumed which are charged to expense, where such items are consumed in the performance or support of the repair and maintenance of locomotives, whether owned by the carrier or by others. This account includes charges to expense for all materials, small tools, supplies, fuels, lubricants, purchased standard stationery and forms, freight-in on materials and supplies, and similar items. Its components shall be distributed to the following functions in accordance with Instruction 1–18:

Administration—General	21–21–01
Repair and Maintenance:	
Locomotives	21–21–41
Road Property and Equipment Damaged	21–21–48
Other—Other	21–21–99

Materials, Tools, Supplies, Fuels, Lubricants—Equipment—Freight Cars—21–22–XX*

This account includes the cost of items installed or commodities consumed which are charged to expense, where such items are consumed in the performance or support of the repair and maintenance of freight-cars, whether owned by the carrier or by others. This account includes charges to expense for all materials, small tools, supplies, fuels, lubricants, purchased standard stationery and forms, freight-in on materials and supplies, and similar items. Its components shall be distributed to the following functions in accordance with Instruction 1–18:

Administration—General	21–22–01
Repair and Maintenance:	
Dismantling Retired Property	21–22–39
Freight Cars	21–22–42
Road Property and Equipment Damaged	21–22–48
Other—Other	21–22–99

Materials, Tools, Supplies, Fuels, Lubricants—Equipment—Other Equipment—21–23–XX

This account includes the cost of items installed or commodities consumed which are charged to expense, where such items are consumed in the performance or support of the repair and maintenance of equipment by others. This account includes charges to expense for all materials, small tools, supplies, fuels, lubricants, purchased standard stationery and forms, freight-in on materials and supplies, and similar items. Its components shall be distributed to the following functions in accordance with Instruction 1–18:

Administration—General	21–23–01
Repair and Maintenance:	
Dismantling Retired Property	21–23–39
Trucks, Trailers, Containers in Revenue Service	*21–23–43
Floating Equipment—Revenue Service	*21–23–44
Passenger and Other Revenue Equipment	21–23–45
Computer Systems and Word Processing Equipment	21–23–46
Work and Other Non-Revenue Equipment	21–23–47
Road Property and Equipment Damaged	21–23–48
Shop Machinery—Locomotives	21–23–49
Shop Machinery—Freight Cars	*21–23–50
Shop Machinery—Other Equipment	21–23–51
Other—Other	21–23–99

Materials, Tools, Supplies, Fuels, Lubricants—Transportation—Train—21–31–XX

This account includes the cost of items installed or commodities consumed which are charged to expense, where such items are consumed in association with the dispatching and operation of freight trains over the charges to expense for all materials, small tools, supplies, fuels, lubricants, purchased standard stationery and forms, freight-in on materials and supplies, and similar items. Its components shall be distributed to the following functions in accordance with Instruction 1–18:

Administration—General	21–31–01
Operations:	
Engine Crews	21–31–56
Train Crews	21–31–57
Dispatching Trains	21–31–58
Operating Switches, Signals, Interlockers, Retarders, Humps	21–31–59
Operating Drawbridges	21–31–60
Highway Crossing Protection	21–31–61
Train Inspection and Lubrication	21–31–62
Clearing Wrecks	21–31–63
Locomotive Fuels	21–31–67
Electric Power Purchased/Produced for Motive Power	21–31–68
Servicing Locomotives	21–31–69
Other—Other	21–31–99

Materials, Tools, Supplies, Fuels, Lubricants—Transportation—Yard—21–32–XX

This account includes the cost of items installed or commodities consumed which are charged to expense, where such items are consumed in and in terminal switching and transfer service. This account includes charges to expense for all materials, small tools, supplies, fuels, lubricants, purchased standard stationery and forms, freight-in on materials and supplies, and similar items. Its components shall be distributed to the following functions in accordance with Instruction 1–18:

Administration—General	21–32–01
Operations:	
Operating Switches, Signals, Interlockers, Retarders, Humps	21–32–59
Clearing Wrecks	21–32–63
Switch Crews	21–32–64
Controlling Operations	21–32–65

Yard and Terminal Clerical	21–32–66
Locomotive Fuel	21–32–67
Electric Power Purchased/Produced for Motive Power	21–32–68
Servicing Locomotives	21–32–69
Other—Other	21–32–99

Materials, Tools, Supplies, Fuels, Lubricants—Transportation—Train and Yard Common—21–33–XX

This account includes the cost of items installed or commodities consumed which are charged to expense, where such items are consumed on behalf of both train and yard operations. This account includes charges to expense for all materials, small tools, supplies, fuels, lubricants, supplies, and similar items. Its components shall be distributed to the following functions in accordance with Instruction 1–18:

Operations:	
Cleaning Car Interiors	21–33–70
Adjusting, Transferring Loads.	*21–33–71
Car Loading Devices and Grain Doors.	*21–33–72

Materials, Tools, Supplies, Fuels, Lubricants—Transportation—Specialized Services—21–34–XX*

This account includes the cost of items installed or commodities consumed which are charged to expense, where such items are consumed in operating services which are specialized in nature and in cost characteristics. The specialized services designated by the Board appear within the explanation of specialized services. This account shall be subdivided by the following functions:

Administration—General	21–34–01
Operations:	
Pick Up and Delivery, Marine Line Haul, and Rail Substitute Service	21–34–73
Loading, Unloading, and Local Marine	21–34–74
Protective Services	21–34–75
Other—Other	21–34–99

Materials, Tools, Supplies, Fuels, Lubricants—Transportation—Administrative Support—21–35–XX

This account includes the cost of items installed or commodities consumed which are charged to expense, where such items are consumed in association with providing direct administrative support for the Transportation Activity. For further clarification refer to the explanation of the Administrative Support Operations Subactivity. This account shall be subdivided by the following functions:

Administration—General	21–35–01
Operations:	
Clerks, Accounting Employees	21–35–76
Communication Systems Operations	21–35–77
Loss and Damage Claims Processing	21–35–78
Other—Other	21–35–99

Materials, Tools, Supplies, Fuels, Lubricants—General and Administrative—21–61–XX

This account includes the cost of items installed or commodities consumed which are charged to expense, where such items are consumed in providing overall administration or other general support for carrier operations. For further clarification refer to the definition of the General and Administrative Activity. This account shall be subdivided by the following functions:

Administration—General	21–61–01
General:	
Accounting, Auditing, Finance	21–61–86
Management Services and Data and Word Processing	21–61–87
Marketing	21–61–88
Sales	21–61–89
Industrial Development	*21–61–90
Legal and Secretarial	21–61–92
Public Relations and Advertising	21–61–93
Research and Development	21–61–94
Other—Other	21–61–99

Purchased Services

Control—30–00–00

This account may be used as a control account for all accounts in the PURCHASED SERVICES series:

Lease Rentals—Dr.
Lease Rentals—Cr.
Joint Facility Rent—Dr.
Joint Facility Rent—Cr.
Other Rents—Dr.
Other Rents—Cr.
Joint Facility—Dr.
Joint Facility—Cr.
Repairs Billed by Others—Dr.
Repairs Billed to Others—Cr.
Other Purchased Services

Lease Rentals—Debit—Control—31–00–00

This account series includes the rentals of road property and equipment with terms of 30 days or more. This account excludes joint facility and joint trackage rents, insurance and maintenance elements of lease payments, and all elements of capital leases as defined in FASB Statement No. 13. Capitalized

leases shall be included in the applicable property account for the particular asset leased [See Instruction 2–11b]. The components of this natural expense will be distributed to the following accounts in accordance with Instruction 1–18:

Lease Rentals—Dr.—Way and Structures—Running	31–11–00
Lease Rentals—Dr.—Way and Structures—Switching	31–12–00
Lease Rentals—Dr.—Way and Structures—Other	31–13–00
Lease Rentals—Dr.—Equipment—Locomotives	31–21–00
Lease Rentals—Dr.—Equipment—Freight Cars	*31–22–00
Lease Rentals—Dr.—Equipment—Other Equipment	31–23–00

Lease Rentals—Credit—Control—32–00–00

This account group includes the rentals of owned property and equipment or subleases of leased road property and equipment with terms of from 30 days to one year. Longer term leases are indicative of a noncarrier operation and all revenues and expenses related to such property and equipment should be classified accordingly and excluded from railroad operations. This account excludes joint facilities and joint trackage, capital leases, and portions of lease receipts covering maintenance and insurance. The components of this natural expense account will be distributed to the following accounts in accordance with Instruction 1–18:

Lease Rentals—Cr.—Way and Structures—Running	32–11–00
Lease Rentals—Cr.—Way and Structures—Switching	32–12–00
Lease Rentals—Cr.—Way and Structures—Other	32–13–00
Lease Rentals—Cr.—Equipment—Locomotives	32–21–00
Lease Rentals—Cr.—Equipment—Freight Cars	*32–22–00

Joint Facility Rents—Debits—Control—33–00–00

This account group includes amounts payable accrued as rent for equipment, tracks, yards, terminals, and other facilities owned or controlled by other carriers, companies, or individuals, and in the joint use of which the accounting company participates. Amounts paid or payable by the accounting company in reimbursement for taxes on property jointly used shall be charged to this account.

The cost of maintenance, operation, or administration of joint facilities, chargeable to the accounting company, shall be charged to the various joint facility accounts (37–XX–00). When the compensation for the use of joint facilities is a fixed amount or is based upon a charge per passenger, ton, car, or other unit, it shall be fairly apportioned between this account and Joint Facility—Dr. (37–XX–00). This apportionment shall be made by the operating company and shall be followed by the accounting company.

The components of this natural expense consist of the following accounts:

Joint Facility Rents—Dr.—Way and Structures—Running	33–11–00
Joint Facility Rents—Dr.—Way and Structures—Switching	33–12–00
Joint Facility Rents—Dr.—Way and Structures—Other	33–13–00
Joint Facility Rents—Dr. Equipment—Locomotives	*33–21–00
Joint Facility Rents—Dr. Equipment—Freight Cars	*33–22–00
Joint Facility Rents—Dr. Equipment—Other Equipment	33–23–00

Joint Facility Rents—Credit—Control—34–00–00

This account series includes amounts receivable accrued for rent of equipment, tracks, yards, terminals and other facilities owned or controlled by the accounting company and used jointly with other companies or individuals. Amounts receivable from other companies in reimbursement for taxes on property jointly used shall be credited to this account.

The portion of the cost of maintenance, operation, or administration of joint facilities recoverable from others shall be credited to the various joint facility accounts (38–XX–00). When the compensation for the use of joint facilities is a fixed amount or is based upon a charge per passenger, ton, car, or other unit, it shall be fairly apportioned by the creditor between this account and Joint Facility—Cr. (38–XX–00).

The components of this account series shall be distributed to the following accounts:

Joint Facility Rents—Cr.—Way and Structures—Running	34–11–00

Joint Facility Rents—Cr.—Way and Structures—Switching	34–12–00
Joint Facility Rents—Cr.—Way and Structures—Other	34–13–00
Joint Facility Rents—Cr.—Equipment—Locomotives	*34–21–00
Joint Facility Rents—Cr.—Equipment—Freight Cars	*34–22–00
Joint Facility Rents—Cr.—Equipment—Other Equipment	34–23–00

Other Rents—Debit—Control—35–00–00

This account group includes the rents with terms of less than 30 days which are not renewed. This account includes all time and mileage payments for interchange locomotive, freight car, and other revenue equipment hire. The components of this account will be distributed to the following accounts in accordance with Instruction 1–18:

Other Rents—Dr.—Way and Structures—Running	35–11–00
Other Rents—Dr.—Way and Structures—Switching	35–12–00
Other Rents—Dr.—Way and Structures—Other	35–13–00
Other Rents—Dr.—Equipment—Locomotives	35–21–00
Other Rents—Dr.—Equipment—Freight Cars	*35–22–00
Other Rents—Dr.—Equipment—Other Equipment	35–23–00

Other Rents—Credit—Control—36–00–00

This account includes rents with terms of less than 30 days which are not renewed. This account includes all time and mileage receipts for interchanged locomotive, freight car, and other revenue equipment hire. The components of this account will be distributed to the following accounts in accordance with Instruction 1–18:

Other Rents—Cr.—Way and Structures—Running	36–11–00
Other Rents—Cr.—Way and Structures—Switching	36–12–00
Other Rents—Cr.—Way and Structures—Other	36–13–00
Other Rents—Cr.—Equipment—Locomotives	36–21–00
Other Rents—Cr.—Equipment—Freight Cars	*36–22–00
Other Rents—Cr.—Equipment—Other Equipment	36–23–00

Joint Facility—Debit—Control—37–00–00

This account includes joint trackage and joint facility costs, exclusive of rents, payable by the railroad to others. The components of this account will be distributed to the following accounts in accordance with Instruction 1–18:

Joint Facility—Dr.—Way and Structures—Running	37–11–00
Joint Facility—Dr.—Way and Structures—Switching	37–12–00
Joint Facility—Dr.—Way and Structures—Other	37–13–00
Joint Facility—Dr.—Equipment—Locomotives	37–21–00
Joint Facility—Dr.—Equipment—Freight Cars	*37–22–00
Joint Facility—Dr.—Equipment—Other Equipment	37–23–00
Joint Facility—Dr.—Transportation—Train	37–31–00
Joint Facility—Dr.—Transportation—Yard	37–32–00
Joint Facility—Dr.—Transportation—Specialized Services	*37–34–00
Joint Facility—Dr.—Transportation—Administrative Support	37–35–00
Joint Facility—Dr.—General and Administrative	37–61–00

Joint Facility—Credit—Control—38–00–00

This account group includes joint trackage and joint facility costs, exclusive of rents, payable by others to the railroad. The components of this account will be distributed to the following accounts in accordance with Instruction 1–18:

Joint Facility—Cr.—Way and Structures—Running	38–11–00
Joint Facility—Cr.—Way and Structures—Switching	38–12–00
Joint Facility—Cr.—Way and Structures—Other	38–13–00
Joint Facility—Cr.—Equipment—Locomotives	38–21–00
Joint Facility—Cr.—Equipment—Freight Cars	*38–22–00
Joint Facility—Cr.—Equipment—Other Equipment	38–23–00
Joint Facility—Cr.—Transportation—Train	38–31–00
Joint Facility—Cr.—Transportation—Yard	38–32–00
Joint Facility—Cr.—Transportation—Specialized Services	*38–34–00
Joint Facility—Cr.—Transportation—Administrative Support	38–35–00
Joint Facility—Cr.—General and Administrative	38–61–00

Repairs Billed by Others—Debit—Control—39–00–00

This account group includes amounts payable by the railroad to others for repair and maintenance of the reporting railroad's property and equipment. The components of this account shall be distributed to the following accounts in accordance with Instruction 1–18:

Repairs Billed by Others—Dr.—Way and Structures—Running—39–11–XX

This account includes amounts payable by the railroad to others for repair and maintenance of the reporting railroad's property associated with the carrier's roadway and track on the line of road and outside of classification yards. This account shall be subdivided by the following functions:

Repair and Maintenance:

Roadway	39–11–10
Tunnels and Subways	39–11–11
Bridges and Culverts	39–11–12
Ties	39–11–13
Rails and Other Track Material	39–11–14
Ballast	39–11–16
Signals and Interlockers	39–11–19
Highway Grade Crossings	39–11–22
Road Property and Equipment Damaged	39–11–48

Repairs Billed by Others—Dr.—Way and Structures—Switching—39–12–XX

This account includes amounts payable by the railroad to others for repair and maintenance of the reporting railroad's property associated with the carrier's roadway and track within classification yards and stations. This account shall be subdivided by the following functions:

Repair and Maintenance:

Roadway	39–12–10
Tunnels and Subways	39–12–11
Bridges and Culverts	39–12–12
Ties	39–12–13
Rails and Other Track Material	39–12–14
Ballast	39–12–16
Signals and Interlockers	39–12–19
Highway Grade Crossings	39–12–22
Road Property and Equipment Damaged	39–12–48

Repairs Billed by Others—Dr.—Way and Structures—Other—39–13–XX

This account includes amounts payable by the railroad to others for repair and maintenance of the carrier's structures other than roadway and track. This account shall be subdivided by the following functions:

Repair and Maintenance:

Communication Systems	39–13–20
Power Systems	39–13–21
Station and Office Buildings	39–13–23
Shop Buildings—Locomotives	39–13–24
Shop Buildings—Freight Cars	*39–13–25
Shop Buildings—Other Equipment	39–13–26
Locomotive Servicing Facilities	39–13–27
Miscellaneous Buildings and Structures	39–13–28
Coal Terminals	*39–13–29
Ore Terminals	*39–13–30
TOFC/COFC Terminals	*39–13–31
Other Marine Terminals	*39–13–32
Motor Vehicle Loading and Distribution Facilities	*39–13–33
Facilities for Other Specialized Services Operations	*39–13–35
Roadway Machines	39–13–36
Snow Removal	39–13–38
Road Property and Equipment Damaged	39–13–48

Repairs Billed by Others—Dr.—Equipment—Locomotives—39–21–XX

This account includes amounts payable by the railroad to others for repair and maintenance under the Locomotive subactivity. This account shall be subdivided by the following functions:

Repair and Maintenance:

Locomotives	39–21–41
Road Property and Equipment Damaged	39–21–48

Repairs Billed by Others—Dr.—Equipment—Freight Cars—39–22–XX*

This account includes amounts payable by the railroad to others for repair and maintenance under the Freight Car subactivity. This account shall be subdivided by the following functions:

Repair and Maintenance:

Freight Cars	39–22–42
Road Property and Equipment Damaged	39–22–48

Repairs Billed by Others—Dr.—Equipment Other Equipment—39–23–XX

This account includes amounts payable by the railroad to others for the repair and maintenance of equipment not pertaining to the Locomotive or Freight Car subactivity. This account shall be subdivided by the following functions:

Repair and Maintenance:

Trucks, Trailers, and Containers in Revenue Service	*39–23–43
Floating Equipment—Revenue Service	*39–23–44

Passenger and Other Revenue Equipment	39–23–45
Computer Systems and Word Processing Equipment	39–23–46
Work and Other Non-Revenue Equipment	39–23–47
Road Property and Equipment Damaged	39–23–48
Shop Machinery—Locomotives	39–23–49
Shop Machinery—Freight Cars	*39–23–50
Shop Machinery—Other Equipment	39–23–51

Repairs Billed to Others—Cr.—Control 40–00–00

This account series includes amounts payable by others to the railroad for repair and maintenance of others' road property and equipment. The components of this account shall be distributed to the following accounts in accordance with Instruction 1–18:

Repairs Billed to Others—Cr.—Way and Structures—Running—40–11–XX

This account includes amounts payable by others to the railroad for repair and maintenance of other railroads' roadway and track on the line of road and outside of classification yards. This account shall be subdivided by the following functions:

Repair and Maintenance:

Roadway	40–11–10
Tunnels and Subways	40–11–11
Bridges and Culverts	40–11–12
Ties	40–11–13
Rails and Other Track Material	40–11–14
Ballast	40–11–16
Signals and Interlockers	40–11–19
Highway Grade Crossings	40–11–22
Road Property and Equipment Damaged	40–11–48

Repairs Billed to Others—Cr.—Way and Structures Switching—40–12–XX

This account includes amounts payable by others to the railroad for repair and maintenance of other railroads' roadway and track within classification yards and stations. This account shall be subdivided by the following functions:

Repair and Maintenance:

Roadway	40–12–10
Tunnels and Subways	40–12–11
Bridges and Culverts	40–12–12
Ties	40–12–13
Rails and Other Track Material	40–12–14
Ballast	40–12–16
Signals and Interlockers	40–12–19
Highway Grade Crossings	40–12–22
Road Property and Equipment Damaged	40–12–48

Repairs Billed to Others—Cr.—Way and Structures—Other—40–13–XX

This account includes amounts payable by others to the railroad for repair and maintenance of other railroads' structures other than roadway and track. This account shall be subdivided by the following functions:

Repair and Maintenance:

Communication Systems	40–13–20
Power Systems	40–13–21
Station and Office Buildings	40–13–23
Shop Buildings Locomotives	40–13–24
Shop Buildings—Freight Cars	*40–13–25
Shop Buildings—Other Equipment	40–13–26
Locomotive Servicing Facilities	40–13–27
Miscellaneous Buildings and Structures	40–13–28
Coal Terminals	*40–13–29
Ore Terminals	*40–13–30
TOFC/COFC Terminals	*40–13–31
Other Marine Terminals	*40–13–32
Motor Vehicle Loading and Distribution Facilities	*40–13–33
Facilities for Other Specialized Services Operations	*40–13–35
Roadway Machines	40–13–36
Snow Removal	40–13–38
Road Property and Equipment Damaged	40–13–48

Repairs Billed to Others—Cr.—Equipment Locomotives—40–21–XX

This account includes amounts payable by others to the railroad for repair and maintenance of other railroads' locomotives. This account shall be subdivided by the following functions:

Repair and Maintenance:

Locomotives	40–21–41
Road Property and Equipment Damaged	40–21–48

Repairs Billed to Others—Cr.—Equipment—Freight Cars—40–22–XX*

This account includes amounts payable by others to the railroad for repair and maintenance of other railroads' freight cars. This account shall be subdivided by the following functions:

Repair and Maintenance:

Freight Cars	40–22–42
Road Property and Equipment Damaged	40–22–48

Repairs Billed to Others—Cr.—Equipment—Other Equipment—40–23–XX

This account includes amounts payable by others to the railroad for repair and maintenance of other railroads' other equipment. Each account shall be subdivided by the following functions:

Repair and Maintenance:
- Trucks, Trailers, and Containers in Revenue Service .. *40–23–43
- Floating Equipment—Revenue Service *40–23–44
- Passenger and Other Revenue Equipment 40–23–45
- Computer Systems and Word Processing Equipment 40–23–46
- Road Property and Equipment Damaged 40–23–48
- Shop Machinery—Locomotives 40–23–49
- Shop Machinery—Freight Cars *40–23–50
- Shop Machinery—Other Equipment 40–23–51

Other Purchased Services—Control—41–00–00

This account group includes amounts charged or credited to operating expenses for purchased advertising; purchased printing; outside professional services such as legal, accounting, audit, engineering, and consulting; payments for detour of trains; utilities, telephone, postage, subscriptions, communications, purchased electric power for train and locomotive propulsion; and other services purchased. The components of this account group shall be distributed to the following accounts in accordance with Instruction 1–18:

Other Purchased Services—Way and Structures—Running—41–11–XX

This account includes amounts charged or credited to operating expenses for other purchased services specified in control account 41–00–00. This account shall be subdivided by the following functions:

Repair and Maintenance:
- Roadway 41–11–10
- Tunnels and Subways 41–11–11
- Bridges and Culverts 41–11–12
- Ties 41–11–13
- Rails and Other Track Material 41–11–14
- Ballast 41–11–16
- Signals and Interlockers 41–11–19
- Highway Grade Crossings 41–11–22
- Dismantling Retired Property 41–11–39
- Road Property and Equipment Damaged 41–11–48

Other—Other 41–11–99

Other Purchased Services—Way and Structures—Switching—41–12–XX

This account includes amounts charged or credited to operating expenses for other purchased services specified in control account 41–00–00. This account shall be subdivided by the following functions:

Repair and Maintenance:
- Roadway 41–12–10
- Tunnels and Subways 41–12–11
- Bridges and Culverts 41–12–12
- Ties 41–12–13
- Rails and Other Track Material 41–12–14
- Ballast 41–12–16
- Signals and Interlockers 41–12–19
- Highway Grade Crossings 41–12–22
- Dismantling Retired Property 41–12–39
- Road Property and Equipment Damaged 41–12–48

Other—Other 41–12–99

Other Purchased Services—Way and Structures—Other—41–13–XX

This account includes amounts charged or credited to operating expenses for other purchased services specified in control account 41–00–00. This account shall be subdivided by the following functions:

Administration:
- Track 41–13–02
- Bridges and Buildings 41–13–03
- Signals 41–13–04
- Communications 41–13–05
- Other 41–13–06

Repair and Maintenance:
- Communication Systems 41–13–20
- Power Systems 41–13–21
- Station and Office Buildings ... 41–13–23
- Shop Buildings—Locomotives 41–13–24
- Shop Buildings—Freight Cars *41–13–25
- Shop Buildings—Other Equipment 41–13–26
- Locomotive Servicing Facilities 41–13–27
- Miscellaneous Buildings and Structures 41–13–28
- Coal Terminals *41–13–29
- Ore Terminals *41–13–30
- TOFC/COFC Terminals *41–13–31
- Other Marine Terminals *41–13–32
- Motor Vehicle Loading and Distribution Facilities *41–13–33
- Facilities for Other Specialized Services Operations *41–13–35
- Roadway Machines 41–13–36
- Snow Removal 41–13–38
- Dismantling Retired Property 41–13–39
- Road Property and Equipment Damaged 41–13–48

Other—Other 41–13–99

Other Purchased Services—Equipment—Locomotives—41–21–XX

This account includes amounts charged or credited to operating expenses for other purchased services specified in control account 41–00–00. This account shall be subdivided by the following functions:

Administrative—General 41–21–01

Repair and Maintenance:
- Dismantling Retired Property 41–21–39

Locomotives	41–21–41
Road Property and Equipment Damaged	41–21–48
Other—Other	41–21–99

Other Purchased Services—Equipment—Freight Cars—41–22–XX*

This account includes amounts charged or credited to operating expenses for other purchased services specified in control account 41–00–00. This account shall be subdivided by the following functions:

Administrative—General	41–22–01
Repair and Maintenance:	
Dismantling Retired Property	41–22–39
Freight Cars	41–22–42
Road Property and Equipment Damaged	41–22–48
Other—Other	41–22–99

Other Purchased Services—Equipment—Other Equipment—41–23–XX

This account includes amounts charged or credited to operating expenses for other purchased services specified in control account 41–00–00. This account shall be subdivided by the following functions:

Administrative—General	41–23–01
Repair and Maintenance:	
Dismantling Retired Property	41–23–39
Trucks, Trailers, Containers in Revenue Service	41–23–43
Floating Equipment—Revenue Service	*41–23–44
Passenger and Other Revenue Equipment	41–23–45
Computer Systems and Word Processing Equipment	41–23–46
Work and Other Non-Revenue Equipment	41–23–47
Road Property and Equipment Damaged	41–23–48
Shop Machinery—Locomotives	41–23–49
Shop Machinery—Freight Cars	*41–23–50
Shop Machinery—Other Equipment	41–23–51
Other—Other	41–23–99

Other Purchased Services—Transportation—Train—41–31–XX

This account includes amounts charged or credited to operating expenses for other purchased services specified in control account 41–00–00. This account shall be subdivided by the following functions:

Administration—General	41–31–01
Operations:	
Engine Crews	41–31–56
Train Crews	41–31–57
Dispatching Trains	41–31–58
Operating Switches, Signals, Interlockers, Retarders, Humps	41–31–59
Operating Drawbridges	41–31–60
Highway Crossing Protection	41–31–61
Train Inspection and Lubrication	41–31–62
Clearing Wrecks	41–31–63
Locomotive Fuel	41–31–67
Electric Power Purchased/Produced for Motive Power	41–31–68
Servicing Locomotives	41–31–69
Other—Other	41–31–99

Other Purchased Services—Transportation—Yard—41–32–XX

This account includes amounts charged or credited to operating expenses for other purchased services specified in control account 41–00–00. This account shall be subdivided by the following functions:

Administration—General	41–32–01
Operations:	
Operating Switches, Signals, Interlockers, Retarders, Humps	41–32–59
Clearing Wrecks	41–32–63
Switch Crews	41–32–64
Controlling Operations	41–32–65
Yard and Terminal Clerical	41–32–66
Locomotive Fuel	41–32–67
Electric Power Purchased/Produced for Motive Power	41–32–68
Servicing Locomotives	41–32–69
Other—Other	41–32–99

Other Purchased Services—Transportation—Train and Yard Common—41–33–XX

This account includes amounts charged or credited to operating expenses for other purchased services specified in control account 41–00–00. This account shall be subdivided by the following functions:

Operations:	
Cleaning Car Interiors	41–33–70
Adjusting, Transferring Loads	41–33–71
Car Loading Devices and Grain Doors	41–33–72

Other Purchased Services—Transportation—Specialized Services—41–34–XX

This account includes amounts charged or credited to operating expenses for other purchased services specified in control account 41–00–00. This account shall be subdivided by the following functions:

Administration—General	41–34–73
Operations:	
Pick Up and Delivery, Marine Line Haul, and Rail Substitute Service	41–34–73
Loading, Unloading, and Local Marine	41–34–74
Protective Services	41–34–75
Other—Other	41–34–99

Other Purchased Services—Transportation—Administrative Support—41–35–XX

This account includes amounts charged or credited to operating expenses for other purchased services specified in control account 41–00–00. This account shall be subdivided by the following functions:

Administration—General	41–35–01
Operations:	
Clerks, Accounting Employees	41–35–76
Communication Systems Operations	41–35–77
Loss and Damage Claims Processing	41–35–78
Other—Other	41–35–99

Other Purchased Services—General and Administrative—41–61–XX

This account includes amounts charged or credited to operating expenses for other purchased services specified in control account 41–00–00. This account shall be subdivided by the following functions:

Administration—General	41–61–01
General:	
Accounting, Auditing, Finance	41–61–86
Management Services and Data and Word Processing	41–61–87
Marketing	41–61–88
Sales	41–61–89
Industrial Development	*41–61–90
Personnel and Labor Relations	41–61–91
Legal and Secretarial	41–61–92
Public Relations and Advertising	41–61–93
Research and Development	41–61–94
Other—Other	41–61–99

Claims and Insurance

Control—50–00–00

This account may be used as a control account for all accounts in the CLAIMS AND INSURANCE series: Loss and Damage Claims, Other Casualties, Insurance.

Loss and Damage Claims—Control—51–00–00

This account series includes amounts payable to compensate for the loss or damage of freight or other goods carried in revenue service. Loss and damage claims should not be allocated. When specific identification of loss and damage claims is possible, the related expenses shall be directly assigned to the Train, Yard, or Specialized service Subactivity. If a solely related determination cannot be made the loss and damage claim shall be charged to the Train and Yard Subactivity. This account series excludes amounts payable to employees or other parties for injuries sustained or loss of life; for damage to real property of others or personal property not carried in revenue services; all payments for other damages of any kind; and related insurance premiums. These costs are appropriately charged to the following accounts:

Loss and Damage Claims—Transportation—Train	51–31–00
Loss and Damage Claims—Transportation—Yard	51–32–00
Loss and Damage Claims—Transportation—Train and Yard Common	51–33–00
Loss and Damage Claims—Transportation—Specialized Services	*51–34–00

Other Casualties—Control—52–00–00

This account includes amounts payable to employees or other parties for injuries sustained or loss of life in connection with the construction, maintenance, operations, and administration of railroad property and equipment; for damage to real property, property of others or personal property not carried in revenue service; all payments for other damages of any kind. This account excludes freight and other goods carried in a revenue service, and insurance premiums related to the casualties chargeable to this account.

NOTE: The costs of clearing wrecks and repairing casualty-caused damage to the railroad's property and equipment are properly classified under other natural expense accounts as appropriate and further classified by relevant activities and functions. These costs are appropriately charged to the following accounts:

Other Casualties—Way and Structures—Running	52–11–00
Other Casualties—Way and Structures—Switching	52–12–00
Other Casualties—Way and Structures—Other	52–13–00
Other Casualties—Equipment—Locomotives	52–21–00
Other Casualties—Equipment—Freight Cars	*52–22–00
Other Casualties—Equipment—Other Equipment	52–34–00
Other Casualties—Transportation—Train	52–31–00
Other Casualties—Transportation—Yard	52–32–00

Other Casualties—Transportation—Specialized Services	*52–34–00
Other Casualties—Transportation—Administrative Support	52–35–00
Other Casualties—General and Administrative	52–61–00

Insurance—Control—53–00–00

This account series include premiums for insurance to cover property and equipment loss and damage, liability, business interruption, and the like. These costs are appropriately charged to the following accounts:

Insurance—Way and Structures—Running	53–11–00
Insurance—Way and Structures—Switching	53–12–00
Insurance—Way and Structures—Other	53–13–00
Insurance—Equipment—Locomotives	53–21–00
Insurance—Equipment—Freight Cars	*53–22–00
Insurance—Equipment—Other Equipment	53–23–00
Insurance—Transportation—Train	53–31–00
Insurance—Transportation—Yard	53–32–00
Insurance—Transportation—Specialized Services	*53–34–00
Insurance—Transportation—Administrative Support	53–35–00
Insurance—General and Administrative	53–61–00

General

Control—60–00–00

This account may be used as a control account for all accounts in the GENERAL series: Other Expenses, Depreciation, Uncollectible Accounts, Property Taxes, Other Taxes.

Other Expenses—Control—61–00–00

This account series includes amounts charged to operating expenses for items not otherwise provided for in the other natural expense accounts, including travel and other expenses of employees, road property and equipment retirement losses, and other items of a general nature.

Other Expenses—Way and Structures—Running—61–11–XX

Each account includes amounts charged to operating expenses for items not otherwise provided for in the other natural expense accounts, including travel and other expenses of employees, road property retirement losses, and other items of a general nature associated with the carrier's roadway and track on the line of road and outside of classification yards. Each account shall be subdivided by the following functions:

Repair Maintenance:	
Roadway	61–11–10
Tunnels and Subways	61–11–11
Bridges and Culverts	61–11–12
Ties	61–11–13
Rails and Other Track Material	61–11–14
Ballast	61–11–16
Signals and Interlockers	61–11–19
Highway Grade Crossings	61–11–22
Dismantling Retired Property	61–11–39
Road Property and Equipment Damaged	61–11–48
Other—Other	61–11–99

Other Expenses—Way and Structures—Switching—61–12–XX

Each account includes amount charged to operating expenses for items not otherwise provided for in the other natural expense accounts, including travel and other expenses of employees, road property retirement losses, and other items of a general nature associated with the carrier's roadway and track within classification yards and stations. Each account shall be subdivided by the following functions:

Repair and Maintenance:	
Roadway	61–12–10
Tunnels and Subways	61–12–11
Bridges and Culverts	61–12–12
Ties	61–12–13
Rails and Other Track Material	61–12–14
Ballast	61–12–16
Signals and Interlockers	61–12–19
Highway Grade Crossings	61–12–22
Dismantling Retired Property	61–12–39
Road Property and Equipment Damaged	61–12–48
Other—Other	61–12–99

Other Expenses—Way and Structures—Other—61–13–XX

This account includes amounts charged to operating expenses for items not otherwise provided for in the other natural expense accounts, including travel and other expenses of employees, road property retirement losses, and other items of a general nature associated with the carrier's structures other than roadway and track. This account shall be subdivided by the following functions:

Administration:	
Track	61–13–02
Bridges and Buildings	61–13–03
Signals	61–13–04
Communications	61–13–05

Other	61–13–06
Repair and Maintenance:	
Communication Systems	61–13–20
Power Systems	61–13–21
Station and Office Buildings	61–13–23
Shop Buildings—Locomotives	61–13–24
Shop Buildings—Freight Cars	*61–13–25
Shop Buildings—Other Equipment	61–13–26
Locomotive Servicing Facilities	61–13–27
Miscellaneous Buildings and Structures	61–13–28
Coal Terminals	*61–13–29
Ore Terminals	*61–13–30
TOFC/COFC Terminals	*61–13–31
Other Marine Terminals	*61–13–32
Motor Vehicle Loading and Distribution Facilities	*61–13–33
Facilities for Other Specialized Services Operations	*61–13–35
Roadway Machines	61–13–36
Snow Removal	61–13–38
Dismantling Retired Property	61–13–39
Road Property and Equipment Damaged	61–13–48
Other—Other	61–13–99

Other Expenses—Equipment—Locomotives 61–21–XX

This account includes amounts charged to operating expenses for items not otherwise provided for in the other natural expense accounts, including travel and other expenses of employees and equipment retirement losses, associated with the repair and maintenance of locomotives, whether owned by the carrier or by others. This account shall be subdivided by the following functions:

Administration—General	61–21–01
Repair and Maintenance:	
Dismantling Retired Property	61–21–39
Locomotives	61–21–41
Road Property and Equipment Damaged	61–21–48
Other—Other	61–21–99

Other Expenses—Equipment—Freight Cars—61–22–XX*

This account includes amounts charged to operating expenses for items not otherwise provided for in the other natural expense accounts, including travel and other expenses of employees, equipment retirement losses, associated with the repair and maintenance of freight cars, whether owned by the carrier or by others. This account shall be subdivided by the following functions:

Administration—General	61–22–01
Repair and Maintenance:	
Dismantling Retired Property	61–22–39
Freight Cars	61–22–42
Road Property and Equipment Damaged	61–22–48
Other—Other	61–22–99

Other Expenses—Equipment—Other Equipment—61–23–XX

This account includes amounts charged to operating expenses for items not otherwise provided for in the other natural expense accounts, including travel and other expenses of employees, equipment retirement losses, associated with the repair and maintenance of equipment other than locomotives and freight cars, whether owned by the carrier or by others. This account shall be subdivided by the following functions:

Administration—General	61–23–01
Repair and Maintenance:	
Dismantling Retired Property	61–23–39
Trucks, Trailers, Containers in Revenue Service	*61–23–43
Floating Equipment—Revenue Service	*61–23–44
Passenger and Other Revenue Equipment	61–23–45
Computer Systems and Word Processing Equipment	61–23–46
Work and Other Non-Revenue Equipment	61–23–47
Road Property and Equipment Damaged	61–23–48
Shop Machinery—Locomotives	61–23–49
Shop Machinery—Freight Cars	*61–23–50
Shop Machinery—Other Equipment	61–23–51
Other—Other	61–23–99

Other Expenses—Transportation—Train—61–23–XX

This account includes amounts charged to operating expenses for items not otherwise provided for in the other natural expense accounts, including travel and other expenses of employees, associated with the dispatching and operations of freight-trains over the roadway and outside of classification yards. This account shall be subdivided by the following functions:

Administration—General	61–31–01
Operations:	
Engine Crews	61–31–56
Train Crews	61–31–57
Dispatching Trains	61–31–58
Operating Switches, Signals, Interlockers, Retarders, Humps	61–31–59
Operating Drawbridges	61–31–60
Highway Crossing Protection	61–31–61
Train Inspection and Lubrication	61–31–62
Clearing Wrecks	61–31–63
Locomotive Fuel	61–31–67
Electric Power Purchased/Produced for Motive Power	61–31–68
Servicing Locomotives	61–31–69
Other—Other	61–31–99

Other Expenses—Transportation—Yard—61–32–XX

This account includes amounts charged to operating expenses for items not otherwise provided for in the other natural expense accounts, including travel and other expenses of employees, and other items of a general nature associated with the movement of freight cars within classification yards and in terminal switching and transfer service. This account shall be subdivided by the following functions:

Administration—General	61–32–01
Operations:	
Operating Switches, Signals, Interlockers, Retarders, Humps	61–32–59
Clearing Wrecks	61–32–63
Switch Crews	61–32–64
Controlling Operations	61–32–65
Yard and Terminal Clerical	61–32–66
Locomotive Fuel	61–32–67
Electric Power Purchased/Produced for Motive Power	61–32–68
Servicing Locomotives	61–32–69
Other—Other	61–32–99

Other Expenses—Transportation—Specialized Services—61–34–XX*

This account includes amounts charged to operating expenses for items not otherwise provided for in the other natural expense accounts, including travel and other expenses of employees, and other items of a general nature incurred in operating services which are specialized in nature and in cost characteristics. The specialized services designated by the Board appear within the explanation of activities/ subactivities. This account shall be subdivided by the following functions:

Administration—General	61–34–01
Operations:	
Pick Up and Delivery, Marine Line Haul, and Rail Substitute Service	61–34–73
Loading, Unloading, and Local Marine	61–34–74
Protective Services	61–34–75
Other—Other	61–34–99

Other Expenses—Transportation—Administrative Support—61–35–XX

This account includes amounts charged to operating expenses for items not otherwise provided for in the other natural expense accounts, including travel and other expenses of employees, and other items of a general nature incurred in association with providing direct administrative support for the Transportation Activity. This account shall be subdivided by the following functions:

Administration—General	61–35–01
Operations:	
Clerks, Accounting Employees	61–35–76
Communication Systems Operations	61–35–77
Loss and Damage Claims Processing	61–35–78
Other—Other	61–35–99

Other Expenses—General and Administrative—61–61–XX

This account includes amounts charged to operating expenses for items not otherwise provided for in the other natural expense accounts, including travel and other expenses of employees, and other items of a general nature incurred in providing overall administration or other support for carrier operations. This account shall be subdivided by the following functions:

Administration—General	61–61–01
General:	
Accounting, Auditing, Finance	61–61–86
Management Services and Data Processing	61–61–87
Marketing	61–61–88
Sales	61–61–89
Industrial Development	*61–61–90
Personnel Labor Relations	61–61–91
Legal and Secretarial	61–61–92
Public Relations and Advertising	61–61–93
Research and Development	61–61–94
Other—Other	61–61–99

Depreciation—Control—62–00–00

This account group includes the amounts charged to operating expenses for depreciation of owned road property and equipment, and the depreciation element of road property held under capital lease in accordance with FASB Statement No. 13. These costs are appropriately charged to the following accounts:

Depreciation—Way and Structures—Running	62–11–00
Depreciation—Way and Structures—Switching	62–12–00
Depreciation—Way and Structures—Other	62–13–00
Depreciation—Equipment—Locomotives	62–21–00
Depreciation—Equipment—Freight Cars	*62–22–00
Depreciation—Equipment—Other Equipment	62–23–00

Uncollectible Accounts—Control—63–00–00

This account includes charges to operating expenses for the writedown of accounts and notes due to the railroad, whether classified as current or long-

term. This account includes any credits to allowance accounts for collectibility and total writeoff of receivables. This account does not include writedowns of property, equipment, or investments (except accounts, notes, or other receivables held as investments). Proper adjustments of incorrect receivables are not to be charged to this account. Collections of amounts previously written off or down are to be credited to this account. The total of this account shall be charged to the following account:

Uncollectible Accounts—General and Administrative 63–61–00

Property Taxes—Control—64–00–00

This account includes only taxes based on the value of real estate and personal property used in railroad operations. The total of this account shall be charged to the following account:

Property Taxes—General and Administrative 64–61–00

Other Taxes—Control—65–00–00

This account includes taxes on gross receipts, franchise fees, excise taxes, and similar items. This account excludes property taxes and taxes chargeable as employee benefits. The total of this account shall be charged to the following account:

Other Taxes—General and Administrative 65–61–00

OPERATING EXPENSE ACCOUNTS

Section 2—Activity/Subactivity Explanations

Way and Structures Activity—(XX–10–XX)

(A) *Way and Structures* activity refers to repairing, maintaining, leasing, renting, depreciating, and retiring right-of-way and trackage, structures, buildings, and facilities. It includes all natural expense object subclassifications such as salaries and wages, fringe benefits, material and supplies, lease rentals, purchased services, casualties, depreciation and retirements, where such objects are in the performance or support of the above functions. Specifically included are all natural expense objects in the performance of the above described functions on property of the type included in property accounts 2 through 45, excluding 44, whether such property is owned or leased. It includes the costs of operating work trains in support of this activity.

This activity excludes all expenses related to transportation and other equipment described in property accounts 44, 46 and 52 through 58, all of which should be charged to the Equipment activity. It also excludes expenses in performance or support of Transportation, General and Administrative activities, property used for noncarrier operations, non-operating property, and interest or other fixed charges.

Running Subactivity—(XX–11–XX)

(1) *Running* subactivity of the Way and Structures activity refers to the functions of repairing, maintaining, leasing, renting, depreciating, and retiring right-of-way, trackage, signals and interlockers, and highway grade crossings for running tracks, passing tracks, crossovers, etc., including turnouts from those tracks, passing clearance points. It includes all natural expense object subclassifications under the Way and Structures activity that are applicable to right-of-way and trackage as defined above. This subactivity specifically excludes expenses incurred in operating signals and interlockers and highway grade crossings, which are properly charged to the Transportation activity.

Switching Subactivity—(XX–12–XX)

(2) *Switching* subactivity of the Way and Structures activity refers to the function of repairing, maintaining, leasing, renting, depreciating, and retiring right-of-way, trackage, signals and interlockers, and highway grade crossings for yards where separate switching services are maintained, including classification, house, team, industry, and other tracks switched by yard locomotives, and for station, team, industry, and other switching tracks for which no separate switching service is maintained. It includes all natural expense object subclassifications under the Way and Structures activity that are applicable to right-of-way and trackage as defined above.

This subactivity specifically excludes expenses incurred in operating signals and interlockers, and highway grade crossings, which are properly charged to the Transportation activity.

Other Subactivity—(XX–13–XX)

(3) *Other* subactivity of the Way and Structures activity refers to the function of repairing, maintaining, leasing, renting, depreciating, and retiring other roadway property structures, buildings, and facilities not provided for in the Running and Switching subactivities. It includes all natural expense object subclassifications under the Way and Structures activity that are applicable to the structures, buildings, and facilities as defined above. The specifically excludes expenses incurred in operating such structures, buildings, and facilities, which are properly charged to the Equipment, Transportation, and General and Administrative activities.

Equipment Activity—(XX–20–XX)

(B) *Equipment* activity refers to repairing, maintaining, leasing, renting, depreciating, and retiring transportation and other operating equipment. It includes all natural expense object subclassifications such as salaries and wages, fringe benefits, material and supplies, lease rentals, purchased services, casualties, depreciation, and retirements. Specifically included are all natural expense objects in the performance of the above functions on property of the type included in property accounts 44, 46 and 52 through 58, whether such property is owned or leased. The costs of operating work trains in support of the Equipment activity are to be included herein.

This activity excludes all expenses related to road property as described in property accounts 2 through 45, excluding account 44, all of which should be charged to the Way and Structures activity. It also excludes expenses in performance of, or support for Transportation, General and Administrative activities, property used for noncarrier operations, nonoperating property, and interest or other fixed charges.

Locomotives Subactivity—(XX–21–XX)

(1) *Locomotives* subactivity of the Equipment activity refers to repairing, maintaining, leasing, renting, depreciating, and retiring locomotives. It includes all natural expense object subclassifications under the Equipment activity that are applicable to locomotives. This subactivity specifically excludes expenses incurred in operating locomotives, such as locomotive fuel and lubricants, train crew wages, operating supplies, servicing (as opposed to maintaining or repairing), and cleaning which are includable in the Transportation activity, except when locomotive use is clearly in support of other activities or subactivities. When locomotives are operated in support of repairing or maintaining locomotives, the operating costs shall be charged to this subactivity.

Freight Train Cars Subactivity—(XX–22–XX)

(2) *Freight Train Cars* subactivity of the Equipment activity refers to repairing, maintaining, leasing, renting, depreciating, and retiring freight train cars. It includes all natural expense object subclassifications under the Equipment activity that are applicable to freight train cars. This subactivity pertains to all freight train cars described in property account 53, whether owned or leased, including freight cars used for hauling freight in company service and cabooses. It does not pertain to work equipment. This subactivity specifically excludes expenses incurred in running trains or operating freight cars, such as for locomotive fuel and lubricants, train crew wages, inspecting trains, operating supplies, servicing (as opposed to maintaining or repairing), and cleaning, which are includable in the Transportation activity, except where such costs are clearly in support of repairing or maintaining freight cars, other activities or subactivities. When locomotives or trains are operated in support of repairing or maintaining freight cars, the operating costs shall be charged to this subactivity.

Other Equipment Subactivity—(XX–23–XX)

(3) *Other Equipment* subactivity of the Equipment activity refers to repairing, maintaining, leasing, renting, depreciating, and retiring other equipment. It includes all natural expense object subclassifications under the Equipment activity which are applicable to other equipment. The subactivity pertains to all equipment described in property accounts 44, 46 and 54 through 58, whether such property is owned or leased. This subactivity specifically excludes expenses incurred in operating other equipment, such as for fuel and lubricants, crew wages, inspecting equipment, operating supplies, servicing (as opposed to maintaining or repairing), and cleaning, which are includible in the Transportation activity, except where such costs are clearly in support of other activities or subactivities. When locomotives, trains, or other equipment are operating in support of repairing or maintaining other equipment, the operating costs shall be charged to this subactivity.

Transportation Activity—(XX–30–XX)

(C) *Transportation* activity refers to operating, servicing, inspecting, weighing, assembling, and switching trains; operating highway revenue services; operating facilities in connection with carrier transportation operations including coal and ore terminals, intermodal terminals, terminal grain elevators, and others; operating carfloat and carferry services and related facilities; operating communications systems which primarily support train operations; and joint facility transportation operations. It includes various administrative functions directly supporting transportation operations including those described in the Administrative Support Operations subactivity. Work train costs in support of the Way and Structures or the Equipment activities should be charged to those activities. However, shipments of company materials, handled in predominantly revenue freight trains, are appropriately included in this activity. This activity includes all natural expense object subclassifications such as salaries and wages, fringe benefits, material and supplies, purchased services, lost or damaged freight, and casualties.

Train Operations Subactivity—(XX–31–XX)

This activity excludes all expenses assignable to the Way and Structures, Equipment, and General and Administrative activities, as well as those expenses for noncarrier operations and nonoperating functions.

(1) *Train Operations* subactivity of the Transportation activity refers to operations of all trains except those performing yard functions in terminals. It includes running trains in road or way service; switching trains except where such switching is performed within yards or terminals; and making customer pick-ups and deliveries except in yards and terminals.

It also provides for dispatching, controlling, reporting, and monitoring road train movements; inspecting and lubricating trains; servicing, fueling, and cleaning (not repairing or maintaining) locomotives; purchasing or producing electric power for motive power; and operating supporting activities such as communications, signaling, crossing protection, and interlockings.

This subactivity also includes crew calling and transporting; crew lodging, meals, and other expenses; lost or damaged freight; casualties and insurance; clearing wrecks; and operating joint tracks and facilities except for yards or specialized services. It also includes salaries and wages, fringe benefits, material and supplies, fuel and lubricants, purchased services, casualty and damages, and other natural expense elements incurred in operating trains.

The Train Operations subactivity excludes the operation of specialized services, all of which should be charged to the Specialized Services Operations subactivity. However, road or way switching between trains and specialized service facilities outside of terminal areas belongs to the Train Operations subactivity.

Work and other nonrevenue train operating costs are to be charged to the appropriate supported activity. Shipments of company materials normally should be charged to this subactivity,

except where the train movement is exclusively or predominantly for such nonrevenue purpose where the supported activity should bear the train operating costs.

Yard Operations Subactivity—(XX–32–XX)

(2) *Yard Operations* subactivity of the Transportation activity refers to classifying cars to make-up or breakdown trains; sorting and handling waybills in connection with freight car classification and switching in yards or terminals; inspecting, servicing, fueling, and cleaning (not repairing or maintaining) locomotives and cabooses used to provide yard or terminal services; purchasing or producing electric power for motive power; diverting or holding cars; and reporting operating and car movement data related to yards and terminals. It also includes operating supporting activities in yards or terminals, such as communications, signaling, and interlockings; yard crew calling and transporting; yard crew lodging, meals, and other expenses; lost or damaged freight specifically traceable to occurrences resulting from the performance of yard operations; casualties and insurance related to yard operations; clearing wrecks which occurred in the performance of yard operations; and operating joint yards and terminals.

Within terminals, this subactivity includes pick-up or delivery of freight cars from or to customer spur tracks, team tracks, freight houses, interchange tracks, rip tracks, and specialized service facilities. It also includes salaries and wages, fringe benefits, material and supplies, fuel and lubricants, purchased services, casualty and damages, and other natural expense elements incurred in operating yards and terminals.

The Yard Operations subactivity includes the cost of switching operations within facilities for Specialized Services and switching or transfer operations between yards and the specialized service facilities. The latter is not limited or affected by definitions or restrictions contained in carrier operating rules or labor agreements. It is related solely to the defined operations when they are performed in a yard or terminal area.

Train and Yard Common Subactivity—(XX–33–XX)

(3) *Train and Yard Common* subactivity of the Transportation activity refers to the function of adjusting and transferring loads; and placing and removing car loading devices and grain doors. It also includes lost or damaged freight not specifically traceable to numerous activities resulting from performance of train, yard, or specialized services operations. It also includes salaries and wages, fringe benefits, material and supplies, purchased services, and other natural expense elements incurred in performing the functions defined above. It excludes the natural expense elements of casualties and insurance, which shall be charged to the Train Operations and Yard Operations subactivities.

Specialized Services Operations Subactivity—(XX–34–XX)

(4) *Specialized Services Operations* subactivity of the Transportation activity refers to operating services which are specialized in nature and in cost characteristics, including all of those so designated by the Board. The purpose of segregating the cost of such services is primarily to preclude distortion of general costs applicable to the Train Operations and Yard Operations subactivities. Secondarily, further breakout of the costs of operating individual specialized services can be provided in less detail than the full range of natural expense accounts, in reports used for recurring cost analysis purposes pertaining to each type of specialized service.

The designated specialized services operations are as follows:

(a) *TOFC/COFC Operations* refers to the function of operating rail-to-ground or water and ground or water-to-rail transfer facilities for handling trailers or containers, including related storage; and the highway movement of trailers or containers within a terminal area for purposes of pick-up, delivery, or interchange.

The service includes loading, tie-down, and/or unloading flat cars or dollies and piggyback trailers to or from

highway tractors; moving trailers, dollies, or containers within the facility; servicing, cleaning, and fueling (but not repairing or maintaining) facility equipment; operating storage areas; and casualties, claims, and insurance relating to the facility.

TOFC/COFC Operations do not include Plan V or other arrangements, where there is a division of revenues between the rail and motor carrier. They do not include switching services performed within the facility by yard or road crews. They also do not include the functions of the Way and Structures, Equipment, and General and Administrative activities, or the Train, Yard, Train and Yard Common, or Administrative Support Operations subactivities.

(b) *Floating Operations* refers to operations of water vessels and equipment in revenue service. They include the operation of carferries, tugs, barges, lighterage, and all other forms of water craft.

Floating operations exclude operations includable in the Administrative Support Operations subactivity, and the switching transfer of cars between general yards or trains and the facility or a dedicated yard serving the facility, or switching within the dedicated supporting terminal facility when performed by yard crews. They also do not include costs appropriate to the Way and Structures, Equipment, or General and Administrative activities.

Floating operations should be classified by line and terminal operations. The distribution should be made based on the nature of the operation and not the facility or equipment. When the service occurs between distinct terminals, the operation should be considered a line operation. When the service is conducted within a general terminal or harbor area, the operation should be considered a terminal operation.

(c) *Coal Terminal Operations and Ore Terminal Operations* refers to operations of rail-to-water or water-to-rail transloading facilities for coal or for ores, including related storage, blending, and other processing or handling at the facility. These operations include loading and/or unloading rail cars or water vessels at the facility; moving commodities within the facility by whatever means; operating the facility's pollution control equipment; operating and directing the operations of moorings and tugboats; servicing, cleaning, and fueling (but not repairing or maintaining) facility equipment; operating storage areas; and casualties, claims, and insurance relating to the facility.

These terminal operations do not include costs appropriate to the Way and Structures, Equipment, or General and Administrative activities. They also do not include costs appropriate to the Train Operations, Yard Operations, Train and Yard Operations Common, or Administrative Support Services Operations subactivities. Switching transfer of cars between general yards or trains and the facility or a dedicated yard serving the facility and switching within the dedicated supporting terminal facility when performed by yard crews should be charged to the Yard Operations subactivity.

(d) *Other Marine Terminal Operations* refers to the operations of marine terminals other than those for which a separate designated specialized service operation category is provided.

(e) *Motor Vehicle Loading and Distribution Facility Operations* refers to the operations of facilities for loading, unloading, or storing motor vehicles.

(f) *Protective Service Operations* refers to the function of servicing, cleaning, and fueling (but not repairing or maintaining) mechanical protective service equipment.

(g) *Other Specialized Services Operations* refers to the function of performing rail substitute service, other highway revenue service, LCL terminal operations, warehouse operations, freight car transloading, grain elevator terminal operations, livestock feeding operations, and other specialized services designated by the Board. It includes the transportation operating expenses of only those services listed above.

Administrative Support Operations Subactivity—(XX–35–XX)

(5) *Administrative Support Operations* subactivity refers to operations providing direct administrative support to the overall Transportation activity. It includes administrative support for the

Common, and the Specialized Services Operations subactivities. The administrative support operations includes receiving and processing customer orders, requesting cars, preparing waybills, rating shipments, billing customers, collecting customer receivables in the ordinary course of business (not to include treasury, legal, general accounting, revenue accounting, or credit operations, all of which are chargeable to the General and Administrative activity), billing and recording demurrage, reporting interchanges, reporting advances, and the initial reporting and summarization of input documents for purposes of cash collection and accounting. Any operations beyond the initial summarization and reporting of input data are assignable to the General and Administrative activity except for those otherwise included in the definition of this subactivity.

Carrier staff, administrative, or clerical operations related to operating or transportation department general administration should not be charged to this subactivity. The Administrative Support Operations subactivity may be performed at local stations, regional offices, or even at the general offices; however, the location of the operation performance does not affect its nature. The operations included in this subactivity should reasonably correlate to the quantity of shipments or to the quantity of carloadings.

General and Administrative Activity—(XX–60–XX)

(D) *General and Administrative* activity refers to the providing of overall administration or other general support for carrier operations. It comprehends only that portion of general and administrative activities that relates to carrier operations (as distinguished from noncarrier operations or nonoperating activities) including executive, legal, financial, treasury, accounting, budgeting, taxation, corporate planning, costing, marketing, advertising, traffic, corporate secretary, public relations, real estate, insurance administration, personnel administration, pension plan administration, general purchasing, labor relations, internal auditing, industrial engineering, and regulatory reporting.

This activity excludes expenses incurred for noncarrier operations of the carrier company as well as for general administration of the corporate entity and nonoperating income or expenses. It also excludes expenses in performance of or direct support for Way and Structures, Equipment, and Transportation activities, with particular attention to the Administrative Support Operations subactivity.

OPERATING EXPENSE ACCOUNTS

Section 3—Function Explanations

NOTE: Functions do not necessarily correlate to organizational structure. A particular department may not have a specific USOA expense function code. However, its costs may be includable under various function codes. Costs not properly chargeable to specific functions should be assigned to Function Code 99, Other.

(a) Functions Related to the Way and Structures Activity

(1) Administration Functions.

(02) Administration, Track—General administration and supervision of central, regional, and divisional engineering functions related to repair and maintenance of track. Used only in Way and Structures—Other. Included are:

- General engineering and design.
- Valuation engineering for maintenance and improvements.
- Planning and supervision of repair and maintenance work.
- Budget preparation, clerical support, and similar functions.

(03) Administration, Bridges and Buildings—General administration and supervision of central, regional and divisional engineering functions related to repair and maintenance of bridges and buildings. Used only in Way and Structures—Other. Included are:

- General engineering and design.
- Valuation engineering for maintenance and improvements.
- Planning and supervision of repair and maintenance work.
- Budget preparation, clerical support, and similar functions.

(04) Administration, Signals—General administration and supervision of

central, regional, and divisional engineering functions related to repair and maintenance of signals. Used only in Way and Structures—Other. Included are:

- General engineering and design.
- Valuation engineering for maintenance and improvements.
- Planning and supervision of repair and maintenance work.
- Budget preparation, clerical support, and similar functions.

(05) Administration, Communications—General administration and supervision of central, regional, and divisional engineering functions related to repair and maintenance of communication facilities. Used only in Way and Structures—Other. Included are:

- General engineering and design.
- Valuation engineering for maintenance and improvements.
- Planning and supervision of repair and maintenance work.
- Budget preparation, clerical support, and similar functions.

(06) Administration, Other—General administration and supervision of central, regional, and divisional engineering functions related to repair and maintenance of other roadway property. Used only in Way and Structures—Other. Included are:

- General engineering and design.
- Valuation engineering for maintenance and improvements.
- Planning and supervision of repair and maintenance work.
- Budget preparation, clerical support, and similar functions.

(2) Repair and Maintenance Functions—These functions include:

- Repair and maintenance work on road property and equipment, including gang foreman, shop foreman, and other supervisors with direct authority over workers; all higher levels of supervision are included in the Administration function.
- Work train service. Crew wages are to be charged directly; other work train expenses except fuel may be apportioned if not solely identifiable to work train service.
- Store expense and shop expense.

(10) Repair and Maintenance, Roadway—Roadway, cuts, fills, banks, embankments, subgrade, roadbed, ditches, drains, landscaping; cutting and removing grass, brush, debris; dressing ballast; preventing and extinguishing fires; patrolling and inspection; roadway relocation.

(11) Repair and Maintenance, Tunnels and Subways—Repaving, ventilating, lighting, other maintenance.

(12) Repair and Maintenance, Bridges and Culverts—Bridges, trestles, culverts and elevated structures which carry tracks; repairing, filling, dredging, cleaning, watching these structures.

(13) Repair and Maintenance, Ties—Cross, switch, bridge, and other track ties. This function includes expenses associated with unloading, distributing and placing ties in tracks.

(14) Repair and Maintenance, Rails and Other Track Material—All track material used in repair of tracks except ballast and ties. This function includes expenses associated with unloading and installing Rail and Other Track Material.

(16) Repair and Maintenance, Ballast—Gravel, stone, slag, cinders, sand, and like material.

(19) Repair and Maintenance, Signals and Interlockers—Signals and interlockers and related apparatus governing train movement.

(20) Repair and Maintenance, Communications Systems—Telephone, telegraph, radio, radar, inductive train communication, and other communication systems, including terminal equipment.

(21) Repair and Maintenance, Power Systems—Power plants, substations, transmission and distribution systems.

(22) Repair and Maintenance, Highway Grade Crossings—Highway grade crossing signals, gates, and related apparatus.

(23) Repair and Maintenance, Station and Office Buildings—Station and office buildings, fixtures, appurtenances, and grounds.

(24) Repair and Maintenance, Shop Buildings—Locomotives—Shops and buildings, fixtures, appurtenances, and grounds, used for the repair, maintenance and servicing of locomotives.

(25) Repair and Maintenance, Shop Buildings—Freight Cars—Shops and buildings, fixtures, appurtenances, and grounds, used for the repair, maintenance, and servicing of freight cars.

(26) Repair and Maintenance, Shop Buildings—Other—Shops and buildings,

fixtures, appurtenances, and grounds, used for the repair, maintenance, and servicing of revenue service equipment other than locomotives and freight cars; roadway machines; work equipment and the like.

(27) Repair and Maintenance, Locomotive Servicing Facilities—Fuel and water stations, fixtures, appurtenances, and grounds.

(28) Repair and Maintenance, Miscellaneous Buildings and Structures. All permanent buildings and structures, and their fixtures, appurtenances, and grounds, not otherwise provided for. (Includes storehouses.)

(29) Repair and Maintenance, Coal Terminals—Wharves, docks, and other loading or unloading facilities for handling coal, including conveyors, machinery and fixtures.

(30) Repair and Maintenance, Ore Terminal—Wharves, docks, and other loading or unloading facilities for handling ores and other bulk mineral commodities, including conveyors, machinery and fixtures.

(31) Repair and Maintenance, TOFC/COFC—Terminals—TOFC/COFC terminal structures, fixtures, machinery and appurtenances, used for transfer of trailers and containers.

(32) Repair and Maintenance, Other Marine Terminals—Marine terminal structures, fixtures, machinery and appurtenances not otherwise provided for.

(33) Repair and Maintenance, Motor Vehicle Loading and Distribution Facilities—Buildings, structures, fixtures, machinery and appurtenances used for receipt, loading, unloading, and distribution of motor vehicles.

(35) Repair and Maintenance Facilities for Other Specialized Services Operations—Buildings, structures, machinery, fixtures and grounds, used as part or whole of a revenue-producing specialized service.

(36) Repair and Maintenance, Roadway Machines—Machines and equipment used for repairs of roadway and structures.

(37) Small tools and Supplies—Cost of small tools and supplies used in repair and maintenances.

(38) Snow Removal—Removal of snow and ice; plow and flange service; setting up, taking down and storing fences. If the amount of labor expense is not substantial, the wages of those employees who perform snow removal duties may be included in the appropriate expense accounts for the duties they are normally assigned.

(39) Dismantling Retired Property—Dismantling retired road property when the property is not to be replaced through normal maintenance, addition or betterment.

(48) Road Property Damaged—Repair of roadway property and structures, used in revenue service, and all equipment not used in revenue service, when damage is caused by derailments, collision, fire, explosions, sabotage, other casualties, and excluding damage resulting through normal operations or use; such as part failures, overloads, overheating, short circuits and similar events. Part failures through normal operations are those where the resulting damage is restricted to the unit of road property which experienced the failure. When the damage extends to other units of road property, related expenses shall be charged to this function.

(3) Other Function.

(99) Other—All expenses not properly includable in the above functions.

(b) Functions Related to the Equipment Activity

(1) Administrative Functions.

(01) Administration, General—General administration and supervision of central, regional, and divisional repair and maintenance functions. Included are:

- General engineering and design.
- Valuation engineering for maintenance and improvements.
- Planning and supervision of repair and maintenance of equipment.
- Budget preparation, clerical support, and similar functions.

(2) Repair and Maintenance Functions—These functions include:

- Repair and maintenance work on equipment including gang foreman, shop foreman, and other supervisors with direct authority over workers; all higher levels of supervision are included in the Administrative function.
- Store expense and shop expense.

(39) Dismantling Retired Property—Dismantling retired equipment when the property is not to be replaced

through normal maintenance, addition or betterment.

(40) [Reserved]

(41) Repair and Maintenance, Locomotives—Repair of locomotives in revenue service.

(42) Repair and Maintenance, Freight Cars—Repair of freight cars and attached motor equipment in revenue service.

(43) Repair and Maintenance, Trucks, Trailers, Containers in Revenue Service—Repair, inspection, and lubrication of trucks, trailers and containers in revenue service.

(44) Repair and Maintenance, Floating Equipment in Revenue Service—Floating equipment including appurtenances.

(45) Repair and Maintenance, Passenger and Other Revenue Equipment—Repair, inspection and lubrication of passenger train cars and attached motor equipment, and other equipment used in revenue service.

(46) Repair and Maintenance, Computer Systems and Word Processing Systems—Computers and attached peripheral equipment; data recording and punch-card processing equipment; word processing equipment.

(47) Repair and Maintenance, Work and Other Non-Revenue Equipment—Rail and floating work equipment and appurtenances, and all other equipment not used in revenue service and not provided for elsewhere.

(48) Equipment Damaged—Repair of locomotives, freight cars, other equipment used in revenue service, and all equipment not used in revenue service, when damage is caused by derailment, collision, fire, explosions, sabotage, washouts, or other casualties, and excluding damage resulting through normal operations or use, such as part failures, overloads, overheating, short circuits and the like. Part failures through normal operations are those where the resulting damage is restricted to the equipment that experienced the failure. When the damage extends to other units of equipment, related repairs shall be charged to this function.

(49) Repair and Maintenance, Shop Machinery—Locomotives—Repair of shop machinery and other apparatus, including special foundations used for the repair, maintenance and servicing of locomotives.

(50) Repair and Maintenance, Shop Machinery—Freight Cars—Repair of shop machinery and other apparatus, including special foundations for the repair, maintenance and servicing of freight cars.

(51) Repair and Maintenance, Shop Machinery—Other Equipment—Repair of shop machinery and other apparatus, including special foundations for the repair, maintenance and servicing of other equipment.

(3) Other Function.

(99) Other—All equipment expenses not properly includable in the above functions.

(c) Functions Related to the Transportation Activity

(1) Administrative Function.

(01) Administration, General—General administration and supervision of central, regional, and divisional operational functions. Included are:

- Planning and supervision of train, yard, common, specialized services and support operations.
- Budget preparation, clerical support, and similar functions.

[Not applicable to the Train and Yard Common Subactivity.]

(2) Operations Functions.

(56) Engine Crews—Operation of trains in line-haul revenue service by enginemen, including crew meals, lodging, deadheading and other expenses.

(57) Train Crews—Operation of trains in line-haul revenue service by trainmen, including crew meals, lodging, deadheading, and other expenses.

(58) Dispatching Trains—Costs include dispatchers, supporting staff, train order stations and operators, office and supplies expense.

(59) Operating Switches, Signals, Interlockers, Retarders, Humps—Operators, switch tenders, supplies, etc.

(60) Operating Drawbridges—Engineers, tenders, watchmen, supplies, etc.

(61) Highway Crossing Protection—Gatekeepers, flagmen, lighting, supplies, etc.

(62) Train Inspection and Lubrication—Inspection and lubrication of trains (cars and locomotives), including minor repairs made by inspectors. This includes the inspection of train locomotives when indistinguishable from

the inspection and lubrication of train cars.

(63) Clearing Wrecks—Removal of equipment, freight or other goods, and property of others damaged in wrecks; note that repair of wreck damage caused to roadway property and equipment is classified as function Code 48—Road Property and Equipment Damaged.

(64) Switch Crews—Operation of trains and locomotives in yard and terminal revenue switching service by enginemen and trainmen, including associated expenses.

(65) Controlling Operations—Directing the operations of yard and terminal interchange and classification service, including office and supplies expense.

(66) Yard and Terminal Clerical—Clerical work in support of the operation of yard and terminal switching and classification service, including office and supplies expense.

(67) Locomotive Fuel—Cost of locomotive fuel used in all service, including the receipt, storage, and dispensing of the fuel.

(68) Electric Power Purchased/Produced for Motive Power—Purchase cost and cost of producing electric power for use by electrically-powered motive equipment in all service.

(69) Servicing Locomotives—Preparing locomotives for switching service in yards and for train service, including moving locomotives around engine yards. This includes the inspection and lubrication of yard locomotives and may include the inspection and lubrication of train locomotives where distinguishable from the inspection and lubrication of train cars.

(70) Cleaning Car Interiors—Cleaning and preparing car interiors for revenue service, including minor repairs made by car cleaners. This includes payment for cleaning cars due to spoilage of perishable shipments.

(71) Adjusting and Transferring Loads—Transferring, picking up, straightening, and reloading freight in the ordinary course of transportation.

(72) Car Loading Devices and Grain Doors—Servicing car loading devices and placing and removing grain doors.

(73) Pickup & Delivery, Marine Line Haul & Rail Substitute Service—Operation of trucks, floating equipment, and all other specialized equipment providing line haul movement for revenue including TOFC/COFC pick-up and delivery.

(74) Loading & Unloading and Local Marine—All other specialized services in the transportation activity such as TOFC/COFC loading, unloading, and tie down; coal and ore loading and unloading; and other similar functions.

(75) Protective Services—Inspecting, servicing, cleaning, and fueling protective equipment and devices.

(76) Clerical and Accounting Employees—Direct administrative support to the Transportation Activity, including receiving and processing customer orders, requesting cars, preparing waybills, rating shipments, billing customers, collecting customer receivables in the ordinary course of business, billing and recording demurrage, reporting interchanges, reporting advances, and the initial summarization and reporting of input data.

(77) Communications Systems Operation—Cost of operating communications systems; when such operations are an integral part of other functions, only specifically identifiable costs of operating communications systems are to be allocated to this function.

(78) Loss and Damage Claims Processing—Receipt, investigation, other handling, and adjustment and settlement of claims for loss or damage of freight or other goods carried in revenue service. Does not include handling claims for personal injury or for loss or damage of other property.

(3) Other Function.

(99) Other—All transportation expenses not properly includable in the above functions.

(d) Functions Related to the General and Administration Activity

(1) Administrative Function.

(01) Administration, General—General administration and supervision of central, regional, and divisional general functions. Included are:

- Planning and supervision of general and administrative functions.
- Budget preparation, clerical support, and similar functions. It includes the overall responsibility for two or more of the General and Administrative functions listed below or the responsibility that expands to more than one activity.

(2) General Functions.

(86) Accounting, Auditing, Finance—General and corporate accounting, auditing by internal auditors and outside accountants, treasury, tax accounting and returns, financial reporting, corporate planning related to investment decisions and budgeting.

(87) Management Services and Data and Word Processing—Systems planning and design, programming, computer operations, data control, key entry of data, and related activities; This includes operating expenses associated with a particular computer system or word processing equipment that is dedicated to more than one activity. This does not include expenses associated with computer systems or word processing equipment dedicated exclusively to the Way and Structure, Equipment or Transportation Activity; these expenses shall be charged to the appropriate subactivity/function.

(88) Marketing—Market planning and analysis, traffic analysis, costing, pricing, and related activities.

(89) Sales—Traffic solicitation and related sales efforts.

(90) Industrial Development—Efforts to locate industries on real estate accessible to the railroad's lines for the purpose of creating future revenues.

(91) Personnel and Labor Relations—Efforts to attract and retain employees, handle fringe benefit plans, monitor and negotiate labor contracts, maintain employee data and records, coordinate training programs, handle grievances, handle employee transfers, operate job safety and equal opportunity programs, and related activities.

(92) Legal and Secretarial—Legal functions handled by attorneys and supporting staff; including lawsuits, injury and damage claims, commerce matters, and similar functions; corporate secretarial functions involving shareholder records, corporate minutes, stock certificates, and similar items.

(93) Public Relations and Advertising—Public relations activities with governmental bodies, shippers, and the general public; advertising in the media, booklets, publications; open houses and tours; and similar activities.

(94) Research and Development—Research into the use of methods, procedures, practices, equipment, machinery tools, and plant, and in determining and measuring the impact of factors or costs not previously known, with the intention of finding ways to improve maintenance, operations, administration, rates, productivity, environmental impact, and similar items. Does not include specific studies or development efforts for which an implementation decision has already been made.

(3) Other Function.

(99) Other—All general and administration expenses not properly includable in the above functions.

INCOME ACCOUNTS

Ordinary Items

501 Railway operating revenues.

This account is a summarization of Railway Operating Revenue Accounts 101 to 122. It excludes transfers from governmental authorities except when the transfer payment is for specific services for transporting property or persons by rail line other than commuter operations and local rail service subsidies granted under authority of the Railroad Revitalization and Regulatory Reform Act of 1976 [See Instruction 1–15(e)(2)].

[52 FR 4346, Feb. 11, 1987]

502 Railway operating revenues—transfers from government authorities for current operations.

This account shall include amounts received or receivable from Federal, state, or municipal authorities which are specifically designated to offset operating expenses, or which may be applied at the discretion of the railroad to operating expenses and/or railroad property.

This account shall also include amounts received from government authorities to offset operating costs sustained on specific lines or in certain regions. Examples are: (1) Local Rail Service Assistance Subsidies granted to the carrier under authority of the Railroad Revitalization and Regulatory Reform Act of 1976, and (2) payments by regional transit authorities

in connection with specified operations performed by the carrier.

This account shall also include indirect receipts which reduce operating expenses, such as assumption of station maintenance costs, abatement of taxes, or other indirect contributions by government agencies, if clearly identifiable and measurable.

NOTE: This account shall not include receipts from government authorities designated for the acquisition, addition to, or improvement of railway operating property. (See instruction 1–15.)

(49 U.S.C. 304, 320)

[43 FR 30558, July 17, 1978]

503 Railway operating revenues—amortization of deferred transfers from government authorities.

This account shall include the amortization applicable to amounts representing the cost of acquisition, addition to, or improvement of depreciable operating property received from Federal, state, or municipal authorities. (See instruction 1–15, and account 783, ''Deferred Revenues—Transfers from Government Authorities.'')

(49 U.S.C. 304, 320)

[43 FR 30558, July 17, 1978]

506 Revenues from property used in other than carrier operations.

This account shall include the total revenues derived from property used in other than carrier operations, the cost of which is includible in balance-sheet account 737, ''Property used in other than carrier operations.''

510 Miscellaneous rent income.

(a) This account shall include such rents of property owned and controlled by the accounting carrier as are not provided for in the foregoing accounts.

(b) This account shall be charged with the cost of maintenance of the property rented, also specific incidental expenses in connection with such property, such as the cost of negotiating contracts, advertising for tenants, fees paid conveyancers, collectors' commissions, and analogous items.

NOTE A: Taxes on property the rent of which is creditable to this account shall be charged to account 64–61–00, Property Taxes.

NOTE B: The rent from property carried in account 737, Property used in other than carrier operations, shall not be included in this account. Such rents shall be included in account 506, Revenues from property used in other than carrier operations.

NOTE C: Rent and other income from real estate acquired for new lines or for additions and betterments shall be credited to the appropriate road and equipment accounts until the completion or coming into service of the property.

NOTE D: Rent and other income from real estate acquired for new lines or for additions and betterments shall be credited to the appropriate road and equipment accounts until the completion or coming into service of the property.

[42 FR 35017, July 7, 1977, as amended at 52 FR 4346, Feb. 11, 1987]

512 Separately operated properties; profit.

(a) This account shall include amounts earned under the terms of agreements or contracts whereby the net income resulting from the operation by others or properties of other companies having a separate corporate existence is to be paid, in whole or in part, to the accounting company.

(b) In determining the amount earned by the accounting company, consideration shall be given not only to the operating revenues and operating expenses but also to other items of income or deduction which affect that amount.

NOTE A: The amount payable by the operating company shall be charged by it to account 550, Income Transferred under Contracts and Agreements.

NOTE B: Dividends or other returns upon securities issued by separately operated companies, and held or controlled by the accounting company, shall be included in accounts 513, ''Dividend income,'' 514, ''Interest income,'' or 516, ''Income from sinking and other funds,'' as may be appropriate.

[42 FR 35017, July 7, 1977, as amended at 52 FR 4347, Feb. 11, 1987]

513 Dividend income.

(a) This account shall include dividends declared on railway and other stocks, the income from which is the property of the accounting company, whether such stocks are owned by the accounting company and held in its treasury or deposited in trust, or are controlled through lease or otherwise.

(b) Dividends declared shall not be credited prior to actual collection unless their payment is reasonably assured by past experience, guaranty, anticipated provision, or otherwise. (See note C to account 708, ''Interest and dividends receivable.'')

(c) Accruals of guaranteed dividends may be included in this account if their payment is reasonably assured.

NOTE A: This account shall not include credits for dividends on stocks issued or assumed by the accounting company and owned by it, whether pledged as collateral or held in its treasury, in special deposits, or in sinking or other funds.

NOTE B: Dividends on stocks of other companies held in sinking or other funds shall be credited to account 516, ''Income from sinking and other funds.''

514 Interest income.

(a) This account shall include the interest on securities and debenture stock of other companies, the income from which is the property of the accounting company whether such securities are owned by the accounting company and held in its treasury or deposited in trust, or are controlled through lease or otherwise.

(b) The account shall also include interest on notes and other evidences of indebtedness and interest on bank balances, open accounts, and other analogous items, including discount or short-term notes. Interest shall not be accrued unless its payment is reasonably assured by past experience, guaranty, anticipated provision, or otherwise. (See note C to account 708, ''Interest and dividends receivable.'')

(c) At the option of the accounting company there may be included each year in this account the portion, applicable to the fiscal period, of the amount requisite to extinguish, during the interval between the date of acquisition and the date of maturity, the discount or premium on securities of other companies owned (other than short-term notes). Amounts thus credited or charged shall be concurrently charged or credited to the account in which the cost of the securities is carried. The discount on short-term notes shall be distributed through equal monthly credits, over the terms of the notes.

NOTE A: This account shall not include interest on securities issued or assumed by the accounting company and owned by it, whether pledged as collateral or held in its treasury, in special deposits, or in sinking or other funds.

NOTE B: Interest on securities other than those of the accounting company, and on other assets held in sinking or other funds shall be included in account 516, ''Income from sinking and other funds.''

NOTE C: Discount on bills for material purchased shall be credited to the accounts to which is charged the cost of the material with respect to which the discount is allowed.

516 Income from sinking and other funds.

(a) This account shall include the income on cash, securities, and other assets (not including securities issued or assumed by the accounting company) held in sinking and other funds. (See note C to account 708, ''Interest and dividends receivable.'')

(b) At the option of the accounting company there may be included each year in this account the portion, applicable to the fiscal period, of the amount requisite to extinguish, during the interval between the date of acquisition and the date of maturity, the discount or premium on funded securities held in sinking or other funds. Amounts thus credited or charged shall be concurrently charged or credited to the account in which the cost of the securities is carried.

517 Release of premiums on funded debt.

This account shall include, during each fiscal year, such proportion of the premiums on outstanding funded debt as may be applicable to the period. (See instruction 5–3.)

518 Reimbursement received under contracts and agreements.

(a) This account shall include amounts received or receivable from other companies or individuals, representing the whole or a part of the net loss of the accounting company, when under the terms of agreements or contract, no obligation for subsequent reimbursement is incurred.

(b) In determining the amount receivable by the accounting company, consideration shall be given not only

to the operating revenues and operating expenses, but also to other items of income or deduction which affect that amount.

NOTE: The amount payable shall be charged by the contributing company to account 545, ''Separately operated properties—Loss.''

[42 FR 35017, July 7, 1977, as amended at 52 FR 4347, Feb. 11, 1987]

519 Miscellaneous income.

(a) This account shall include all items, not provided for elsewhere, properly creditable to income accounts during the current year. Among the items which shall be included in this account are:

Cancellation of balance sheet accounts representing unclaimed wages and vouchered accounts written off because of carrier's inability to locate the creditor.

Profit from sale of securities carried as temporary cash investments.

Profit from sale of land used for transportation purposes, of noncarrier property and of securities acquired for investment purposes.

Profit from company bonds reacquired.

Decreases in the valuation allowance (contained within account 702) for the marketable equity securities included in current assets.

(b) Gains from extinguishment of debt shall be aggregated and, if material, credited to account 570, ''Extraordinary Items,'' upon approval by the Board; however, gains from extinguishment of debt (excluding debt maturing serially) which is made to satisfy sinking fund requirements, shall be recorded in this account regardless of amount.

531 Railway operating expenses.

This account shall include total expenses caused by operations, as shown in the primary expense accounts provided in these regulations.

534 Expenses of property used in other than carrier operations.

This account shall include depreciation, rent, taxes, and other expenses incurred on property used in other than carrier operations.

NOTE: If property for which rent expense is includable in this account is sublet, the rent from the sublease shall be included in account 506, Revenues from property used in other than carrier operations.

[42 FR 35017, July 7, 1977, as amended at 52 FR 4347, Feb. 11, 1987]

544 Miscellaneous taxes.

This account shall include all accruals for taxes not provided for elsewhere, such as taxes on securities owned, and taxes on income from securities owned.

545 Separately operated properties; loss.

(a) This account shall include amounts payable under the terms of agreements or contracts whereby the net loss resulting from the operation by others of properties of other companies having a separate corporate existence is to be paid, in whole or in part, by the accounting company.

(b) In determining the amount payable by the accounting company, consideration shall be given not only to the operating revenues and operating expenses, but also to other items of income or deductions which affect that amount.

NOTE A: The amounts receivable by the operating company shall be credited by it to account 518, Reimbursements received under contracts and agreements.

NOTE B: Dividends or other returns upon securities issued by separately operated companies and held or controlled by the accounting company shall not be included in this account to offset a deficit payable, but in accounts 513, ''Dividend income,'' or 514, ''Interest income,'' as may be appropriate.

[42 FR 35017, July 7, 1977, as amended at 52 FR 4347, Feb. 11, 1987]

546 Interest on funded debt.

This account shall include the current accruals of interest on all classes of long-term debt, the principal of which is includable in accounts 765, Funded debt unmatured; 766, Equipment obligations; 767, Receivers' and trustees' securities; 768, Debt in default; and 769, Accounts Payable; affiliated companies.

NOTE A: This account shall not include charges for interest on funded debt obligations issued or assumed by the accounting company and owned by it, whether pledged as collateral or held in its treasury, in special deposits, or in sinking or other funds.

NOTE B: When funded debt is incurred for new lines or extensions, or for addition and betterment purposes, the accruals of interest on such funded debt (less interest received on unexpended balances), to the date of completion or coming into service of the property so acquired shall be includable in the road and equipment accounts.

NOTE C: This account shall be maintained so as to show separately: (a) Fixed interest which will be paid, or for which provision for payment will be made, when the interest matures; (b) interest in default; and (c) contingent interest determined to be payable.

[42 FR 35017, July 7, 1977, as amended at 52 FR 4347, Feb. 11, 1987]

547 Interest on unfunded debt.

This account shall include interest accrued on unfunded debt, such as short-term notes payable on demand or having maturity dates of one year or less from dates of issue, and open accounts, including discount and expense on demand and short-term loans, interest on receipts outstanding for installments paid on capital stock, interest on deferred payments for public improvements, interest on tax deficiencies, overcharge claims and court awards, and other analogous items. The discount on short-term notes, if of a considerable amount shall be distributed through equal monthly charges, over the term of the notes.

NOTE: When short-term notes or other evidences of unfunded indebtedness are issued for new lines or extensions or for addition and betterment purposes the accrual of interest to the date of completion or coming into service of the property shall be included in the road and equipment accounts.

[42 FR 35017, July 7, 1977, as amended at 52 FR 4347, Feb. 11, 1987]

548 Amortization of discount on funded debt.

(a) This account shall be charged during each fiscal period with the proportion of the discount on funded debt obligations applicable to that period. This proportion shall be determined according to a rule the uniform application of which through the interval between the date of sale and the date of maturity will extinguish the discount on funded debt.

(b) The charge to this account for any period must not be either greater or less than the proportion of the balance remaining unamortized applicable to that period so long as any portion of the discount remains unextinguished. However, the entire amount for the discount and expense applicable to any particular issue of obligations may be charged directly to this account at time of issue when the aggregate of such amounts does not appreciably affect the accounts. (See instruction 5–3(b).)

549 Maintenance of investment organization.

This account shall include the directly assignable administration expenses of the accounting company which are incident to its investments in leased or nonoperating physical property, and in stocks, bonds, or other securities.

ITEMS OF EXPENSE

Advertising annual reports (lessor companies only).
Calls for bonds in accordance with sinking fund provisions of mortgages.
Directors' fees.
Printing and mailing dividend checks.
Publishing and mailing annual reports and other corporate statements to shareholders.
Publishing notices of declaration of dividends.
Law expenses.
Office expenses.
Salaries of officers, clerks, and attendant.
Stationery and printing.

NOTE: Administration expenses incident to railway operation are includible in the primary accounts provided for in operating expense general account series 60–00–00.

550 Income transferred under contracts and agreements.

(a) This account shall include the whole or any portion of the income of the accounting company payable to another company under the terms of agreements or contracts without obligation for reimbursement.

(b) In determining the amount payable by the accounting company, consideration shall be given not only to operating revenues and operating expenses, but also to other items of income or deduction which affect that amount.

NOTE A: The amount receivable by the other company shall be credited by it to account 512, ''Separately operated properties—Profit.''

NOTE B: Dividends or other payments upon securities issued or assumed by the accounting company shall not be included in this account.

[42 FR 35017, July 7, 1977, as amended at 52 FR 4347, Feb. 11, 1987]

551 Miscellaneous income charges.

(a) This account shall include items, not otherwise provided for in the other income accounts. This includes:

Income tax on the interest on the accounting company's funded debt when these taxes are assumed by the company.
Payments of old accounts previously written off.
Penalties and fines for violation of the Interstate Commerce Act or other federal and state laws.
Loss on sale of securities carried as temporary cash investments.
Loss on sale of land used for transportation purposes and of noncarrier property.
Loss on sale of securities acquired for investment purposes, and charges to write down the ledger value of such securities because of impairment in their value.
Loss from company bonds reacquired.
Increases in the valuation allowance (contained within account 702) for the marketable equity securities included in current assets.

Contributions for charitable, social, or community welfare purposes that do not have a direct relation to the protection of company property, development of its business, or welfare of its employees.

(b) Losses from extinguishment of debt shall be aggregated and, if material, charged to account 570, ''Extraordinary Items (net),'' upon approval by the Board; however, losses from extinguishment of debt (excluding debt maturing serially) which is made to satisfy sinking fund requirements, shall be included in this account regardless of amount.

(c) Contributions for charitable, social, or community welfare purposes that have a direct relation to the protection of company property, development of its business, or welfare of its employees should be charged to account 61–61–99, Other Expenses—General and Administrative—Other.

(49 U.S.C. 12, 20, 304, 913, and 1012)

[42 FR 35017, July 7, 1977, as amended at 42 FR 64350, Dec. 23, 1977; 52 FR 4347, Feb. 11, 1987; 67 FR 57533, Sept. 11, 2002]

553 Uncollectible accounts.

This account shall include losses on receivable, notes, or claims that are not includible in account 63–61–00. ''General—Uncollectible Accounts—General and Administrative.''

555 Unusual or infrequent items (debit) credit.

This account shall include material items unusual in nature or infrequent in occurrence, but not both, accounted for in the current year in accordance with the text of instruction 1–2(d), upon approval by the Board.

556 Income taxes on ordinary income.

This account shall include accruals for Federal, State and other income taxes applicable to ordinary income. See the text of account 590, for recording other income tax consequences.

557 Provision for deferred taxes.

(a) This account shall include the net tax effect of all material timing differences [See definition 17(e)] originating and reversing in the current accounting period and the future tax benefits of loss carryforwards recognized in accordance with Instruction 1–10.

(b) This account shall include credits for the amortization of the investment tax credit if the carrier elected to use the deferred method of accounting for the investment tax credit. (See instruction 1–10.)

[42 FR 35017, July 7, 1977, as amended at 52 FR 4347, Feb. 11, 1987; 67 FR 57533, Sept. 11, 2002]

560 Income or loss from operations of discontinued segments.

This account shall include the results of operations of a segment of a business (see definition 32(a)), after giving effect to income tax consequences, that has been or will be discontinued in accordance with the text of instruction 1–2(d), upon approval by the Board.

562 Gain or loss on disposal of discontinued segments.

This account shall include the gain or loss from the disposal of a segment of a business, after giving effect to income tax consequences, in accordance

with the text of instruction 1–2(d), upon approval by the Board.

[42 FR 35017, July 7, 1977, as amended at 67 FR 57533, Sept. 11, 2002]

570 Extraordinary items (net).

(a) This account shall include extraordinary items accounted for during the current accounting year in accordance with the text of instruction 1–2(d), upon submission of a letter from the carrier's independent accountants, approving or otherwise commenting on the item and upon approval by the Board.

(b) This account shall be maintained in a manner sufficient to identify the nature and gross amount of each debit and credit.

(c) Income tax consequences of charges and credits to this account shall be recorded in account 590, ''Income taxes on extraordinary items,'' or account 591, ''Provision for deferred taxes—extraordinary items.''

590 Income taxes on extraordinary items.

This account shall include the estimated income tax consequences (debit or credit) assignable to the aggregate of items of both taxable income and deductions from taxable income which for accounting purposes are classified as unusual and infrequent, and are recorded in account 570, ''Extraordinary Items (Net).'' The tax effect of any timing differences caused by recognizing an item in the account provided for extraordinary items in different periods in determining accounting income and taxable income shall be included in account 591, ''Provision for deferred taxes—extraordinary items.''

591 Provision for deferred taxes—extraordinary items.

This account shall include debits or credits for the current accounting period for income taxes deferred currently, or for amortization of income taxes deferred in prior accounting periods applicable to items of revenue or expense included in account 570, ''Extraordinary Items (Net).'' (See instruction 1–10.)

592 Cumulative effect of changes in accounting principles.

This account shall include the cumulative effect of changing to a new accounting principle, after giving effect of income tax consequences, in accordance with instruction 1–2(d), upon approval by the Board.

FORM OF INCOME STATEMENT

I. Ordinary Items

501 Railway operating revenues (exclusive of transfers from government authorities)	.....
503 Railway operating revenues (amortization of deferred transfers from government authorities)	.....
502 Railway operating revenues (amortization of deferred transfers from government authorities	.....
531 Railway operating expenses	.....
Net Revenue from Railway Operation [1]	.....

II. Other Income

506 Revenues from property used in other than carrier operations	.....
510 Miscellaneous rent income	.....
512 Separately operated properties—profit	.....
513 Dividend income	.....
514 Interest income	.....
516 Income from sinking and other funds	.....
517 Release of premiums on funded debt	.....
518 Reimbursements received under contracts and agreements	.....
519 Miscellaneous income	.....
Income from affiliated companies:	
Dividends	.....
Equity in undistributed earnings (losses)	.....
Total income from affiliated companies	.....
Total other income	.....
Total income	.....

III. Miscellaneous Deductions From Income

534 Expenses of property used in other than carrier operations	.....
535 Taxes on property used in other than carrier operations	.....
543 Miscellaneous rent expense	.....
544 Miscellaneous taxes	.....
545 Separately operated properties-loss	.....
549 Maintenance of investment organization	.....
550 Income transferred under contracts and agreements	.....
551 Miscellaneous income charges	.....
553 Uncollectible accounts	.....
Total miscellaneous deductions	.....
Income available for fixed charges	.....

IV. Fixed Charges

546 Interest on funded debt:	
(a) Fixed interest not in default	.....
(b) Interest in default	.....
547 Interest on unfunded debt	.....
548 Amortization of discount on funded debt	.....
Total fixed charges	.....
Income after fixed charges	.....

V. Other Deductions

546 Interest on funded debt: (c) Contingent interest	.....

FORM OF INCOME STATEMENT—Continued

VI. Unusual or Infrequent Items	
555 Unusual or infrequent items (debt) credit	.....
Income (loss) from continuing operations (before income taxes)	.....
VII. Provision for Income Taxes	
556 Income taxes on ordinary income:	
Federal income taxes	.....
State income taxes	.....
Other income taxes	.....
557 Provision for deferred taxes	.....
Income from continuing operations	.....
VIII. Discontinued Operations	
560 Income or loss from operations of discontinued segments (less applicable income taxes of $_____	.....
562 Gain or loss on disposal of discontinued segments (less applicable income taxes of $_____	.....
Income (loss) before extraordinary items	.....
IX. Extraordinary Items and Accounting Changes	
570 Extraordinary items (net)	.....
590 Income taxes on extraordinary items	.....
591 Provision for deferred taxes—extraordinary items	.....
Total extraordinary items	.....
592 Cumulative effect of changes in accounting principles (less applicable income taxes of $_____	.....
Net income	.....

[1] Reconciliation of net railway operating income (NROI):

Net revenues from railway operations	.....
(556) Income taxes on ordinary income	.....
(557) Provision for deferred income taxes	.....
(560) Taxes applicable to income or loss from operations of discontinued segments	.....
(562) Taxes applicable to gain or loss on disposal of discontinued segments	.....
Income from lease of road and equipment (formerly account 509)	.....
Rent for leased roads and equipment (formerly account 542)	.....
Net railway operating income	.....

(49 U.S.C. 304, 320)

[42 FR 35017, July 7, 1977, as amended at 43 FR 30558, July 17, 1978; 67 FR 57533, Sept. 11, 2002]

RETAINED EARNINGS ACCOUNTS

Credit

601 Credit balance (at beginning of calendar year).

This account shall include the net credit balance in the retained earnings account at the beginning of the calendar year.

601.5 Prior period adjustments to beginning retained earnings account.

This account shall include adjustments net of assigned income taxes, in accordance with the text of instruction 1–2(d), to the balance in the retained earnings account at the beginning of the calendar year, upon approval by the Board.

602 Credit balance transferred from income.

This account shall show the net credit balance brought forward from the income account for the calendar year.

603 Appropriations released.

This account is provided to return to unappropriated retained earnings the amount of appropriations no longer required. The account shall be subdivided to show the nature of the appropriations being released and the circumstances of the release shall be fully described.

606 Other credits to retained earnings.

This account shall include other credit adjustments, net of assigned income taxes, not provided for elsewhere in this system but only after such inclusion has been authorized by the Board.

Debit

611 Debit balance (at beginning of calendar year).

This account shall include the net debit balance in the retained earnings account at the beginning of the calendar year.

612 Debit balance transferred from income.

This account shall show the net debit balance brought forward from the income account for the calendar year.

616 Other debits to retained earnings.

(a) This account shall include losses from resale of reacquired capital stock, and charges which reduce or write-off discount on capital stock issued by the company, but only to the extent that such charges exceed credit balances in account 795, ''Other capital,'' applicable to net gains from reacquisition and

resale or retirement of such subclass of capital stock. See instruction 5–4.

(b) This account shall also include other debit adjustments, net of assigned income taxes, not provided for elsewhere in this system but only after such inclusion has been authorized by the Board.

620 Appropriations for sinking and other funds.

This account shall be charged and account 797, ''Retained earnings; Appropriated,'' shall be credited with amounts appropriated pursuant to provisions of reorganization plans, mortgages, deeds of trust, or other contracts requiring payments into sinking funds, capital funds, and other funds.

621 Appropriations for other purposes.

This account shall be charged and account 797, ''Retained earnings; Appropriated,'' shall be credited with the amount of appropriations for general contingencies, indefinite possible future losses and other corporate purposes not provided for elsewhere. The appropriations shall be released when their respective purposes have been served.

623 Dividends.

This account shall be charged with the amount of dividends declared on actually outstanding capital stock issued or assumed by the company. If the dividend is not payable in cash, the securities or other property to be distribruted shall be described with sufficient particularity to identify the distribution. This account shall be subdivided to show separately the dividends declared on the various subclasses of capital stock.

NOTE: This account shall not include charges for dividends on capital stock issued or assumed by the company and owned by it, whether pledged as collateral or held in its treasury, in special deposits, or sinking or other funds.

GENERAL BALANCE SHEET ACCOUNTS EXPLANATIONS

Assets

CURRENT ASSETS

701 Cash.

(a) This account shall include money, checks, sight drafts, and sight bills of exchange in the hands of the accounting company's financial officers and agents, or in transit from its agents and conductors for which such agents and conductors have received credit. It shall include, also, deposits with banks and trust companies available for use on demand, and savings accounts subject to the usual clause reserving the right to defer payment for a specified number of days.

(b) The amount of checks and drafts, which have been transmitted to payees and which remain unpaid at the close of the accounting period, shall be credited to this account. When the amount of such checks and drafts cannot be determined with absolute accuracy, an estimate of the amount shall be used. Amounts not transmitted to payees shall be included in the appropriate liability accounts.

NOTE: Compensating balances under an agreement which legally restricts the use of such funds shall not be included in this account. Such balances shall be included in account 703, ''Special Deposits,'' or 717, ''Other Funds,'' as appropriate.

702 Temporary cash investments.

This account shall include the cost of securities and other obligations acquired for the purpose of temporarily investing cash, such as United States Treasury certificates, marketable securities, time drafts receivable, demand loans, time loans, time deposits with banks and trust companies, and other similar investments of a temporary character, which are readily convertible into cash at substantially their recorded cost.

This account shall be subdivided to reflect the marketable equity securities portion (and its corresponding valuation allowance) and other temporary investments. (See instruction 5–2.)

703 Special deposits.

This account shall include cash deposits, either placed in the hands of trustees or under the direct control of the reporting company, which are restricted for specific purposes. Examples are those deposits made for the payment of dividends and interest due within one year, the liquidation of other current liabilities, to guarantee fulfillment of current contract obligations to meet specific operating requirements, or compensating balances (See definition 10) under an agreement which legally restricts the use of such funds, and which constitute support for short-term borrowing arrangements. Subaccounts may be set up, if necessary, to account for special deposits for specific purposes.

NOTE: Deposits available for general company purposes shall be included in account 701, ''Cash.''

[42 FR 35017, July 7, 1977, as amended at 67 FR 57533, Sept. 11, 2002]

704 Loans and notes receivable.

This account shall include the book value of all collectible obligations in the form of demand or time loans and notes receivable, or other similar evidences (except interest coupons) of money receivable within a time not exceeding one year from date of issue.

NOTE A: Current loans and notes receivable from affiliated companies shall be included in account 708.5, ''Receivables from affiliated companies.''

NOTE B: Obligations held as investments which mature more than one year after date of issue shall be included in accounts 721, ''Investments and advances: Affiliated companies,'' or 722, ''Other investments and advances,'' as appropriate.

NOTE C: Loans and notes receivable acquired for the purpose of temporarily investing cash shall be included in account 702, ''Temporary cash investments.''

705 Accounts receivable; interline and other balances.

This account shall include the net debit balances receivable from other companies representing items such as interline freight, passenger, switching, and baggage revenues, charges for equipment interchanged on a per diem or mileage basis, and charges, for car repairs, loss and damage freight claims, and overcharge claims.

NOTE: The amount to be entered in this account is not the net balance between this account and account 752, ''Accounts payable; Interline and other balances.'' Net credit balances payable to other companies shall be included in account 752.

706 Accounts receivable; customers.

This account shall include amounts currently due from customers for transportation and other charges incidental to transportation, and from agents and other representatives charged with the collection or custody of current revenues.

NOTE: Amounts advanced to general and special agents as working funds shall be included in account 710, ''Working funds.''

707 Accounts receivable; other.

This account shall include amounts due in audited accounts, such as those due from the United States or other Governments for the transportation of mails and Government property, and from express companies for express facilities furnished under contract; miscellaneous bills against other railway companies, corporations, firms, and individuals; and other similar items.

NOTE A: The amount to be entered in this account is not the net balance between this account and account 754, ''Accounts payable; Other.''

NOTE B: Amounts due from affiliated companies for miscellaneous bills and other items subject to current settlement shall be included in account 708.5, ''Receivables from affiliated companies.''

708 Interest and dividends receivable.

This account shall include the amount of interest accrued to the date of the balance sheet on bonds, mortgages, notes, and other commercial paper owned, on loans made, open accounts, bank deposits, and the amount of dividends declared on stocks owned, and dividends accrued on such stocks when contracts require that the dividends be paid at stated times.

NOTE A: No amount representing interest or dividends receivable shall be included in this account unless its payment is reasonably assured by past experience, anticipated provision, or otherwise.

NOTE B: No dividends or other returns on securities issued or assumed by the accounting company shall be included in this account.

NOTE C: If settlement of amounts included in this account is not made when due, such amounts that are not subject to current settlement shall be transferred to account 741, ''Other assets,'' at their estimated realizable value. Items of current character but of doubtful value, as well as noncurrent items, shall be written off to the extent of any estimated uncollectible portion by charge to account 553, ''Uncollectible accounts''. If notes are taken in settlement of amounts included in this account, the amounts shall be transferred to account 704, ''Loans and notes receivable,'' or account 741, as appropriate. (See instruction 5–1.)

NOTE D: Current interest and dividends receivable from affiliated companies shall be included in account 708.5, ''Receivables from affiliated companies,'' and noncurrent amounts receivable shall be included in account 721, ''Investments and advances; Affiliated companies.''

708.5 Receivables from affiliated companies.

This account shall include amounts due from affiliated companies which are subject to current settlement such as deposits, demand or time loans, notes receivable, interest, dividends, miscellaneous bills and similar items.

NOTE: Receivables from affiliated companies, representing net debit balances for items such as operating revenues, charges for equipment interchanged, car repairs and claims, shall not be included in this account but in account 705, ''Accounts receivable; Interline and other balances.''

709 Accrued accounts receivable.

This account shall include estimates of all unaudited current items receivable by the carrier to the date of the balance sheet, including those which are creditable to revenue, expense, or income accounts. Among the items which shall be included in this account are:

Amounts receivable from others for unreported interline traffic.

Amounts receivable from others for use of facilities, including equipment, for which bills have not been rendered.

Amounts receivable from others for services for which bills have not been rendered.

Rents receivable for which bills have not been rendered.

709.5 Allowance for uncollectible accounts.

This account shall be credited with amounts provided for receivables which may become uncollectible, and shall be maintained to show the amount of each separate allowance set out below and the amounts of debits and credits thereto:

(a) Allowance for receivables applicable to transportation operations. Credits to this subdivision shall be concurrently charged to account 63–60–00, ''Uncollectible Accounts; General and administrative.''

(b) Allowances for receivables not applicable to transportation operations. Credits to this subdivision shall be concurrently charged to account 553, ''Uncollectable accounts.''

[42 FR 35017, July 7, 1977, as amended at 67 FR 57533, Sept. 11, 2002]

710 Working funds.

This account shall include amounts advanced to general and special agents, and to other officers and employees, as working funds from which certain expenditures are to be made and accounted for. It also includes advances to fast freight lines and to demurrage and other bureaus.

NOTE: Advances to jointly owned or used terminal companies and other companies for permanent working funds or capital purposes shall be included in accounts 721, ''Investments and advances; Affiliated companies,'' or 722, ''Other investments and advances,'' as appropriate.

711 Prepayments.

This account shall include the balances in the accounts representing short-term prepaid rents chargeable to the appropriate rent accounts as the term is consumed for which the rents are paid; also short-term interest, and insurance premiums, taxes and licenses, and similar items paid in advance of their accrual, which are to be apportioned and charged, as they accrue, to the appropriate accounts.

712 Material and supplies.

(a) This account shall include the balances representing the cost of all unapplied material, such as road and shop material, articles in process of manufacture by the accounting company, fuel, stationery, and dining car and other supplies. In determining the cost of material and supplies suitable

allowance shall be made for any purchase discounts allowed. The cost shall include all specifically assignable transportation charges incurred in obtaining the delivery of such materials and supplies upon the premises of the carrier including loading and unloading, and a suitable proportion of purchasing and store expenses. The cost shall also include sales and excise taxes on material purchases; however, sales and excise taxes may be charged to account 65–60–00, ''Other taxes; General and administrative,'' provided this procedure will not adversely affect the accounts and is consistently followed. Taxes on gasoline, other motor fuel, and motor oil are also includible in this account.

(b) Materials recovered for reuse in connection with construction, maintenance, or the retirement of property shall be charged to this account at cost, or average cost, estimated if not known, less accumulated depreciation, if any, plus the cost to restore the materials to a serviceable condition, or current market value, whichever is lower. (See definition 31, *Salvage value.*)

(c) Scrap and other nonusable materials, including obsolete parts, shall be included in account 713, ''Other current assets,'' at the estimated salvage value when the sale of the materials is imminent and there is a relatively firm market price. Obsolete parts not subject to imminent sale shall be included in account 741, ''Other assets,'' at their net realizable value.

(d) Material and supplies shall be credited to this account and charged to the appropriate operating expense or other account on the basis of recorded cost, average cost, or other recognized pricing system, provided that such system is consistently applied and is based on the cost of such material and supplies.

(e) An inventory of material and supplies shall be taken during each calendar year and the necessary adjustments to bring this account into harmony with the actual inventory balances shall be made in the accounts of the year in which the inventories are taken. In effecting this adjustment, determined differences in accounting for important classes of material shall be equitably assigned among the accounts to which the classes of material are ordinarily chargeable. Other differences shall be equitably apportioned among the primary accounts to which material has been charged since the last inventory. (Also see instruction 5–1(b).)

NOTE: Balances representing the cost of unapplied construction material and supplies located at the point of use, which have been purchased for projected new roads and extensions, or for new railroad equipment, shall be included in account 90, ''Construction in progress.''

[42 FR 35017, July 7, 1977, as amended at 67 FR 57533, Sept. 11, 2002]

713 Other current assets.

This account shall include amounts for other current assets which are not includible in the foregoing current asset accounts.

714 Deferred income tax debits.

This account shall include the current portion of deferred income tax debits and credits determined in accordance with Instruction 1–10, when the balance is a net debit. A net credit balance shall be included in account 762, ''Deferred income tax credits''.

(49 U.S.C. 10321, 11145; 5 U.S.C. 553)

[47 FR 12350, Mar. 23, 1982]

SPECIAL FUNDS

715 Sinking funds.

(a) This account shall include the amount of cash, the ledger value of live securities of other companies, and other assets which are held by trustees of sinking and other funds for the purpose of redeeming outstanding obligations, including such assets held in the hands of the accounting company's treasurer when the assets are segregated in a distinct fund.

(b) This account shall include amounts deposited with trustees on account of mortgaged property sold, where the proceeds are held for the redemption of securities; and also the par value (or the amount recorded for no par stock) of live securities issued or assumed by the accounting company and held in such funds.

(c) A separate subaccount shall be kept for each fund. The title of each subaccount shall designate the obligation redeemable from the fund.

NOTE: In stating the balance sheet in the annual reports to the Board the total amount of the funds and the par value (or the amount recorded for no par stock) of securities issued or assumed by the accounting company and held in the funds shall be shown in the short columns, and the net amount of the funds (total amount less securities issued or assumed) shall be shown in the long column.

716 Capital funds.

(a) This account shall include cash and the ledger value of other assets held by trustees or by the accounting company's treasurer when segregated in distinct funds that have been (1) realized from the sale of equipment obligations or other long-term obligations and not yet applied toward the specific purposes for which the obligations were incurred, and (2) set aside in accordance with governmental, mortgage, or contractual requirements in connection with reorganizations or otherwise. This account shall also include funds deposited with trustees to be held until mortgaged property sold is replaced.

(b) An appropriate record shall be maintained for securities issued or assumed by the accounting company and held in the funds, identifying those that are nominally issued or nominally outstanding.

NOTE: Funds specifically set aside for sinking fund purposes shall be included in account 715, ''Sinking funds.'' If one purpose of a capital fund is to provide contributions to a sinking fund under specified conditions, the entire amount of the fund shall be included in this account until the contributions to the sinking fund are made, at which time the amounts thereof shall be transferred to account 715.

NOTE: The ledger value of assets of the character indicated in paragraph (a)(2) of this section, shall be transferred to the appropriate current asset account when the assets are definitely assigned in advance of expenditure to the payment of interest or other current liabilities payable within one year.

717 Other funds.

This account shall include the amount of cash and the ledger value of securities of other companies and other assets which are in the hands of trustees or managers of insurance, employees' pension, savings, relief, hospital, and other funds which have been raised and specifically set aside or invested for specific purposes not provided for elsewhere; also the par value (or the amount recorded for no par stock) of securities issued or assumed by the accounting company and held in such funds. A separate subaccount shall be kept for each fund.

NOTE A: Sinking funds and capital funds are provided for in accounts 715, ''Sinking funds,'' and 716, ''Capital funds,'' respectively.

NOTE B: In stating the balance sheet in the annual reports to the Board, the total amount of the funds and the par value (or the amount recorded for no par stock) of securities issued or assumed by the accounting company and held in the funds shall be shown in the short columns, and the net amount of the funds (total amount less securities issued or assumed) shall be shown in the long column.

NOTE C: This account shall not include funds held by the accounting company solely as trustee and in which it has no beneficial interest.

NOTE D: This account shall include compensating balances (see definition 10) under an agreement which legally restricts the use of such funds and which constitute support for long-term borrowing arrangements.

[42 FR 35017, July 7, 1977, as amended at 67 FR 57533, Sept. 11, 2002]

INVESTMENTS

721 Investments and advances; affiliated companies.

(a) This account shall include the ledger value of the accounting company's investment in securities issued or assumed by affiliated companies other than securities held in special deposits or special funds; and also investment advances made to affiliated companies not subject to current settlement; notes receivable from affiliated companies which mature later than 1 year from date of the balance sheet; and similar noncurrent items of affiliated companies.

(b) This account shall be maintained in such manner as to show each of the following classes of investment in each affiliated company:

(1) Stocks.

(2) Bonds.

(3) Other secured obligations.

(4) Unsecured notes.

(5) Investment advances.

(c) A complete record of securities pledged shall be maintained to show

separately the ledger value of securities pledged and unpledged in the annual report to the Board.

NOTE A: Accounts with affiliated companies which are subject to current settlement, if their collection is reasonably assured, shall be classed as current assets, and if settlement is deferred beyond one year such items shall be transferred to this account.

NOTE B: The term affiliated companies (also see definition 5(a)) includes:

1. Controlled companies, including companies solely controlled by the accounting company, and also companies jointly controlled by the accounting company and others under a joint arrangement.

2. Controlling companies, including both companies solely controlling the accounting company, and companies which jointly control the accounting company under a joint arrangement.

3. Companies controlled by controlled companies.

4. Companies controlled by controlling companies.

By *control* (also see definition 5(a)) is meant the ability to determine the action of a corporation. For the purposes of this account, the following are to be considered forms of control:

(a) Right through title to securities issued or assumed to exercise the major part of the voting power in the controlled corporation.

(b) Right through agreement or source other than title to securities, to name the majority of the board of directors, managers, or trustees of the controlled corporation.

(c) Right to foreclose a first lien upon all or a major part in value of the tangible property of the controlled corporation.

(d) Right to secure control because of advances made for construction of the operating property of the controlled corporation.

(e) Right to control only in a specific respect the action of the controlled corporation.

A leasehold interest in the property of a corporation is not considered a form of control over the lessor corporation.

Sole control is that which rests in one corporation.

Joint control is that which rests in two or more corporations and which is held under a joint arrangement.

NOTE C: The value of securities borrowed by the accounting company and pledged shall not be included in this account. A memorandum record shall be kept.

NOTE D: The value of securities pledged for purposes other than that of security for funded debt or short-term loans shall be included in accounts 715, ''Sinking funds,'' 716, ''Capital funds,'' or 717, ''Other funds,'' as appropriate.

[42 FR 35017, July 7, 1977, as amended at 67 FR 57533, Sept. 11, 2002]

721.5 Adjustments; investments and advances—affiliated companies.

(a) This account shall be credited with amounts charged to account 551, ''Miscellaneous income charges,'' to provide for impairment in the value of investment securities and other assets included in account 721, ''Investments and advances; affiliated companies.''

(b) If provision is made for anticipated losses in specific assets, when the assets are written down or written off, or are sold or otherwise disposed of at a loss, the reduction in the book value or the losses sustained shall be charged to this account to the extent of the credit balance in the account applicable to the particular items involved, and the remainder, if any, shall be charged to account 551, ''Miscellaneous income charges.'' Where a general provision for losses in unspecified asset values is maintained, all such losses resulting from write-downs, write-offs, etc., shall be charged to this account to the extent of the total credit balance in the account, and the remainder, if any, shall be charged to account 551, ''Miscellaneous income charges.''

722 Other investments and advances.

(a) This account shall include the ledger value of the accounting company's investment in securities issued or assumed by nonaffliated companies other than securities held in special deposits or special funds; and also investment advances made to nonaffiliated companies not subject to current settlement; notes receivable from nonaffiliated companies which mature later than 1 year from date of the balance sheet; and similar noncurrent items of nonaffiliated companies.

(b) This account shall be maintained in such manner as to show each of the following classes of investment in each nonaffiliated company:

(1) Stocks.

(2) Bonds.
(3) Other secured obligations.
(4) Unsecured notes.
(5) Investment advances.

(c) A complete record of securities pledged shall be maintained to show separately the ledger value of securities pledged and unpledged in the annual report to the Board.

NOTE A: Accounts with nonaffiliated companies which are subject to current settlement, if their collection is reasonably assured, shall be classed as current assets, and if settlement is deferred beyond one year such items shall be transferred to account 741, ''Other assets.''

NOTE B: The term *nonaffiliated companies* includes all companies other than those defined as affiliated in note B of account 721, ''Investments and advances: Affiliated companies.''

NOTE C: The value of securities borrowed by the accounting company and pledged shall not be included in this account. A memorandum record shall be kept.

NOTE D: The value of securities pledged for purposes other than that of security for funded debt or short-term loans shall be included in accounts 715, ''Sinking funds,'' 716, ''Capital funds,'' or 717, ''Other funds,'' as appropriate.

723 Adjustments; other investments and advances.

(a) This account shall be credited with amounts charged to account 551, ''Miscellaneous income charges,'' to provide for impairment in the value of investment securities and other assets included in account 722, ''Other investments and advances.''

(b) If provision is made for anticipated losses in specific assets, when the assets are written down or written off, or are sold or otherwise disposed of at a loss, the reduction in the book value or the losses sustained shall be charged to this account to the extent of the credit balance in the account applicable to the particular items involved, and the remainder, if any, shall be charged to account 551. ''Miscellaneous income charges.'' Where a general provision for losses in unspecified asset values is maintained, all such losses resulting from write-down, write-offs, etc., shall be charged to this account to the extent of the total credit balance in the account, and the remainder, if any shall be charged to account 551, ''Miscellaneous income charges.''

724 Allowance for net unrealized loss on noncurrent marketable equity securities—Cr.

This account shall reflect the amount by which aggregate cost exceeds market value for the noncurrent marketable equity securities found in accounts 721 and 722. This account shall be debited or credited so that the balance at the balance sheet date shall reflect such difference. (Refer to instruction 5–2.)

This account shall *not* include amounts by which aggregate cost exceeds market value if such differences are judged to be other than temporary. (Such differences should be charged to account 723.)

TANGIBLE PROPERTY

731 Road and equipment property.

This account shall include the accounting company's investment in road and equipment (including that held under contract for purchase), used or held for use as transportation property in existence at the date of the balance sheet. When property is retired from service, this account shall be credited with the ledger value of the property retired.

NOTE A: This account shall not include any items representing titles to securities.

NOTE B: When equipment or other property is acquired under an agreement which provides that the cost shall be paid in installments, the cost (its money value at time of purchase) shall be charged to the appropriate road and equipment accounts at the time the equipment is delivered to the carrier, and included in this account in the same manner as the cost of equipment purchased outright. When the par value of notes or other securities issued in payment, or in part payment, for such equipment is more (or less) than the actual cash value of the equipment at the time of the purchase, or of the proportion to which the securities are applicable, the difference between the par value of the securities and the actual cash value of the equipment, or of the proportion paid for by the securities, shall be charged (or credited) to the proper discount and premium accounts.

NOTE C: Held for use, as referred to above, implies the ability of the carrier to substantiate within a reasonable period of time, by plan or policy, the probable future use which is to be made of the property.

732 Improvements on leased property.

(a) This account shall include the cost of improvements made by the lessee to property which is held under lease from others or through control of the company owning the property, where such improvements are used by the lessee in transportation service, and the lessee is not to be reimbursed by the lessor for such improvements. (See instruction 2–18.)

(b) The carrier's records shall be kept in such manner as to show the debits and credits to this account in accordance with the provisions for road and equipment.

NOTE A: This account shall not include any itmes representing titles to securities.

NOTE B: When the lessor company includes in account 731, ''Road and equipment property,'' the cost of improvements made by the lessee to property, leased by it from the lessor and settlement is not made at the time for the cost thereof, the lessee, pending settlement with the lessor, shall include the cost thereof in account 721, ''Investments and advances; Affiliated companies,'' or 722, ''Other investments and advances,'' as appropriate.

733 Accumulated depreciation; improvements on leased property.

(a) This account shall be credited with amounts concurrently charged to operating expenses or other authorized accounts for depreciation accrued on improvements to leased property, the cost of which is included in account 732, ''Improvements on leased property.''

(b) The service value of each unit of property retired (and also of each minor item, less than a unit, retired and not replaced) for which this accumulated depreciation account has been established shall be charged to this account.

(c) Instructions for depreciation accounts, rates of depreciation, and records to be maintained, as contained in instruction 4 for owned property, shall also apply to improvements on leased property.

734 Accumulated amortization; improvements on leased property—defense projects.

This account shall include the amounts of accumulated past provisions for amortization of improvements to leased property applicable to defense projects, the cost of which is included in account 732, ''Improvements on leased property.'' This account shall be charged with the amount of the credit balance applicable to specific property at the time the property is retired. The accounting company shall maintain separate subaccounts for amortization of (1) road property and (2) equipment.

735 Accumulated depreciation; road and equipment property.

(a) This account shall be credited with amounts concurrently charged to operating expenses or other authorized accounts to cover the loss in service value of depreciable road and equipment property. It shall also include adjustments which the Board may authorize the accounting company to make such as adjustments for past accruals of depreciation, and provision for material abandonment or other losses applicable to nondepreciable property.

(b) The service value of each unit of depreciable property retired (and also of each minor item, less than a unit, retired and not replaced) shall be charged to this account. This account shall also be charged for amounts for losses applicable to nondepreciable property retired for which provision was previously made by approval of the Board, and any resultant adjustment of such provision shall be referred to the Board for consideration and decision.

(c) Comprehensive instructions pertaining to depreciation accounts, rates of depreciation, and records to be maintained, are contained in instruction 4.

736 Accumulated amortization; road and equipment property—defense project.

This account shall include the amount of accumulated past provisions for amortization of road and equipment defense projects, the cost of which is included in account 731, ''Road and equipment property.'' This account shall be charged with the amount of the credit balance applicable to specific property at the time the property is retired. The accounting company shall maintain separate subaccounts

for amortization of (1) road property and (2) equipment.

737 Property used in other than carrier operations.

This account shall include the accounting company's investment in property other than property assignable to accounts 731, ''Road and equipment property,'' and 732, ''Improvements on leased property,'' such as hotels, restaurants, powerplants, which are not operated by the accounting company or another carrier in connection with its transportation service.

ITEMS OF INVESTMENT

Coal and other mines.
Commercial power plants.
Hotels and restaurants.
Lands and buildings not used in transportation operations.
Lands and other property acquired and held in anticipation of future use.
Mineral and timber lands.
Rails and other track material leased to others.
Saw mills and other manufacturing plants not operated in connection with transportation service.

738 Accumulated depreciation; property used in other than carrier operations.

This account shall be credited with amounts charged to income or other authorized accounts for depreciation accrued on property, the cost of which is included in account 737, ''Property used in other than carrier operations.'' When such property is destroyed, sold, or otherwise retired from service, this account shall be charged with the amount of the credit balance applicable to the property retired.

INTANGIBLE PROPERTY

739 Organization expenses.

This account shall include all fees paid to governments for the privilege of incorporation, and office and other expenditures incident to organizing the corporation and putting it in readiness to do business; cost of preparing and distributing prospectuses; special counsel fees; cost of preparing and issuing certificates of stock; cost of procuring the necessary certificates from State authorities; and other like costs necessary and proper in organizing the enterprise.

NOTE: Cost of soliciting for loans or for the sale of bonds or other evidences of indebtedness shall be charged to balance sheet account 743, ''Other deferred debits.'' (See instruction 5–3.)

OTHER ASSETS AND DEFERRED DEBITS

741 Other assets.

This account shall include the estimated value of salvage recoverable from property retired when the recovery of the salvage is deferred for any reason. (See instruction 2–5 and 2–7.) This account shall also include the estimated realizable amount for other assets of doubtful value, collection of which within one year is not assured; also other deferred assets and miscellaneous assets not otherwise provided for in general balance sheet accounts. (See instruction 5–1.)

743 Other deferred debits.

(a) This account shall include the amount of debit balances in suspense accounts that cannot be cleared and disposed of until additional information is received, such as frieght claims paid when found to be correct, but in advance of investigation with other carriers; unextinguished discount on short-term notes; unadjusted debit items not otherwise provided for and similar items the proper disposition of which is uncertain

(b) This account shall also include the aggregate amount of the expenses incurred in connection with the issuance of each class of the carrier's outstanding long-term or equipment obligations, such as fees for listing long-term obligations on stock exchanges, legal and other fees, cost of tax stamps and similar items. (See account 14.) Separate subdivisions shall be maintained for each issue of such obligations. (See instruction 5–3.)

[42 FR 35017, July 7, 1977, as amended at 67 FR 57533, Sept. 11, 2002]

744 Accumulated deferred income tax debits.

This account shall include the amount of deferred noncurrent income tax debits and credits determined in accordance with Instruction 1–10 when

the balance is a net debit. A net credit balance shall be included in account 786, ''Accumulated deferred income tax credits''.

(49 U.S.C. 10321, 11145; 5 U.S.C. 553)

[47 FR 12350, Mar. 23, 1982]

Liabilities and Shareholders' Equity

CURRENT LIABILITIES

751 Loans and notes payable.

(a) This account shall include the balances representing obligations outstanding in the form of loans and notes payable or other similar evidence (except interest coupons) of indebtedness payable on demand or within a time not exceeding one year from date of issue.

(b) This account shall be kept in such form so as to show separately the amounts of notes payable within one year from date of issue that are secured by collateral.

NOTE A: Loans and notes payable to affiliated companies which are subject to current settlement shall be included in account 757, ''Payables to affiliated companies,'' and noncurrent obligations in account 769, ''Accounts payable; Affiliated companies.''

NOTE B: This account shall not include obligations due within one year which are intended to be refinanced on a long-term basis. Long-term refinancing of short-term obligations means: (1) Replacement with long-term obligations or equity securities, or (2) renewal, extension, or replacement with short-term obligations for an uninterrupted period extending beyond one year from the balance sheet date.

The intention to refinance on a long-term basis shall be supported by the ability to refinance. Evidence of this ability includes either: (1) The actual issuance of an obligation, after the balance sheet date but before the balance sheet is issued, or (2) before the balance sheet is issued, the existence of a financing agreement which is long-term and based on terms readily determinable with no existing violations of its provisions, and with a lender which is financially capable of honoring the agreement.

752 Accounts payable; interline and other balances.

This account shall include the net credit balances payable to other companies representing items such as interline freight, passenger, switching and baggage revenues, charges for equipment interchanged on a per diem or mileage basis, and charges for car repairs, loss and damage freight claims, and overcharge claims.

NOTE: The amount to be entered in this account is not the net balance between this account and account 705, ''Accounts receivable; Interline and other balances.'' Net debit balances receivable from other companies shall be included in account 705.

753 Audited accounts and wages payable.

This account shall include the amount of audited vouchers or accounts and audited payrolls unpaid on the date of the balance sheet. It shall include balances representing unclaimed wages and outstanding pay and time or discharge checks issued in payment of wages and all other unpaid vouchered items.

NOTE: The amount of checks and drafts, which have been transmitted to payees and which remain unpaid at the close of the accounting period, shall be credited to account 701, ''Cash.''

754 Accounts payable; other.

This account shall include outstanding drafts drawn by station agents, conductors' refund and extra-fare checks not presented for redemption, taxes collected from employees and others for the account of taxing agencies, and other items of the nature of demand liabilities not covered by accounts 751, 752, 753, 755, 756, and 757.

NOTE A: The amount to be reported under this account is not the net balance between this account and account 707, ''Accounts receivable; Other.''

NOTE B: The amount of checks and drafts, which have been transmitted to payees and which remain unpaid at the close of the accounting period, shall be credited to account 701, ''Cash.'' When the amount of such checks and drafts cannot be determined with absolute accuracy an estimate of the amount shall be used.

NOTE C: Deposits and other items of affiliated companies subject to current settlement shall be included in account 757, ''Payables to affiliated companies.''

755 Interest payable.

This account shall include the amount of matured and unpaid interest on funded debt, and other obligations of the accounting company for which provision has been made for current

settlement. This account shall also include the amount of interest subject to current settlement accrued to the date of the balance sheet, but payable after that date, on obligations of the accounting company.

NOTE: Interest payable on debt to affiliated companies, if subject to current settlement, shall be included in account 757, ''Payables to affiliated companies.'' Noncurrent interest shall be included in account 769, ''Accounts payable; Affiliated companies.'' Interest payable to others which is not paid when it matures shall be included in account 781. ''Interest in default,'' if not subject to current settlement. Where interest is in default, subsequent accruals shall be credited directly to account 781.

756 Dividends payable.

This account shall include the amount of dividends payable on capital stock but unpaid, at the date of the balance sheet.

NOTE: Dividends payable to affiliated companies shall be included in account 757, ''Payables to affiliated companies.''

757 Payables to affiliated companies.

This account shall include amounts payable to affiliated companies which are subject to current settlement such as deposits, demand or time loans, notes payable, interest, dividends, miscellaneous bills, and similar items.

NOTE: Payables to affiliated companies, representing net credit balances for items such as revenues, charges for equipment interchanged, car repairs and claims, shall not be included in this account but in account 752, ''Accounts payable; Interline and other balances.''

759 Accrued accounts payable.

This account shall include estimates of unaudited items payable by the carrier to the date of the balance sheet, including those which are chargeable to revenue, expense, or income accounts. Among the items which should be included in this account are:

Rents payable.

Amounts payable to others for unreported interline traffic.

Amounts payable to others for use of facilities, including equipment, for which bills have not been rendered.

Amounts payable to others for services for which bills have not been rendered.

Estimated amounts payable within one year covering liability for claims for injuries to persons, loss and damage, and similar items.

Amounts payable (estimated if necessary) within one year pursuant to agreements with labor organizations or otherwise for employees vacations now earned.

760 Federal income taxes accrued.

This account shall be credited with the amount accrued for Federal income taxes which has been concurrently charged to the appropriate income or other authorized accounts. Credits to this account that are based upon estimates shall be adjusted during the year so that this account may show, as nearly as practicable the approximate amount of the carrier's unpaid liability for such taxes. Payments of taxes for which accruals have been made shall be debited to this account.

761 State and other income taxes accrued.

This account shall be credited with the amounts accrued for state and other income taxes which have been concurrently charged to the appropriate income or other authorized accounts. Credits to this account that are based upon estimates shall be adjusted during the year so that this account may show, as nearly as practicable, the approximate amount of the carrier's unpaid liability for such taxes. Payments of taxes for which accruals have been made shall be debited to this account.

761.5 Other taxes accrued.

(a) This account shall be credited with the accruals of all taxes, other than income taxes, which have been concurrently charged to the appropriate income or other accounts for taxes. Such accruals may be based upon estimates, provided such estimates shall be adjusted during the year so that this account may show, as nearly as practicable, the approximate amount of the carrier's unpaid liability for such taxes. Payments of taxes for which accruals have been made shall be debited to this account.

(b) The records supporting the entries in this account shall be kept to show separately by classes of taxes the amount of the tax accruals for the current year and adjustments of accruals for prior years.

NOTE: Amounts for prepayments of taxes shall be included in account 711, ''Prepayments.''

762 Deferred income tax credits.

This account shall include the current portion of deferred income tax charges and credits determined in accordance with Instruction 1–10 when the balance is a net credit. A net debit balance shall be included in account 714, ''Deferred income tax debits''.

(49 U.S.C. 10321, 11145; 5 U.S.C. 553)

[47 FR 12350, Mar. 23, 1982]

763 Other current liabilities.

There shall be included in this account the principal amount of unpresented bonds drawn for redemption through the operation of sinking and redemption fund agreements, also the principal amount of unpresented fund debt obligations, and receivers' and trustees' securities which have matured (for which provision has been made for current settlement), and other current liabilities not includible in the foregoing current liability accounts.

764 Equipment obligations and other long-term debt due within one year.

This account shall include the total amount of bonds, equipment obligations, and other long-term debt, including obligations maturing serially or payable in installments which are due and payable within one year, and for which arrangements for long-term refinancing have not been made (See note B to account 751, ''Loans and notes payable'') or for which no sinking funds have been provided. This account shall be subdivided according to the different classes of debt.

LONG-TERM DEBT DUE AFTER ONE YEAR

765 Funded debt unmatured.

(a) This account shall include the total par value of unmatured debt (other than equipment obligations), maturing more than one year from the close of the accounting period, including obligations due within one year which are expected to be refinanced on a long-term basis (see note B to account 751, ''Loans and notes payable''), whether the securities were issued by the accounting company or the payment was assumed by the accounting company after being issued as the debt of other companies. (See account 764, ''Equipment obligations and other long-term debt due within one year.'')

(b) The amounts included in this account shall be divided to show the par value of (1) certificates or other evidences of funded debt (pledged and unpledged) held in the company's treasury, by its agents or trustees, or otherwise subject to its control, including both those reacquired after actual issue and those nominally but never actually issued; and (2) certificates or other evidences of funded debt issued and actually outstanding, being those not held by the company, its agents or trustees, or subject to its control.

(c) The amounts included herein shall be further divided so as to show the amount of each class of funded debt, as follows:

(1) *Mortgage bonds.* Bonds secured by lien on physical property and not includible in the other subdivisions of this account.

(2) *Collateral trust bonds.* Bonds and notes secured by a lien on securities or other negotiable paper; and stock trust certificates that are similar in character to collateral trust bonds.

(3) *Income bonds.* Bonds which are a lien on a carrier's revenue alone, or bonds which, while being a lien on its property and franchises, can claim payment of interest only in case interest is earned.

(4) *Miscellaneous obligations.* All funded obligations not provided for by the other subdivisions of this account, also notes, unsecured certificates of indebtedness, debenture bond, plain bonds, real estate mortgages executed or assumed and other similar obligations maturing more than one year from date of issue, but excluding liabilities for assessments for public improvements and those evidenced by conditional or deferred equipment purchase contracts for which provision is made in accounts 782, ''Other liabilities,'' and 766, ''Equipment obligations,'' respectively.

(5) *Receipts outstanding for funded debt.* Receipts for payments on account of funded debt. When certificates are issued for such payments, the par value

shall be included in the account covering the class of funded debt for which the certificates are issued.

(d) Each of the above classes shall also be divided into subclasses according to differences in mortgage or other lien or security therefor, rate of interest, interest dates, or date of maturity. Parts of any issue agreeing in other characteristics but maturing serially may be treated as of the same subclass.

(e) Records shall be maintained in such manner as to show (1) securities the issuance or assumption of which has been authorized by the Board under provisions of the Interstate Commerce Act, and similar securities issued or assumed prior to the effective date of such provisions of the Act, and (2) other obligations of a kind which may legally be issued or assumed without such authorization.

NOTE A: Securities (other than equipment obligations) maturing one year or less from date of issue shall be included in accounts 757, ''Payables to affiliated companies,'' 769, ''Accounts payable; Affiliated companies,'' or 751, ''Loans and notes payable,'' as appropriate, except that where an issue of securities maturing serially over a period of years contains short-term obligations such obligations may be included as funded debt. Mature funded debt shall be included in account 763, ''Other current liabilities,'' if provision has been made for current settlement. If no provision has been made for current settlement, matured funded debt shall be included in account 768, ''Debt in default,'' except that when the collection of matured funded debt of affiliated companies is not enforced by controlling companies, the principal amount (to the extent held by a controlling company) shall be included in account 769, ''Accounts payable; Affiliated companies.''

NOTE B: See definitions 3, actually issued; 4, actually outstanding; 25, nominally issued; and 26, nominally outstanding.

NOTE C: Nonnegotiable notes having a maturity of more than one year after date of issue, held by affiliated companies, shall be included in account 769, ''Accounts payable; Affiliated companies.''

NOTE D: Securities nominally issued or reacquired and held in the company's treasury, except securities held by trustees in sinking or other funds, shall be included in a subdivision of this account. In the general balance sheet statement the total unmatured funded debt included in this account shall be shown in the first short column. The amount nominally but not actually issued and the amount nominally outstanding shall be shown in the second short column, and in the long column shall be shown the amount actually outstanding.

[42 FR 35017, July 7, 1977, as amended at 67 FR 57533, Sept. 11, 2002]

766 Equipment obligations.

(a) This account shall include the par value of equipment securities and the principal amount of contractual obligations for the purchase of equipment, excluding principal or obligations maturing serially or payable in installments within one year from the close of the accounting period, and including obligations due within one year which are expected to be refinanced on a long-term basis (see account 764, ''Equipment obligations and other long-term debt due within one year''); for explanation of long-term refinancing, see note B to account 751, ''Loans and notes payable.''

(b) The amounts included herein shall be divided as follows:

(1) Principal amount of equipment securities including those maturing serially, issued or assumed by the accounting company or by receivers and trustees, which have been authorized by the Board under provisions of the Interstate Commerce Act and similar securities issued or assumed prior to the effective date of such provisions of the act.

(2) Principal sums of obligations for equipment purchased under conditional or deferred payment contracts, which may be legally entered into or assumed by the accounting company or by receivers and trustees, without authorization by the Board.

766.5 Capitalized lease obligations.

(a) Long-term leases which are clearly in substance installment purchases shall be capitalized. The liability under such leases which have been capitalized in fixed asset accounts shall be recorded in this account. (See instruction 2–20.)

(b) This account shall be kept so as to show the liability under each lease obligation.

NOTE A: The portion of the liability for long-term leases which is payable within 1 year of the close of the accounting period is includible in account 764, Equipment obligations and other long-term debt due within one year.

NOTE B: Leases which merely state the right to use property and a related obligation to pay specific rents over a definite future period shall not be considered to be assets and liabilities.

(49 U.S.C. 12, 20, 304, 913 and 1012)

[42 FR 56611, Oct. 27, 1977]

767 Receivers' and trustees' securities.

When receivers or trustees acting under the orders of a court are in possession of the property of the company, and under the order of such court issue or assume evidences of indebtedness (other than equipment securities or obligations) the par value of such evidences shall be credited to this account.

NOTE: The par value of equipment securities or the principal amount of obligations incurred for the purchase of equipment under conditional or deferred payment contracts shall be included in account 766, ''Equipment obligations.''

768 Debt in default.

This account shall include amounts transferred from other accounts representing matured funded securities or obligations, receivers' and trustees' securities, equipment obligations and short-term notes, when maturity dates of such obligations have not been extended

NOTE A: The principle amount of matured funded debt of affiliated companies the collection of which is not enforced by the controlling company shall (to the extent of the principal amount held by the controlling company) be included in account 769, ''Accounts payable; Affiliated companies.''

NOTE B: The principal amount unpresented funded debt obligations which have matured, and for which provision has been made for payment shall be included in account 763, ''Other current liabilities.''

769 Accounts payable; affiliated companies.

This account shall include the par value of nonnegotiable notes issued to affiliated companies; also matured funded debt of affiliated companies held by controlling companies where there is no agreement for an extension as to time of payment and collection of the principal is not enforced; credit balances in open accounts with such companies other than credit balances classable as current liablilities, and interest accrued on notes, matured funded debt of affiliated companies and open accounts included in this account, when such interest is not subject to current settlements. The amounts included herein shall be divided as follows:

(a) Notes, including not only nonnegotiable notes that run longer than a term of one year, but also such notes payable on demand or within one year from the date of issue when it is mutually agreed that the notes shall not be enforced as current assets by the holder.

(b) Par value of matured funded debt of affiliated companies held by controlling companies where there is no agreement for an extension of time and collection is not enforced.

(c) Open accounts not subject to current settlement.

(d) Interest accrued on amounts included in this account when not subject to current settlement.

NOTE A: Accounts with affiliated companies which are subject to current settlement shall be classed as current assets or current liabilities, as appropriate.

NOTE B: No item shall be included in this account which is not known to be the property of an affiliated company.

NOTE C: The term *affiliated companies* includes:

1. Controlled companies, including companies solely controlled by the accounting company, and also companies jointly controlled by the accounting company and others under a joint arrangement. (See definition 4.)

2. Controlling companies, including both companies solely controlling the accounting company, and companies which jointly control the accounting company under a joint arrangement.

3. Companies controlled by controlled companies.

4. Companies controlled by controlling companies.

By *control* (See definition 8) is meant the ability to determine the action of a corporation. For the purposes of this account, the following are to be considered forms of control:

(a) Right through title to securities issued or assumed to exercise the major part of the voting power in the controlled corporation.

(b) Right through agreement of some character or through some source other than title to securities, to name the majority of the board of directors, managers, or trustees of the controlled corporation.

(c) Right to foreclose a first lien upon all or a major part in value of the tangible property of the controlled corporation.

(d) Right to secure control in consequence of advances made for construction of the operating property of the controlled corporation.

(e) Right to control only in a specific respect the action of the controlled corporation.

A leasehold interest in the property of a corporation is not to be classed as a form of control over the lessor corporation.

Sole control is that which rests in one corporation.

Joint control is that which rests in two or more corporations and which is held under a joint arrangement.

770.1 Unamortized debt discount.

This account shall include the total of the net debit balances representing the excess of the discount over the premimium in connection with the issuance of each class of the carrier's outstanding long-term or equipment obligations. Separate subdivisions shall be maintained for each issue of such obligations. (See instruction 5–3.)

NOTE A: Issue costs related to long-term debt (debt expense) shall be included in account 743, ''Other deferred debits.'' (See instruction 5–3.)

NOTE B: When long-term obligations are refinanced the balance of debt discount and expense pertaining to the old obligations shall be transferred to account 551, ''Miscellaneous income charges.''

770.2 Unamortized premium on debt.

This account shall include the total of all credit balances representing the excess of the premium over the discount and expenses in connection with the issuance of each class of the carrier's outstanding long-term or equipment obligations. Separate subdivisions shall be maintained for each issue of obligations. (See instruction 5–3.)

OTHER LONG-TERM LIABILITIES

771 Accrued liability; pension and welfare.

(a) This account shall include the credit balances accrued representing the estimated liability of the carrier for amounts provided by charges to operating expenses, including amounts contributed by employees, irrespective of whether carried in special funds or in general funds of the carrier, for pensions, accident and death benefits, savings, relief, hospital, or other provident purposes.

(b) The carrier may use the ''full accrual basis'' to account for pension costs upon prior approval of the Board. Full accrual basis as used herein means recording in the accounts now and hereafter costs of employees pensions accrued, including credits for past services, upon the basis of actuarial computations, even though the sum has not been funded by payment to the trustees. Applications for such accounting shall show the method of computation, together with the carrier's proposal for recording in the accounts the related income tax credits to be realized in subsequent years.

(c) This account shall be charged when payments are made to retired employees, or disbursements are made for the purposes for which liability was provided.

(d) Separate subaccounts shall be maintained to show the amount provided for each liability and the nature of and amounts of debits and credits to the subaccounts.

772 Accrued liability; leased property.

(a) This account shall be credited with amounts concurrently charged to operating expenses or other accounts to cover the accrued liability on leased road and equipment when settlement between the accounting carrier and the lessor is not made currently. The amounts recorded shall include unsettled rent, based on depreciation or other factors, and liability for property retired.

(b) This account shall be divided to show the liability to (1) affiliated companies (See definition 4), and (2) others.

774 Accrued liability; casualty and other claims.

(a) This account shall be credited with the amounts charged to operating expense to provide for estimated liabilities for claims for deaths of or injuries to employees and others, and for damages to property not owned or held under lease by the carrier; for claims for loss, destruction, damage, or delays to property entrusted to the carrier for transportation or storage; for revenue over charges, such as those covered by

reparation claims; and for similar items. No credits shall be made to this account for amounts recoverable from insurance companies or others.

(b) Separate subaccounts shall be maintained to show the amount provided for each liability and the nature of and amounts of debits and credits to the subaccounts.

(c) If settlements for claims when audited are charged to this account, the balances for each year shall be kept separately until all items have been adjusted and cleared. If the settlements when audited are charged to the appropriate expense accounts, the balance in this account shall be adjusted through the expense accounts so as to reflect the probable liability at the close of each accounting period for claims which have been or may be filed for actuarial occurrences.

(d) Estimates of amounts payable within one year covering liability for claims shall be transferred from this account to account 759, ''Accrued accounts payable.''

775 Other accrued liabilities.

(a) This account shall be credited with the amounts accrued for estimated liabilities or losses provided by charges to operating expense or income accounts which are not provided for in any of the preceding accrued liability accounts.

(b) Separate subaccounts shall be maintained to show the amount provided for each liability and the nature of and amounts of debits and credits to the subaccounts.

(c) Upon accomplishment of the purpose for which each accrued liability was provided in this account, any remaining balance in the applicable subaccount shall be cleared to the appropriate operating expense or other account. Prior Board approval shall be required for clearance of balances in accrued liability subaccounts which were originally established by authority of the Board.

(d) Estimates of amounts payable within one year covering any liability included in this account shall be transferred to account 759, ''Accrued accounts payable.''

781 Interest in default.

This account shall include the amount of matured and unpaid interest (for which no provision has been made for current settlement) on all indebtedness issued or assumed by the accounting company except interest which is added to the principal of the debt on which incurred. Where interest is in default, subsequent accruals shall be credited to this account.

NOTE: Interest matured and unpaid on debt to affiliated companies, if not subject to current settlement, shall be included in account 769, ''Accounts payable; Affiliated companies.''

782 Other liabilities.

This account shall include assessments for public improvements; retained amounts due governmental agencies for construction work; percentages due contractors to be paid upon completion of contracts; deposits for construction of side tracks to be refunded on basis of an agreed portion of the earnings from the traffic handled over the tracks and similar liabilities not payable within one year: This account shall also include other deferred and noncurrent liabilities not otherwise provided for in general balance sheet accounts. Assessments for public improvements and amounts due governmental agencies and others for payments to be made within one year, shall be included in account 763, ''Other current liabilities,'' or other appropriate current liability account.

783 Deferred revenues—transfers from government authorities.

This account shall include amounts representing the cost of acquisition, addition to, or improvement of depreciable operating property received, or receivable from Federal, state, or local authorities. Items to be included in this account shall be determined in accordance with instruction 1–15.

An appropriate record shall be maintained of each asset associated with these transfers showing: (1) Original cost to carrier (or fair value if not purchased), (2) accumulated depreciation, and (3) estimated salvage value, if any.

This account shall be charged periodically, and account 503, ''Railway Operating Revenues—Amortization of Deferred Transfers from Government Authorities,'' shall be credited with amounts equal to the depreciation costs of the assets to which they apply. When such assets are retired or otherwise disposed of, this account shall be charged, and account 503 concurrently credited with any remaining associated amounts. (See instruction 1–15.)

NOTE A: This account shall not include government transfers in the form of, or designated for the purchase of land or other non-depreciable property. Transfers of this type are includible in account 795, ''Other Capital.''

NOTE B: This account shall not include transfers from the Federal Government to either Amtrak or ConRail representing the cost of depreciable and non-depreciable operating property.

(49 U.S.C. 304, 320)

[43 FR 30558, July 17, 1978]

DEFERRED CREDITS

784 Other deferred credits.

(a) This account shall include the amount of credit balances in suspense accounts that cannot be disposed of until services are performed or additional information is received, such as amounts received from sale of mileage tickets, to be disposed of as mileage is honored; amounts received from sales of excess baggage script, to be disposed of as coupons are honored; interchangeable mileage credential ticket redemption funds, amounts collected from the sale of damaged, unclaimed, and over freight held pending final disposition, unadjusted credit items not otherwise provided for; and similar items, the proper disposition of which is uncertain.

786 Accumulated deferred income tax credits.

(a) This account shall be credited with the noncurrent portions of deferred income tax debits and credits when the balance is a net credit, as determined by Instruction 1–10. A net debit balance shall be included in account 744, ''Accumulated deferred income tax debits''.

(b) This account shall be credited with the amount of investment tax credits utilized in the current year for income tax purposes but deferred for accounting purposes (see Instruction 1–10).

(c) This account shall be concurrently debited with amounts credited to account 557, ''Provision for deferred taxes,'' representing amortization of amounts for investment tax credits deferred in prior accounting periods.

(d) This account shall be maintained in such a manner as to show separately:

(1) the unamortized balance of deferred income taxes and deferred investment tax credit separately as of the beginning and as of the end of each year (2) the entries that affected the account balance, and (3) the current year's net credits or charges applicable to timing differences and deferred investment tax credits.

NOTE A: For definitions of income tax terminology see Definition 17. Account 557, ''Provision for deferred taxes'', and account 591, ''Provision for deferred taxes—Extraordinary item,'' shall concurrently be charged (credited) with the net effect of material timing effects. Other related deferred income tax balance sheet accounts are:

Account 714, ''Deferred income tax debit.''

Account 744, ''Accumulated deferred income tax debits.''

Account 762, ''Deferred income tax credits.''

(49 U.S.C. 10321, 11145; 5 U.S.C. 553)

[47 FR 12350, Mar. 23, 1982, as amended at 67 FR 57533, Sept. 11, 2002]

SHAREHOLDERS' EQUITY

791 Capital stock.

(a) This account shall include the par value of stocks with par value; the stated value of no par stock having a stated value; and the cash value of the consideration received or the amount approved by the Board for no par stocks without stated value for all shares of capital stock or other form of proprietary interest in the accounting company which have been issued to bona fide purchasers and have not been reacquired and canceled, also shares of stock nominally issued.

(b) This account also shall include amounts transferred from retained earnings for no par stock without stated value when approved by the Board.

(c) The amount of the consideration received from the sale of par value stock and no par stock having a stated value in excess of the amount credited to this account shall be credited to account 794, ''Premiums and assessments on capital stock.''

(d) When capital stock is retired or canceled, this account shall be charged with the amount at which such stock is carried in this account. In the case of no par stock without stated value, the amount to be charged shall be the proportion, applicable to the reacquired shares immediately prior to reacquisition, of the total book liability included herein of actually outstanding shares of the particular class and series of stock of which the reacquired shares are a part.

(e) The amounts included in this account shall be recorded so as to show (1) par value of shares of par value stock; the stated value of shares of no par stock, and the amount paid in or approved by the Board for no par stock without stated value (pledged or unpledged), held in the company's treasury, by its agents or trustees, or otherwise subject to its control, including shares nominally but never actually issued and (2) par value of shares of par value stock, the stated value of shares of no par stock, and the amount paid in or approved by the Board for shares of no par stock without stated value, issued and actually outstanding, being the shares not held by the company, its agents, or trustees, or subject to its control.

(f) The amounts recorded shall be further divided so as to show the amount of each class of stock issued, separated as between par value and no par value stock, as follows:

(1) *Common stock.* Stocks which have no preference over other issues of stock in distribution of dividends or of assets.

(2) *Preferred stock.* Stocks having preference over other issues of stock in distribution of dividends or of assets.

(3) *Debenture stock.* Stock issued under a contract to pay a specified return at specified intervals.

(4) *Receipts outstanding for installments paid.* Receipts for payments on account of subscriptions to capital stock.

(g) When the subscriber has paid his subscription in full and is entitled to receive certificates representing the shares for which he has subscribed, the par value of stocks having par value, the stated value of no par stock, or the agreed purchase price or the price authorized by the Board for no par stock without stated value, as appropriate, shall be included in the division for the class for which the certificates are issued.

(h) Each of the above classes shall also be divided into subclasses according to differences in dividend or interest rights, voting rights, or conditions under which the securities may be retired.

NOTE A: When a general levy or assessment is made against the holders of capital stock requiring the payment of any sum in addition to the consideration agreed upon at the time of sale, the amount collected shall be credited to account 794, ''Premiums and assessments on capital stock.''

NOTE B: When no par stock without stated value is issued in exchange for par stock, or no par stock with stated value, amounts included in account 794, ''Premiums and assessments on capital stock,'' for the retired stock, shall be transferred to this account, and any amounts icluded in the discount account for the retired stock shall be charged to account 795, ''Other capital''; *Provided, however,* That any excess over the amount of accumulated net gains applicable to the subclass exchanged included in account 795 shall be charged to account 616, ''Other debits to retained earnings.''

NOTE C: An appropriate record shall be maintained with respect to shares of capital stock showing the number of shares nominally issued, nominally outstanding, actually issued and actually outstanding.

NOTE D: See definitions 3, actually issued; 4, actually outstanding; 25, nominally issued; and 26, nominally outstanding.

[42 FR 35017, July 7, 1977, as amended at 67 FR 57533, Sept. 11, 2002]

792 Capital stock to be distributed.

This account shall include the company's liability under agreements to exchange its capital stock for the outstanding securities of companies whose physical property has been acquired under such agreements, but whose securities have not yet been surrendered for exchange. This account shall also include stock dividends declared that

remain undistributed at the end of an accounting period.

[42 FR 35017, July 7, 1977, as amended at 52 FR 4347, Feb. 11, 1987]

793 Discount on capital stock.

This account shall include the excess of the par or stated value recorded in account 791, ''Capital stock,'' (at the time of original sale of par value stock and no par stock with a stated value) plus accrued dividends, if any, over the cash value of the consideration received.

794 Premiums and assessments on capital stock.

(a) This account shall include the excess of the actual cash vlaue of the consideration received (at the time of original sale of par value stock and no par stock with a stated value) over the par or stated value of the stock issued, plus accrued dividends, if any, and subsequent assessments against stockholders representing payments required in excess of par or stated value.

(b) Separate subdivisions shall be maintained for premiums and for assessments on each class and series of stock.

(c) When capital stock is retired and canceled, this account shall be charged with the amount of assessments and premiums originally recorded for the shares of stock retired and canceled.

795 Other capital.

(a) This account shall include all other capital not classified as retained earnings. It shall include such items as the amount of consent dividends on the accounting company's capital stock; capital arising from donations by stockholders of capital stock of the company or other contribution to capital; amounts representing reduction of the par or recorded value of the accounting company's capital stock, including reductions arising in merger of a railroad and pooling of interest (see instruction 2–15(d)); capital from reorganization of the company (see instruction 2–16); and amounts of forfeited subscriptions to the accounting company's capital stock. This account shall also include gains from the acquisition, retirement, or resale of reacquired shares of the accounting company's capital stock; and forgiveness by stockholders as a contribution to capital of long-term debt owed to them.

(b) This account shall be charged with amounts included herein when capitalized by stock dividends or otherwise with the approval of the Board, and losses from retirement or resale of reacquired shares up to an amount not in excess of credits included herein applicable to the reacquired shares; and may be charged with the amortization of discount on capital stock to the extent of credits herein for such stock.

(c) This account shall be subdivided to show each source of other capital.

(d) This account shall be subdivided to show the cumulative amounts representing the cost of nondepreciable operating property received from government authorities, in accordance with the provisions of instruction 1–15.

(e) This account shall also be subdivided to show the cumulative amounts representing the cost of depreciable and nondepreciable operating property received by Amtrak or Conrail from the Federal Government. (See instruction 1–15.)

(49 U.S.C. 304, 320)

[42 FR 35017, July 7, 1977, as amended at 43 FR 30558, July 17, 1978]

797 Retained earnings; appropriated.

This account shall include the accumulated amount of retained earnings which has been appropriated and set aside according to provisions of mortgages, deeds of trust, reorganization plans, or other agreements requiring payments into capital funds, sinking funds, or other funds; and also appropriations for general contingencies, possible future losses (not in the category of liabilities actually incurred), and other corporate purposes. This account shall be subdivided by classes of appropriations showing the purpose for which each appropriation is made.

798 Retained earnings; unappropriated.

(a) This account shall include the net balance (debit or credit) of the amounts included in accounts 601 to 623, inclusive. It shall not include transfers either to or from account 795,

''Other capital,'' unless authorized upon application to the Board.

(b) Any balance representing retained earnings not segregated at the date of the balance sheet shall be included in a subdivision of this account.

(c) The balance of accounts 601 to 623, inclusive, shall be closed into this account at the end of each calendar year.

798.1 Net unrealized loss on noncurrent marketable securities.

This account shall include the accumulated changes in account 724 to the extent that these changes represent a net unrealized loss (aggregate cost exceeds market value).

798.5 Treasury stock.

(a) This account shall include in subdivisions for each class the reacquisition cost of capital stock which has been actually issued or assumed by the carrier, then reacquired, and is neither retired nor canceled, nor properly includable in sinking or other funds.

(b) This account shall be maintained to reflect separately securities pledged and unpledged.

(c) This account shall be shown on the balance sheet as a deduction in arriving at stockholders' equity.

NOTE: The accounting for the reacquisition and resale of capital stock shall be in accordance with instruction 5–4, paragraphs (e) through (g).

FORM OF GENERAL BALANCE SHEET STATEMENT

The classified form of general balance sheet statement is designed to show the financial condition of the accounting company at any specified date.

ASSETS

Current assets:
701. Cash.
702. Temporary cash investments.
703. Special deposits.
704. Loans and notes receivable.
705. Accounts receivable; Interline and other balances.
706. Accounts receivable; Customers.
707. Accounts receivable; Other.
708. Interest and dividends receivable.
708.5. Receivables from affiliated companies.
709. Accrued accounts receivable.
709.5. Allowance for uncollectible accounts.
Net receivables.
710. Working funds.
711. Prepayments.
712. Material and supplies.
713. Other current assets.
714. Deferred income tax debits.

ASSETS—Continued

Total current assets.

Special funds:
715. Sinking funds.
716. Capital funds.
717. Other funds.
Total special funds.

Investments:
721. Investments and advances; affiliated companies.
Undistributed earnings from certain investments in account 751.
721.5. Adjustments; investments and advances—affiliated companies.
Net—investments and advances—affiliated companies.
722. Other investments and advances.
723. Adjustments; Other investments and advances.
724. Allowance for net unrealized loss on noncurrent marketable equity securities—Cr.
Net—other investments and advances.
Total investments.

Tangible property:
731. Road and equipment property.
735. Accumulated depreciation; Road and equipment property.
736. Accumulated amortization; Road and equipment property—Defense projects.
Net road and equipment property.
732. Improvements on leased property.
733. Accumulated depreciation; Improvements on leased property.
734. Accumulated amortization; Improvements on leased property—Defense projects.
Net improvements on leased property.
Total carrier property.
737. Property used in other than carrier operations.
738. Accumulated depreciation; Property used in other than carrier operations.
Net—property used in other than carrier operations.
Total tangible property.

Intangible property:
739. Organization expenses.

Other assets and deferred debits:
741. Other assets.
743. Other deferred debits.
744. Accumulated deferred income tax debits.
Total other assets and deferred debits.
Total assets.

LIABILITIES AND SHAREHOLDERS' EQUITY

Current liabilities:
751. Loans and notes payable.
752. Accounts payable; Interline and other balances.
753. Audited accounts and wages payable.
754. Accounts payable; Other.
755. Interest payable.
756. Dividends payable.
757. Payables to affiliated companies.
759. Accrued accounts payable.
760. Federal income taxes accrued.
761. State and other income taxes accrued.
761.5. Other taxes accrued.
762. Deferred income tax credits.
763. Other current liabilities.
764. Equipment obligations and other long-term debt due within one year.
Total current liabilities.

Long-term debt due after one year: [1]
765. Funded debt unmatured.
766. Equipment obligations.
766.5. Capitalized lease obligations.
767. Receivers' and trustees' securities.
768. Debt in default.
769. Accounts payable; Affiliated companies.

ASSETS—Continued

770.1 Unamortized debt discount.
770.2 Unamortized premium on debt.
Total long-term debt due after one year.

Other long-term liabilities:
771. Accrued liability; Pension and welfare.
772. Accrued liability; Leased property.
774. Accrued liability; Casualty and other claims.
775. Other accrued liabilities.
781. Interest in default.
782. Other liabilities.
Total other long-term liabilities.

Deferred credits:
783. Deferred revenues—transfers from government authorities.
784. Other deferred credits.
786. Accumulated deferred income tax credits.
Total deferred credits.

Shareholders' equity:

Capital stock:
791. Capital stock.
792. Liability for conversion of capital stock.
793. Discount on capital stock.
Total capital stock.

Additional capital:
794. Premiums and assessments on capital stock.
795. Other capital.
Total additional capital.

Retained earnings:
797. Retained earnings; Appropriated.

ASSETS—Continued

798. Retained earnings; Unappropriated.
798.1 Net unrealized loss on noncurrent marketable equity securities.
Total retained earnings.
798.5 Treasury stock.
Total shareholders' equity.
Total liabilities and shareholders' equity.

[1] To be divided as to "Total issued" and "Held by or for company."

(49 U.S.C. 12, 20, 304, 913 and 1012)

[42 FR 35017, July 7, 1977, as amended at 42 FR 56611, Oct. 27, 1977; 43 FR 30558, July 17, 1978]

CONVERSION TABLES

Operating Expense Accounts.
Transportation Operating Revenue Accounts.
Income Accounts.
Retained Income Accounts.
General Balance Sheet Accounts.

OPERATING EXPENSE ACCOUNTS—CONVERSION TABLE

[See footnotes at end of table]

System of accounts effective prior to Jan 1, 1978		System of accounts effective Jan. 1, 1978				
Account title	No.	Account No.[1]				
Maintenance of Roadway and Structures						
Superintendence	201	11–13–02	21–13–02		41–13–02	61–13–02
		11–13–03	21–13–03		41–13–03	61–13–03
		11–13–04	21–13–04		41–13–04	61–13–04
		11–13–05	21–13–05		41–13–05	61–13–05
		11–13–06	21–13–06		41–13–06	61–13–06
Roadway maintenance	202	11–11–10	21–11–10	39/40–11–10	41–11–10	61–11–10
		11–12–10	21–12–10	39/40–12–10	41–12–10	61–12–10
		11–11–11	21–11–48	39/40–11–48	41–11–48	61–11–48
		11–12–11	21–12–11	39/40–12–11	41–12–11	61–12–48
Tunnels and subways	206	11–11–11	21–11–11	39/40–11–11	41–11–11	61–11–11
		11–12–11	21–12–11	39/40–12–11	41–12–11	61–12–11
		11–11–48	21–11–48	39/40–11–48	41–12–48	61–12–48
		11–12–48	21–12–48	39/40–12–48	41–12–48	61–12–48
Bridges, trestles and culverts	208	11–11–12	21–11–12	39/40–11–12	41–11–12	61–11–12
		1–12–12	21–12–12	39/40–12–12	41–12–12	61–12–12
		11–11–48	21–11–48	39/40–11–48	41–11–48	61–11–48
		11–12–48	21–12–48	39/40–12–48	41–12–48	61–12–48
Elevated structures	210	11–11–12	21–11–12	39/40–11–12	41–11–12	61–11–12
		11–12–12	21–12–12	39/40–12–12	41–12–12	61–12–12
		11–11–48	21–11–48	39/40–11–48	41–11–48	61–11–48
		11–12–48	21–12–48	39/40–12–48	41–12–48	61–12–48
Ties	212		21–11–13			
			21–12–13			
			21–11–48			
			21–12–48			
Rails	214		21–11–14			
			21–12–14			
			21–11–48			
			21–12–48			
Other track material	216		21–11–15			
			21–12–15			
			21–11–48			
			21–12–48			
Ballast	218		21–11–16			

OPERATING EXPENSE ACCOUNTS—CONVERSION TABLE—Continued

[See footnotes at end of table]

System of accounts effective prior to Jan 1, 1978		System of accounts effective Jan. 1, 1978				
Account title	No.	Account No.[1]				
		.....	21–12–16	.....	.....	.....
		.....	21–11–48	.....	.....	.....
		.....	21–12–48	.....	.....	.....
Track laying and surfacing	220	11–11–17	21–11–17	39/40–11–17	41–11–17	61–11–17
		11–12–17	21–12–17	39/40–12–17	41–12–17	61–12–17
		11–11–48	21–11–48	39/40–11–48	41–11–48	61–11–48
		11–12–48	21–12–48	39/40–12–48	41–12–48	61–12–48
Fences, snowsheds and signs	221	11–13–28	21–13–28	39/40–13–28	41–13–28	61–13–28
		11–13–48	21–13–48	39/40–13–48	41–13–48	61–13–48
Station and office buildings	227	11–13–23	21–13–23	39/40–13–23	41–13–23	61–13–23
		11–13–33	21–13–33	39/40–13–33	41–13–33	61–13–33
		11–13–35	21–13–35	39/40–13–35	41–13–35	61–13–35
		11–13–48	21–13–48	39/40–13–48	41–13–48	61–13–48
Roadway buildings	229	11–13–28	21–13–28	39/40–13–28	41–13–28	61–13–28
		11–13–48	21–13–48	39/40–13–48	41–13–48	61–13–48
Water stations	231	11–13–27	21–13–27	39/40–13–27	41–13–27	61–13–27
		11–13–48	21–13–48	39/40–13–48	41–13–48	61–13–48
Fuel stations	233	11–13–27	21–13–27	39/40–13–27	41–13–27	61–13–27
		11–13–48	21–13–48	39/40–13–48	41–13–48	61–13–48
Shops and enginehouses	235	11–13–24	21–13–24	39/40–13–24	41–13–24	61–13–24
		11–13–25	21–13–25	39/40–13–25	41–13–25	61–13–25
		11–13–26	21–13–26	39/40–13–26	41–13–26	61–13–26
		11–13–48	21–13–48	39/40–13–48	41–13–48	61–13–48
Grain elevators	237	11–13–35	21–13–35	39/40–13–35	41–13–35	61–13–35
		11–13–48	21–13–48	39/40–13–48	41–13–48	61–13–48
Storage warehouses	239	11–13–28	21–13–28	39/40–13–28	41–13–28	61–13–28
		11–13–48	21–13–48	39/40–13–48	41–13–48	61–13–48
Wharves and docks	241	11–13–32	21–13–32	39/40–13–32	41–13–32	61–13–32
		11–13–48	21–13–48	39/40–13–48	41–13–48	61–13–48
Coal and ore wharves	243	11–13–29	21–13–29	39/40–13–29	41–13–29	61–13–29
		11–13–30	21–13–30	39/40–13–30	41–13–30	61–13–30
		11–13–48	21–13–48	39/40–13–48	41–13–48	61–13–48
TOFC/COFC terminals	244	11–13–31	21–13–31	39/40–13–31	41–13–31	61–13–31
		11–13–48	21–13–48	39/40–13–48	41–13–48	61–13–48
Communication systems	247	11–13–20	21–13–20	39/40–13–20	41–13–20	61–13–20
		11–13–48	21–13–48	39/40–13–48	41–13–48	61–13–48
Signals and interlockers	249	11–11–19	21–11–19	39/40–11–19	41–11–19	61–11–19
		11–12–48	21–12–48	39/40–12–48	41–12–18	61–12–18
		11–11–48	21–11–48	39/40–11–48	41–11–48	61–11–48
		11–12–48	21–12–48	39/40–12–48	41–12–48	61–12–48
Power plants	253	11–13–21	21–13–21	39/40–13–21	41–13–21	61–13–21
		11–13–24	21–13–24	39/40–13–24	41–13–24	61–13–24
		11–13–28	21–13–25	39/40–13–25	41–13–25	61–13–25
		11–13–26	21–13–26	39/40–13–26	41–13–26	61–13–26
		11–13–48	21–13–48	39/40–13–48	41–13–48	61–13–48
Power transmission systems	257	11–13–21	21–13–21	39/40–13–21	41–13–21	61–13–21
		11–13–24	21–13–24	39/40–13–24	41–13–24	61–13–24
		11–13–25	21–13–25	39/40–13–25	41–13–25	61–13–25
		11–13–26	21–13–26	39/40–13–26	41–13–26	61–13–26
		11–13–48	21–13–48	39/40–13–48	41–13–48	61–13–48
Miscellaneous structures	265	11–13–28	21–13–28	39/40–13–28	41–13–28	61–13–28
		11–13–48	21–13–48	39/40–13–48	41–13–48	61–13–48
Roadway property; depreciation	266	.....	.....	.....	.....	62–11–00
		.....	.....	.....	.....	62–12–00
		.....	.....	.....	.....	62–13–00
Retirements; road	267	.....	.....	.....	.....	[2] 61–11–99
		.....	.....	.....	.....	61–12–99
		.....	.....	.....	.....	61–13–99
Roadway machines	269	11–13–36	21–13–36	39/40–13–36	41–13–36	61–13–36
		11–13–48	21–13–48	39/40–13–48	41–13–48	61–13–48
Dismantling retired road property	270	11–11–39	21–11–39	.....	41–11–39	61–11–39
		11–12–39	21–12–39	.....	41–12–39	61–12–39
		11–13–39	21–13–39	.....	41–13–39	61–13–39
Small tools and supplies	271	11–13–37	21–13–37	39/40–13–37	41–13–37	61–13–37
Removing snow, ice and sand	272	11–13–38	21–13–38	39/40–13–38	41–13–38	61–13–38
Public improvements; maintenance	273	11–11–22	21–11–22	39/40–11–22	41–11–22	61–11–22
		11–12–22	21–12–22	39/40–12–22	41–12–22	61–12–22

OPERATING EXPENSE ACCOUNTS—CONVERSION TABLE—Continued

[See footnotes at end of table]

System of accounts effective prior to Jan 1, 1978		System of accounts effective Jan. 1, 1978				
Account title	No.	Account No.[1]				
Injuries to persons	274	11–11–99	...	...	...	61–11–99
		11–12–99	...	...	...	61–12–99
		11–13–99	...	...	...	61–13–99
		11–61–92	21–61–92	41–61–92	...	61–61–92
		...	...	...	...	52–11–00
		...	...	...	...	52–12–00
		...	...	...	...	52–13–00
Insurance	275	...	...	...	...	53–11–00
		...	...	...	...	53–12–00
		...	...	...	...	53–13–00
Stationery and printing	276	...	21–11–xx	...	[2]41–11–xx	...
		...	21–12–xx	...	41–12–xx	...
		...	21–13–xx	...	41–13–xx	...
Employees health and welfare benefits	277	12–11–00	...	...	...	...
		12–12–00	...	...	...	...
		12–13–00	...	...	...	...
Maintaining joint tracks, yards and other facilities—Dr	278	...	...	37–11–00	...	...
		...	...	37–12–00	...	...
		...	...	37–13–00	...	...
Maintaining joint tracks, yards and other facilities—Cr	279	...	...	38–11–00	...	...
		...	...	38–12–00	...	...
		...	38–13–00	...	...	...
Right-of-way expenses	281	11–11–99	21–11–99	...	41–11–99	61–11–99
		11–12–99	21–12–99	...	41–12–99	61–12–99
		11–13–99	21–13–99	...	41–13–99	61–13–99
Other expenses	282	11–11–99	21–11–99	...	41–11–99	61–11–99
		11–12–99	21–12–99	...	41–12–99	61–12–99
		11–13–99	21–13–99	...	41–13–99	61–13–99
Maintenance of Equipment						
Superintendence	301	11–21–01	21–12–01	...	41–21–01	61–21–01
		11–22–01	21–22–01	...	41–22–01	61–22–01
		11–23–01	21–23–01	...	41–23–01	61–23–01
Shop machinery	302	11–21–40	21–21–40	39/40–21–40	41–21–40	61–21–40
		11–22–40	21–22–40	39/40–22–40	41–22–40	61–22–40
		11–23–40	21–22–40	39/40–23–40	41–23–40	61–23–40
Power plant machinery	304	11–13–21	21–13–21	39/40–13–21	41–13–21	61–13–21
		11–13–28	21–13–28	39/40–13–28	41–13–28	61–13–28
Shop and power plant machinery; depreciation	305	...	...	...	...	62–13–00
		...	...	...	...	62–21–00
		...	...	...	...	62–22–00
		...	...	...	...	62–23–00
Dismantling retired shop and power plant machinery	306	11–13–39	21–13–39	...	41–13–39	61–13–39
		11–21–39	21–21–39	...	41–21–39	61–21–39
		11–22–39	21–22–39	...	41–22–39	61–22–39
		11–23–39	21–23–39	...	41–23–39	61–23–39
Locomotive repairs	311	11–21–41	21–21–41	39/40–21–41	41–21–41	61–21–41
		11–21–48	21–21–48	39/40–21–48	41–21–48	61–21–48
		11–31–62	21–31–62	...	41–31–62	61–31–62
Freight-train cars; repairs	314	11–22–42	21–22–42	39/40–22–42	41–22–42	61–22–42
		11–22–48	21–22–48	39/40–22–48	41–22–48	61–22–48
		11–31–62	21–31–62	...	41–31–62	61–31–62
Passenger-train cars; repairs	317	11–25–45	21–25–45	39/40–25–45	41–25–45	61–25–45
		11–25–48	21–25–48	39/40–25–48	41–25–48	61–25–48
Highway revenue equipment; repairs	318	11–23–43	21–23–43	39/40–23–43	41–23–43	61–23–43
		11–23–48	21–43–48	39/40–23–48	41–23–48	61–23–48
Floating equipment; repairs	323	11–23–44	21–23–44	39/40–23–44	41–23–44	61–23–44
		11–23–48	21–23–48	30/40–23–48	41–23–48	61–23–48
Work equipment; repairs	326	11–23–47	21–23–47	39/40–23–47	41–23–47	61–23–47
		11–23–48	21–23–48	39/40–23–48	41–23–48	61–23–48
Miscellaneous equipment; repairs	328	11–23–47	21–23–47	39/40–23–47	41–23–47	61–23–47
		11–23–48	21–23–48	39/40–23–48	41–23–48	61–23–48
Dismantling retired equipment	329	11–21–39	21–21–39	...	41–21–39	61–21–39

OPERATING EXPENSE ACCOUNTS—CONVERSION TABLE—Continued

[See footnotes at end of table]

System of accounts effective prior to Jan 1, 1978		System of accounts effective Jan. 1, 1978				
Account title	No.	Account No.[1]				
		11–22–39	21–22–39	.....	41–22–39	61–22–39
		11–23–39	21–23–39	.....	41–23–39	61–23–39
Retirements; equipment	330	.....	.....	.....	.....	61–29–99
		.....	.....	.....	.....	61–22–99
		.....	.....	.....	.....	61–23–99
Equipment; depreciation	331	.....	.....	.....	.....	62–21–00
		.....	.....	.....	.....	62–22–00
		.....	.....	.....	.....	62–23–00
Injuries to persons	332	11–21–99	.....	.....	.....	61–21–99
		11–22–99	.....	.....	.....	61–22–99
		11–23–99	.....	.....	.....	61–23–99
		11–61–99	21–61–92	41–61–92	.....	61–61–92
		.....	.....	.....	.....	52–21–00
		.....	.....	.....	.....	52–22–00
		.....	.....	.....	.....	52–23–00
Insurance	333	.....	.....	.....	.....	53–21–00
		.....	.....	.....	.....	53–22–00
		.....	.....	.....	.....	53–23–00
Stationery and printing	334	.....	[2] 21–21–xx	.....	[2] 41–21–xx	.....
		.....	21–22–xx	.....	41–22–xx	.....
		.....	21–23–xx	.....	41–23–xx	.....
Employees health and welfare benefits	335	12–21–00	.....	.....	.....	.....
		12–22–00	.....	.....	.....	.....
		12–23–00	.....	.....	.....	.....
Joint maintenance of equipment expenses—Dr	336	.....	.....	37–21–00	.....	.....
		.....	.....	37–22–00	.....	.....
		.....	.....	37–23–00	.....	.....
Joint maintenance of equipment expenses—Cr	337	.....	.....	38–21–00	.....	.....
		.....	.....	38–22–00	.....	.....
		.....	.....	38–23–00	.....	.....
Other expenses	339	11–21–99	21–21–99	.....	41–21–99	61–21–99
		11–22–99	21–22–99	.....	41–22–99	61–22–99
		11–23–99	21–23–99	.....	41–23–99	61–23–99
Various	.....	11–23–46	21–23–46	39/40–23–46	41–23–46	61–23–46
Traffic Expense Account						
Superintendence	351	11–61–01	21–61–01	.....	41–61–01	61–61–01
Outside agencies	352	11–61–88	21–61–88	.....	41–61–88	61–61–88
		11–61–89	21–61–89	.....	41–61–89	61–61–89
Advertising	353	11–61–93	21–61–93	.....	41–61–93	61–61–93
Traffic associations	354	11–61–93	21–61–93	.....	41–61–93	61–61–93
Fast freight lines	355	11–61–99	21–61–99	.....	41–61–99	61–61–99
Industrial and immigration bureaus	356	11–61–90	21–61–90	.....	41–61–90	61–61–90
Insurance	357	.....	.....	.....	.....	53–61–00
Stationery and printing	358	.....	[2] 21–61–xx	.....	[2] 41–61–xx	.....
Employees health and welfare benefits	359	12–61–00	.....	.....	.....	.....
Other expenses	360	11–61–99	21–61–99	.....	41–61–99	61–61–99
Transportation Expense Accounts						
Superintendence	371	11–31–01	21–31–01	.....	41–31–01	61–31–01
		11–32–01	21–32–01	.....	41–32–01	61–32–01
		11–34–01	21–34–01	.....	41–34–01	61–34–01
		11–35–01	21–35–01	.....	41–35–01	61–35–01
Dispatching trains	372	11–31–58	21–31–58	.....	41–31–58	61–31–58
Station employees	373	11–33–71	.....	.....	.....	.....
		11–35–76	.....	.....	.....	.....
		11–35–77	.....	.....	.....	.....
Weighing, inspection and demurrage bureaus	374	.....	.....	.....	41–31–99	.....
Coal and ore wharves	375	11–34–74	21–34–74	.....	41–34–74	61–34–74
Station supplies and expenses	376	.....	21–33–71	.....	41–33–71	.....
		.....	21–35–76	.....	41–35–76	61–35–76
		.....	21–35–77	.....	41–35–77	61–35–77
Yardmasters and yard clerks	377	11–32–65	.....	.....	.....	.....
		11–32–66	.....	.....	.....	.....
Yard conductors and brakemen	378	11–32–64	.....	.....	.....	.....
Yard switch and signal tenders	379	11–32–59	.....	.....	.....	.....

OPERATING EXPENSE ACCOUNTS—CONVERSION TABLE—Continued

[See footnotes at end of table]

System of accounts effective prior to Jan 1, 1978		System of accounts effective Jan. 1, 1978				
Account title	No.	Account No.[1]				
Yard enginemen	380	11–32–64				
Yard switching fuel	382	11–32–67	21–32–67		41–32–67	61–32–67
Yard switching power produced	383	11–32–68	21–32–68		41–32–68	61–32–68
Yard switching power purchased	384				41–32–68	
Servicing yard locomotives	388	11–32–69	21–32–69		41–32–69	61–32–69
Yard supplies and expenses	389		21–32–59		41–32–59	61–32–59
			21–32–64		41–32–64	61–32–64
			21–32–65		41–32–65	61–32–65
			21–32–66		41–32–66	61–32–66
Operating joint yards and terminals—Dr	390			37–32–00		
Operating joint yards and terminals—Cr	391			38–32–00		
Train enginemen	392	11–31–56				
Train fuel	394	11–31–67	21–31–67		41–31–67	61–31–67
Train power produced	395	11–31–68	21–31–68		41–31–68	61–31–68
Train power purchased	396				41–31–68	
Servicing train locomotives	400	11–31–69	21–31–69		41–31–69	61–31–69
Trainmen	401	11–31–57				
Train supplies and expenses	402		21–31–56		41–31–56	61–31–56
		11–31–62	21–31–62		41–31–62	61–31–62
		11–33–70	21–33–70		41–33–70	
		11–33–71	21–33–71		41–33–71	
		11–33–72	21–33–72		41–33–72	
		11–34–75	21–34–75		41–34–75	61–34–75
		11–31–99	21–31–99		41–31–99	61–31–99
Operating sleeping cars	403	11–41–01	21–41–01		41–41–01	61–41–01
		11–41–57	21–41–57		41–41–57	61–41–57
		11–45–76	21–45–76		41–45–76	61–45–76
		11–41–99	21–41–99		41–41–99	61–41–99
Signal and interlocker operation	404	11–31–59	21–31–59		41–31–59	61–31–59
Crossing protection	405	11–31–61	21–31–61		41–31–61	61–31–61
Drawbridge operations	406	11–31–60	21–31–60		41–31–60	61–31–60
Communication system operation	407	11–35–77	21–35–77		41–35–77	61–35–77
Operating floating equipment	408	11–34–01	21–34–01		41–34–01	61–34–01
		11–34–73	21–34–73		41–34–73	61–34–73
		11–34–74	21–34–74		41–34–74	61–34–74
Employees health and welfare benefits	409	12–31–00				
		12–32–00				
		12–33–00				
		12–34–00				
		12–35–00				
Stationery and printing	410		[2] 21–31–xx		[2] 41–31–xx	
		21–32–xx		41–32–xx		
		21–34–xx		41–34–xx		
		21–35–xx		41–35–xx		
Other expenses	411	11–31–99	21–31–99		41–31–99	61–31–99
		11–32–99	21–32–99		41–32–99	61–32–99
		11–34–99	21–34–99		41–34–99	61–34–99
		11–35–99	21–35–99		41–35–99	61–35–99
Operating joint tracks and facilities—Dr	412			37–31–00		
			37–32–00			
			37–34–00			
			37–35–00			
Operating joint tracks and facilities—Cr	413			38–31–00		
				38–32–00		
				38–34–00		
				38–35–00		
Insurance	414					53–31–00
						53–32–00
						53–34–00
						53–35–00
Clearing wrecks	415	11–31–63	21–31–63		41–31–63	61–31–63
		11–32–63	21–32–63		41–32–63	61–32–63
Damage to property	416					52–31–00
						52–32–00
						52–34–00
						52–35–00

OPERATING EXPENSE ACCOUNTS—CONVERSION TABLE—Continued

[See footnotes at end of table]

System of accounts effective prior to Jan 1, 1978		System of accounts effective Jan. 1, 1978				
Account title	No.	Account No.[1]				
Damage to livestock on right-of-way	417	.....	.....	.....	.....	52–31–00
Loss and damage; Freight	418	.....	.....	.....	.....	51–31–00
		.....	.....	.....	.....	51–32–00
		.....	.....	.....	.....	51–33–00
		.....	.....	.....	.....	51–34–00
		11–35–78	21–35–78	.....	41–35–78	61–35–78
Loss and damage; Baggage	419	.....	.....	.....	.....	51–31–00
		.....	.....	.....	.....	51–32–00
		.....	.....	.....	.....	51–33–00
		.....	.....	.....	.....	51–34–00
		11–35–78	21–35–78	.....	41–35–78	61–35–78
Injuries to persons	420	11–31–99	.....	.....	.....	61–61–92
		11–32–99	.....	.....	.....	61–31–99
		11–34–99	.....	.....	.....	61–32–99
		11–35–99	.....	.....	.....	61–34–99
		11–61–92	21–61–92	41–61–92	.....	61–35–99
		.....	.....	.....	.....	52–13–00
		.....	.....	.....	.....	52–32–00
		.....	.....	.....	.....	52–34–00
		.....	.....	.....	.....	52–35–00
		11–35–78	21–35–78	.....	41–35–78	61–35–78
TOFC/COFC terminals	421	11–34–73	21–34–73	.....	41–34–73	61–34–73
		11–34–74	21–34–74	.....	41–34–74	61–34–74
		11–34–75	21–34–75	.....	41–34–75	61–34–75
Other highway transportation	422	11–34–73	21–34–73	.....	41–34–73	61–34–73
		11–34–74	21–34–74	.....	41–34–74	61–34–74
		11–34–75	21–34–75	.....	41–34–75	61–34–75
Miscellaneous Operations Expense						
Dining and buffet service	441	11–41–01	21–41–01	.....	41–41–01	61–41–01
		11–41–57	21–41–57	.....	41–41–57	61–41–57
		11–41–99	21–41–99	.....	41–41–99	61–41–99
Hotels and restaurants	442	11–34–99	21–34–99	.....	41–34–99	61–34–99
Grain elevators	443	11–34–01	21–34–01	.....	41–34–01	61–34–01
		11–34–74	21–34–74	.....	41–34–74	61–34–74
		11–34–75	21–34–75	.....	41–34–75	61–34–75
Producing power sold	445	11–31–68	21–31–68	.....	41–31–68	61–31–68
		11–32–68	21–32–68	.....	41–32–68	61–32–68
Other miscellaneous operations	446	11–34–99	21–34–99	.....	41–34–99	61–34–99
Operating joint miscellaneous facilities—Dr	447	.....	.....	37–34–00	.....	.....
		.....	.....	37–35–00	.....	.....
Operating joint miscellaneous facilities—Cr	448	.....	.....	38–34–00	.....	.....
		.....	.....	38–35–00	.....	.....
Employees Health and Welfare Benefits	449	12–34–00	.....	.....	.....	.....
General Operating Expenses						
Salaries and expenses of general officers	451	11–61–01	21–61–01	.....	41–61–01	61–61–01
		11–61–86	21–61–86	.....	41–61–86	61–61–86
		11–61–87	21–61–87	.....	41–61–87	61–61–87
		11–61–90	21–61–90	.....	41–61–90	61–61–90
		11–61–91	21–61–91	.....	41–61–91	61–61–91
		11–61–94	21–61–94	.....	41–61–94	61–61–94
		11–61–99	21–61–99	.....	41–61–99	61–61–99
Salaries and expenses of clerks and attendants	452	11–61–01	21–61–01	.....	41–61–01	61–61–01
		11–61–99	21–61–99	.....	41–61–99	61–61–99
		11–61–86	21–61–86	.....	41–61–86	61–61–86
		11–61–87	21–61–87	.....	41–61–87	61–61–87
		11–61–90	21–61–90	.....	41–61–90	61–61–90
		11–61–91	21–61–91	.....	41–61–91	61–61–91
		11–61–92	21–61–92	.....	41–61–92	61–61–92
		11–61–94	21–61–94	.....	41–61–94	61–61–94
		.....	21–61–99	.....	41–61–99	61–61–99
General office supplies and expenses	453	.....	21–61–01	.....	41–61–01	61–61–01
Law expenses	454	11–61–92	21–61–92	.....	41–61–92	61–61–92
Insurance	455	.....	.....	.....	.....	53–61–00
Employees health and welfare benefits	456	12–61–00	.....	.....	.....	.....

OPERATING EXPENSE ACCOUNTS—CONVERSION TABLE—Continued

[See footnotes at end of table]

System of accounts effective prior to Jan 1, 1978		System of accounts effective Jan. 1, 1978				
Account title	No.	Account No.[1]				
Pensions	457	12–11–00				
		12–12–00				
		12–13–00				
		12–21–00				
		12–22–00				
		12–23–00				
		12–31–00				
		12–32–00				
		12–34–00				
		12–35–00				
		12–61–00				
Stationery and printing	458		[2] 21–61–xx		[2] 41–61–xx	
Other expenses	460	11–61–99	21–61–99		41–61–99	61–61–99
General joint facilities—Dr	461			37–61–00		
General joint facilities—Cr	462			38–61–00		
Various expenses		11–61–94	21–61–94		41–61–94	61–61–94

Footnotes:

[1] Freight account activity/subactivity numbers are shown except when old accounts are exclusively passenger expenses Passenger and common activity/subactivity numbers shall be used where appropriate.

[2] Account numbers with the last 2 digits "xx" indicates that the account is subdivided by applicable functions See account texts for appropriate function assignment.

TRANSPORTATION OPERATING REVENUE ACCOUNTS CONVERSION TABLE

System of accounts eff. prior to Jan. 1, 1978		System of accounts eff. Jan. 1, 1978	
Account title	No.	No.	Account title
Transportation Revenue Accounts			
Transportation; rail line	100	100	Transportation; rail line.
Freight	101	101	Freight.
Passenger	102	102	Passenger.
Baggage	103	103	Passenger-related.
Sleeping car	104	103	Do.
Parlor and chair car	105	103	Do.
Other passenger-train	108	103	Do.
Milk	109	101	Freight.
Switching	110	104	Switching.
Water transfers	113	105	Water transfers.
Incidental	130	110	Incidental.
Dining and buffet	131	103	Passenger-related.
Hotel and restaurant	132	110	Incidental.
Station, train, and boat privileges	133	110	Do.
Storage; freight	135	110	Do.
Demurrage	137	106	Demurrage.
Communication	138	110	Incidental.
Grain elevator	139	110	Do.
Power	141	110	Do.
Rent of buildings and other property	142	110	Do.
Miscellaneous	143	110	Do.
Joint facility	150	120	Joint facility.
Joint facility—cr	151	121	Joint facility—cr.
Joint facility—dr	152	122	Joint facility—dr.

INCOME ACCOUNTS CONVERSION TABLE

System of accounts eff. prior to Jan. 1, 1978		System of accounts eff. Jan. 1, 1978	
Account title	No.	No.	Account title
Income Accounts			
Railway operating revenues	501	501	Railway operating revenues.
Revenues from miscellaneous operations	502	506	Revenues from property used in other than carrier operations.

INCOME ACCOUNTS CONVERSION TABLE—Continued

System of accounts eff. prior to Jan. 1, 1978		System of accounts eff. Jan. 1, 1978	
Account title	No.	No.	Account title
Hire of freight cars and highway revenue freight equipment; credit balance.	503	.....	32–22–00, 32–23–00, 36–22–00, and 36–23–00.
Rent from locomotives	504	.....	32–21–00, and 36–21–00.
Rent from passenger-train cars	505	.....	32–25–00, and 36–25–00.
Rent from floating equipment	506	.....	32–23–00, and 36–23–00.
Rent from work equipment	507	.....	32–23–00, and 36–23–00.
Joint facility rent income	508	.....	34–11–00, 34–12–00, 34–13–00, 34–21–00, 34–22–00, and 34–23–00
Income from lease of road and equipment	509	.....	32–11–00, 32–12–00, 32–13–00, 32–21–00, 32–22–00, and 32–23–00.
Miscellaneous rent income	510	510	Miscellaneous rent income.
Income from nonoperating property	511	506	Revenues from property used in other than carrier operations.
		534	Expenses of property used in other than carrier operations.
Separately operated properties; profit	512	512	Separately operated properties; profit.
Dividend income	513	513	Dividend income.
Interest income	514	514	Interest income.
Income from sinking and other reserve funds	516	516	Income from sinking and other reserve funds.
Release of premiums on funded debt	517	517	Release of premiums on funded debt.
Contributions from other companies	518	518	Contributions from other companies.
Miscellaneous income	519	519	Miscellaneous income.
Railway operating expenses	531	531	Railway operating expenses.
Railway tax accruals	532	556	Income taxes on ordinary income.
Provision for deferred taxes	533	557	Provision for deferred taxes.
Expenses of miscellaneous operations	534	534	Expenses of property used in other than carrier operations.
Taxes on miscellaneous operating property	535	535	Taxes on property used in other than carrier operations.
Hire of freight cars and highway revenue freight equipment—debit balance.	536	.....	31–22–00, 35–22–00, 31–23–00, and 35–23–00.
Rent for locomotives	537	.....	31–21–00, and 35–21–00.
Rent for passenger-train cars	538	.....	31–25–00, and 35–25–00.
Rent for floating equipment	539	.....	31–23–00, and 35–23–00.
Rent for work equipment	540	.....	31–23–00, and 35–23–00.
Joint facility rents	541	.....	33–11–00, 33–12–00, 33–13–00, 33–21–00, 33–22–00, and 33–23–00.
Rent for leased roads	542	.....	31–11–00, 31–12–00, 31–13–00, 31–21–00, 31–22–00, and 31–23–00.
Miscellaneous rents	543	543	Miscellaneous rents.
Miscellaneous tax accruals	544	544	Miscellaneous taxes.
Taxes on property used in other than carrier operations	535		
Separately operated properties; loss	545	545	Separately operated properties; loss.
Interest on funded debt	546	546	Interest on funded debt.
Interest on unfunded debt	547	547	Interest on unfunded debt.
Amortization of discount on funded debt	548	548	Amortization of discount on funded debt.
Maintenance of investment organization	549	549	Maintenance of investment organization.
Income transferred to other companies	550	550	Income transferred to other companies.
Miscellaneous income charges	551	551	Miscellaneous income charges.
		553	Uncollectible accounts.
Unusual or infrequent items (debit) credit	555	555	Unusual or infrequent items (debit) credit.
Income or loss from operations of discontinued segments	560	560	Income or loss from operations of discontinued segments.
Gain or loss on disposal of discontinued segments	562	562	Gain or loss on disposal of discontinued segments.
Extraordinary items (net)	570	570	Extraordinary items (net).
Income taxes on extraordinary items	590	590	Income taxes on extraordinary items.
Provision for deferred taxes—extraordinary items	591	591	Provision for deferred taxes—extraordinary items.
Cumulative effect of changes in accounting principles	592	592	Cumulative effect of changes in accounting principles.

RETAINED INCOME ACCOUNTS CONVERSION TABLE

System of accounts eff. prior to Jan. 1, 1978		System of accounts eff. Jan. 1, 1978	
Account title	No.	No.	Account title
Credit			
Credit balance (at beginning of calendar year)	601	601	Credit balance (at beginning of calendar year).
Prior period adjustments to beginning retained income account.	601.5	601.5	Prior period adjustments to beginning retained earnings account.
Credit balance transferred from income	602	602	Credit balance transferred from income.
Other credits to retained income	606	606	Other credits to retained earnings.
Debit			
Debit balance (at beginning of calendar year)	611	611	Debit balance (at beginning of calendar year).
Debit balance transferred from income	612	612	Debit balance transferred from income.
Other debits to retained income	616	616	Other debits to retained earnings.
Appropriations for sinking and other reserve funds	620	620	Appropriations for sinking and other funds.
Appropriations for other purposes	621	621	Appropriations for other purposes.
Appropriations released	622	603	Appropriations released.
Dividends	623	623	Dividends.

GENERAL BALANCE SHEET ACCOUNTS CONVERSION TABLE

System of accounts eff. prior to Jan. 1, 1978		System of accounts eff. Jan. 1, 1978	
Account title	No.	No.	Account title
Cash	701	701	Cash.
Temporary cash investments	702	702	Temporary cash investments.
Special deposits	703	703	Special deposits.
Loans and notes receivable	704	704	Loans and notes receivable.
		708.5	Receivables from affiliated companies.
		709.5	Allowance for uncollectible accounts.
Traffic, car service and other balances—dr	705	705	Accounts receivable; interline and other balances.
		709.5	Allowances for uncollectible accounts.
		752	Accounts payable; interline and other balances.
Net balance receivable from agents and conductors	706	706	Accounts receivable; customers.
Miscellaneous accounts receivable	707	707	Accounts receivable; other.
		708.5	Receivables from affiliated companies.
		709.5	Allowance for uncollectible accounts.
Interest and dividends receivable	708	708	Interest and dividends receivable.
		708.5	Receivables from affiliated companies.
		709.5	Allowance for uncollectible accounts.
Accrued accounts receivable	709	709	Accrued accounts receivable.
Working fund advances	710	710	Working funds.
Prepayments	711	711	Prepayments.
Material and supplies	712	712	Material and supplies.
Other current assets	713	713	Other current assets.
Deferred income tax charges	714	714	Deferred income tax debits.
Sinking funds	715	715	Sinking funds.
Capital and other reserve funds	716	716	Capital funds.
Insurance and other funds	717	717	Other funds.
Investment in affiliated companies	721	721	Investments and advances; affiliated companies.
Other investments	722	722	Other investments and advances.
Reserve for adjustment of investment in securities—cr	723	721.5	Adjustments; investments and advances—affiliated companies.
		723	Adjustments; other investments and advances.
Road and equipment property	731	731	Road and equipment property.
Organization expenses	71	739	Organization expenses.
Improvements on leased property	732	732	Improvements on leased property.
Accrued depreciation; improvements on leased property	733	733	Accumulated depreciation; improvements on leased property.
Accrued depreciation; road and equipment	735	735	Accumulated depreciation; road and equipment property.
Amortization of defense projects; road and equipment	736	736	Accumulated amortization; road and equipment property—defense projects.
		734	Accumulated amortization; improvements on leased property—defense projects.
Miscellaneous physical property	737	737	Property used in other than carrier operations.
Accrued depreciation; miscellaneous physical property	738	738	Accumulated depreciation; property used in other than carrier operations.

GENERAL BALANCE SHEET ACCOUNTS CONVERSION TABLE—Continued

System of accounts eff. prior to Jan. 1, 1978		System of accounts eff. Jan. 1, 1978	
Account title	No.	No.	Account title
Other assets	741	741	Other assets.
Unamortized discount on long-term debt	770.1	770.1	Unamortized debt discount.
Other deferred charges	743	743	Other deferred debits.
Accumulated deferred income tax charges	744	744	Accumulated deferred income tax debits.
Liabilities			
Loans and notes payable	751	751	Loans and notes payable.
		757	Payables to affiliated companies.
Traffic, car service and other balances—cr	752	752	Accounts payable; interline and other balances.
		705	Accounts receivable; interline and other balances.
		709.5	Allowance for uncollectible accounts.
Audited accounts and wages payable	753	753	Audited accounts and wages payable.
Miscellaneous accounts payable	754	754	Accounts payable; other.
		757	Payables to affiliated companies.
Interest matured unpaid	755	755	Interest payable.
		757	Payables to affiliated companies.
Dividends matured unpaid	756	756	Dividends payable.
		757	Payables to affiliated companies.
Unmatured interest accrued	757	755	Interest payable.
		757	Payables to affiliated companies.
Unmatured dividends declared	758	756	Dividends payable.
		757	Payables to affiliated companies.
Accrued accounts payable	759	759	Accrued accounts payable.
Federal income taxes accrued	760	760	Federal income taxes accrued.
Other taxes accrued	761	711	Prepayments.
		761	State and other income taxes accrued.
		761.5	Other taxes accrued.
Deferred income tax credits	762	762	Deferred inome tax credits.
Other current liabilities	763	763	Other currrent liabilities.
Equipment obligations and other debt due within one year	764	764	Equipment obligations and other long-term debt due within 1 year.
Funded debt unmatured	765	765	Funded debt unmatured.
Equipment obligations	766	766	Equipment obligations.
Receivers' and trustees' securities	767	767	Receivers' and trustees' securities.
Debt in default	768	768	Debt in default.
Amounts payable to affiliated companies	769	769	Accounts payable; affiliated companies.
Pension and welfare reserves	771	771	Accrued liability; pension and welfare.
Casualty and other reserves	774	774	Accrued liability; casualty and other claims.
		775	Other accrued liabilities.
Interest in default	781	781	Interest in default.
Other liabilities	782	782	Other liabilities.
Unamortized premium on long-term debt	790.2	770.2	Unamortized premium on debt.
Other deferred credits	784	784	Other deferred credits.
Accrued liability; leased property	785	772	Accrued liability; leased property.
Accumulated deferred income tax credits	786	786	Accumulated deferred income tax credits.
Shareholders' Equity			
Capital stock issued	791	791	Capital stock.
Stock liability for conversion	792	792	Liability for conversion of capital stock.
Discount on capital stock	793	793	Discount on capital stock.
Premiums and assessment on capital stock	794	794	Premiums and assessments on capital stock.
Paid-in surplus	795	795	Other capital.
Other capital surplus	796	795	Do.
Retained income; appropriated	797	797	Retained earnings; appropriated.
Retained income; unappropriated	798	798	Retained earnings; unappropriated.
Treasury stock	798.5	798.5	Treasury stock.

Subpart B—Branch Line Accounting System

900 Definitions.

Unless otherwise required by context, the following definitions apply in this subpart:

Account means an account in the STB's Uniform System of Accounts (USOA), for Railroad companies (49 CFR Part 1201, Subpart A).

IC Act means the Interstate Commerce Act (49 U.S.C. 1 *et seq.*), as amended.

Branch Line or *Branch* means a rail line or segment of line which (a) has been designated on a transportation system diagram in categories (1), (2), (3), or (4) (49 CFR 1152.10(b) (1), (2), (3), (4)); or (b) is the subject of a directed service order under section 304(d)(3) of the 3R Act; or (c) is the subject of a rail continuation service agreement entered into prior to the designation of the line on a system diagram.

STB or *Board* means the Surface Transportation Board.

Designated State agency means the instrumentality created by a State or designated by appropriate authority to administer or coordinate its State rail plan as required by section 5(j)(2) of the Department of Transportation Act (90 Stat. 131) or section 402(c)(1)(A) of the 3R Act (87 Stat. 985) or regulations promulgated pursuant thereto.

Railroad means a common carrier by railroad, as defined in section 1(3) of the Interstate Commerce Act (49 U.S.C. 1(3)).

3R Act means the Regional Rail Reorganization Act of 1973, Pub. L. 93–236, 87 Stat. 985, as amended.

4R Act means the Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. 94–210, 90 Stat. 31.

XX, when used in place of digits in a six-digit account number, means that all accounts containing the remaining four-digits are included. Example: *11–21–XX* refers to all salary and wage accounts for locomotives because *11* designates salaries and wages and *21* designates locomotives. Thus, *11–21–XX* includes all of the following accounts: 11–21–01; 11–21–40; 11–21–48; 11–21–39; and 11–21–99. Similarly, *XX–31–67* means all accounts containing *31* (train operations) and *67* (locomotive fuel).

[43 FR 1733, Jan. 11, 1978, as amended at 47 FR 49596, Nov. 1, 1982; 67 FR 57533, Sept. 11, 2002]

910 Purpose and scope.

Section 205(e)(1)(A) of the 3R Act directs the office to issue regulations which will permit the collection and publication by the Consolidated Rail Corp. (ConRail), or by profitable railroads of information necessary to determine accurately the revenues attributable, avoidable costs, and service units of light-density lines scheduled for abandonment. This accurate information is intended to facilitate the determination of the revenues and avoidable costs in abandonment proceedings and in potential offers of subsidy. This information is intended to be compatible with the Regional Subsidy Standards, for those lines which were not conveyed to ConRail under the final system plan and with the National Subsidy Standards (49 CFR Part 1152, Subpart D), for all other lines. The purpose of the Branch Line Accounting System regulations is to specify an accounting system for the collection and publication of this information.

[43 FR 1733, Jan. 11, 1978, as amended at 47 FR 49596, Nov. 1, 1982; 67 FR 57533, Sept. 11, 2002]

920 Collection of data.

(a) *Lines for which data collection is required*. The railroad shall collect data on all branch lines which meet the criteria listed in paragraphs 1 through 4 below. The data to be collected are specified in section 920(b).

(1) Branch lines in categories (1), (2), and (3) on the System Diagram Map include, respectively, lines for which a carrier intends to file an abandonment application within three years, lines which the carrier has under study and are potentially subject to abandonment, and lines for which an abandonment application is pending before the Board. The collection of data on such lines shall commence on the first day of the month after the line has been designated in one of the categories and will continue so long as the branch line is retained in one of these categories. The assignment and apportionment

methodology set forth in Part 1152, Subchapter B (National Subsidy Standards), shall be applied.

(2) For branch lines operated under an order directing service, under section 304(d)(3) of the 3R Act, data shall be collected from the effective date of the order until the order is withdrawn.

(3) For branch lines operated under a rail service continuation agreement under section 1a(6)(a) of the IC Act, data shall be collected from the effective date of the agreement until the termination of the agreement. The assignment and apportionment methodology set forth in Part 1152, Subchapter B (National Subsidy Standards), shall be applied.

(4) For branch lines operated under a rail service continuation agreement under section 304 of the 3R Act, data collection shall commence on the effective date of the agreement and shall continue until the termination date of the agreement.

(b) *Data to be collected*. The data collected shall include the items of revenue, expense, and service units which are specified in 49 CFR 1152, as described in the account texts listed in section 950. The format for presentation of these data is specified in section 940.

[43 FR 1733, Jan. 11, 1978, as amended at 47 FR 49596, Nov. 1, 1982; 67 FR 57533, Sept. 11, 2002]

930 Publication of data.

(a) *General*. The railroad shall file on or before June 30 of each calendar year the certification included in these regulations as Appendix I. The railroad shall include a description of each branch line using the format set forth in Appendix I of these regulations. The description of each branch line requires the same data as that submitted under 49 CFR 1152.11. This section prescribes the branch line information required in conjunction with the system diagram maps specifying the line's designation, states and counties traversed, delineation of mileposts, and location of agency and terminal stations.

(b) [Reserved]

(c) *Access to records*. The records, accounts, working papers, and other documents reflecting the revenues, cost, and service unit data of each branch line for which the railroad must maintain data shall be made available for inspection and examination by the Board and, for lines situated within its State, by the designated State agency at a time and place mutually agreeable to the parties. The railroad shall also reproduce such records for the designated State agency, provided the agency pays the reasonable cost thereof.

(d) *Waivers and modifications*. The STB's Office of Economics, Environmental Analysis, and Administration may, with respect to individual requests, upon good cause shown, waive or modify any requirement of this section not required by law.

[43 FR 1733, Jan. 11, 1978, as amended at 44 FR 9730, Feb. 14, 1979; 47 FR 49596, Nov. 1, 1982; 67 FR 57533, Sept. 11, 2002]

940 Annual branch line report.

This section specifies the format in which the data collected for each branch line shall be maintained. Definitions of each account are presented in section 950.

(A) Attributable revenue	Amount
101 Freight	.....
104 Switching	.....
105 Water transfers	.....
106 Demurrage	.....
110 Incidental	.....
121 Joint facility—credit	.....
122 Joint facility—debit	.....
506 Revenue from property used in other than carrier operations	.....
510 Miscellaneous rent income	.....
519 Miscellaneous income	.....
599 Subsidy payments from preexisting contracts	.....
Total attributable revenues	.....

(B) ON-BRANCH AVOIDABLE COSTS

Line item—(a)	Freight			
	Salaries and wages—(b)	Material, tools, supplies, fuels, and lubricants—(c)	Purchased services—(d)	General—(e)
(1) Actual or apportioned expense accounts:				
Way and structures: Administration:				
001 Track				
002 Bridge and Building				
003 Signal				
004 Communication				
005 Other				
Repair and maintenance:				
006 Roadway—Running				
007 Roadway—Switching				
008 Tunnels and Subways—Running				
009 Tunnels and Subways—Switching				
010 Bridges and Culverts—Running				
011 Bridges and Culverts—Switching				
012 Ties—Running	N/A		N/A	N/A
013 Ties—Switching	N/A		N/A	N/A
014 Rail—Running	N/A		N/A	N/A
015 Rail—Switching	N/A		N/A	N/A
016 Other Track Material—Running	N/A		N/A	N/A
017 Other Track Material—Switching	N/A		N/A	N/A
018 Ballast—Running	N/A		N/A	N/A
019 Ballast—Switching	N/A		N/A	N/A
020 Track Laying and Surfacing—Running				
021 Track Laying and Surfacing—Switching				
022 Road Property Damaged—Running				
023 Road Property Damaged—Switching				
024 Road Property Damaged—Other				
025 Signals and Interlockers—Running				
026 Signals and Interlockers—Switching				
027 Communications Systems				
028 Electric Power Systems				
029 Highway Grade Crossings—Running				
030 Highway Grade Crossings—Switching				
031 Station and Office Buildings				
032 Shop Buildings—Locomotives				
033 Shop Buildings—Freight Cars				
034 Shop Buildings—Other Equipment				
101 Locomotive Servicing Facilities				
102 Miscellaneous Buildings and Structures				
103 Coal Terminals				
104 Ore Terminals				
105 Other Marine Terminals				
106 TOFC/COFC—Terminals				
107 Motor Vehicle Loading and Distribution Facilities				
108 Facilities for Other Specialized Service Operations				
109 Roadway Machines				
110 Small Tools and Supplies				
111 Snow Removal				
112 Fringe Benefits—Running	N/A	N/A	N/A	
113 Fringe Benefits—Switching	N/A	N/A	N/A	
114 Fringe Benefits—Other	N/A	N/A	N/A	
115 Casualties and Insurance—Running	N/A	N/A	N/A	
116 Casualties and Insurance—Switching	N/A	N/A	N/A	
117 Casualties and Insurance—Other	N/A	N/A	N/A	
118 Lease Rentals—Debit—Running	N/A	N/A		N/A
119 Lease Rentals—Debit—Switching	N/A	N/A		N/A
120 Lease Rentals—Debit—Other	N/A	N/A		N/A
121 Lease Rentals—(Credit)—Running	N/A	N/A		N/A
122 Lease Rentals—(Credit)—Switching	N/A	N/A		N/A
123 Lease Rentals—(Credit)—Other	N/A	N/A		N/A
124 Joint Facility Rent—Debit—Running	N/A	N/A		N/A
125 Joint Facility Rent—Debit—Switching	N/A	N/A		N/A
126 Joint Facility Rent—Debit—Other	N/A	N/A		N/A
127 Joint Facility Rent—(Credit)—Running	N/A	N/A		N/A
128 Joint Facility Rent—(Credit)—Switching	N/A	N/A		N/A
129 Joint Facility Rent—(Credit)—Other	N/A	N/A		N/A
130 Other Rents—Debit—Running	N/A	N/A		N/A

(B) ON-BRANCH AVOIDABLE COSTS—Continued

Line item—(a)	Freight			
	Salaries and wages—(b)	Material, tools, supplies, fuels, and lubricants—(c)	Purchased services—(d)	General—(e)
131 Other Rents—Debit—Switching	N/A	N/A		N/A
132 Other Rents—Debit—Other	N/A	N/A		N/A
133 Other Rents—(Credit)—Running	N/A	N/A		N/A
134 Other Rents—(Credit)—Switching	N/A	N/A		N/A
135 Other Rents—(Credit)—Other	N/A	N/A		N/A
136 Depreciation—Running	N/A	N/A	N/A	
137 Depreciation—Switching	N/A	N/A	N/A	
138 Depreciation—Other	N/A	N/A	N/A	
139 Joint Facility—Debit—Running	N/A	N/A		N/A
140 Joint Facility—Debit—Switching	N/A	N/A		N/A
141 Joint Facility—Debit—Other	N/A	N/A		N/A
142 Joint Facility—(Credit)—Running	N/A	N/A		N/A
143 Joint Facility—(Credit)—Switching	N/A	N/A		N/A
144 Joint Facility—(Credit)—Other	N/A	N/A		N/A
145 Dismantling Retired Road Property—Running				
146 Dismantling Retired Road Property—Switching				
147 Dismantiling Retired Road Property—Other				
148 Other—Running				
149 Other—Swtiching				
150 Other—Other				
151 Total Way and Structures				
Equipment: Locomotives:				
201 Administration				
202 Repair and Maintenance				
203 Machinery Repair				
204 Equipment Damaged				
205 Fringe Benefits	N/A	N/A	N/A	
206 Other Casualties and Insurance	N/A	N/A	N/A	
207 Lease Rentals—Debit	N/A	N/A		N/A
208 Lease Rentals—(Credit)	N/A	N/A		N/A
209 Joint Facility Rent—Debit	N/A	N/A		N/A
210 Joint Facility Rent—(Credit)	N/A	N/A		N/A
211 Other Rents—Debit	N/A	N/A		N/A
212 Other Rents—(Credit)	N/A	N/A		N/A
213 Depreciation	N/A	N/A	N/A	
214 Joint Facility—Debit	N/A	N/A		N/A
215 Joint Facility—(Credit)	N/A	N/A		N/A
216 Repairs Billed to Others—(Credit)	N/A	N/A		N/A
217 Dismantling Retired Property				
218 Other				
219 Total Locomotives				
Freight cars:				
220 Administration				
221 Repair and Maintenance				
222 Machinery Repair				
223 Equipment Damaged				
224 Fringe Benefits	N/A	N/A	N/A	
225 Other Casualties and Insurance	N/A	N/A	N/A	
226 Lease Rentals—Debit	N/A	N/A		N/A
227 Lease Rentals—(Credit)	N/A	N/A		N/A
228 Joint Facility Rent—Debit	N/A	N/A		N/A
229 Joint Facility Rent—(Credit)	N/A	N/A		N/A
230 Other Rents—Debit	N/A	N/A		N/A
231 Other Rents—(Credit)	N/A	N/A		N/A
232 Depreciation	N/A	N/A	N/A	
233 Joint Facility—Debit	N/A	N/A		N/A
234 Joint Facility—(Credit)	N/A	N/A		N/A
235 Repairs Billed to Others—(Credit)	N/A	N/A		N/A
236 Dismantling Retired Property				
237 Other				
238 Total Freight Cars				
Other Equipment:				
301 Administration				
Repair and Maintenance:				
302 Trucks, Trailers, and Containers—Revenue Service				
303 Floating Equipment—Revenue Service				
304 Floating and Other Revenue Equipment				

(B) ON-BRANCH AVOIDABLE COSTS—Continued

Line item—(a)	Freight			
	Salaries and wages—(b)	Material, tools, supplies, fuels, and lubricants—(c)	Purchased services—(d)	General—(e)
305 Computers and Data Processing Systems				
306 Machinery				
307 Work and Other Non-Revenue Equipment				
308 Equipment Damaged				
309 Fringe Benefits	N/A	N/A	N/A	
310 Other Casualties and Insurance	N/A	N/A	N/A	
311 Lease Rentals—Debit	N/A	N/A		N/A
312 Lease Rentals—(Credit)	N/A	N/A		N/A
313 Joint Facility Rent—Debit	N/A	N/A		N/A
314 Joint Facility Rent—(Credit)	N/A	N/A		N/A
315 Other Rents—Debit	N/A	N/A		N/A
316 Other Rents—(Credit)	N/A	N/A		N/A
317 Depreciation	N/A	N/A	N/A	
318 Joint Facility—Debit	N/A	N/A		N/A
319 Joint Facility—(Credit)	N/A	N/A		N/A
320 Repairs Billed to Others—(Credit)				
321 Dismantling Retired Property				
322 Other				
323 Total Other Equipment				
324 Total Equipment				
Transportation: Train operations:				
401 Administration				
402 Engine Crews				
403 Train Crews				
404 Dispatching Trains				
405 Operating Signals and Interlockers				
406 Operating Drawbridges				
407 Highway Crossing Protection				
408 Train Inspection and Lubrication				
409 Locomotive Fuel				
410 Electric Power Purchased or Produced for Motive Power				
411 Servicing Locomotives				
412 Freight Lost or Damaged—Solely Related	N/A	N/A	N/A	
413 Clearing Wrecks				
414 Fringe Benefits	N/A	N/A	N/A	
415 Other Casualties and Insurance	N/A	N/A	N/A	
416 Joint Facility—Debit	N/A	N/A		N/A
417 Joint Facility—(Credit)	N/A	N/A		NA
418 Other				
419 Total Train Operations				
Yard Operations:				
420 Administration				
421 Switch Crews				
422 Controlling Operations				
423 Yard and Terminal Clerical				
424 Operating Switches, Signals Retarders and Humps				
425 Locomotive Fuel				
426 Electric Power Purchased or Produced for Motive Power				
427 Servicing Locomotives				
428 Freight Lost or Damaged—Solely Related	N/A	N/A	N/A	
429 Clearing Wrecks				
430 Fringe Benefits	N/A	N/A	N/A	
431 Other Casualties and Insurance	N/A	N/A	N/A	
432 Joint Facility—Debit	N/A	N/A		N/A
433 Joint Facility—(Credit)	N/A	N/A		N/A
434 Other				
435 Total Yard Operations				
Train and Yard Operations Common:				
501 Cleaning Car Interiors				N/A
502 Adjusting and Transferring Loads				N/A
503 Car Loading Devices and Grain Doors				N/A
504 Freight Lost or Damaged—all other	N/A	N/A	N/A	
505 Fringe Benefits	N/A	N/A	N/A	
506 Total Train and Yard Operations Common				
Specialized Service Operations:				
507 Administration				
508 Pickup and Delivery and Marine Line Haul				

(B) ON-BRANCH AVOIDABLE COSTS—Continued

Line item—(a)	Freight			
	Salaries and wages—(b)	Material, tools, supplies, fuels, and lubricants—(c)	Purchased services—(d)	General—(e)
509 Loading and Unloading and Local Marine				
510 Protection Services				
511 Freight Lost or Damaged—Solely Related	N/A	N/A	N/A	
512 Fringe Benefits	N/A	N/A	N/A	
513 Casualties and Insurance	N/A	N/A	N/A	
514 Joint Facility—Debit	N/A	N/A		N/A
515 Joint Facility—(Credit)	N/A	N/A		N/A
516 Other				
517 Total Specialized Services Operations				
Administrative Support Operations:				
518 Administration				
519 Employees Performing Clerical and Accounting Functions				
520 Communication Systems Operation				
521 Loss and Damage Claims Processing				
522 Fringe Benefits	N/A	N/A	N/A	
523 Casualties and Insurance	N/A	N/A	N/A	
524 Joint Facility—Debit	N/A	N/A		N/A
525 Joint Facility—(Credit)	N/A	N/A		N/A
526 Other				
527 Total Administrative Support Operations				
528 Total transportation				
General and Administrative:				
601 Officers—General Administration				
602 Accounting, Auditing and Finance				
603 Management Services and Data Processing				
604 Marketing				
605 Sales				
606 Industrial Development				
607 Personnel and Labor Relations				
608 Legal and Secretarial				
609 Public Relations and Advertising				
610 Research and Development				
611 Fringe Benefits	N/A	N/A	N/A	
612 Casualties and Insurance	N/A	N/A	N/A	
613 Writedown of Uncollectible Accounts	N/A	N/A	N/A	
614 Property Taxes	N/A	N/A	N/A	
615 Other Taxes Except on Corporate Income or Payrolls	N/A	N/A	N/A	
616 Joint Facility—Debit	N/A	N/A		N/A
617 Joint Facility—(Credit)	N/A	N/A		N/A
618 Other				
619 Total General and Administrative				
620 Total Carrier Operating Expenses				

	Amount
(2) Other Computed Cost Elements:	
651 Locomotives return on investment	
652 Freight train car costs	
01 Per day costs	
02 Mileage costs	
654 Rehabilitation	
664 Deadheading, taxi and hotel costs	
01 Deadheading	
02 Taxi	
03 Hotel	
665 Overhead movement costs	
01 Transportation	
02 Equipment	
03 Freight train cars—mileage portion	
Total Computed On-Branch Costs	
(3) Off-Branch Avoidable Costs:	
661 Terminal Costs	
01 Modified terminal costs	
02 Normal terminal costs	
03 Interchange costs	
662 Freight train car costs	

	Amount
663 Freight train revenue ton-mile costs	
Total Off-Branch Avoidable Costs	
(4) All Other Avoidable Costs:	
671 Working capital	
672 Required capital expenditures	
673 Deferred maintenance	
674 Current cost of freight train cars, locomotives, and other equipment	
675 Foregone tax benefits	
676 Administrative costs	
677 Deferred subsidy payment costs	
678 Casualty reserve expenses	
Total, all other avoidable costs	
681 Reasonable return on the value of property	
682 Management fee	
(5) Total of avoidable costs, reasonable return and management fee	$

(C) *Service Units*

	Direct on-branch	Overhead movement
(1) On-Branch Service Units—Freight-Car Accounts:		
821 Freight train car miles (loaded and empty):		
01 Box—Plain 40 foot		
02 Box—Plain 50 foot or longer		
03 Box—Equipped		
04 Gondola—Plain		
05 Gondola—Equipped		
06 Hopper—Covered		
07 Hopper—Open top—General Service		
08 Hopper—Open top—Special Service		
09 Refrigerator—Mechanical		
10 Refrigerator—Nonmechanical		
11 Flat—TOFC/COFC		
12 Flat—Multi-level		
13 Flat—General Service		
14 Flat—Other		
15 All other cars		
823 Freight-train Car-days (loaded and empty):		
01 Box—Plain 40 foot		
02 Box—Plain 50 foot or longer		
03 Box—Equipped		
04 Gondola—Plain		
05 Gondola—Equipped		
06 Hopper—Covered		
07 Hopper—Open top—General Service		
08 Hopper—Open top—Special Service		
09 Refrigerator—Mechanical		
10 Refrigerator—Nonmechanical		
11 Flat—TOFC/COFC		
12 Flat—Multi-level		
13 Flat—General Service		
14 Flat—Other		
15 All other cars		

	Total off-branch	Overhead movement	Net off-branch
Locomotive-Mile Accounts			
813 Road locomotive unit miles			
841 Road diesel locomotive gross ton-miles			
842 Road electric locomotive gross ton-miles			
Locomotive Unit Hour Accounts			
832 Road locomotive unit hours			
833 Road diesel locomotive unit hours			
834 Road electric locomotive unit hours			
835 Yard locomotive unit hours			
836 Yard diesel locomotive unit hours			
837 Yard electric locomotive unit hours			
Rented or Leased Equipment			
851 Freight train car-days			
852 Floating equipment car-days			

	Total off-branch	Overhead movement	Net off-branch
855 Locomotive days			
Train hours			
861 Train hours			

	Total off-branch	Overhead movement	Net off-branch
(2) Off-Branch Service Units—Car-Mile Accounts:			
822 Freight train loaded car-miles by car type:			
01 Box—General service—unequipped			
02 Box—General service—equipped			
03 Box—Special service			
04 Gondola—General service			
05 Gondola—Special service			
06 Hopper—open—General service			
07 Hopper—open—Special service			
08 Hopper—covered			
09 Stock			
10 Flat—General service			
11 Flat—Special service			
12 Flat—TOFC			
13 Autorack			
14 Refrigerator—Meat mechanical			
15 Refrigerator—Other mechanical			
16 Refrigerator—Meat nonmechanical			
17 Refrigerator—Other nonmechanical			
18 Tank 9,999 gallons and under			
19 Tank 10,000–18,999 gal			
20 Tank 19,000–21,999 gal			
21 Tank 22,000–27,999 gal			
22 Tank 28,000–31,999 gal			
23 Tank 32,000 and over			
24 All other			
Ton-Mile Accounts			
831 Revenue ton-miles			

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950 Text and chart of accounts.

This section defines each account outlined in the format shown under section 940 of these regulations.

(a) *Attributable revenues—101 Freight.* (1) This account shall include revenue from the transportation of freight and from transit, stop, and recognizing privileges, upon the basis of lawful tariff rates.

(2) This account shall include collections in excess of tariff charges, except where such amounts are segregated and held subject to refund.

(3) Proceeds derived from the sale of unclaimed and refused freight which has been transported in accordance with the contract of shipment shall be credited to this account in cases where such items can be readily identified. Uncollectible tariff charges on such shipments shall be charged to this account.

(4) Amounts determined to be uncollectible shall be accounted for in accordance with the text of account 63–61–00, ''General—Uncollectible accounts.''

ITEMS TO BE CREDITED

(a) Revenue upon the basis of local freight tariff rates, regardless of class of train in which the freight is transported.

(b) The carrier's proportion of revenue upon the basis of through freight tariff rates, regardless of class of train in which the freight is transported.

(c) Revenue from transportation of mail matter, and empty mail pouches, at freight rates.

(d) Revenue from transportation of freight on special trains at rates based on weights of shipments.

(e) Revenue on basis of classifications and freight tariffs from transportation of caretakers of freight shipments.

(f) Revenue from reconsigning privileges.

(g) Revenue from stop privileges.

(h) Revenue from transit privileges.

(i) Revenue upon the basis of arbitraries out of freight, rates for water transfers (ferriage, lighterage, and floatage).

(j) Revenue from transportation of trailers and containers on flat cars in TOFC/COFC service upon the basis of all-rail line-haul freight tariff rates and under arrangements for motor carrier-railroad joint haul, and from the loading and unloading of trailers and containers on and from flat cars upon the basis of tariff rates and under arrangements for motor carrier-railroad joint haul.

ITEMS TO BE CHARGED

(a) Amounts paid as bridge and ferry arbitraries on freight.

(b) Amounts paid for completing a haul.

(c) Amounts paid for elevation of freight.

(d) Amounts paid for switching services, in connection with the transportation of freight, on the basis of switching tariffs, and allowances out of through rates, including amounts paid for switching empty cars in connection with a freight revenue movement.

(e) Amounts paid for transferring freight between stations.

(f) Arbitraries and allowances to others for lighterage and wharfage.

(g) The carrier's proportion of overcharges resulting from the use of erroneous rates, weights, classifications or computations.

(h) The carrier's proportion of refunds on account of errors in routing and billing.

(i) The carrier's proportion of uncollected revenue on freight lost or destroyed in transit.

(j) The carrier's proportion of uncollected tariff charges on damaged shipments for which charges neither shipper nor consignee is liable.

(k) Amounts paid on basis of tariff rates for loading and unloading livestock.

(l) Amounts paid to motor truck companies for hauling trailers and containers to and from TOFC/COFC terminals, and allowances to shippers who perform such service on the basis of tariff rates.

NOTE A: Amounts paid for switching empty cars other than in connection with loaded movements shall be charged to operating expense account 61–32–XX, ''General—Other Expenses—Transportation, Yard, Freight,'' except that amounts paid for switching equipment for repairs shall be included in the appropriate equipment repair accounts.

NOTE B: Other carriers' proportion of revenue and of uncollectible undercharges paid by the carrier on account of its errors in routing and billing shall be charged to operating expense account 61–35–76, ''General—Other Expenses—Transportation, Administrative Support.''

NOTE C: When a lessee company transports freight over the tracks of another carrier on the basis of a proportion of revenues under a joint arrangement, it shall include the entire compensation in its revenue and statistics, charging the appropriate joint facility expense and rental accounts with the amounts paid the lessor company, and the lessor company shall credit the corresponding accounts.

NOTE D: Revenue from the transportation of caretakers of freight shipments, when not included as a part of the freight charges on the waybill covering the freight shipments, shall be credited to account 102, ''Passenger.''

NOTE E: This account shall be maintained so as to show separately payments and allowances for (a) terminal collection and delivery services when performed in connection with line-haul transportation of freight on the basis of freight tariff rates, further separated between (1) TOFC/COFC service, and (2) all other freight service; also (b) payments for switching services when performed in connection with line-haul transportation of freight on the basis of switching tariffs and allowances out of freight rates, including the switching of empty cars in connection with a revenue movement, and (c) payments on basis of tariff rates for loading and unloading livestock.

104 Switching. (1) This account shall include the revenue from switching service upon the basis of lawful tariff rates. To this account shall be credited the carrier's revenue upon the basis of tariff rates, or the carrier's allowance out of through rates, from the switching of cars of all kinds, loaded or empty, either locally at a station or within a switching district, between connecting lines, between local industries, or between connecting lines and local industries; revenue upon the basis of distinct tariff rates for ''trapcar'' and ''ferry-car'' service and for spotting cars; also the revenue from interwork switching at industrial plants, and the revenue from ''penalty switching'' incident to the improper delivery of cars by other carriers.

(2) To this account shall be charged amounts paid for switching when such switching service is provided for in the switching rate charged by the carrier.

NOTE: ''Penalty switching'' charges paid by the carrier shall be included in expense account 61–32–XX, ''General—Other Expenses—Transportation, Yard, Freight.''

105 Water transfers. (1) This account shall include the revenue, from the transfer by water (ferriage, lighterage, and floatage), of passenger, freight, vehicles, and livestock, upon the basis of lawful local tariff rates.

(2) This account also shall include revenue from water transfers of other traffic, such as the revenue from towing beyond lighterage limits and all other towing for which an extra charge is made; insurance of freight afloat when billed out at other than cost; storage of freight afloat; grain overage in boats; pumping performed for outside parties; and for other similar sources.

(3) To this account shall be charged amounts payable to other companies or individuals for extra lighterage, extra towing, and for all other service when such payments represent revenue collected and credited to this account and not a directed expense.

NOTE: No revenue shall be included in this account for water transfers of passengers or shipments upon the basis of arbitraries out of rates for transportation involving rail line haul.

106 Demurrage. This account shall include the revenue from the detention of cars incident to loading, unloading, reconsigning, and stops in transit upon the basis of lawful tariffs for demurrage. This account shall also include the revenue from the detention of trailers and containers used in TOFC/COFC service, incident to loading and unloading, upon the basis of tariff rates.

NOTE: This account shall be maintained so as to reflect separately (1) revenue from detention of cars, and (2) revenue from detention of trailers and containers used in TOFC/COFC service.

110 Incidental. This account is designed to show the amounts which the carrier becomes entitled to receive from services rendered incidentally with rail-line and water-line transportation; for the use of facilities of which the expenses for operation and maintenance are not separable from railway expenses and from incidental sources not provided for elsewhere. Among the items included in this account are revenues derived from (1) hotels and restaurants, (2) operations conducted at stations and on trains by individual or companies other than railway companies, (3) storage, (4) the sale of electric power, (5) renting property operated and maintained in connection with the property used in the carrier's transportation operations and from railway operations not provided for elsewhere.

121 Joint facility, credit. This account shall include the carrier's proportion of revenue collected by others in connection with the operation of joint tracks, yards, terminals, and other facilities, including revenue from hotels, restaurants, grain elevators, sale of power, and other miscellaneous operations.

NOTE A: The purpose of this account is to show the amounts of revenue from the operation of joint tracks, yards, terminals and other facilities operated by other companies, which under existing contracts or agreements are credited by the operating company to the tenant companies which participate therein. The bill rendered by any creditor company against a debtor company for the latter's proportion of the expense of maintenance and operation of joint facilities, which includes also a credit covering a proportion of the revenue to be paid over, shall show the distribution of the credit for such proportion of the revenue separately from the distribution of the expense of operation.

NOTE B: No credits shall be made to this account representing amounts creditable by the operating company to primary accounts 101–103, 105, and 110.

122 Joint facility, debit. This account shall include that proportion of revenue from the operation of joint tracks, yards, terminals, and other facilities, which is creditable to other companies, including revenue from hotels, restaurants, grain elevators, sale of power, and other miscellaneous operations.

NOTE A: The purpose of this account is to show the amount of revenue from operation of a terminal company or other carrier which, under the terms of existing contracts or agreements covering the joint use of tracks, yards, and other facilities, is credited to other carriers that participate in the benefits from such joint use. The bill rendered by a creditor company against a debtor company for the latter's proportion of expense of maintaining and operating joint facilities, which includes a credit covering the debtor company's proportion of the revenues from operation of such joint facilities, shall indicate separately the proper distribution of both the revenues and the expenses included in the bill, and such distribution shall be adhered to the debtor.

NOTE B: No debits shall be made to this account representing amounts creditable by the operating company to primary accounts 101–103, 105, and 110.

OTHER INCOME ACCOUNTS

506 Revenues from property used in other than carrier operations. This account shall include the total revenues derived from property used in other than carrier operations, the cost of which is includible in balance-sheet account 737, ''Property used in other than carrier operations.''

510 Miscellaneous rent income. (1) This account shall include such rents of property owned and controlled by the accounting carrier as are not provided for in the foregoing accounts.

(2) This account shall be charged with the cost of maintenance of the property rented, also specific incidental expenses in connection with such property, such as the cost of negotiating contracts, advertising for tenants, fees paid conveyancers, collectors' commissions, and analogous items.

NOTE A: If property the rent of which is chargeable to account 543—''Miscellaneous rents,'' is sublet by the accounting company, the rent receivable therefore shall be credited to this account.

NOTE B: Taxes on property the rent of which is creditable to this account shall be charged to account 553—''Taxes on property used in other than carrier operations.''

NOTE C: The rent from property carried in balance-sheet account 737—''Property used in other than carrier operations,'' shall not be included in this account, but in account 506—''Revenues from property used in other than carrier operations.''

NOTE D: Rent and other income from real estate acquired for new lines or for additions and betterments shall be credited to the appropriate road and equipment accounts until the completion or coming into service of the property.

519 Miscellaneous income. (1) This account shall include all items, not provided for elsewhere, properly creditable to income accounts during the current year. Among the items which shall be included in this account are:

(i) Cancellation of balance sheet accounts representing unclaimed wages and vouchered accounts written off because of carrier's inability to locate the creditor.

(ii) Profit from sale of land used for transportation purposes, of noncarrier property and of securities acquired for investment purposes.

(2) Gains for extinguishment of debt shall be aggregated and, if material, credited to account 570 ''Extraordinary Items,'' upon approval by the Commission; however, gains from extinguishment of debt (excluding debt maturing serially), which is made to satisfy sinking fund requirements, shall be recorded in this account regardless of amount.

599 Subsidy payments from preexisting contracts. This account shall include all payments made to the operating carrier of a subsidized line that (1) existed prior to the commencement of operations under a subsidy operating agreement and (2) would cease if freight service on the line were discontinued.

(b) *On-branch avoidable cost*—(1) *Actual and apportioned expense accounts.*

PERSONNEL

Control	10–00–00

This account may be used as a control account for all accounts in the PERSONNEL Series: Salaries and Wages; Fringe Benefits Not Included in Compensation.

Salaries and Wages—Control. This control account includes the compensation payable to employees for services performed. It includes amounts payable in connection with profit sharing and stock option plans that are part of employee compensation. This control account also includes amounts of compensation payable to employees for paid time off as a fringe benefit: vacation pay, holiday pay, sick pay, and other payments considered direct compensation for time not worked. Amounts of labor billed by contractors, other companies, and joint facilities, are not considered salaries and wages of the carrier company and are not to be included in this account group. Its components shall be distributed to the following accounts in accordance with instruction 1–14 of Part 1201, Subpart A:

Salaries and wages—way and structures—running: Freight	11–11–XX

This account includes the compensation payable to all repair and maintenance employees and others who are associated with the repair and maintenance of the carrier's roadway and track on the line of road and outside of classification yards. Compensation payable to officers and technical and clerical employees shall only be assigned to Way and Structures—Other. This account shall be subdivided by the following functions:

Repair and maintenance

Roadway	11–11–10
Tunnels and subways	11–11–11
Bridges and culverts	11–11–12
Track laying and surfacing	11–11–17
Signals and interlockers	11–11–19
Highway grade crossings	11–11–22

Dismantling retired property	11–11–39
Road property and equipment damaged	11–11–48
Other—other	11–11–99
Salaries and wages—way and structures—switching: Freight	11–12–XX

This account includes the compensation payable to all repair and maintenance employees and others who are associated with the repair and maintenance of the carrier's roadway and track within classification yards and stations. Compensation payable to officers and technical and clerical employees shall be assigned to Way and Structures—Other. This account shall be subdivided by the following functions:

Repair and maintenance

Roadway	11–12–10
Tunnels and subways	11–12–11
Bridges and culverts	11–12–12
Track laying and surfacing	11–12–17
Signals and interlockers	11–12–19
Highway grade crossings	11–12–22
Dismantling retired property	11–12–39
Road property and equipment damaged	11–12–48
Other—other	11–12–99
Salaries and wages—way and structures—other: Freight	11–13–XX

This account includes the compensation payable to all repair and maintenance employees and others who are associated with the repair and maintenance of the carrier's structures other than roadway and track. Each administration account (functions 02–06) includes the compensation payable to all officers and technical and clerical employees associated with the Way and Structures Activity. This account shall be subdivided by the following functions:

Administration

Track	11–13–02
Bridges and buildings	11–13–03
Signals	11–13–04
Communications	11–13–05
Other	11–13–06

Repair and maintenance

Communication systems	11–13–20
Electric power systems	11–13–21
Station and office buildings	11–13–23
Shop buildings—locomotives	11–13–24
Shop buildings—freight cars	11–13–25
Shop buildings—other	11–13–26
Locomotive servicing facilities	11–13–27
Miscellaneous buildings and structures	11–13–28
Coal terminals	11–13–29
Ore terminals	11–13–30
TOFC/COFC terminals	11–13–31
Other marine terminals	11–13–32
Motor vehicle loading and distribution facilities	11–13–33
Facilities for other specialized services operations	11–13–35
Roadway machines	11–13–36
Small tools and supplies	11–13–37
Snow removal	11–13–38
Dismantling retired property	11–13–39
Road property and equipment damaged	11–13–48
Other—other	11–13–99
Salaries and wages—equipment—locomotives: Freight	11–21–XX

This account includes the compensation payable to all officers and technical and clerical employees, repair and maintenance employees, and others who are associated with the repair and maintenance of locomotives, whether owned by the carrier or by others. This account shall be subdivided by the following functions:

Administration—general	11–21–01

Repair and maintenance

Dismantling retired property	11–21–39
Shop machinery	11–21–40
Locomotives	11–21–41
Road property and equipment damaged	11–21–48
Other—other	11–21–99
Salaries and Wages—Equipment—Freight Cars: Freight	11–22–XX

This account includes the compensation payable to all officers, technical and clerical employees, repair and maintenance employees, and others, who are associated with the repair and maintenance of freight cars, whether owned by the carrier or by others. This account shall be subdivided by the following functions:

Administration—general	11–22–01

Repair and maintenance

Dismantling retired property	11–22–39
Shop machinery	11–22–40
Freight cars	11–22–42
Road property and equipment damaged	11–22–48
Other—other	11–22–99
Salaries and wages—equipment—other equipment: Freight	11–23–XX

This account includes the compensation payable to all officers, technical and clerical employees, repair and maintenance employees, and others, who are associated with the repair and maintenance of equipment other than locomotives and freight cars, whether owned by the carrier or by others. This account shall be subdivided by the following functions:

Administration—general	11–23–01

Repair and maintenance

Dismantling retired property	11–23–39
Shop machinery	11–23–40
Trucks, trailers, containers in revenue service	11–23–43
Floating equipment—revenue service	11–23–44
Passenger and other revenue equipment	11–23–45
Computers and data processing equipment	11–23–46
Work and other non-revenue equipment	11–23–47
Road property and equipment damaged	11–23–48
Other—other	11–23–99
Salaries and wages—transportation—train: Freight	11–31–XX

This account includes the compensation payable to all officers, technical and clerical employees, engine and train crews, and other operational employees, who are associated with the dispatching and operation of freight trains over the roadway and outside of classification yards. This account shall be subdivided by the following functions:

Administration—general	11–31–01

Operations

Engine crews	11–31–56
Train crews	11–31–57
Dispatching trains	11–31–58

Operating switches, signals, interlockers, retarders, humps	11–31–59
Operating drawbridges	11–31–60
Highway crossing protection	11–31–61
Train inspection and lubrication	11–31–62
Clearing wrecks	11–31–63
Locomotive fuel	11–31–67
Electric power purchased/produced for motive power	11–31–68
Servicing locomotives	11–31–69
Other—other	11–31–99
Salaries and wages—transportation—yard: Freight	11–32–XX

This account includes the compensation payable to all officers, technical and clerical employees, engine and train crews, and other operational employees, who are associated with the movement of freight cars within classification yards and in terminal switching and transfer service. This account shall be subdivided by the following functions:

Administration—general	11–32–01
Operations	
Operating switches, signals, interlockers, retarders, humps	11–32–59
Clearing wrecks	11–32–63
Switch crews	11–32–64
Controlling operations	11–32–65
Yard and terminal clerical	11–32–66
Locomotive fuel	11–32–67
Electrical power purchased/produced for motive power	11–32–68
Servicing locomotives	11–32–69
Other—other	11–32–99
Salaries and wages—transportation—train and yard common: Freight	11–33–XX

This account includes the compensation payable to all officers, technical and clerical employees, engine and train crews, and other operational employees performing functions incurred on behalf of both train and yard operations. This account shall be subdivided by the following functions:

Operations	.....
Cleaning car interiors	11–33–70
Adjusting and transferring loads	11–33–71
Car loading devices and grain doors	11–33–72
Salaries and wages—transportation—specialized services: Freight	11–34–XX

This account includes the compensation payable to all officers, technical and clerical employees, engine and train crews, and other operational employees who are associated with operating services which are specialized in nature and in cost characteristics. The specialized services designated by the Board appear within the definition of specialized services. This account shall be subdivided by the following functions:

Administration—general	11–34–01
Operations	
Pickup and delivery, marine line haul, and rail substitute service	11–34–73
Loading, unloading, and local marine	11–34–74
Protective service	11–34–75
Other—other	11–34–99
Salaries and wages—transportation—administrative support: Freight	11–35–XX

This account includes the compensation payable to all officers, technical and clerical employees, engine and train crews, and other operational employees, who are associated with providing direct administrative support for the Transportation Activity. For further clarification refer to the definition of the Administrative Support Operations Subactivity contained in Part 1201, Subpart A. This account shall be subdivided by the following functions:

Administration—general	11–35–01
Operations	
Clerical and accounting employees	11–35–76
Communication systems operations	11–35–77
Loss and damage claims processing	11–35–78
Other—other	11–35–99
Salaries and wages—general and administrative: Freight	11–61–XX

This account includes the compensation payable to all employees who are associated with overall administration or other general support for carrier operations. Overall administration includes executive, legal, financial, treasury, accounting, budgeting, taxation, corporate planning, costing, marketing, advertising, traffic, corporate secretary, public relations, real estate, insurance administration, personnel administration, pension plan administration, general purchasing, labor relations, internal auditing, industrial engineering, and regulatory reporting. For further clarification refer to the definition of the General and Administrative Activity contained in Part 1201, Subpart A. This account shall be subdivided by the following functions:

Administration—general	11–61–01
General	
Accounting, auditing, finance	11–61–86
Management services and data processing	11–61–87
Marketing	11–61–88
Sales	11–61–89
Industrial development	11–61–90
Personnel and labor relations	11–61–91
Legal and secretarial	11–61–92
Public relations and advertising	11–61–93
Research and development	11–61–94
Other—other	11–61–99
Fringe benefits not included in compensation—control	12–00–00

This control account includes amounts payable to others, or other costs charged to expense, for employee benefits which are not considered part of direct compensation. These benefits include the carrier portions of Railroad Retirement contributions, pension expense, unemployment taxes, dental plans, health plans, hospitalization insurance, life insurance, subsidies for employee lunchrooms, company entertainment facilities for personal use, and other benefits to employees that are not includable in direct compensation. They exclude travel expense on company business, casualties, workmen's compensation, as well as dues, memberships,

and similar items when the direct beneficiary is clearly the company rather than the employee

Fringe benefits not included in compensation—way and structures—running: Freight 12–11–00

This account includes amounts payable to others, or other costs charged to expense, for employee benefits which are not considered part of direct compensation for employees who are associated with the repair and maintenance of the carrier's roadway and track on the line of road and outside of classification yards.

Fringe benefits not included in compensation—way and structures—switching: Freight 12–12–00

This account includes amounts payable to others, or other costs charged to expense, for employee benefits which are not considered part of direct compensation for employees who are associated with repair and maintenance of the carrier's roadway and track within classification yards and stations.

Fringe benefits not included in compensation—way and structures—other: Freight 12–13–00

This account includes amounts payable to others, or other costs charged to expense, for employee benefits which are not considered part of direct compensation for employees who are associated with the repair and maintenance of the carrier's structures other than roadway and track, and who are associated with the Administration of the Way and Structures Activity.

Fringe benefits not included in compensation—equipment—locomotives: Freight 12–21–00

This account includes amounts payable to others, or other costs charged to expense, for employee benefits which are not considered part of direct compensation for employees who are associated with the repair and maintenance of locomotives, whether owned by the carrier or by others.

Fringe benefits not included in compensation—equipment—freight cars: Freight 12–22–00

This account includes amounts payable to others, or other costs charged to expense, for employee benefits which are not considered part of direct compensation for employees who are associated with the repair and maintenance of freight cars, whether owned by the carrier or by others.

Fringe benefits not included in compensation—equipment—other equipment: 12–23–00

This account includes the amounts payable to others, or other costs charged to expense, for employee benefits which are not considered part of direct compensation for employees who are associated with the repair and maintenance of equipment other than locomotives and freight cars, whether owned by the carrier or by others.

Fringe benefits not included in compensation—transportation—train: Freight 12–31–00

This account includes the amounts payable to others, or other costs charged to expense, for employee benefits which are not considered part of direct compensation for employees who are associated with the dispatching and operating of freight trains over the roadway and outside of classification yards.

Fringe benefits not included in compensation—transportation—yard: Freight 12–32–00

This account includes the amounts payable to others, or other costs charged to expense, for employee benefits which are not considered part of direct compensation for employees who are associated with the movement of freight cars within classification yards and in terminal switching and transfer service.

Fringe benefits not included in compensation—transportation—train and yard Common: Freight 12–33–00

This account includes the amounts payable to others, or other costs charged to expense, for employee benefits which are not considered part of direct compensation for employees performing functions incurred on behalf of both train and yard operations.

Fringe benefits not included in compensation—transportation—specialized services: Freight 12–34–00

This account includes the amounts payable to others, or other costs charged to expense, for employee benefits which are not considered part of direct compensation for employees who are associated with operating services which are specialized in nature and in cost characteristics. The specialized services designated by the Board appear within the definition of specialized services.

Fringe benefits not included in compensation—transportation—administrative support: Freight 12–35–00

This account includes the amounts payable to others, or other costs charged to expense, for employee benefits which are not considered part of direct compensation for employees who are associated with providing direct administrative support for the Transportation Activity. For further clarification refer to the definition of the Administrative Support Operations Subactivity contained in Part 1201, Subpart A.

Fringe benefits not included in compensation—general and administrative: Freight 12–61–00

This account includes the amounts payable to others, or other costs charged to expense, for employee benefits which are not considered part of direct compensation for employees who provide overall administration or other general support for carrier operations. Overall administration includes executive, legal, financial, treasury, accounting, budgeting, taxation, corporate planning, costing, marketing, advertising, traffic, corporate secretary, public relations, real estate, insurance administration, personnel administration, pension plan administration, general

purchasing, labor relations, internal auditing, industrial engineering, and regulatory reporting. For further clarification refer to the definition of the General and Administrative Activity contained in Part 1201, Subpart A.

MATERIEL

Control	20–00–00

This account may be used as a control account for the MATERIEL series: Materials, Tools, Supplies, Fuels, Lubricants.

Materials, tools, supplies, fuels, lubricants—Control	21–00–00

This account group includes the cost of items installed or commodities consumed which are charged to expense in connection with carrier operations. This account includes charges to expense for all materials, small tools, supplies, fuels, lubricants, purchased standard stationery and forms, freight-in on materials and supplies, and similar items. This account excludes purchased services such as utilities, communications, postage and other items of similar nature.

Materials, tools, supplies, fuels, lubricants—way and structures—Running: Freight	21–11–XX

This account includes the cost of items installed or commodities consumed which are charged to expense, where such items are consumed in the performance or support of the repair and maintenance of the carrier's roadway and track on the line of the road and outside of classification yards. This account includes charges to expense for all materials, small tools, supplies, fuels, lubricants, purchased standard stationery and forms, freight-in on materials, and supplies, and similar items. Its components shall be distributed to the following functions in accordance with instruction 1–8 of Part 1201, Subpart A:

Repair and maintenance

Roadway	21–11–10
Tunnels and subways	21–11–11
Bridges and culverts	21–11–12
Ties	21–11–13
Rails	21–11–14
Other track material	21–11–15
Ballast	21–11–16
Track laying and surfacing	21–11–17
Signals and interlockers	21–11–19
Highway grade crossings	21–11–22
Dismantling retired property	21–11–39
Road property and equipment damaged	21–11–48
Other—other	21–11–99
Materials, tools, supplies, fuels, lubricants—way and structures—switching: Freight	21–12–XX

This account includes the cost of items installed or commodities consumed which are charged to expense, where such items are consumed in the performance or support of the repair and maintenance of the carrier's roadway and track within classification yards and stations. This account includes charges to expense for all materials, small tools, supplies, fuels, lubricants, purchased standard stationery and forms, freight-in on materials and supplies, and similar items. Its components shall be distributed to the following functions in accordance with instruction 1–8 of Part 1201, Subpart A:

Repair and maintenance

Roadway	21–12–10
Tunnels and subways	21–12–11
Bridges and culverts	21–12–12
Ties	21–12–13
Rails	21–12–14
Other track material	21–12–15
Ballast	21–12–16
Track laying and surfacing	21–12–17
Signals and interlockers	21–12–19
Highway grade crossings	21–12–22
Dismantling retired property	21–12–39
Road property and equipment damaged	21–12–48
Other—other	21–12–99
Materials, tools, supplies, fuels, lubricants—way and structures—other: Freight	21–13–XX

This account includes the cost of items installed or commodities consumed which are charged to expense, where such items are consumed in the performance or support of the repair and maintenance of the carrier's structures not provided for in running or switching. This account includes charges to expense for all materials, small tools, supplies, fuels, lubricants, purchased standard stationery and forms, freight-in on materials and supplies, and similar items. Its components shall be distributed to the following functions in accordance with instruction 1–8 of Part 1201, Subpart A:

Administration

Track	21–13–02
Bridges and buildings	21–13–03
Signals	21–13–04
Communications	21–13–05
Other	21–13–06

Repair and maintenance

Communication systems	21–13–20
Electric power systems	21–13–21
Station and office buildings	21–13–23
Shop buildings—locomotives	21–13–24
Shop buildings—freight cars	21–13–25
Shop buildings—other equipment	21–13–26
Locomotive servicing facilities	21–13–27
Miscellaneous buildings and structures	21–13–28
Coal terminals	21–13–29
Ore terminals	21–13–30
TOFC/COFC terminals	21–13–31
Other marine terminals	21–13–32
Motor vehicle loading and distribution facilities	21–13–33
Facilities for other specialized services operations	21–13–35
Roadway machines	21–13–36
Small tools and supplies	21–13–37
Snow removal	21–13–38
Dismantling retired property	21–13–39
Road property and equipment damaged	21–13–48
Other—other	21–13–99
Materials, tools, supplies, fuels, lubricants—equipment—locomotives: Freight	21–21–XX

This account includes the cost of items installed or commodities consumed which are charged to expense, where such items are

consumed in the performance or support of the repair and maintenance of locomotives, whether owned by the carrier or by others. This account includes charges to expense for all materials, small tools, supplies, fuels, lubricants, purchased standard stationery and forms, freight-in on materials and supplies, and similar items. Its components shall be distributed to the following functions in accordance with instruction 1–8 of Part 1201, Subpart A:

Administration—General	21–21–01
Repair and maintenance	
Dismantling retired property	21–21–39
Machinery	21–21–40
Locomotives	21–21–41
Road property and equipment	21–21–48
Other—other	21–21–99
Materials, tools, supplies, fuels, lubricants—equipment—freight cars: Freight	21–22–XX

This account includes the cost of items installed or commodities consumed which are charged to expense, where such items are consumed in the performance or support of the repair and maintenance of freight cars, whether owned by the carrier or by others. This account includes charges to expense for all materials, small tools, supplies, fuels, lubricants, purchased standard stationery and forms, freight-in on materials and supplies, and similar items. Its components shall be distributed to the following functions in accordance with instruction 1–8 of Part 1201, Subpart A:

Administration—general	21–22–01
Repair and maintenance	
Dismantling retired property	21–22–39
Machinery	21–22–40
Freight cars	21–22–42
Road property and equipment damaged	21–22–48
Other—other	21–22–99
Materials, tools, supplies, fuels, lubricants—equipment—other equipment: Freight	21–23–XX

This account includes the cost of items installed or commodities consumed which are charged to expense, where such items are consumed in the performance or support of the repair and maintenance of equipment other than locomotives and freight cars, whether owned by the carrier or by others. This account includes charges to expense for all materials, small tools, supplies, fuels, lubricants, purchased standard stationery and forms, freight-in on materials and supplies, and similar items. Its components shall be distributed to the following functions in accordance with instruction 1–8 of Part 1201, Subpart A:

Administration—general	21–23–01
Repair and maintenance	
Dismantling retired property	21–23–39
Machinery	21–23–40
Trucks, trailers, containers in revenue service	21–23–43
Floating equipment—revenue service	21–23–44
Passenger and other revenue equipment	21–23–45
Computers and data processing equipment	21–23–46
Work and other nonrevenue equipment	21–23–47
Road property and equipment damaged	21–23–48
Other—other	21–23–99
Materials, tools, supplies, fuels, lubricants—transportation—train: Freight	21–31–XX

This account includes the cost of items installed or commodities consumed which are charged to expense, where such items are consumed in association with the dispatching and operation of freight trains over the roadway and outside of classification yards. This account includes charges to expense for all materials, small tools, supplies, fuels, lubricants, purchased standard stationery and forms, freight-in on materials and supplies, and similar items. Its components shall be distributed to the following functions in accordance with instruction 1–8 of Part 1201, Subpart A:

Administration—general	21–31–01
Operations	
Engine crews	21–31–56
Train crews	21–31–57
Dispatching trains	21–31–58
Operating switches, signals, interlockers, retarders, humps	21–31–59
Operating drawbridges	21–31–60
Highway crossing protection	21–31–61
Train inspection and lubrication	21–31–62
Clearing wrecks	21–31–63
Locomotive fuels	21–31–67
Electric power purchased/produced for motive power	21–31–68
Servicing locomotives	21–31–69
Other—other	21–31–99
Materials, tools, supplies, fuels, lubricants—transportation—yard: Freight	21–32–XX

This account includes the cost of items installed or commodities consumed which are charged to expense, where such items are consumed in association with the movement of freight cars within classification yards and in terminal switching and transfer service. This account includes charges to expense for all materials, small tools, supplies, fuels, lubricants, purchased standard statonery and forms, freight-in on materials and supplies, and similar items. Its components shall be distributed to the following functions in accordance with instruction 1–8 of Part 1201, Subpart A:

Administration—general	21–32–01
Operations	
Operating switches, signals, interlockers, retarders, humps	21–32–59
Clearing wrecks	21–32–63
Switch crews	21–32–64
Controlling operations	21–32–65
Yard and terminal clerical	21–32–66
Locomotive fuel	21–32–67
Electric power purchased/produced for motive power	21–32–68
Servicing locomotives	21–32–69
Other—other	21–32–99
Materials, tools, supplies, fuels, lubricants—transportation—train and yard common: Freight	21–33–XX

This account includes the cost of items installed or commodities consumed which are charged to expense, where such items are

consumed on behalf of both train and yard operations. This account includes charges to expense for all materials, small tools, supplies, fuels, lubricants, purchased standard stationery and forms, freight-in on materials and supplies, and similar items. Its components shall be distributed to the following functions in accordance with instruction 1–8 of Part 1201, Subpart A:

Operations

Cleaning car interiors	21–33–70
Adjusting, transferring loads	21–33–71
Car loading devices and grain doors	21–33–72
Materials, tools, supplies, fuels, lubricants—transportation—specialized services: Freight	21–34–XX

This account includes the cost of items installed or commodities consumed which are charged to expense, where such items are consumed in operating services which are specialized in nature and in cost characteristics. The specialized services designated by the Commission appear within the definition of specialized services. This account shall be subdivided by the following functions:

Administration—general	21–34–01
Operations	
Pick up and delivery, marine line haul, and rail substitute service	21–34–73
Loading, unloading, and local marine	21–34–74
Protective services	21–34–75
Other—other	21–34–99
Materials, tools, supplies, fuels, lubricants—transportation—administra- tive support: Freight	21–35–XX

This account includes the cost of items installed or commodities consumed which are charged to expense, where such items are consumed in association with providing direct administrative support for the Transportation Activity. For further clarification refer to the definition of the Administrative Support Operations Subactivity contained in Part 1201, Subpart A. This account shall be subdivided by the following functions.

Administration—general	21–35–01
Operations	
Clerks, accounting employees	21–35–76
Communication systems operations	21–35–77
Loss and damage claims processing	21–35–78
Other—other	21–35–99
Materials, tools, supplies, fuels, lubricants—general and administrative: Freight	21–61–XX

This account includes the cost of items installed or commodities consumed which are charged to expense, where such items are consumed in providing overall administration or other general support for carrier operations. For further clarification refer to the definition of the General and Administrative Activity contained in Part 1201, Subpart A. This account shall be subdivided by the following functions:

Administration—general	21–61–01
General	
Accounting, auditing, finance	21–61–86
Management services and data processing	21–61–87
Marketing	21–61–88
Sales	21–61–89
Industrial development	21–61–90
Personnel and labor relations	21–61–91
Legal and secretarial	21–61–92
Public relations and advertising	21–61–93
Research and development	21–61–94
Other—other	21–61–99

PURCHASED SERVICES

Control	30–00–00

This account may be used as a control account for all accounts in the PURCHASED SERVICES series:

Lease rentals—Credit	
Joint facility rent—Debit	
Joint facility rent—Credit	
Other rents—Debit	
Other rents—Credit	
Joint facility—Debit	
Joint facility—Credit	
Repairs billed by others—Debit	
Repairs billed to others—Credit	
Other purchased services	
Lease rentals—debit—control	31–00–00

This control account includes the rentals of road property and equipment with terms of 30 days or more. This account excludes joint facility and joint trackage rents, insurance and maintenance elements of lease payments, and all elements of capital leases as defined in FASB Statement No. 13. The components of this natural expense will be distributed to the following accounts in accordance with instruction 1–8 of Part 1201, Subpart A:

Lease rentals—debit—way and structures—running: freight	31–11–00
Lease rentals—debit—way and structures—switching: freight	31–12–00
Lease rentals—debit—way and structures—other: freight	31–13–00
Lease rentals—debit—equipment—locomotives: freight	31–21–00
Lease rentals—debit—equipment—freight cars: freight	31–22–00
Lease rentals—debit—equipment—other equipment: freight	31–23–00
Lease rentals—credit—control	32–00–00

This control account includes the rentals of owned property and equipment or subleases of leased road property and equipment with terms of from 30 days to one year. Longer term leases are indicative of a noncarrier operation and all revenues and expenses related to such property and equipment should be classified accordingly and excluded from railroad operations. This account excludes joint facilities and joint trackage, capital leases, and portions of lease receipts covering maintenance and insurance. The components of this natural expense account will be distributed to the following accounts in accordance with instruction 1–8 of Part 1201, Subpart A:

Lease rentals—credit—way and structures—running: freight	32–11–00
Lease rentals—credit—way and structures—switching: freight	32–12–00

Lease rentals—credit—way and structures—other: freight	32–13–00
Lease rentals—credit—equipment—locomotives: freight	32–21–00
Lease rentals—credit—equipment—freight cars: freight	32–22–00
Lease rentals—credit—equipment—other equipment: freight	32–23–00
Joint facility rents—debit—control	33–00–00

This control account includes amounts payable accrued as rent for equipment, tracks, yards, terminals, and other facilities owned or controlled by other carriers, companies, or individuals, and in the joint use of which the accounting company participates. Amounts paid or payable by the accounting company in reimbursement for taxes on property jointly used shall be charged to this account.

NOTE: The cost of maintenance, operation, or administration of joint facilities, chargeable to the accounting company, shall be charged to the various joint facility accounts (37–XX–00). When the compensation for the use of joint facilities is a fixed amount or is based upon a charge per ton, car, or other unit, it shall be fairly apportioned between this account and Joint Facility—Dr. (37–XX–00). This apportionment shall be made by the operating company, and shall be followed by the accounting company. The components of this natural expense consist of the following accounts:

Joint facility rents—debit—way and structures—running: Freight	33–11–00
Joint facility rents—debit—way and structures—switching: Freight	33–12–00
Joint facility rents—debit—way and structures—other: Freight	33–13–00
Joint facility rents—debit—equipment—locomotives: Freight	33–21–00
Joint facility rents—debit—equiment—freight cars: Freight	33–22–00
Joint facility rents—debit—equipment—other equipment: Freight	33–23–00
Joint facility rents—credit—control	34–00–00

This control account includes amounts receivable accrued for rent of equipment, tracks, yards, terminals and other facilities owned or controlled by the accounting company and used jointly with other companies or individuals. Amounts receivable from other companies in reimbursement for taxes on property jointly used shall be credited to this account.

NOTE: The portion of the cost of maintenance, operation, or administration of joint facilities recoverable from others shall be credited to the various joint facility accounts (38–XX–00). When the compensation for the use of joint facilities is a fixed amount or is based upon a charge per ton, car, or other unit, it shall be fairly apportioned by the creditor between this account and Joint Facility—credit (28–XX–00).

Joint facility rents—credit—way and structures—running: Freight	34–11–00
Joint facility rents—credit—way and structures—switching: Freight	34–12–00
Joint facility rents—credit—way and structures—other: Freight	34–13–00
Joint facility rents—credit—equipment—locomotives: Freight	34–21–00
Joint facility rents—credit—equipment—freight cars: Freight	34–22–00
Joint facility rents—credit—equipment—other equipment: Freight	34–23–00
Other rents—debit—control	35–00–00

This account includes the rents with terms of less than 30 days which are not renewed. This account includes all time and mileage payments for interchange locomotive, freight car, and other revenue equipment hire. The components of this account will be distributed to the following accounts in accordance with instruction 1–8 of Part 1201, Subpart A:

Other rents—debit—way and structures—running: Freight: Freight	35–11–00
Other rents—debit—way and structures—switching: Freight	35–12–00
Other rents—debit—way and structures—other: Freight	35–13–00
Other rents—debit—equipment—locomotives: Freight	35–21–00
Other rents—debit—equipment—freight cars: Freight	35–22–00
Other rents—debit—equipment—other equipment: Freight	35–23–00
Other rents—credit—control	36–00–00

This account includes rents with terms of less than 30 days which are not renewed. This account includes all time and mileage receipts for interchanged locomotive, freight car, and other revenue equipment hire. The components of this account will be distributed to the following accounts in accordance with instruction 1–8 of Part 1201, Subpart A:

Other rents—credit—way and structures—running: Freight	36–11–00
Other rents—credit—way and structures—switching: Freight	36–12–00
Other rents—credit—way and structures—other: Freight	36–13–00
Other rents—credit—equipment—locomotives: Freight	36–21–00
Other rents—credit—equipment—freight cars: Freight	36–22–00
Other rents—credit—equipment—other equipment: Freight	36–23–00
Joint facility—debit—control	37–00–00

This account includes joint trackage and joint facility costs, exclusive of rents, payable by the railroad to others. The components of this account will be distributed to the following accounts in accordance with instruction 1–8 of Part 1201, Subpart A:

Joint Facility—debit—way and structures—running: Freight	37–11–00
Joint Facility—debit—way and structures—switching: Freight	37–12–00
Joint Facility—debit—way and structures—other: Freight	37–13–00
Joint facility—debit—equipment—locomotives: Freight	37–21–00
Joint facility—debit—equipment—freight cars: Freight	37–22–00
Joint facility—debit—equipment—other equipment: Freight	37–23–00

Joint facility—debit—transportation—train: Freight	37–31–00
Joint facility—debit—transportation—yard: Freight	37–32–00
Joint facility—debit—transportation—specialized services: Freight	37–34–00
Joint facility—debit—transportation—administrative support: Freight	37–35–00
Joint facility—debit—general and administrative: Freight	37–61–00
Joint facility—credit—control	38–00–00

This account includes joint trackage and joint facility costs, exclusive of rents, payable by others to the railroad. The components of this account will be distributed to the following accounts in accordance with instruction 1–8 of Part 1201, Subpart A:

Joint facility—credit—way and structures—running: Freight	38–11–00
Joint facility—credit—way and structures—switching: Freight	38–12–00
Joint facility—credit—way and structures—other: Freight	38–13–00
Joint facility—credit—equipment—locomotives: Freight	38–21–00
Joint facility—credit—equipment—freight cars: Freight	38–22–00
Joint facility—credit—equipment—other equipment: Freight	38–23–00
Joint facility—credit—transportation—train: Freight	38–31–00
Joint facility—credit—transportation—yard: Freight	38–32–00
Joint facility—credit—transportation—specialized services: Freight	38–34–00
Joint facility—credit—transportation—administrative support: Freight	38–35–00
Joint facility—credit—general and administrative: Freight	38–61–00
Repairs billed by others—debit—control	39–00–00

This account includes amounts payable by the railroad to others for repair and maintenance of the reporting railroad's property and equipment. The components of this account shall be distributed to the following accounts in accordance with instruction 1–8 of Part 1201, Subpart A:

Repairs billed by others—debit—way and structures—running: Freight	39–11–XX

This account includes amounts payable by the railroad to others for repair and maintenance of the reporting railroad's property associated with the carrier's roadway and track on the line of road and outside of classification yards. This account shall be subdivided by the following functions:

Repair and maintenance

Roadway	39–11–10
Tunnels and subways	39–11–11
Bridges and culverts	39–11–12
Track laying and surfacing	39–11–17
Signals and interlockers	39–11–19
Highway grade crossings	39–11–22
Road property and equipment damaged	39–11–48
Repairs billed by others—debit—way and structures—switching: Freight	39–12–XX

This account includes amounts payable by the railroad to others for repair and maintenance of the reporting railroad's property associated with the carrier's roadway and track within classification yards and stations. This account shall be subdivided by the following functions:

Repair and maintenance

Roadway	39–12–10
Tunnels and subways	39–12–11
Bridges and culverts	39–12–12
Track laying and surfacing	39–12–17
Signals and interlockers	39–12–19
Highway grade crossings	39–12–22
Road property and equipment damaged	39–12–48
Repairs billed by others—debit—way and structures—other: Freight	39–13–XX

This account includes amounts payable by the railroad to others for repair and maintenance of the carrier's structures other than roadway and track. This account shall be subdivided by the following functions:

Repair and maintenance

Communication systems	39–13–20
Electric power systems	39–13–21
Station and office buildings	39–13–23
Shop buildings—locomotives	39–13–24
Shop buildings—freight cars	39–13–25
Shop buildings—other equipment	39–13–26
Locomotive servicing facilities	39–13–27
Miscellaneous buildings and structures	39–13–28
Coal terminals	39–13–29
Ore terminals	39–13–30
TOFC/COFC terminals	39–13–31
Other marine terminals	39–13–32
Motor vehicle loading and distribution facilites	39–13–33
Facilities for other specialized services operations	39–13–35
Roadway machines	39–13–36
Small tools and supplies	39–13–37
Snow removal	39–13–38
Road property and equipment damaged	39–13–48
Repairs billed by others—debit—equipment—locomotives: Freight	39–21–XX

This account includes amounts payable by the railroad to others for repair and maintenance under the locomotive subactivity. This account shall be subdivided by the following functions:

Repair and maintenance

Machinery	39–21–40
Locomotives	39–21–41
Road property and equipment damaged	39–21–48
Repairs billed by others—debit—equipment—freight cars: Freight	39–22–XX

This account includes amounts payable by the railroad to others for repair and maintenance under the freight car subactivity. This account shall be subdivided by the following function:

Repair and maintenance

Machinery	39–22–40
Freight cars	39–22–42
Road property and equipment damaged	39–22–48
Repairs billed by others—debit—equipment—other equipment: Freight	39–23–XX

This account includes amounts payable by the railroad to others for the repair and maintenance of equipment not pertaining to the locomotive or freight car subactivity. This account shall be subdivided by the following functions:

Repair and maintenance

Machinery	39–23–40
Trucks, trailers, and containers in revenue service	39–23–43
Floating equipment—revenue service	39–23–44
Passenger and other revenue equipment	39–23–45
Computers and data processing equipment	39–23–46
Work and other nonrevenue equipment	39–23–47
Road property and equipment damaged	39–23–48
Repairs billed to others—credit—control	40–00–00

This control account includes amounts payable by others to the railroad for repair and maintenance of others' road property and equipment. The components of this account shall be distributed to the following accounts in accordance with instruction 1–8 of Part 1201, Subpart A:

Repairs billed to others—credit—way and structures—running: Freight	40–11–XX

This account includes amounts payable by others to the railroad for repair and maintenance of other railroads' roadway and track on the line of road and outside of classification yards. This account shall be subdivided by the following functions:

Repair and maintenance

Roadway	40–11–10
Tunnels and subways	40–11–11
Bridges and culverts	40–11–12
Track laying and surfacing	40–11–17
Signals and interlockers	40–11–19
Highway grade crossings	40–11–22
Road property and equipment damaged	40–11–48
Repairs billed to others—credit—way and structures—switching: Freight	40–12–XX

This account includes amounts payable by others to the railroad for repair and maintenance of other railroads' roadway and track within classification yards and stations. This account shall be subdivided by the following functions:

Repair and maintenance

Roadway	40–12–10
Tunnels and subways	40–12–11
Bridges and culverts	40–12–12
Track laying and surfacing	40–12–17
Signals and interlockers	40–12–19
Highway grade crossings	40–12–22
Road property and equipment damaged	40–12–48
Repairs billed to others—credit—way and structures—other: Freight	40–13–XX

This account includes amounts payable by others to the railroad for repair and maintenance of other railroads' structures other than roadway and track. This account shall be subdivided by the following functions:

Repair and maintenance

Communication systems	40–13–20
Electric power systems	40–13–21
Station and office buildings	40–13–23
Shop buildings—locomotives	40–13–24
Shop buildings—freight cars	40–13–25
Shop buildings—other equipment	40–13–26
Locomotive servicing facilities	40–13–27
Miscellaneous buildings and structures	40–13–28
Coal terminals	40–13–29
Ore terminals	40–13–30
TOFC/COFC terminals	40–13–31
Other marine terminals	40–13–32
Motor vehicle loading and distribution facilities	40–13–33
Facilities for other specialized services operations	40–13–35
Roadway machines	40–13–36
Small tools and supplies	40–13–37
Snow removal	40–13–38
Road property and equipment damaged	40–13–48
Repairs billed to others—credit—equipment—locomotives: Freight	40–21–XX

This account includes amounts payable by others to the railroad for repair and maintenance of other railroads' locomotives. This account shall be subdivided by the following functions:

Repair and maintenance

Machinery	40–21–40
Locomotives	40–21–41
Road property and equipment damaged	40–21–48
Repairs billed to others—credit—equipment—freight cars: Freight	40–22–XX

This account includes amounts payable by others to the railroad for repair and maintenance of other railroads' freight cars. This account shall be subdivided by the following functions:

Repair and maintenance

Machinery	40–22–40
Freight cars	40–22–42
Road property and equipment damaged	40–22–48
Repairs billed to others—credit—equipment—other equipment: Freight	40–23–XX

This account includes amounts payable by others to the railroad for repair and maintenance of other railroads' other equipment. This account shall be subdivided by the following functions:

Repair and maintenance

Machinery	40–23–40
Trucks, trailers, and containers in revenue service	40–23–43
Floating equipment—revenue service	40–23–44
Passenger and other revenue equipment	40–23–45
Computers and data processing equipment	40–23–46
Work and other non-revenue equipment	40–23–47
Road property and equipment damaged	40–23–48
Other purchased services—control	41–00–00

This control account includes amounts charged or credited to operating expenses for purchased advertising; purchased printing; outside professional services such as legal, accounting, audit, engineering, and consulting; payments for detour of trains; utilities, telephone, postage, subscriptions, communications, purchased electric power for train and locomotive propulsion; and other services purchased. The components of this account shall be distributed to the following accounts in accordance with instruction 1–8 of Part 1201, Subpart A:

Other purchased services—way and structures—running: Freight	41–11–XX

This account includes amounts charged or credited to operating expenses for other purchased services specified in control account 41–00–00. This account shall be subdivided by the following functions:

Repair and maintenance

Roadway	41–11–10
Tunnels and subways	41–11–11
Bridges and culverts	41–11–12
Track laying and surfacing	41–11–17
Signals and interlockers	41–11–19
Highway grade crossings	41–11–22
Dismantling retired property	41–11–39
Road property and equipment damaged	41–11–48
Other—other	41–11–99
Other purchased services—way and structures—switching: Freight	41–12–XX

This account includes amounts charged or credited to operating expenses for other purchased services specified in control account 41–00–00. This account shall be subdivided by the following functions:

Repair and maintenance

Roadway	41–12–10
Tunnels and subways	41–12–11
Bridges and culverts	41–12–12
Track laying and surfacing	41–12–17
Signals and interlockers	41–12–19
Highway grade crossings	41–12–22
Dismantling retired property	41–12–39
Road property and equipment damaged	41–12–48
Other—other	41–12–99
Other purchased services—way and structures—other: Freight	41–13–XX

This account includes amounts charged or credited to operating expenses for other purchased services specified in control account 41–00–00. This account shall be subdivided by the following functions:

Administration

Track	41–13–02
Bridges and buildings	41–13–03
Signals	41–13–04
Communications	41–13–05
Other	41–13–06

Repair and maintenance

Communication systems	41–13–20
Electric power systems	41–13–21
Station and office buildings	41–13–23
Shop buildings—locomotives	41–13–24
Shop buildings—freight cars	41–13–25
Shop buildings—other equipment	41–13–26
Locomotive servicing facilities	41–13–27
Miscellaneous buildings and structures	41–13–28
Coal terminals	41–13–29
Ore terminals	41–13–30
TOFC/COFC terminals	41–13–31
Other marine terminals	41–13–32
Motor vehicle loading and distribution facilities	41–13–33
Facilities for other specialized services operations	41–13–35
Roadway machines	41–13–36
Small tools and supplies	41–13–37
Snow removal	41–13–38
Dismantling retired property	41–13–39
Road property and equipment damaged	41–13–48
Other—other	41–13–99
Other purchased services—equipment—locomotives: Freight	41–21–XX

This account includes amounts charged or credited to operating expenses for other purchased services specified in control account 41–00–00. This account shall be subdivided by the following functions:

Administration—general	41–21–01

Repair and maintenance

Dismantling retired property	41–21–39
Machinery	41–21–40
Locomotive	41–21–41
Road property and equipment damaged	41–21–48
Other—other	41–21–99
Other purchased services—equipment—freight cars: Freight	41–22–XX

This account includes amounts charged or credited to operating expenses for other purchased services specified in control account 41–00–00. This account shall be subdivided by the following functions:

Administration—general	41–22–01

Repair and maintenance

Dismantling retired property	41–22–39
Machinery	41–22–40
Freight cars	41–22–42
Road property and equipment damaged	41–22–48
Other—other	41–22–99
Other purchased services—equipment—other equipment: Freight	41–23–XX

This account includes amounts charged or credited to operating expenses for other purchased services specified in control account 41–00–00. This account shall be subdivided by the following functions:

Administration—general	41–23–01

Repair and maintenance

Dismantling retired property	41–23–39
Machinery	41–23–40
Trucks, trailers, containers in revenue service	41–23–43
Floating equipment—revenue service	41–23–44
Passenger and other revenue equipment	41–23–45
Computers and data processing equipment	41–23–46
Work and other nonrevenue equipment	41–23–47
Road property and equipment damaged	41–23–48
Other—other	41–23–99
Other purchased services—transportation—train: Freight	41–31–XX

This account includes amounts charged or credited to operating expenses for other purchased services specified in control account 41–00–00. This account shall be subdivided by the following functions:

Administration—general	41–31–01

Operations

Engine crews	41–31–56
Train crews	41–31–57
Dispatching trains	41–31–58
Operating switches, signals, interlockers, retarders, humps	41–31–59
Operating drawbridges	41–31–60
Highway crossing protection	41–31–61
Train inspection and lubrication	41–31–62
Clearing wrecks	41–31–63
Locomotive fuel	41–31–67
Electric power purchased/produced for motive power	41–31–68
Servicing locomotives	41–31–69
Other—other	41–31–99
Other purchased services—transportation—yard: Freight	41–32–XX

This account includes amounts charged or credited to operating expenses for other purchased services specified in control account 41–00–00. This account shall be subdivided by the following functions:

Administration—general	41–32–01
Operations	
Operating switches, signals, interlockers, retarders, humps	41–32–59
Clearing wrecks	41–32–63
Switch crews	41–32–64
Controlling operations	41–32–65
Yard and terminal clerical	41–32–66
Locomotive fuel	41–32–67
Electric power purchased/produced for motive power	41–32–68
Servicing locomotives	41–32–69
Other—other	41–32–99
Other purchased services—transportation—train and yard common: Freight	41–33–XX

This account includes amounts charged or credited to operating expenses for other purchased services specified in control account 41–00–00. This account shall be subdivided by the following functions:

Operations	
Cleaning car interiors	41–33–70
Adjusting, transferring loads	41–33–71
Car loading devices and grain doors	41–33–72
Other purchased services—transportation—specialized services: Freight	41–34–XX

This account includes amounts charged or credited to operating expenses for other purchased services specified in control account 41–00–00. This account shall be subdivided by the following functions:

Administration—general	41–34–01
Operations	
Pick up and delivery, marine line haul, and rail substitute service	41–34–73
Loading, unloading, and local marine	41–34–74
Protective Services	41–34–75
Other—other	41–34–99
Other purchased services—transportation—administrative support: freight	41–35–XX

This account includes amounts charged or credited to operating expenses for other purchased services specified in control account 41–00–00. This account shall be subdivided by the following functions:

Administration—general	41–35–01
Operations	
Clerks, accounting employees	41–35–76
Communication systems operations	41–35–77
Loss and damage claims processing	41–35–78
Other—other	41–35–99
Other purchased services—general and administrative: freight	41–61–XX

This account includes amounts charged or credited to operating expenses for other purchased services specified in control account 41–00–00. This account shall be subdivided by the following functions:

Administration—general	41–61–01
General	
Accounting, auditing, finance	41–61–86
Management services and data processing	41–61–87
Marketing	41–61–88
Sales	41–61–89
Industrial development	41–61–90
Personnel and labor relations	41–61–91
Legal and secretarial	41–61–92
Public relations and advertising	41–61–93
Research and development	41–61–94
Other—other	41–61–99

CLAIMS AND INSURANCE

Control	50–00–00

This account may be used as a control account for all accounts in the CLAIMS AND INSURANCE series: loss and damage claims; other casualties; insurance.

Loss and damage claims—control	51–00–00

This account includes amounts payable to compensate for the loss or damage of freight or other goods carried in revenue service. This account excludes amounts payable to employees or other parties for injuries sustained or loss of life; for damage to real property of others or personal property not carried in revenue service; all payments for other damages of any kind; and related insurance premiums.

Loss and damage claims—transportation—train: freight	51–31–00

This account includes amounts payable to compensate for the loss or damage of freight or other goods carried in revenue service while operating all trains except those performing yard functions in terminals.

Loss and damage claims—transportation—yard: freight	51–32–00

This account includes amounts payable to compensate for the loss or damage of freight or other goods carried in revenue service which is lost or damaged in yards or terminals.

Loss and damage claims—transportation—train and yard common: freight	51–33–00

This account includes amounts payable to compensate for the loss or damage of freight or other goods carried in revenue service which are not predominantly train or yard.

Loss and damage claims—transportation—specialized services: freight	51–34–00

This account includes amounts payable to compensate for the loss or damage of freight or other goods carried in revenue service incurred in designated specialized services operations.

Other casualties—control	52–00–00

This account includes amounts payable to employees or other parties for injuries sustained or loss of life in connection with the construction, maintenance, operations, and administration of railroad property and equipment; for damage to real property, property of others or personal property not carried in revenue service; all payments for other damages of any kind. This account excludes freight and other goods carried in revenue service, and insurance premiums related to the casualties chargeable to this account.

NOTE: The costs of clearing wrecks and repairing casualty-caused damage to the railroad's property and equipment are properly classified under other natural expense accounts as appropriate and further classified by relevant activities and functions.

These costs are appropriately charged to the following natural accounts:

Other casualties—way and structures—running: freight	52–11–00
Other casualties—way and structures—switching: freight	52–12–00
Other casualties—way and structures—other: freight	52–13–00
Other casualties—equipment—locomotives: freight	52–21–00
Other casualties—equipment—freight cars: freight	52–22–00
Other casualties—equipment—Other equipment: freight	52–23–00
Other casualties—transportation—train: freight	51–31–00
Other casualties—transportation—yard: freight	51–32–00
Other casualties—transportation—specialized services: freight	52–34–00
Other casualties—transportation—administrative support: freight	52–35–00
Other casualties—general and administrative: freight	52–61–00
Insurance—control	53–00–00

This account includes premiums for insurance to cover property and equipment loss and damage, liability, business interruption, and the like. These costs are appropriately charged to the following accounts:

Insurance—way and structures—running: freight	53–11–00
Insurance—way and structures—switching: freight	53–12–00
Insurance—way and structures—other: freight	53–13–00
Insurance—equipment—locomotives: freight	53–21–00
Insurance—equipment—freight cars: freight	53–22–00
Insurance—equipment—other equipment: freight	53–23–00
Insurance—transportation—train: freight	53–31–00
Insurance—transportation—yard: freight	53–32–00
Insurance—transportation—specialized services: freight	53–34–00
Insurance—transportation—administrative support: freight	53–35–00
Insurance—general and administrative: freight	53–61–00

GENERAL

Control	60–00–00

This account may be used as a control account for all accounts in the GENERAL series: other expenses; depreciation; uncollectible accounts; property taxes; other taxes.

Other expenses—control	61–00–00

This account includes amounts charged to operating expenses for items not otherwise provided for in the other natural expense accounts, including travel and other expenses of employees, road property and equipment retirement losses, and other items of a general nature.

Other expenses—way and structures—running: freight	61–11–XX

This account includes amounts charged to operating expenses for items not otherwise provided for in the other natural expense accounts, including travel and other expenses of employees, road property retirement lossses, and other items of a general nature associated with the carrier's roadway and track on the line of road and outside of classification yards. This account shall be subdivided by the following functions:

Repair and maintenance

Roadway	61–11–10
Tunnels and subways	61–11–11
Bridges and culverts	61–11–12
Track laying and surfacing	61–11–17
Signals and interlockers	61–11–19
Highway grade crossings	61–11–22
Dismantling retired property	61–11–39
Road property and equipment damaged	61–11–48
Other—other	61–11–99
Other expenses—way and structures—switching: freight	61–12–XX

This account includes amount charged to operating expenses for items not otherwise provided for in the other natural expense accounts, including travel and other expenses of employees, road property retirement losses, and other items of a general nature associated with the carrier's roadway and track within classification yards and stations. This account shall be subdivided by the following functions:

Repair and maintenance

Roadway	61–12–10
Tunnels and subways	61–12–11
Bridges and culverts	61–12–12
Track laying and surfacing	61–12–17
Signals and interlockers	61–12–19
Highway grade crossings	61–12–22
Dismantling retired property	61–12–39
Road property and equipment damaged	61–12–48
Other—other	61–12–99
Other expenses—way and structures—other: freight	61–13–XX

This account includes amounts charged to operating expenses for items not otherwise provided for in the other natural expense accounts, including travel and other expenses of employees, road property retirement losses, and other items of a general nature associated with the carrier's structures other than roadway and track. This account shall be subdivided by the following functions:

Administration

Track	61–13–02
Bridges and buildings	61–13–03
Signals	61–13–04
Communications	61–13–05
Other	61–13–06

Repair and maintenance

Communication systems	61–13–20
Electric power systems	61–13–21
Station and office buildings	61–13–23
Shop buildings—locomotives	61–13–24
Shop buildings—freight cars	61–13–25
Shop buildings—other equipment	61–13–26
Locomotive servicing facilities	61–13–27
Miscellaneous buildings and structures	61–13–28

Coal terminals	61–13–29
Ore terminals	61–13–30
TOFC/COFC terminals	61–13–31
Other marine terminals	61–13–32
Motor vehicle loading and distribution facilities	61–13–33
Facilities for other specialized services operations	61–13–35
Roadway machines	61–13–36
Small tools and supplies	61–13–37
Snow removal	61–13–38
Dismantling retired property	61–13–39
Road property and equipment damaged	61–13–48
Other—other	61–13–99
Other expenses—equipment—locomotives: Freight	61–21–XX

This account includes amounts charged to operating expenses for items not otherwise provided for in the other natural expense accounts, including travel and other expenses of employees and equipment retirement losses, associated with the repair and maintenance of locomotives, whether owned by the carrier or by others. This account shall be subdivided by the following functions:

Administration—general	61–21–01
Repair and maintenance	
Dismantling retired property	61–21–39
Machinery	61–21–40
Locomotives	61–21–41
Road property and equipment damaged	61–21–48
Other—other	61–21–99
Other expenses—equipment—freight cars: Freight	61–22–XX

This account includes amounts charged to operating expenses for items not otherwise provided for in the other natural expense accounts, including travel and other expenses of employees, equipment retirement losses, associated with the repair and maintenance of freight cars, whether owned by the carrier or by others. This account shall be subdivided by the following functions:

Administration—general	61–22–01
Repair and maintenance	
Dismantling retired property	61–22–39
Machinery	61–22–40
Freight cars	61–22–42
Road property and equipment damaged	61–22–48
Other—other	61–22–99
Other expenses—equipment—other equipment: Freight	61–23–XX

This account includes amounts charged to operating expenses for items not otherwise provided for in the other natural expense accounts, including travel and other expenses of employees, equipment retirement losses, associated with the repair and maintenance of equipment other than locomotives and freight cars, whether owned by the carrier or by others. This account shall be subdivided by the following functions:

Administration—general	61–23–01
Repair and maintenance	
Dismantling retired property	61–23–39
Machinery	61–23–40
Trucks, trailers, containers in revenue service	61–23–43
Floating equipment—revenue service	61–23–44
Passenger and other revenue equipment	61–23–45
Computers and data processing equipment	61–23–46
Work and other nonrevenue equipment	61–23–47
Road property and equipment damaged	61–23–48
Other—other	61–23–99
Other expenses—transportation—train: Freight	61–31–XX

This account includes amounts charged to operating expenses for items not otherwise provided for in the other natural expense accounts, including travel and other expenses of employees, associated with the dispatching and operations of freight trains over the roadway and outside of classification yards. This account shall be subdivided by the following functions:

Administration—general	61–31–01
Operations	
Engine crews	61–31–56
Train crews	61–31–57
Dispatching trains	61–31–58
Operating switches, signals, interlockers, retarders, humps	61–31–59
Operating drawbridges	61–31–60
Highway crossing protection	61–31–61
Train inspection and lubrication	61–31–62
Clearing wrecks	61–31–63
Locomotive fuel	61–31–67
Electric power purchased/produced for motive power	61–31–68
Servicing locomotives	61–31–69
Other—other	61–31–99
Other expenses—transportation—yard: Freight	61–32–XX

This account includes amounts charged to operating expenses for items not otherwise provided for in the other natural expense accounts, including travel and other expenses of employees, and other items of a general nature associated with the movement of freight cars within classification yards and in terminal switching and transfer service. This account shall be subdivided by the following functions:

Administration—general	61–32–01
Operations	
Operating switches, signals, interlockers, retarders, humps	61–32–59
Clearing wrecks	61–32–63
Switch crews	61–32–64
Controlling operations	61–32–65
Yard and terminal clerical	61–32–66
Locomotive fuel	61–32–67
Electric power purchased/produced for motive power	61–32–68
Servicing locomotives	61–32–69
Other—other	61–32–99
Other expenses—transportation—specialized services: Freight	61–34–XX

This account includes amounts charged to operating expenses for items not otherwise provided for in the other natural expense accounts, including travel and other expenses of employees, and other items of a general nature incurred in operating services which are specialized in nature and in cost characteristics. The specialized services designated by the Board appear within the definition of specialized services. This account shall be subdivided by the following functions:

Administration—general	61–34–01

Operations

Pick up and delivery, marine line haul, and rail substitute service	61–34–73
Loading, unloading, and local marine	61–34–74
Protective services	61–34–75
Other—other	61–34–99
Other expenses—transportation—administrative support: Freight	61–35–XX

This account includes amounts charged to operating expenses for items not otherwise provided for in the other natural expense accounts, including travel and other expenses of employees, and other items of a general nature incurred in association with providing direct administrative support for the Transportation Activity. This account shall be subdivided by the following functions:

Administration—general	61–35–01

Operations

Clerks, accounting employees	61–35–76
Communication systems operations	61–35–77
Loss and damage claims processing	61–35–78
Other—other	61–35–99
Other expenses—general and administrative: Freight	61–61–XX

This account includes amounts charged to operating expenses for items not otherwise provided for in the other natural expense accounts, including travel and other expenses of employees, and other items of a general nature incurred in providing overall administration of other support for carrier operations. This account shall be subdivided by the following functions:

Administration—general	61–61–01

General

Accounting, auditing, finance	61–61–86
Management services and data processing	61–61–87
Marketing	61–61–88
Sales	61–61–89
Industrial development	61–61–90
Personnel labor relations	61–61–91
Legal and secretarial	61–61–92
Public relations and advertising	61–61–93
Research and development	61–61–94
Other—other	61–61–99
Depreciation—control	62–00–00

This control account includes the amounts charged to operating expenses for depreciation of owned road property and equipment, and the depreciation element of road property held under capital lease in accordance with FASB Statement No. 13. These costs are appropriately charged to the following natural accounts:

Depreciation—way and structures—running: Freight	62–11–00
Depreciation—way and structures—switching: Freight	62–12–00
Depreciation—way and structures—other: Freight	62–13–00
Depreciation—equipment—locomotives: Freight	62–21–00
Depreciation—equipment—freight cars: Freight	62–22–00
Depreciation—equipment—other equipment: Freight	62–23–00
Uncollectible accounts—control	63–00–00

This account includes charges to operating expenses for the writedown of accounts and notes due to the railroad, whether classified as current or long-term. This account includes any credits to allowance accounts for collectibility and total writeoff of receivables. This account does not include writedowns of property, equipment, or investments (except accounts, notes, or other receivables held as investments). Proper adjustments of incorrect receivables are not to be charged to this account. Collections of amounts previously written off or down are to be credited to this account. The total of this account shall be charged to the following account:

Uncollectible accounts—general and administrative: Freight	63–61–00
Property taxes—control	64–00–00

This account includes only taxes based on the value of real estate and personal property used in railroad operations. The total of this account shall be charged to the following account:

Property taxes—general and administrative: Freight	64–61–00
Other taxes—control	65–00–00

This account includes taxes on gross receipts, franchise fees, excise taxes, and similar items. This account excludes property taxes and taxes chargeable as emloyee benefits. The total of this account shall be charged to the following account:

Other taxes—general and administrative: Freight	65–61–00

(2) *Other computed cost elements.*

651 Locomotives return on investment.
652 Freight train car costs.
  01 Per day costs.
  02 Mileage costs.
654 Rehabilitation.
664 Deadheading, taxi and hotel costs.
  01 Deadheading.
  02 Taxi.
  03 Hotel.
665 Overhead movement costs.
  01 Transportation.
  02 Equipment.
  03 Freight-train cars—mileage portion.

(3) *Off-branch avoidable costs.*

661 Terminal costs.
  01 Modified terminal costs.
  02 Normal terminal costs.
  03 Interchange costs.
662 Freight train car costs.
663 Freight train revenue ton-mile costs.

(4) *All other avoidable costs.*[1]

671 Working capital.
672 Required capital expenditures.
673 Deferred maintenance.

[1] Accounts 671–675 apply to Part 1152 only. Accounts 677 and 682 apply to Part 1155 only.

674 Current cost of freight train cars, locomotives, and other equipment.
675 Foregone tax benefits.
676 Administrative costs.
677 Deferred subsidy payment costs.
678 Casualty reserve expenses.
Total, all other avoidable costs.
681 Reasonable return on the value of properties.
682 Management fee.

[43 FR 1733, Jan. 11, 1978, as amended at 43 FR 28498, June 30, 1978; 44 FR 9730, Feb. 14, 1979; 47 FR 49596, Nov. 1, 1982; 67 FR 57533, Sept. 11, 2002]

APPENDIX I TO PART 1201—CERTIFICATION OF BRANCH LINE ACCOUNTING SYSTEM RECORDS

Carrier: (Exact legal title or name of the respondent) _____

_____

Name, title, telephone number and address of the person to be contacted:

Name _____
Title _____
Telephone Number: (Area Code) and (Telephone number) _____
Office Address: (Street and number) (City, State, and ZIP code) _____

_____

CERTIFICATION

I, the undersigned, _____
of (Title of officer in charge of accounts) ____

_____
(Full name of reporting company) _____

certify that during the calendar year 19____ the branch line accounting system data were collected and maintained for each line that met the criteria set forth in 49 CFR 1201, Subpart B, section 920(a), Lines For Which Data Collection Is Required, (Docket No. 36366).

Signature _____

Date_____

The lines covered by this certification are described below: (Describe each branch line separately using the following format as set forth in 49 CFR 1152.11.)

(a) Carrier's designation for line (Ex. Zanesville Secondary Track);

(b) State or states in which line is located;

(c) County or counties in which line is located;

(d) Milepost delineating each line or portion of line;

(e) Agency or terminal station(s) located on line or portion of line with milepost designations;

(f) Current category designation and date placed in that category; and

(g) Previous category.

[44 FR 9730, Feb. 14, 1979, as amended at 47 FR 49596, Nov. 1, 1982]

PARTS 1202–1219 [RESERVED]

PARTS 1220–1239—PRESERVATION OF RECORDS

NOTE: Section 20(7)(b) of the Interstate Commerce Act includes the following provision:

Any person who shall knowingly and willfully make, cause to be made, or participate in the making of, any false entry in any annual or other report required under this section to be filed, or in the accounts of any book of accounts or in any records or memoranda kept by a carrier, or required under this section to be kept by a lessor or other person, or who shall knowingly and willfully destroy, mutilate, alter, or by any other means or device falsify the record of any such accounts, records, or memoranda, * * * shall be deemed guilty of a misdemeanor and shall be subject, upon conviction in any court of the United States of competent jurisdiction to a fine of not more than five thousand dollars or imprisonment for not more than two years, or both such fine and imprisonment: *Provided*, That the Board may in its discretion issue orders specifying such operating, accounting, or financial papers, records, books, blanks, tickets, stubs, correspondence, or documents of such carriers, lessors, or other persons as may, after a reasonable time, be destroyed, and prescribing the length of time the same shall be preserved.

PART 1220—PRESERVATION OF RECORDS

Sec.
1220.0 Applicability.
1220.1 Records required to be retained.
1220.2 Protection and storage of records.
1220.3 Preservation of records.
1220.4 Companies going out of business.
1220.5 Waiver of requirements of these regulations.
1220.6 Schedule of records and periods of retention.

AUTHORITY: 49 U.S.C. 721, 11144, 11145.

SOURCE: 50 FR 10775, Mar. 18, 1985; 51 FR 22083, June 18, 1986, unless otherwise noted.

§ 1220.0 Applicability.

The preservation of record rules contained in this part shall apply to the following:

Railroad companies
Electric railway companies
Express companies
Persons furnishing cars to railroads
Ratemaking organizations

This part applies also to the preservation of accounts, records and memoranda of traffic associations, demurrage and car service bureaus, weighing and inspection bureaus, and other joint activities maintained by or on behalf of companies listed in the above paragraph of this subpart.

[50 FR 1075, Mar. 18, 1985 and 51 FR 22083, June 18, 1986, as amended at 51 FR 44297, Dec. 9, 1986; 62 FR 50525, Sept. 26, 1997]

§ 1220.1 Records required to be retained.

Companies subject to this part shall retain records for the minimum retention periods required by § 1220.6, Schedule of records and periods of retention. After the required retention periods, the records may be destroyed at the discretion of each company's management. It shall be the obligation of the subject company to maintain records that adequately support financial and operational data required by the Board. The company may request a ruling from the Board on the retention of any record. The provisions of this part shall not be construed as excusing compliance with the lawful requirements of any other governmental body prescribing longer retention periods for any category of records.

§ 1220.2 Protection and storage of records.

(a) The company shall protect records subject to this part from fires, floods, and other hazards, and safeguard the records from unnecessary exposure to deterioration from excessive humidity, dryness, or lack of ventilation.

(b) The company shall notify the Board if prescribed records are substantially destroyed or damaged before the term of the prescribed retention periods.

§ 1220.3 Preservation of records.

(a) All records may be preserved by any technology that is immune to alteration, modification, or erasure of the underlying data and will enable production of an accurate and unaltered paper copy.

(b) Records not originally preserved on hard copy shall be accompanied by a statement executed by a person having personal knowledge of the facts indicating the type of data included within the records. One comprehensive statement may be executed in lieu of individual statements for multiple records if the type of data included in the multiple records is common to all such records. The records shall be indexed and retained in such a manner as will render them readily accessible. The company shall have facilities available to locate, identify and produce legible paper copies of the records.

(c) Any significant characteristic, feature or other attribute that a particular medium will not preserve shall be clearly indicated at the beginning of the applicable records as appropriate.

(d) The printed side of forms, such as instructions, need not be preserved for each record as long as the printed matter is common to all such forms and an identified specimen of the form is maintained on the medium for reference.

[50 FR 10775, Mar. 18, 1985, as amended at 56 FR 30874, July 8, 1991]

§ 1220.4 Companies going out of business.

The records referred to in these regulations may be destroyed after business is discontinued and the company is completely liquidated. The records may not be destroyed until dissolution is final and all pending transactions and claims are completed. When a company is merged with another company under jurisdiction of the Board, the successor company shall preserve records of the merged company in accordance with these regulations.

§ 1220.5 Waiver of requirements of these regulations.

A waiver from any provision of these regulations may be made by the Board upon its own initiative or upon submission of a written request by the company. Each request for waiver shall demonstrate that unusual circumstances warrant a departure from

prescribed retention periods, procedures, or techniques, or that compliance with such prescribed requirements would impose an unreasonable burden on the company.

§ 1220.6 Schedule of records and periods of retention.

The following schedule shows periods that designated records shall be preserved. The descriptions specified under the various general headings are for convenient reference and identification, and are intended to apply to the items named regardless of what the records are called in individual companies and regardless of the record media. The retention periods represent the prescribed number of years from the date of the document and not calendar years. Records not listed below shall be retained as determined by the management of each company.

SCHEDULE OF RECORDS AND PERIODS OF RETENTION

Item and category of records	Retention period
A. CORPORATE AND GENERAL	
1. Incorporation and reorganization:	
(a) Charter or certificate of incorporation and amendments	Note A.
(b) Legal documents related to mergers, consolidations, reorganization, receiverships and similar actions which affect the identity or organization of the company.	Do.
2. Minutes of Directors, Executive Committees, Stockholders and other corporate meetings	Do.
3. Titles, franchises and authorities:	
(a) Certificates of public convenience and necessity issued by regulating bodies	Until expiration or cancellation.
(b) Operating authorizations and exemptions to operate	Do.
(c) Copies of formal orders of regulatory bodies served upon the company	Note A.
(d) Deeds, charters, and other title papers	Until disposition of property.
(e) Patents and patent records	Note A.
4. Annual reports or statements to stockholders	3 years.
5. Contracts and agreements:	
(a) Service contracts, such as for operational management, accounting, financial or legal services, and agreements with agents.	Until expiration or termination plus 3 years.
(b) Contracts and other agreements relating to the construction, acquisition or sale of real property and equipment except as otherwise provided in (a) above.	Do.
(c) Contracts for the purchase or sale of material and supplies except as provided in (a) above.	Until expiration.
(d) Shipping contracts for transportation or caretakers of freight	Do.
(e) Contracts with employees and employee bargaining groups	Until expiration.
(f) Contracts, leases and agreements, not specifically provided for in this section	Until expiration or termination plus 1 year.
6. Accountant's auditor's, and inspector's reports:	
(a) Certifications and reports of examinations and audits conducted by public accountants.	3 years
(b) Reports of examinations and audits conducted by internal auditors, time inspectors, and others.	Do.
7. Other: (See Note A)	
B. TREASURY	
1. Capital stock records:	
(a) Capital stock ledger	Note A.
(b) Capital stock certificates, records of or stubs of	Do.
(c) Stock transfer register	Do.
2. Long-term debt records:	
(a) Bond indentures, underwritings, mortgages, and other long-term credit agreements.	Until redemption plus 3 years.
(b) Registered bonds and debenture ledgers	Do.
(c) Stubs or similar records of bonds or other long-term debt issued	Note A.
3. Authorizations from regulatory bodies for issuance of securities including applications, reports, and supporting papers.	Do.
4. Records of securities owned, in treasury, or held by custodians, detailed ledgers and journals, or their equivalent.	Until the securities are sold, redeemed or otherwise disposed of.
5. Other: (See Note A)	
C. FINANCIAL AND ACCOUNTING	
1. Ledgers:	
(a) General and subsidiary ledgers with indexes	Until discontinuance of use plus 3 years.
(b) Balance sheets and trial balance sheets of general and subsidiary ledgers	3 years.
2. Journals:	
(a) General journals	Until discontinuance of use plus 3 years.
(b) Subsidiary journals and any supporting data, except as otherwise provided for, necessary to explain journal entries.	3 years.

SCHEDULE OF RECORDS AND PERIODS OF RETENTION—Continued

Item and category of records	Retention period
3. Cash books:	
(a) General cash books	Until discontinuance of use plus 3 years.
(b) Subsidiary cash books	3 years.
4. Vouchers:	
(a) Voucher registers, indexes, or equivalent	Do.
(b) Paid and canceled vouchers, expenditure authorizations, detailed distribution sheets and other supporting data including original bills and invoices, if not provided for elsewhere.	Do.
(c) Paid drafts, paid checks, and receipts for cash paid out	3 years.
5. Accounts receivable:	
(a) Record or register of accounts receivable, indexes thereto, and summaries of distribution.	3 years after settlement.
(b) Bills issued for collection and supporting data	Do.
(c) Authorization for writing off receivables	1 year.
(d) Reports and statements showing age and status of receivables	Do.
6. Records of accounting codes and instructions	3 years after discontinuance.
7. Other: (Note A)	
D. PROPERTY AND EQUIPMENT	
NOTE.—All accounts, records, and memoranda necessary for making a complete analysis of the cost or value of property shall be retained for the periods shown. If any of the records elsewhere provided for in this schedule are of this character, they shall be retained for the periods shown below, regardless of any lesser retention period assigned	
1. Property records:	
(a) Records which maintain complete information on cost or other value of all real and personal property or equipment.	3 years after disposition of property.
(b) Records of additions and betterments made to property and equipment	Do.
(c) Records pertaining to retirements and replacements of property and equipment	Do.
(d) Records pertaining to depreciation	Do.
(e) Records of equipment number changes	Do.
(f) Records of motor and engine changes	Do.
(g) Records of equipment lightweighed and stenciled	Only current or latest records.
2. Engineering records of property changes actually made	3 years after disposition of property.
3. Other: (Note A)	
E. PERSONNEL AND PAYROLL	
1. Personnel and payroll records	1 year (Note A).
F. INSURANCE AND CLAIMS	
1. Insurance records:	
(a) Schedules of insurance against fire, storms, and other hazards and records of premium payments.	Until expiration plus 1 year.
(b) Records of losses and recoveries from insurance companies and supporting papers.	1 year after settlement.
(c) Insurance policies	Until expiration of coverage plus 1 year.
2. Claims records:	
(a) Claim registers, card or book indexes, and other records which record personal injury, fire and other claims against the company, together with all supporting data.	1 year after settlement.
(b) Claims registers, card or book indexes, and other records which record overcharges, damages, and other claims filed by the company against others, together with all supporting data.	Do.
(c) Records giving the details of authorities issued to agents, carriers, and others for participation in freight claims.	3 years.
(d) Reports, statements and other data pertaining to personal injuries or damage to property when not necessary to support claims or vouchers.	Do.
(e) Reports, statements, tracers, and other data pertaining to unclaimed, over, short, damaged, and refused freight, when not necessary to support claims or vouchers.	1 year.
(f) Authorities for disposal of unclaimed, damaged, and refused freight	3 years.
3. Other: (See Note A)	
G. TAXES	
1. Taxes. (Note A)	
H. PURCHASES AND STORES	
1. Purchases and stores. (Note A)	
I. SHIPPING AND AGENCY DOCUMENTS	
1. Bills of lading and releases:	
(a) Consignors' shipping orders, consignors' shipping tickets, and copies of bills of lading freight bills from other carriers and other similar documents furnished the carrier for movement of freight.	1 year.
(b) Shippers' order-to-notify bills of lading taken up and cancelled	Do.
2. Freight waybills:	
(a) Local waybills	Do.

SCHEDULE OF RECORDS AND PERIODS OF RETENTION—Continued

Item and category of records	Retention period
(b) Interline waybills received from and made to other carriers	Do.
(c) Company freight waybills	Do.
(d) Express waybills	Do.
3. Freight bills and settlements:	
(a) Paid copy of freight bill retained to support receipt of freight charges:	
(1) Bus express freight bills provided no claim has been filed	Do.
(2) All other freight bills	Do.
(b) Paid copy of freight bill retained to support payment of freight charges to other carriers:	
(1) Bus express freight bills provided no claim has been filed	Do.
(2) All other freight bills	Do.
(c) Records of unsettled freight bills and supporting papers	1 year after disposition.
(d) Records and reports of correction notices	1 year.
4. Other freight records:	
(a) Records of freight received, forwarded, and delivered	Do.
(b) Notice to consignees of arrival of freight; tender of delivery	Do.
5. Agency records (to include conductors, pursers, stewards, and others):	
(a) Cash books	Do.
(b) Remittance records, bank deposit slips and supporting papers	Do.
(c) Balance sheets and supporting papers	Do.
(d) Statements of corrections in agents' accounts	Do.
(e) Other records and reports pertaining to ticket sales, baggage handled, miscellaneous collections, refunds, adjustments, etc.	Do.
J. Transportation	
1. Records pertaining to transportation of household goods:	
(a) Estimate of charges	1 year.
(b) Order for service	Do.
(c) Vehicle-load manifest	Do.
(d) Descriptive inventory	Do.
2. Records and reports pertaining to operation of marine and floating equipment:	
(a) Ship log	3 years.
(b) Ship articles	Do.
(c) Passenger and room list	Do.
(d) Floatmen's barge, lighter, and escrow captain's reports, demurrage records, towing reports and checks sheets.	2 years.
3. Car distribution and movement-railroads only:	
(a) Records of car allotment and distribution	Do.
(b) Records of cars ordered, furnished and loaded	Do.
(c) Records showing dates and numbers of trains, initials and number of cars, movement of cars, and mileage of cars and trains.	Do.
(d) Report of cars interchanged with connecting lines	Do.
(e) Reports of unfilled car orders	1 year.
(f) Per diem and mileage reports made and received, including reclaims and discrepancy and adjustment reports.	2 years.
(g) Demurrage and storage records	Do.
4. Dispatchers' sheets, registers, and other records pertaining to movement of transportation equipment.	3 years
5. Import and export records including bonded freight and steamship engagements	2 years.
6. Records, reports, orders and tickets pertaining to weighting of freight	3 years.
7. Records of loading and unloading of transportation equipment	2 years.
8. Records pertaining to the diversion or reconsignment of freight, including requests, tracers, and correspondence.	Do.
9. Other: (See Note A)	
K. TARIFFS AND RATES	
1. Official file copies of tariffs, classifications, division sheets, and circulars relative to the transportation of persons or property.	3 years after expiration or cancellation.
2. Authorities and supporting papers for transportation of property or passengers free or at reduced rates.	3 years.
3. Records and documents required by provisions of § 1253.20 to be maintained	2 years.
L. SUPPORTING DATA FOR REPORTS AND STATISTICS	
1. Supporting data for reports filed with the Surface Transportation Board and regulatory bodies:	
(a) Supporting data for annual financial, operating and statistical reports	3 years.
(b) Supporting data for periodical reports of operating revenues, expenses, and income.	Do.
(c) Supporting data for reports detailing use of proceeds from issuance or sale of company securities.	Do.
(d) Supporting data for valuation inventory reports and records. This includes related notes, maps and sketches, underlying engineering, land, and accounting reports, pricing schedules, summary or collection sheets, yearly reports of changes and other miscellaneous data, all relating to the valuation of the company's property by the Surface Transportation Board or other regulatory body.	3 years after disposition of the property.

SCHEDULE OF RECORDS AND PERIODS OF RETENTION—Continued

Item and category of records	Retention period
2. Supporting data for periodical reports of accidents, inspections, tests, hours of service, repairs, freight car locations, etc.	3 years.
3. Supporting data for periodical statistical of operating results or performance by tonnage, mileage, passengers carried, piggyback traffic, commodities, costs, analyses of increases and decreases, or otherwise.	Do.
M. MISCELLANEOUS	
1. Index of records	Until revised as record structure changes.
2. Statement listing records prematurely destroyed or lost	For the remainder of the period as prescribed for records destroyed.

Note A: Records referenced to this note shall be maintained as determined by the designated records supervisory official. Companies should be mindful of the record retention requirements of the Internal Revenue Service, Securities and Exchange Commission, state and local jurisdictions and other regulatory agencies. Companies shall exercise reasonable care in choosing retention periods, and the choice of retention periods shall reflect past experiences, company needs, pending litigation, and regulatory requirements.

[50 FR 10775, Mar. 18, 1985, as amended at 51 FR 22083, June 18, 1986]

PARTS 1240–1259—REPORTS

NOTE: The report forms prescribed by parts 1241–1259 are available upon request from the Office of the Secretary, Surface Transportation Board, Washington, DC 20423.

PART 1241—ANNUAL, SPECIAL, OR PERIODIC REPORTS—CARRIERS SUBJECT TO PART I OF THE INTERSTATE COMMERCE ACT

Sec.
1241.1 Common carriers.
1241.2 Reporting companies defined.
1241.11 Annual reports of class I railroads.
1241.15 Railroad classification survey form.

AUTHORITY: 49 U.S.C. 11145.

NOTE: The report forms prescribed by part 1241 are available upon request from the Office of the Secretary, Surface Transportation Board, Washington, DC 20423.

§ 1241.1 Common carriers.

All common carriers subject to the provisions of Part I of Interstate Commerce Act, as amended, and the owners of all railroads engaged in interstate commerce as therein defined, are hereby required hereafter to file in the office of the Board on or before the 31st day of March in each year, reports covering the period of 12 months ending with the 31st day of December preceding said date, giving the particulars heretofore called for in the annual reports required by the Board of said carriers and owners of railroads.

[32 FR 20456, Dec. 20, 1967]

§ 1241.2 Reporting companies defined.

(a) Every common carrier by rail which is required by the act to regulate commerce to file with the Board any tariff or schedule of rates, fares, or charges, or any concurrence in such tariff or schedule, shall be required to keep operating accounts and to file an annual operating report unless specifically excused by the Board.

(b) Every railway corporation owning but not operating a railway used in interstate or foreign commerce shall be required to file with the Board an annual nonoperating report unless relieved therefrom under the provisions of rule following.

(c) Any actually existing inactive corporation coming within the scope of rule given above may be relieved from the requirements of that rule if it has no outstanding stocks or obligations not held by or for its controlling corporation and the controlling corporation reports for the inactive corporation such facts as the Board may require to be reported.

(d) Reports of a controlling corporation and its controlled corporations must exclude duplications in respect of investments in railway plant and equipment and in respect of securities outstanding.

[32 FR 20456, Dec. 20, 1967, as amended at 46 FR 9115, Jan. 28, 1981]

§ 1241.11 Annual reports of class I railroads.

(a) Commencing with reports for the year ended December 31, 1973, and thereafter, until further order, all line-haul railroad companies of class I, as defined in § 1240.1 of this chapter, subject to section 20, Part I of the Interstate Commerce Act, are required to file annual reports in accordance with Railroad Annual Report Form R–1. Such annual report shall be filed in duplicate in the office of the Office of Economics, Environmental Analysis, and Administration, Surface Transportation Board, Washington, DC 20423, on or before March 31 of the year following the year which is being reported.

(b) [Reserved]

(49 U.S.C. 220, 313, 412 and 10321; 5 U.S.C. 553)

[38 FR 32920, Nov. 29, 1973, as amended at 41 FR 21354, May 25, 1976; 42 FR 1475, Jan. 7, 1977; 44 FR 65402, Nov. 13, 1979; 67 FR 57534, Sept. 11, 2002]

§ 1241.15 Railroad classification survey form.

Commencing with the year ending December 31, 1982, and thereafter, until further order, all railroad companies not required to file an Annual Report (Form R–1) shall compute their adjusted revenues using the railroad revenue deflator formula. If there is a change in a carrier's classification the survey form shall be filed with the Bureau of Accounts, Surface Transportation Board, Washington, DC 20423, on or before March 31.

[48 FR 2544, Jan. 20, 1983]

PART 1242—SEPARATION OF COMMON OPERATING EXPENSES BETWEEN FREIGHT SERVICE AND PASSENGER SERVICE FOR RAILROADS [1]

LIST OF INSTRUCTIONS

Sec.
1242.00 Separation of common operating expenses.

GENERAL

1242.01 Expenses solely related to freight service and passenger service.
1242.02 Common expenses.
1242.03 Made by accounting divisions.
1242.04 Special tests.
1242.05 Operating expense account number notation.
1242.06 Instructions for separation.

OPERATING EXPENSES—WAY AND STRUCTURES

1242.10 Administration—track (account XX–19–02).
1242.11 Administration—bridges and buildings (account XX–19–03).
1242.12 Administration—signals (account XX–19–04).
1242.13 Administration—communications (account XX–19–05).
1242.14 Administration—other (account XX–19–06).
1242.15 Roadway, tunnels and subways, bridges and culverts, ties, rails, other track material, ballast, track laying and surfacing, and road property damaged (accounts XX–17–10 to XX–18–12, inclusive; 21–17–13 to 21–18–16, inclusive, XX–17–17, XX–18–17, XX–17–48, and XX– 18–48).
1242.16 Road property damaged—other (account XX–19–48).
1242.17 Signals and interlockers (accounts XX–17–19 and XX–18–19).
1242.18 Communication systems (account XX–19–20).
1242.19 Electric power systems (account XX–19–21).
1242.20 Highway grade crossings (accounts XX–17–22 and XX–18–22).
1242.21 Station and office buildings (account XX–19–23).
1242.22 Shop buildings—locomotives (account XX–19–24).
1242.23 Shop buildings—freight cars (account XX–13–25).
1242.24 Shop buildings—other equipment (account XX–19–26).
1242.25 Locomotive servicing facilities (account XX–19–27).
1242.26 Miscellaneous buildings and structures (account XX–19–28).
1242.27 Coal marine terminals, ore marine terminals, TOFC/COFC terminals, other marine terminals, motor vehicle loading and distribution facilities, and facilities for other specialized service operations (accounts XX–13–29 to XX–13–35, inclusive).
1242.28 Roadway machines, small tools and supplies, and snow removal (accounts XX–19–36 to XX–19–38, inclusive).
1242.29 Fringe benefits (accounts 12–17–00, 12–18–00, 12–19–00).
1242.30 Dismantling retired road property and depreciation (accounts XX–17–39, XX–18–39, XX–19–39, 62–17–00, 62–18–00, and 62–19–00).

[1] The accounts mentioned in this part refer to and agree with part 1201 of this chapter.

1242.31 Lease rentals—debit and credit and other rents—debit and credit (accounts 31–17–00, 31–18–00, 31–19–00, 32–17–00, 32–18–00, 32–19–00, 35–17–00, 35–18–00, 35–19–00, 36–17–00, 36–18–00, and 36–19–00).
1242.32 Joint facility rents—debit and credit and joint facility—debit and credit (accounts 33–17–00, 33–18–00, 33–19–00, 34–17–00, 34–18–00, 34–19–00, 37–17–00, 37–18–00, 37–19–00, 38–17–00, 38–18–00, and 38–19–00).
1242.33 Other expenses and casualties and insurance (accounts XX–17–99, XX–18–99, XX–19–99, 50–17–00, 50–18–00, and 50–19–00).

OPERATING EXPENSES—EQUIPMENT

Locomotives

1242.34 Administration (account XX–26–01).
1242.35 Repair and maintenance (account XX–26–41).
1242.36 Machinery repair and equipment damaged (accounts XX–26–40 and XX–26–48).
1242.37 Dismantling retired property and depreciation (accounts XX–26–39 and 62–26–00).
1242.38 Fringe benefits (account 12–26–00).
1242.39 Lease rentals—debit and credit, other rents—debit and credit, and repairs billed to others (accounts 31–26–00, 32–26–00, 35–26–00, 36–26–00, and 40–26–98).
1242.40 Joint facility rents—debit and credit, and joint facility—debit and credit (accounts 33–26–00, 34–26–00, 37–26–00, and 38–26–00).
1242.41 Other and casualties and insurance (accounts XX–26–99 and 50–26–00).

Freight Cars

1242.42 Administration, repair and maintenance, machinery repair, equipment damaged, dismantling retired property, fringe benefits, other casualties and insurance, lease rentals, joint facility rents, other rents, depreciation, joint facility, repairs billed to others, and other (accounts XX–22–01, XX–22–42, XX–22–40, XX–22–48, XX–22–39, 12–22–00, 50–22–00, 31–22–00 to 38–22–00 inclusive, 62–22–00, 40–22–98, and XX–22–99).

Other Equipment

1242.43 Administration (account XX–27–01).
1242.44 Trucks, trailers, and containers (revenue service) and floating equipment (revenue service) (accounts XX–23–43 and XX–23–44).
1242.45 Passenger and other revenue equipment (account XX–27–45).
1242.46 Computers and data processing equipment (account XX–27–46).
1242.47 Machinery (account XX–27–40).
1242.48 Work and other non-revenue equipment (account XX–27–47).
1242.49 Equipment damaged (account XX–27–48).
1242.50 Fringe benefits (account 12–27–00).
1242.51 Dismantling retired property and depreciation (accounts XX–27–39 and 62–27–00).
1242.52 Lease rentals—debit and credit, other rents—debit and credit, repairs billed to others—credit (accounts 31–27–00, 32–27–00, 35–27–00, 36–27–00, and 40–27–98).
1242.53 Joint facility rents—debit and credit and joint facility—debit and credit (accounts 33–27–00, 34–27–00, 37–27–00, and 38–27–00).
1242.54 Other and casualties and insurance (accounts XX–27–99 and 50–27–00).

OPERATING EXPENSES—TRANSPORTATION

Train Operations

1242.55 Administration (account XX–51–01).
1242.56 Engine crews and train crews (accounts XX–51–56 and XX–51–57).
1242.57 Dispatching trains (account XX–51–58).
1242.58 Operating signals and interlockers, operating drawbridges, highway crossing protection (accounts XX–51–59, XX–51–60, and XX–51–61).
1242.59 Train inspection and lubrication (account XX–51–62).
1242.60 Locomotive fuel, electric power purchased/produced for motive power, and servicing locomotives (accounts XX–51–67, XX–51–68, and XX–51–69).
1242.61 Freight lost or damaged—solely related (to train) (account 51–51–00).
1242.62 Clearing wrecks (account XX–51–63).
1242.63 Fringe benefits (account 12–51–00).
1242.64 Joint facility—debit and credit (accounts 37–51–00 and 38–51–00).
1242.65 Other and casualties and insurance (accounts XX–51–99 and 50–51–00).

Yard Operations

1242.66 Administration (account XX–52–01).
1242.67 Switch crews; controlling operations; yard and terminal clerical; locomotive fuel; electric power purchased/produced for motive power; operating switches, signals, retarders, and humps; and servicing locomotives (accounts XX–52–64, XX–52–65, XX–52–66, XX–52–59, XX–52–67, XX–52–68, and XX–52–69).
1242.68 Freight lost or damaged—solely related (to yard) (account 51–52–00).
1242.69 Clearing wrecks (account XX–52–63).
1242.70 Fringe benefits (account 12–52–00).
1242.71 Joint facility—debit and credit (accounts 37–52–00 and 38–52–00).
1242.72 Other and casualties and insurance (accounts XX–52–99 and 50–52–00).

Train and Yard Operations Common

1242.73 Cleaning car interiors and freight lost and damaged—all other (accounts XX–53–70 and 51–53–00).

1242.74 Adjusting and transferring loads, and car loading devices and grain doors (accounts XX–33–71 and XX–33–72).
1242.75 Fringe benefits (account 12–53–00).

Specialized Service Operations

1242.76 Administration; pickup and delivery, marine line haul and rail substitute service; loading, unloading and local marine; protective services; freight lost or damaged—solely related; fringe benefits; casualties and insurance; joint facility, and other (accounts XX–34–01, XX–34–73, XX–34–74, XX–34–75, 51–34–00, 12–34–00, 50–34–00, 37–34–00, 38–34–00, and XX–34–99).

Administrative Support Operations

1242.77 Administration (account XX–55–01).
1242.78 Employees performing clerical and accounting functions, and loss and damage claims processing (accounts XX–55–76 and XX–55–78).
1242.79 Communication systems operations (account XX–55–77).
1242.80 Fringe benefits (account 12–55–00).
1242.81 Joint facility—debit and credit (accounts 37–55–00 and 38–55–00).
1242.82 Other and casualties and insurance (accounts XX–55–99 and 50–55–00).

OPERATING EXPENSES

General and Administration

1242.83 Officers—general superintendence; accounting, auditing and finance; management services and data processing; personnel and labor relations; legal and secretarial; research and development; writedown of uncollectible accounts; property taxes; other taxes except on corporate income or payrolls; and other (accounts XX–63–01, XX–63–86, XX–63–87, XX–63–91, XX–63–92, XX–63–94, 63–63–00, 64–63–00, 65–63–00, and XX–63–99).
1242.84 Marketing, sales, and public relations and advertising (accounts XX–63–88, XX–63–89, and XX–63–93).
1242.85 Fringe benefits (account 12–63–00).
1242.86 Industrial development (account XX–61–90).
1242.87 Joint facility—debit and credit and casualties and insurance (accounts 37–63–00, 38–63–00, and 50–63–00).

AUTHORITY: 49 U.S.C. 721, 11142.

SOURCE: 43 FR 7637, Feb. 24, 1978, unless otherwise noted.

NOTE: The report forms prescribed by part 1242 are available upon request from the Office of the Secretary, Surface Transportation Board, Washington, DC 20423.

LIST OF INSTRUCTIONS

§ 1242.00 Separation of common operating expenses.

(a) Commencing with annual reports for the year 1978 or for any portion thereof until further order, all class I railroad companies including class I switching and terminal companies subject to section 20 of the Interstate Commerce Act as amended shall separate operating expenses common to both freight service and passenger service in accordance with the regulation in this part.

(b) The carrier shall maintain records supporting its common operating expense apportionments to freight and passenger services. The carrier shall report common expense apportionments to the Board as required.

[43 FR 7637, Feb. 24, 1978, as amended at 67 FR 57534, Sept. 11, 2002]

GENERAL

§ 1242.01 Expenses solely related to freight service and passenger service.

The Uniform System of Accounts for Railroad Companies (49 CFR part 1201) requires that carriers assign directly to freight service or to passenger service, including allied services, the expenses, taxes, and purchased services incurred solely for the benefit of either freight or passenger service.

§ 1242.02 Common expenses.

The Uniform System of Accounts also requires that carriers assign to common expense accounts the remaining expenses, taxes and purchased services which are not solely related to either freight or passenger service. The following instructions govern the separation of common expense accounts between freight and passenger services.

§ 1242.03 Made by accounting divisions.

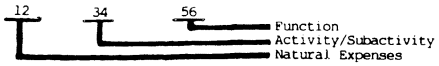
The separation shall be made by accounting divisions, where such divisions are maintained, and the aggregate of the accounting divisions reported for the quarter and for the year.

§ 1242.04 Special tests.

When the separation of common expense accounts between freight and passenger services is based upon special tests or service unit factors, such tests shall be made at sufficiently frequent intervals to represent actual operating conditions. The service unit factors used are those of the reporting period.

§ 1242.05 Operating expense account number notation.

(a) The operating expense account numbers consist of a six-digit coding structure divided into three two-digit groups. The first two-digit group denotes natural expenses; the second group denotes activities/subactivities for freight, passenger or common service; and the third group signifies applicable function assignment.



(b) For reporting purposes, four natural expense categories are utilized. The categories are: salaries and wages (account 11-XX-XX); material, tools, supplies, fuels and lubricants (account 21-XX-XX); purchased services (accounts 31-XX-XX to 41-XX-XX, inclusive); and general (accounts 61-XX-XX to 65-XX-XX, inclusive, 51-XX-XX, 52-XX-XX, 53-XX-XX and 12-XX-XX).

(c) The symbol ''XX'' in the first two-digit group is used throughout the separation instructions to denote more than one natural expense associated with the same activity/subactivity-function account structure. For reporting purposes, the natural expense account numbers represented by ''XX'' include:

11—Salaries and wages;
21—Materials, tools, supplies, fuels, and lubricants;
30 or 41—Purchased services:
30—Summation of certain purchased service accounts;
41—Other purchased services;
61—General.

(d) The ''30'' natural expense designation indicates a summation of specific purchased service accounts that are reported in total rather than individually. The specific accounts under the way and structures activity except for administration functions include 39–1X–XX, repairs billed by others, Dr.; 40–1X–XX, repairs billed to others, cr.; and 41–1X–XX, other purchased services. For the equipment activity excluding administration functions, the ''30'' designation denotes the summation of 39–2X–XX and 41–2X–XX.

(e) The ''41'' natural expense designation (other purchased services) is the purchased service category of the ''XX'' code for the following:

(1) Way and structures activity administration—function accounts,

(2) Equipment activity administration—function accounts,

(3) Transportation activity expense accounts, and

(4) General and administration activity expense accounts.

(f) The ''61'' general natural expense designation is applicable to all accounts with the ''XX'' symbol except transportation, train and yards accounts (XX–(33/43/53)–XX).

(g) The natural expense account number ''50'' is used throughout the separation instructions to indicate the summation of accounts 52-XX-XX, Other casualties, and 53-XX-XX, Insurance, that are reported as one item, ''Casualties and Insurance,'' (50-XX-XX).

(h) The number ''98'' in the function account group (last two digits) is used in the separation rules to designate the summation of a natural expense consisting of more than one functional assignment that is reported as one item. This includes Repairs Billed to Others, Cr.—Equipment (40–2X–XX). For example, the locomotive subactivity contains accounts 40–(21/24/26)–40, 40–(21/24/26)–41, and 40–(21/24/26)–48 which are treated as 40–(21/24/26)–98.

§ 1242.06 Instructions for separation.

(a) Certain instructions for separating common expense accounts (dependent accounts) between freight and passenger services base the allocation on the proportional freight/passenger separation of other common expense accounts (independent accounts). The dependent account is frequently identified by an ''XX'' symbol in the natural expense position (first two digits) with corresponding independent accounts also identified by the ''XX'' natural expense symbol. Unless otherwise stated,

the applicable natural expense associated with ''XX'' symbol shall be the same for both the dependent and independent accounts.

(b) To illustrate, § 1242.10 provides instructions for separating common Way and Structures, Administration—Track accounts (dependent accounts) designated by XX–19–02. The separation is based on certain other common Way and Structures accounts including Roadway—Running, XX–17–10, and Roadway—Switching, XX–18–10.

(c) As § 1242.05 states, the ''XX'' symbol denotes the following natural expenses for Way and Structures administration functions:

11—Salaries and wages,
21—Materials, tools, supplies, fuels, and lubricants,
41—Other purchased services, and
61—General.

These natural expenses shall be individually applied to the separation rules in § 1242.10. In each case, the independent accounts providing the basis for freight/passenger separation of the dependent account shall have the same natural expense designation. For example, the basis of separating account 11–19–02, Salaries and Wages, Way and Structures, Administration—Track, would be based on certain independent accounts including 11–17/18–10, Salaries and Wages, Way and Structures, Running/Switching, Repair and Maintenance, Roadway.

OPERATING EXPENSES—WAY AND STRUCTURES

§ 1242.10 Administration—track (account XX–19–02).

Separate common administration—track expenses between freight and passenger services in the same proportion as the common expenses of the following accounts are separated between freight and passenger services:

Roadway:
  Running (XX–17–10)
  Switching (XX–18–10)
Ties:
  Running (21–17–13)
  Switching (21–18–13)
Rails:
  Running (21–17–14)
  Switching (21–18–14)
Other Track Materials:
  Running (21–17–15)
  Switching (21–18–15)
Ballast:
  Running (21–17–16)
  Switching (21–18–16)
Track Laying and Surfacing:
  Running (XX–17–17)
  Switching (XX–18–17)
Road Property Damaged:
  Running (XX–17–48)
  Switching (XX–18–48)
  Other (XX–19–48)
Dismantling Retired Road Property:
  Running (XX–17–39)
  Switching (XX–18–39)
  Other (XX–19–39)

§ 1242.11 Administration—bridges and buildings (account XX–19–03).

Separate common administration—bridges and buildings expenses between freight and passenger services in the same proportion as the common expenses of the following accounts are separated between freight and passenger services:

Tunnels and Subways:
  Running (XX–17–11)
  Switching (XX–18–11)
Bridges and Culverts:
  Running (XX–17–12)
  Switching (XX–18–12)
  Electric Power Systems (XX–19–21)
  Station and Office Buildings (XX–19–23)
Shop Buildings:
  Locomotives (XX–19–24)
  Other Equipment (XX–19–26)
  Locomotive Servicing Facilities (XX–19–27)
  Miscellaneous Buildings and Structures (XX–19–28)

§ 1242.12 Administration—signals (account XX–19–04).

Separate common administration—signals expenses between freight and passenger services in the same proportion as the common expenses of the following accounts are separated between freight and passenger services:

Signals and Interlockers:
  Running (XX–17–19)
  Switching (XX–18–19)

§ 1242.13 Administration—communications (account XX–19–05).

Separate common administration—communications expenses between freight and passenger services in the same proportion as the common expenses of the following accounts are separated between freight and passenger services:

Communications Systems (XX–19–20)

§ 1242.14 Administration—other (account XX–19–06).

Separate common administration—other expenses between freight and passenger services in the same proportion as the common expenses of the following accounts are separated between freight and passenger services:

Administration:
- Track (XX–19–02)
- Bridges and Buildings (XX–19–03)
- Signals (XX–19–04)
- Communications (XX–19–05)

§ 1242.15 Roadway, tunnels and subways, bridges and culverts, ties, rails, other track material, ballast, track laying and surfacing, and road property damaged (accounts XX–17–10 to XX–18–12 inclusive, 21–17–13 to 21–18–16 inclusive, XX–17–17, XX–18–17, XX–17–48, and XX–18–48).

The expenses for running and switching subactivities shall be separated between freight service and passenger service as follows:

(a) *Switching tracks.* (1) Yard: Expenses for yards used in common by freight and passenger services shall be apportioned on the basis of the respective switching locomotive unit-hours in the common yards.

(2) Way: Where the tracks at any one location are used in common by both freight and passenger services, expenses may be assigned to that service which makes the dominant use of them.

(b) *Running tracks.* The expenses of tracks used in common by both services shall be apportioned on the basis of gross ton-miles (including locomotive ton-miles) handled over these tracks in the respective services.

§ 1242.16 Road property damaged—other (account XX–19–48).

Separate common expenses in proportion to the total common expenses assigned to freight/passenger from the following Way and Structures accounts:

Road Property Damaged—Running (XX–17–48)

Road Property Damaged—Switching (XX–18–48)

§ 1242.17 Signals and interlockers (accounts XX–17–19 and XX–18–19).

Separate common expenses on the basis of the total train-hours in running service, and/or the yard-switching plus train switching hours in the switching service over the tracks on which the common signals and interlockers are used.

§ 1242.18 Communication systems (account XX–19–20).

Separate common expenses on the basis of the common expense separation in:

Way and Structures—Administration—Track, Bridges and Culverts, and Signals (accounts XX–19–02 to XX–19–04, inclusive)

Equipment—Administration—Locomotives and Other Equipment (accounts XX–26–01 and XX–27–01)

Transportation—Administration—Train, Yard, and Administrative Support (accounts XX–51–01, XX–52–01, and XX–55–01)

Dispatching Trains (Account XX–51–58)

§ 1242.19 Electric power systems (account XX–19–21).

Separate common expenses on basis of common expenses of electric power purchased or produced for motive power (accounts XX–51–68 and XX–52–68).

§ 1242.20 Highway grade crossings (accounts XX–17–22 and XX–18–22).

Separate running and switching common expenses according to distribution of the running and switching portions only of common expense accounts listed in § 1242.10, Administration—Track (account XX–19–02).

§ 1242.21 Station and office buildings (account XX–19–23).

If the sum of the direct freight and the direct passenger expenses is more than 50 percent of the total charges to this account for an accounting division, separate the common expenses on the basis of the directly assigned expenses in this account for the accounting division involved. If the sum of the direct freight and the direct passenger expenses does not aggregate to more than 50 percent of the total charges for an accounting division, the common expenses should be separated on the basis of special test. Where common

expenses exist in an accounting division but the direct expenses are applicable to only one service, i.e., freight or passenger, the common expenses shall be separated on the basis of a special test. If the accounting is performed on a system basis rather than by accounting divisions, the common expenses shall be separated on the basis of a special study.

§ 1242.22 Shop buildings—locomotives (account XX–19–24).

Separate common expenses according to distribution of common expenses in the following accounts:

Machinery Repair (XX–26–40)
Locomotive—Repair and Maintenance (XX–26–41)

§ 1242.23 Shop buildings—freight cars (account XX–13–25).

These accounts pertain solely to freight service and contain no common expense for separation herein.

§ 1242.24 Shop buildings—other equipment (account XX–19–26).

Assign directly to freight (or as particular facts suggest otherwise).

§ 1242.25 Locomotive servicing facilities (account XX–19–27).

Separate common expenses according to distribution of common expenses in the following accounts:

Locomotive Fuel (XX–51–67 and XX–52–67)
Electric Power Purchased or Produced for Motive Power (XX–51–68 and XX–52–68)
Servicing Locomotives (XX–51–69 and XX–52–69)

§ 1242.26 Miscellaneous building and structures (account XX–19–28).

Separate common expenses as specific facts indicate or according to distribution of common expenses listed in § 1242.10, Administration-Track (account XX–19–02).

§ 1242.27 Coal marine terminals, ore marine terminals, TOFC/COFC terminals, other marine terminals, motor vehicle loading and distribution facilities, and facilities for other specialized service operations (accounts XX–13–29 to XX–13–35, inclusive).

These accounts pertain solely to freight service and contain no common expenses for separation herein.

§ 1242.28 Roadway machines, small tools and supplies, and snow removal (accounts XX–19–36 to XX–19–38, inclusive).

Separate common expenses according to distribution of common expenses listed in § 1242.10, Administration—Track (account XX–19–02).

§ 1242.29 Fringe benefits (accounts 12–17–00, 12–18–00, and 12–19–00).

Separate common expenses in the running subactivity in the same proportion as the salaries and wages, way and structures, common expenses in all accounts with a designated running subactivity. Separate common expenses in the switching subactivity in the same proportion as the salaries and wages, way and structure, common expense accounts with a designated switching activity. Separate common expenses in the other subactivity in the same proportion as the salaries and wages, way and structures, common expenses in all accounts with a designated other subactivity.

§ 1242.30 Dismantling retired road property and depreciation (accounts XX–17–39, XX–18–39, XX–19–39, 62–17–00, 62–18–00, and 62–19–00).

Separate common expenses in each account for each subactivity (running, switching and other) in proportion to the separation of common repair and maintenance expenses associated with the particular common properties depreciated and/or dismantled.

§ 1242.31 Lease rentals—debit and credit and other rents—debit and credit (accounts 31–17–00, 31–18–00, 31–19–00, 32–17–00, 32–18–00, 32–19–00, 35–17–00, 35–18–00, 35–19–00, 36–17–00, 36–18–00, and 36–19–00).

(a) Separate common debit expense accounts in each subactivity (running,

switching and other) in proportion to the separation of solely related freight or passenger service in each account. If there are no solely related expenses in an account or if the solely related expenses are assignable entirely to freight or to passenger service, separate common debit expense accounts on the basis of the same percentages calculated for the separation of administration—other (account XX–19–06).

(b) Separate all common credit expense accounts on the same percentages calculated for the separation of administration—other (account XX–19–06).

§ 1242.32 Joint facility rents—debit and credit and joint facility—debit and credit (accounts 33–17–00, 33–18–00, 33–19–00, 34–17–00, 34–18–00, 34–19–00, 37–17–00, 37–18–00, 37–19–00, 38–17–00, 38–18–00, and 38–19–00).

(a) Solely related (freight or passenger service) debit expense accounts in each subactivity (running, switching and other) shall be assigned according to the use made of each facility by the reporting carrier, regardless of the use by other carriers. Common debit expenses shall be separated on the basis of the percentage separations of the solely related expenses in each individual account. If there are no solely related expenses or if the solely related expenses are assigned entirely to freight or to passenger service, separate common debit expenses on the same percentages calculated for the separation of administrative—other (account XX–19–06).

(b) Separate all common credit expense accounts on the same percentages calculated for the separation of administration—other (account XX–19–06).

§ 1242.33 Other expenses and casualties and insurance (accounts XX–17–99, XX–18–99, XX–19–99, 50–17–00, 50–18–00, and 50–19–00).

Separate common expenses on the basis of the percentages calculated for the separation of administrative—other (account XX–19–06).

OPERATING EXPENSES—EQUIPMENT

locomotives

§ 1242.34 Administration (account XX–26–01).

Separate common expenses according to distribution of common expenses in the following accounts:

Repair and Maintenance (XX–26–41)
Machinery Repair (XX–26–40)
Equipment Damage (XX–26–48)
Dismantling Retired Property (XX–26–39)

§ 1242.35 Repair and maintenance (account XX–26–41).

(a) Where the carrier maintains records of the repairs by individual locomotive units or classes of locomotive units:

(1) If individual locomotive units or classes of locomotive units are used exclusively in road-freight, road-passenger, yard-freight, or yard-passenger service, the separation shall be actual.

(2) If individual locomotive units or classes or locomotive units are used interchangeably (common) in road-freight (including train-switching), road passenger (including train switching), yard-freight or yard-passenger service, separate the heavy shop repairs between these services on the basis of run-out unit miles of individual locomotive units or classes of locomotive units since the previous shopping; and separate the cost of running repairs between such services on the basis of the miles run by the individual locomotive unit or class of locomotive unit in each service during the accounting period for which the separation is being made.

(b) Where the carrier maintains records of heavy shop repair costs by individual locomotive units or classes of locomotive units, but does not maintain records of the cost of running repairs by individual locomotive units:

(1) The heavy shop repairs shall be separated as indicated in paragraph (a) of this section.

(2) The common expenses of running repairs shall be separated among road-freight (including train switching), road-passenger (including train switching), yard-freight and yard-passenger services on the basis of locomotive unit miles or locomotive ton-miles for the

accounting period for which the separation is being made.

(c) Where the carrier does not maintain records of either heavy shop repairs or running repairs by individual locomotive units or classes of locomotive units: The expenses shall be separated among road-freight service (including train-switching), road-passenger service (including train switching), yard freight, and yard-passenger services, on the basis of locomotive unit-miles or locomotive ton-miles for the accounting period for which the separation is being made.

§ 1242.36 Machinery repair and equipment damaged (accounts XX–26–40 and XX–26–48).

Separate common expenses according to separation of common expenses in repair and maintenance (account XX–26–41).

§ 1242.37 Dismantling retired property and depreciation (accounts XX–26–39 and 62–26–00).

Separate common expenses in each account in proportion to the separation of common repair and maintenance expenses associated with the particular common properties depreciated and/or dismantled.

§ 1242.38 Fringe benefits (account 12–26–00).

Separate common expenses in proportion to the split of common salaries and wages in administration, locomotive repair and maintenance, machinery repair, equipment damaged, and dismantling retired road property (accounts 11–26–01, 11–26–41, 11–26–40, 11–26–48, and 11–26–39).

§ 1242.39 Lease rentals—debit and credit, other rents—debit and credit, and repairs billed to others (accounts 31–26–00, 32–26–00, 35–26–00, 36–26–00 and 40–26–98).

(a) Separate common debit expense accounts in proportion to the assignment of solely related freight or passenger service in each individual debit account. If there are no solely related expenses or if the solely related expenses are assigned entirely to freight or passenger service, separate common debit expense accounts on the same percentage basis calculated for the separation of administration (account XX–26–01).

(b) Separate all common credit expense accounts on the same percentages calculated for the separation of administration (account XX–26–01).

§ 1242.40 Joint facility rents—debit and credit, and joint facility—debit and credit (accounts 33–26–00, 34–26–00, 37–26–00 and 38–26–00).

(a) Solely related freight and passenger debit expense accounts shall be assigned according to the use made of each facility by the reporting carrier, regardless of the use by other carriers. Common debit expenses shall be separated on the basis of the percentage separation of the solely related expenses; or if the solely related expenses are assigned entirely to freight or passenger service, separate common expenses on the same percentages calculated for the separation of administration (account XX–26–01).

(b) Separate all common credit expense accounts on the same percentages calculated for the separation of administration (account XX–26–01).

§ 1242.41 Other and casualties and insurance (accounts XX–26–99 and 50–26–00).

Separate common expenses on the basis of percentages calculated for the separation of administration (account XX–26–01).

FREIGHT CARS

§ 1242.42 Administration, repair and maintenance, machinery repair, equipment damaged, dismantling retired property, fringe benefits, other casualties and insurance, lease rentals, joint facility rents, other rents, depreciation, joint facility, repairs billed to others, and other (accounts XX–22–01, XX–22–42, XX–22–40, XX–22–48, XX–22–39, 12–22–00, 50–22–00, 31–22–00 to 38–22–00 inclusive, 62–22–00, 40–22–98 and XX–22–99).

These accounts pertain solely to freight service and contain no common expenses for separation herein.

OTHER EQUIPMENT

§ 1242.43 Administration (account XX–27–01).

Separate common expenses according to freight/passenger separation of the following accounts:

Passenger and Other Revenue Equipment (XX–27–45)

Work and Other Non-Revenue Equipment (XX–27–47)

§ 1242.44 Trucks, trailers, and containers (revenue service) and floating equipment (revenue service) (accounts XX–23–43 and XX–23–44).

These accounts pertain solely to freight service and contain no common expenses for separation herein.

§ 1242.45 Passenger and other revenue equipment (account XX–27–45).

Separate as particular facts suggest.

§ 1242.46 Computers and data processing equipment (account XX–27–46).

If the sum of the direct freight and the direct passenger expenses is more than 50 percent of the total charges to this account for an accounting division, separate the common expenses on the basis of the directly assigned expenses in this account for the accounting division involved. If the sum of the direct freight and the direct passenger expenses does not aggregate 50 percent of the total charges for an accounting division, the common expenses shall be separated on the basis of a special test. If common expenses exist in an accounting division but the direct expenses are applicable to only one service, i.e., freight or passenger, the common expenses shall be separated on the basis of a special test. If the accounting is performed on a system basis rather than by accounting divisions, follow the intent of the above instructions.

§ 1242.47 Machinery (account XX–27–40).

Separate common expenses on the basis of the freight/passenger separation of administration (account XX–27–01).

§ 1242.48 Work and other non-revenue equipment (account XX–27–47).

Separate common expenses according to distribution of common expenses in Way and structures—administration—other (account XX–19–06).

§ 1242.49 Equipment damaged (account XX–27–48).

Separate common expenses according to distribution of common expenses in machinery, passenger and other revenue equipment, computer and data processing equipment and work and other non-revenue equipment accounts (accounts XX–27–40, XX–27–45, XX–27–46, and XX–27–47).

§ 1242.50 Fringe benefits (account 12–27–00).

Separate common expenses in proportion to the percentage separation of common salaries and wages in administration (account XX–27–01).

§ 1242.51 Dismantling retired property and depreciation (accounts XX–27–39 and 62–27–00).

Separate common expenses in proportion to the separation of common repair and maintenance expenses associated with the particular common property depreciated and/or dismantled.

§ 1242.52 Lease rentals—debit and credit, other rents—debit and credit, repairs billed to others—credit (accounts 31–27–00, 32–27–00, 35–27–00, 36–27–00, and 40–27–98).

(a) Separate common debit expense accounts in proportion to the separation of solely related (freight or passenger service) in each individual account. If there are no solely related expenses or if the solely related expenses are assignable entirely to freight or passenger service, separate common debit expense accounts on the same percentages calculated for the separation of administration (account XX–27–01).

(b) Separate common credit expense accounts on the basis of the same percentages calculated for the separation of administration (account XX–27–01).

§ 1242.53 Joint facility rents—debit and credit and joint facility—debit and credit (accounts 33–27–00, 34–27–00, 37–27–00 and 38–27–00).

(a) Solely related freight and passenger service debit expense accounts shall be assigned according to the use made of each facility by the reporting carrier, regardless of the use made of the facility by other carriers. Common debit expense accounts shall be separated on the basis of the percentage separation of the solely related expenses in each individual account. If there are no solely related expenses or if the solely related expenses are assigned entirely to freight or passenger service, separate common expenses on the same percentages calculated for the separation of administration (account XX–27–01).

(b) Separate all common credit expense accounts on the basis of the same percentages calculated for the separation of administration (account XX–27–01).

§ 1242.54 Other and casualties and insurance (accounts XX–27–99 and 50–27–00).

Separate common expenses on the basis of the percentages calculated for the separation of administration (account XX–27–01).

OPERATING EXPENSES—TRANSPORTATION

train operations

§ 1242.55 Administration (account XX–51–01).

Separate common expenses according to distribution of common expenses in the following accounts:

Engine Crews (XX–51–56)
Train Crews (XX–51–57)
Dispatching Trains (XX–51–58)
Operating Signals and Interlockers (XX–51–59)
Operating Drawbridges (XX–51–60)
Highway Crossing Protection (XX–51–61)
Train Inspection and Lubrication (XX–51–62)
Locomotive Fuel (XX–51–67)
Electric Power Purchased/Produced for Motive Power (XX–51–68)
Servicing Locomotives (XX–51–69)
Clearing Wrecks (XX–51–63)

§ 1242.56 Engine crews and train crews (accounts XX–51–56 and XX–51–57).

Separate common expenses on the basis of direct assignment or if there are no directly assignable expenses, separate on the basis of train hours, including train switching hours.

§ 1242.57 Dispatching trains (account XX–51–58).

Separate common expenses on the basis of train hours, including train switching hours.

§ 1242.58 Operating signals and interlockers, operating drawbridges, highway crossing protection (accounts XX–51–59, XX–51–60 and XX–51–61).

Separate common expenses on the basis of total train hours (including train switching hours) of the particular common operating divisions or track segment on which the common signals, interlockers, drawbridges and highway crossings are located.

§ 1242.59 Train inspection and lubrication (account XX–51–62).

Separate common expenses on basis of directly assigned expenses. If there are no directly assignable expenses, separate on the basis of train miles.

§ 1242.60 Locomotive fuel, electric power purchased/produced for motive power and servicing locomotives (accounts XX–51–67, XX–51–68 and XX–51–69).

Separate common expenses in each account on basis of direct expenses. If there are no direct expenses, separate on the basis of train hours and way-switching service hours.

§ 1242.61 Freight lost or damaged—solely related (to train) (account 51–51–00).

Separate common expenses on the basis of proportion of the solely related expenses assigned to freight and passenger services or on the basis of a special study.

§ 1242.62 Clearing wrecks (account XX–51–63).

Separate common expenses according to specific circumstances.

§ 1242.63 Fringe benefits (account 12–51–00).

Separate common expenses in proportion to the percentage separation calculated for the salaries and wages account—administration (account 11–51–01).

§ 1242.64 Joint facility—debit and credit (accounts 37–51–00 and 38–51–00).

(a) Solely related freight and passenger service debit expense accounts shall be assigned according to the use made of each facility by the reporting carrier, regardless of the use made of the facility by other carriers. Common debit expense accounts shall be separated on the basis of the percentage separation of the solely related expenses. If there are no solely related expenses or if the solely related expenses are assigned entirely to either freight or passenger service, separate common expenses on the same percentages calculated for the separation of administration (account XX–51–01).

(b) Separate common credit expense accounts on the basis of the percentages calculated for the separation of administration (account XX–51–01).

§ 1242.65 Other and casualties and insurance (accounts XX–51–99 and 50–51–00).

Separate common expenses on the basis of the percentages calculated for the separation of administration (account XX–51–01).

YARD OPERATIONS

§ 1242.66 Administration (account XX–52–01).

Separate common expenses according to distribution of common expenses in the following accounts:

Switch Cews (XX–52–64)
Controlling Operations (XX–52–65)
Yard and Terminal Clerical (XX–52–66)
Operating Switches, Signals, Retarders and Humps (XX–52–59)
Locomotive Fuel (XX–52–67)
Servicing Locomotives (XX–52–69)
Electric Power Purchased/Produced for Motive Power (XX–52–68)
Clearing Wrecks (XX–52–63)

§ 1242.67 Switch crews; controlling operations; yard and terminal clerical; locomotive fuel; electric power purchased/produced for motive power; operating switches signals, retarders, and humps; and servicing locomotives (accounts XX–52–64, XX–52–65, XX–52–66, XX–52–59, XX–52–67, XX–52–68 and XX–52–69).

Separate common expenses on the basis of the distribution of freight and passenger yard-switching hours in those yards common to both freight and passenger services.

§ 1242.68 Freight lost or damaged—solely related (to yard) (account 51–52–00).

Separate common expenses on the basis of the solely related freight and passenger expenses or on the basis of a special study.

§ 1242.69 Clearing wrecks (account XX–52–63).

Separate common expenses according to specific circumstances.

§ 1242.70 Fringe benefits (account 12–52–00).

Separate common expenses in proportion to the percentage separation calculated for the salaries and wages administration account (account 11–52–01).

§ 1242.71 Joint facility—debit and credit (accounts 37–52–00 and 38–52–00).

(a) Solely related freight and passenger service debit expenses accounts shall be assigned according to the use made of each facility by the reporting carriers, regardless of the use made of the facility by other carriers. Common debit expenses shall be separated on the basis of the percentage separation of the solely related expenses. If there are no solely related expenses or if the solely related expenses are assigned entirely to freight or passenger service, separate common expenses on the same percentages calculated for the separation of administration (account XX–52–01).

(b) Separate common credit expense accounts on the basis of the percentages calculated for the separation of administration (account XX–51–01).

§ 1242.72 Other and casualties and insurance (accounts XX–52–99 and 50–52–00).

Separate common expenses on the basis of the percentages calculated for the separation of administration (account XX–52–01).

TRAIN AND YARD OPERATIONS COMMON

§ 1242.73 Cleaning car interiors and freight lost and damaged—all other (accounts XX–53–70 and 51–53–00).

Separate common expenses on basis of solely related freight and passenger expenses or special study.

§ 1242.74 Adjusting and transferring loads, and car loading devices and grain doors (accounts XX–33–71 and XX–33–72).

These accounts pertain solely to freight service and contain no common expenses for separation herein.

§ 1242.75 Fringe benefits (account 12–53–00).

Separate common expenses in proportion to the freight/passenger separation calculated for the salaries and wages—cleaning car interiors common account (account 11–53–70).

SPECIALIZED SERVICE OPERATIONS

§ 1242.76 Administration; pickup and delivery, marine line haul, and rail substitute service; loading, unloading and local marine; protective services; freight lost or damaged—solely related; fringe benefits; casualties and insurance; joint facility, and other (accounts XX–34–01, XX–34–73, XX–34–74, XX–34–75, 51–34–00, 12–34–00, 50–34–00. 37–34–00, 38–34–00 and XX–34–99).

These accounts pertain solely to freight service and contain no common expenses for separation herein.

ADMINISTRATIVE SUPPORT OPERATIONS

§ 1242.77 Administration (account XX–55–01).

Separate common expenses in the same proportion as common expenses are separated in employees performing clerical and accounting functions, communication systems operations and loss and damage claims processing (accounts XX–55–76, XX–55–77 and XX–55–78).

§ 1242.78 Employees performing clerical and accounting functions, and loss and damage claims processing (accounts XX–55–76 and XX–55–78).

If the sum of the direct freight and the direct passenger expenses is more than 50 percent of the total charges to this account for an accounting division, separate the common expenses on the basis of the directly assigned expenses in this account for the particular accounting division. If the sum of the direct freight and the direct passenger expenses does not aggregate 50 percent of the total charges for an accounting division, the common expenses shall be separated on the basis of special test. If common expenses exist in an accounting division but the direct expenses are applicable to only one service, i.e., freight or passenger, and even though the direct charges are over 50 percent of the total charges, the common expenses shall be separated on the basis of a special test. If the accounting is performed on a system basis rather than by accounting division, follow the intent of the above instructions.

§ 1242.79 Communication systems operations (account XX–55–77).

Separate common expenses on bases of the percentages calculated for the separation of Communication Systems (account XX–19–20), § 1242.18.

§ 1242.80 Fringe benefits (account 12–55–00).

Separate common expenses in proportion to the percentage separation calculated for the salaries and wages—administration account (account 11–55–01).

§ 1242.81 Joint facility—debit and credit (accounts 37–55–00 and 38–55–00).

Solely related freight and passenger service debit expense accounts shall be assigned according to the use made of each facility by the reporting carriers, regardless of the use made of the facility by other carriers. Common debit expenses shall be separated on the basis of the percentage separation of the solely related expenses. If there are

no solely related expenses or if the solely related expenses are assigned entirely to either freight or passenger service, separate common expenses on the same percentages calculated for the separation of administration (account XX–55–01).

Separate common credit expenses on the basis of the percentages calculated for the separation of administration (account XX–55–01).

§ 1242.82 Other and casualties and insurance (accounts XX–55–99 and 50–55–00).

Separate common expenses on the basis of the percentages calculated for the separation of administration (account XX–55–01).

OPERATING EXPENSES

general and administration

§ 1242.83 Officers—general superintendence; accounting, auditing and finance; management services and data processing; personnel and labor relations; legal and secretarial; research and development; writedown of uncollectible accounts; property taxes; other taxes except on corporate income or payrolls; and other (accounts XX–63–01, XX–63–86, XX–63–87, XX–63–91, XX–63–92, XX–63–94, 63–63–00, 64–63–00, 65–63–00 and XX–63–99).

Separate common expenses in proportion to the separation of all other common expenses except General and Administrative Expenses.

§ 1242.84 Marketing, sales, and public relations and advertising (accounts XX–63–88, XX–63–89 and XX–63–93).

Separate each common expense account on the basis of the solely related freight and passenger expense accounts.

§ 1242.85 Fringe benefits (account 12–63–00).

Separate the common expenses in proportion to the total common salaries and wages expense separation (account 11-XX-XX) determined in §§ 1242.83 and 1242.84.

§ 1242.86 Industrial development (account XX–61–90).

These accounts pertain solely to freight service and contain no common expenses for separation herein.

§ 1242.87 Joint facility—debit and credit and casualties and insurance (accounts 37–63–00, 38–63–00 and 50–63–00).

Separate the common expenses in proportion to the total of all common expense separations determined in §§ 1242.83 and 1242.84 above.

NOTE: If compilation of the data in compliance with any of the above separation rules results in an undue burden in accounting expense, the carrier may request relief from such rules by letter to the Director, Bureau of Accounts. If reliable data can be developed through other methods and procedures, the carrier may request substitution of such methods also by letter to the Director, Bureau of Accounts. In both cases, the carrier shall support the request with full details.

PART 1243—QUARTERLY OPERATING REPORTS—RAILROADS

Sec.
1243.1 Revenues, expenses and income.
1243.2 Condensed balance sheet.
1243.3 Report of fuel cost, consumption, and surcharge revenue.

AUTHORITY: 49 U.S.C. 721, 11145.

SOURCE: 37 FR 5503, Mar. 16, 1972, unless otherwise noted.

NOTE: The report forms prescribed by part 1243 are available upon request from the Office of the Secretary, Surface Transportation Board, Washington, DC 20423.

§ 1243.1 Revenues, expenses and income.

Commencing with reports for the 3 months beginning January 1, 1972, and for subsequent quarters thereafter, until further ordered, all class I railroads, except switching and terminal companies, subject to the provisions of Part I of the Interstate Commerce Act, be, and they are hereby, required to compile and file quarterly reports of revenues, expenses and income in accordance with quarterly report Form RE&I, and instructions thereon. Such quarterly reports shall be filed, in duplicate, in the Office of Economics, Environmental Analysis, and Administration, Surface Transportation Board,

Washington, DC 20423, within 30 days after the end of the quarter to which they relate.

[37 FR 5503, Mar. 16, 1972, as amended at 67 FR 57534, Sept. 11, 2002]

§ 1243.2 Condensed balance sheet.

Commencing with reports for the 3 months beginning January 1, 1972, and for subsequent quarters thereafter, until further ordered, all class I railroads, except switching and terminal companies, subject to the provisions of Part I of the Interstate Commerce Act, be, and they are hereby, required to compile and file quarterly reports of balance sheet items in accordance with quarterly report Form CBS, and instructions thereon. Such quarterly reports shall be filed, in duplicate, with the Office of Economics, Environmental Analysis, and Administration, Surface Transportation Board, Washington, DC 20423, within 30 days after the end of the quarter to which they relate.

[37 FR 5503, Mar. 16, 1972, as amended at 67 FR 57534, Sept. 11, 2002]

§ 1243.3 Report of fuel cost, consumption, and surcharge revenue.

Commencing with reports for the 3 months beginning October 1, 2007, all Class I railroads are required to file quarterly a Report of Fuel Cost, Consumption, and Surcharge Revenue, in accordance with the Board's reporting form. Such reports shall be filed, in duplicate, with the Office of Economics, Environmental Analysis, and Administration, Surface Transportation Board, Washington, DC 20423–0001, within 30 days after the end of the quarter reported.

APPENDIX TO SECTION 49 CFR 1243.3

OMB Control No. 2140–0014
Expires _____, 2010

Railroad Name _____

QUARTERLY REPORT OF FUEL COST, CONSUMPTION, AND SURCHARGE REVENUE FOR THE QUARTER ENDING _____, 20____

[Instructions: The report shall contain data only for the reported quarter. Cost and revenue are defined as accrued or earned that quarter. The report shall be filed with the Surface Transportation Board on or before 30 days after the end of that quarter.]

Line No.	Data (a)	Amount (in thousands) (b)
1	Total fuel cost [1].	
2	Total gallons of fuel consumed [1].	
3	Total increase or decrease in cost of fuel [2].	
4	Total revenue from fuel surcharges [3].	
5	Revenue from fuel surcharges on regulated traffic.	

[1] Include fuel for freight, yard and work train locomotives. Include fuel charged to train and yard service (function 67—Locomotive Fuels). Include all other fuel used for railroad operations and maintenance, including motor vehicles and power equipment not charged to function 67—Locomotive Fuels.
[2] Show the total increase or decrease in fuel cost over previous quarter.
[3] Show Fuel surcharges billed for all traffic (line 4) and for only regulated traffic (line 5).

I, the undersigned, _____, Title: _____, state that this report was prepared by me or under my supervision and that I have carefully examined it and on the basis of my knowledge, belief, and verification declare it to be full, true and correct.

SUPPLEMENTAL INFORMATION ABOUT THE FUEL SURCHARGE REPORT

The following information is provided in compliance with OMB requirements, pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*:

Information in this report is intended to permit the Board to monitor the fuel surcharge practices of Class I carriers.

The estimated annual hourly, per respondent burden for filing this report is 12 hours.

This report is mandatory for Class I carriers.

Information collected through this report is published on the Board's website and is maintained by the agency for at least 2 years.

The display of a currently valid OMB control number for this collection is required by law. Under 5 CFR 1320.5(b), persons are not required to respond to this collection of information unless it displays a currently valid OMB control number.

[72 FR 45386, Aug. 14, 2007]

PART 1244—WAYBILL ANALYSIS OF TRANSPORTATION OF PROPERTY—RAILROADS

Sec.
1244.1 Definitions.
1244.2 Applicability.
1244.3 Reporting contract shipment waybills and Canadian and Mexican international waybills.
1244.4 Sampling of waybills.
1244.5 Date of filing.
1244.6 Retention of files.
1244.7 Special studies.
1244.8 Analysis of waybill data.
1244.9 Procedures for the release of waybill data.

AUTHORITY: 49 U.S.C. 721, 10707, 11144, 11145.

SOURCE: 46 FR 26784, May 15, 1981, unless otherwise noted.

§ 1244.1 Definitions.

(a) *Railroad*—an individual railroad or terminal company subject to the Interstate Commerce Act and every receiver, trustee, executor, administrator or assignee of any such railroad. If a railroad and its railroad subsidiaries report to the Board on a consolidated basis, they would collectively be considered as a *railroad*.

(b) A *railroad subsidiary*—a railroad owned or controlled by another railroad.

(c) A *waybill*, which may be referred to by other names such as mine tickets, is the document or instrument prepared from the bill of lading contract or shipper's instructions as to the disposition of the freight, and used by the railroad(s) involved as the authority to move the shipment and as the basis for determining the freight charges and interline settlements.

§ 1244.2 Applicability.

(a) Effective July 1, 1981 and thereafter, unless otherwise ordered, each railroad as defined in § 1244.1 above is required to file waybill sample information for all line-haul revenue waybills terminated on its lines if it terminates at least 4,500 revenue carloads in any of the three preceding years, or if it terminates at least 5% of the revenue carloads terminating in any state in any of the three preceding years. A railroad required to file waybill sample information under this section shall herein be referred to as *subject railroad*.

(b) Waybill terminations shall include all line-haul revenue movements terminating for waybilling purposes on the subject railroad's line whether the lading is destined for the terminating station as denoted on the waybill or the shipment is being rebilled or forwarded to the ultimate destination by another railroad or another mode of transportation (e.g., lake cargo, inbound transit, or other rebilled movements).

(c) Each subject railroad shall also file the required waybill sample information for all of its railroad subsidiaries.

(d) Each subject railroad shall also file the required waybill sample information for any other railroad for which it performs revenue billing and/or interline settlements under special agreement.

(e) The surviving corporate entity of railroads (subject to the Interstate Commerce Act) who have merged or reorganized shall be required to report waybill sample information if its predecessor railroad or any of its predecessor railroads were required to report under this section.

(f) In order to determine the number of carloads terminated in each state, railroads not otherwise submitting waybill information must report annually the number of carloads terminated by state for the last calendar year. These reports shall be submitted by March 1 of the year following the report year.

(g) *Transition*. This final rule will apply to all subject waybills which are in the subject railroad's audit month of July 1981 and all audit months thereafter. The former rule will continue to apply to all subject waybills for the prior audit months up to and including June 1981.

§ 1244.3 Reporting contract shipment waybills and Canadian and Mexican international waybills.

(a) All railroads shall identify (flag) contract shipment waybills.

(b) The revenue associated with contract shipments may be encrypted (masked) to safeguard the confidentiality of the contract rates.

(1) Upon written request, the Board will provide a masking procedure for a railroad's use or will mask the contract revenues when the Waybill Sample is filed with the Board.

(2) When a railroad intends to use its own proprietary masking procedure, those procedures, and any changes in those procedures, must be approved by the Board thirty (30) days prior to their use.

(3) All railroads that use a proprietary masking procedure, and intend to continue to use the same procedure, must certify, by letter to the Board, prior to January 31 each year, that the contract revenue masking procedures are unchanged.

(4) All correspondence and certifications concerning masking procedures should be addressed to: Director, Office of Economics, Environmental Analysis, and Administration, Surface Transportation Board, Washington, DC 20423–0001, ATTN: WAYBILL COORDINATOR.

(c) Railroads moving traffic on the U.S. rail system to the Canadian or Mexican border shall include a representative sample of such international export traffic in the Waybill Sample.

(d) Railroads shall identify (flag) such movements as international traffic in the waybill records.

(e) Railroads may report information on the complete rail routing or report only information related to the U.S. portion of the movement.

(f) Railroads may mask revenue divisions associated with cross-border traffic following the masking procedures set forth in paragraphs (a) and (b) of this section.

[65 FR 37711, June 16, 2000, as amended at 66 FR 53735, Oct. 24, 2001]

§ 1244.4 Sampling of waybills.

(a) Subject railroads shall file waybill sample information in one of the following two ways. (1) Authenticated copies of a sample of audited revenue waybills—the manual system (§ 1244.3(b)). (2) A computer tape containing specified information from a sample of waybills—the computerized system (§ 1244.3(c)).

(b) *The Manual System.* (1) The sample of subject waybills shall be as follows:

(i) All waybills with less than 6 carloads per waybill whose serial numbers are 1 or end in 01,

(ii) All waybills with 6 to 25 carloads per waybill whose serial numbers end in 1; and,

(iii) All waybills with 26 or more carloads per waybill whose serial numbers end in 1 or 7.

(2) The expected sampling rates for the manual system are as follows:

Numbers of carloads on waybill	Expected sample rate
1 to 5	1/100
6 to 25	1/10
26 and over	1/5

(3) Upon giving the subject roads 60 days notice, the Board may require random serial number endings in lieu of the respective endings shown in § 1244.3(b). These random serial number endings would have the expected sample rates shown in § 1244.3(b)(2).

(4) If the subject waybills have no waybill numbers or serial numbers, or have seriously flawed waybill or serial numbers, then the subject railroad should serialize those documents in blocks of 1,000 or blocks of multiples of 1,000 (e.g., 1, 2, . . . 1,000; 1, 2, . . .) and use these constructed serial numbers for selection purposes.

(c) *The Computerized System.* (1) The tape shall be required to conform to the standards and format specified in Statement No. 81–1, *Procedure for Sampling Waybill Records by Computer* (2009 edition), issued by the Surface Transportation Board. The Director of the Federal Register has approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any editions other than those specified in this section, the STB must publish notice of change in the FEDERAL REGISTER and the material

must be available to the public. You may obtain or inspect a copy of these standards from the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001; from the Surface Transportation Board Web site at *http://www.stb.dot.gov;* or by calling (202) 245–0323. You may also inspect a copy at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(2) The sampling rates for the computerized system are as follows:

Number of carloads on waybill	Sample rate
1 to 2	1/40
3 to 15	1/12
16 to 60	1/4
61 to 100	1/3
101 and over	1/2

(d) *Controls and Annual Counts.* (1) Each subject railroad shall maintain a control procedure to ensure complete and accurate reporting for the waybill sampling. All pertinent waybill data shall be included on hard copy waybill submissions including inbound references for transit waybills. All such pertinent waybill data shall be legible.

(2) All subject railroads shall maintain a record of the number of line-haul revenue carloads that terminated on their line in a calendar year and shall furnish this number when requested by the Board.

(3) All subject railroads using the manual system of reporting shall furnish the Board, in accordance with instructions on the Transmittal Form OPAD–2, the total counts of line-haul revenue waybills terminated in each reporting period for the following three categories:

(i) Waybills, with less than six carloads per waybill,

(ii) Waybills with 6 to 25 carloads per waybill, and

(iii) Waybills with 26 or more carloads per waybill.

(4) All subject railroads on the computerized system of reporting shall furnish the Board the control counts and tape specification information as required by the Statement No. 81–1.

(5) Certification by a responsible officer of the subject railroad as to the completeness and accuracy of sample shall be made once a year in accordance with the instructions on the Transmittal Forms OPAD–1 or OPAD–2.

[46 FR 26784, May 15, 1981, as amended at 46 FR 45141, Sept. 10, 1981. Redesignated at 65 FR 37711, June 16, 2000; 73 FR 66803, Nov. 12, 2008]

§ 1244.5 Date of filing.

(a) The reporting period for which subject railroads submit waybill sample information shall be the audit (accounting) month except as specified below:

(1) Subject railroads using the computerized system may submit waybill sample information quarterly as specified in Statement 81–1.

(2) Subject railroad using the manual system may submit waybill sample information quarterly if it submits fewer than 1,000 waybills per year.

(b) Waybill sample information shall be forwarded no later than 60 days from the end of the reporting period to the Board.

(c) When the submitted waybill sample information is returned to the submitting railroad for correction, that railroad shall resubmit corrected data to the Board promptly but no later than 60 days after its receipt.

(d) *Transmittal Forms.* (1) Subject railroads using the manual system of reporting shall complete the Transmittal Form OPAD–2, to accompany each waybill sample submission.

(2) Subject railroads using the computerized system of reporting shall complete the Transmittal Form OPAD–1, to accompany each waybill tape submission.

[46 FR 26784, May 15, 1981. Redesignated at 65 FR 37711, June 16, 2000]

§ 1244.6 Retention of files.

(a) Subject railroads which submit waybill sample data by the computerized system instead of the manual system shall retain the underlying hard copy waybills or facsimilies capable of producing legible copies, which shall be complete including inbound references

for transit waybills, for a minimum period of four years.

(b) This file of retained waybills shall be maintained in such a manner that the railroads on the computerized system may readily retrieve waybill copies using the waybill identifier code as shown on the submitted computerized waybill record.

[46 FR 26784, May 15, 1981. Redesignated at 65 FR 37711, June 16, 2000]

§ 1244.7 Special studies.

(a) Although routine submission of hard copy waybills is eliminated when a railroad reports under the computerized system, the Board may order that railroad to submit hard copies of the underlying waybills for special studies.

(b) The Board may order the subject railroads to supply additional data for submitted waybill copies or records for special studies.

[46 FR 26784, May 15, 1981. Redesignated at 65 FR 37711, June 16, 2000]

§ 1244.8 Analysis of waybill data.

Users of the waybill sample when presenting waybill analysis before the Board shall ensure that the appropriate weighting factors are applied to account for the stratified sampling. See Statement 81–1 for guidelines for weighting waybill data and for computing sampling errors.

[46 FR 26784, May 15, 1981. Redesignated at 65 FR 37711, June 16, 2000]

§ 1244.9 Procedures for the release of waybill data.

(a) *General*. The procedures for the release of waybill data identify five classes of users of the STB Waybill Sample, define the waybill information or data that each class of users may obtain, and set forth the applicable requirements for the data's release. They also formalize notice and protest procedures for the possible release of waybill data to other users to protect against the inappropriate release of confidential data. The Director of the Office of Economics, Environmental Analysis, and Administration shall be responsible for releasing waybill data in accordance with these procedures.

(b) *Class of user, available data, and applicable release requirements*—(1) *Railroads*. Each requesting railroad may obtain any waybill record from the STB Waybill Sample covering traffic that originated, terminated, or was bridged by that railroad. The railroad shall not have access to waybill data pertaining to traffic in which it did not participate. Also, it must meet all STB and legal requirements concerning release of shipper information in accordance with 49 U.S.C. 11910(a).

(2) *Federal agencies*. Each requesting Federal agency (including quasi-governmental agencies) may obtain any waybill record from the STB Waybill Sample subject to the following requirements:

(i) The Federal agency shall make the information contained in the STB Waybill Sample available only to its employees or those contractors working on the particular project or study requiring the waybill data.

(ii) The Federal agency will ensure that railroads and shippers are afforded the same privilege and protection against disclosure of the waybill data as the Board provides.

(iii) The Federal agency will not release any data to the public unless the data elements are aggregated to contain at least three shippers and to prevent identification of an individual railroad.

(iv) The Federal agency will refer any requests for waybill data and accompanying documentation to the STB for processing and will so inform the requesting party of such referral to the Board.

(v) The Federal agency must sign an agreement annually with the Board agreeing to these restrictions.

(3) *States*. Each requesting State may obtain any waybill record pertaining to traffic that was originated, terminated, interchanged in, or that passed through its State subject to the same requirements imposed on federal agencies under paragraphs (b)(2)(i) through (v) of this section.

(4) *Transportation practitioners, consulting firms, and law firms—specific proceedings*. Transportation practitioners, consulting firms and law firms may use data from the STB Waybill Sample in preparing verified statements to be submitted in formal proceedings before

the STB and/or State Boards (Board) subject to the following requirements:

(i) The STB Waybill Sample is the only single source of the data or obtaining the data from other sources is burdensome or costly, and the data is relevant to issues pendng before the Board.

(ii) The requestor submits to the STB a written waybill request that complies with § 1244.8(e).

(iii) All waybill data must be returned to the STB, and the firm must not keep any copies.

(iv) A transportation practitioner, consulting firm, or law firm must submit any evidence drawn from the STB Waybill Sample to the Board only unless the evidence is aggregated to the level of at least three shippers and will prevent the identification of an individual railroad. Nonaggregated evidence submitted to the Board will be made part of the public record only if the Board finds that it does not reveal competitively sensitive data. However, evidence found to be sensitive may be provided to counsel or other independent representatives for other parties subject to the usual and customary protective order issued by the Board or appropriate authorized official.

(v) For each Board proceeding, a firm must sign a confidentiality agreement with the STB agreeing to the above restrictions before any data will be released. This agreement will permit use of the released data for a period of one year from the date the agreement is signed by the user. If the data is required for an additional period of time because a proceeding is still pending before the Board, the firm must sign a new confidentiality agreement covering the data needed for each additional year the proceeding is opened.

(5) *Public use.* Nonconfidential waybill data may be obtained from the ''Public Use Waybill File''. Reports produced from the Public Use Waybill File may be used, published, or released. The Public Use Waybill File contains the following nonconfidential items:

(i) Waybill Date (Month, Day, Year).

(ii) Accounting Period (Month, Year).

(iii) Number of Carloads.

(iv) Car Ownership (Rail or Private).

(v) AAR Car Type.

(vi) AAR Mechanical Designation.

(vii) STB Car Type.

(viii) TOFC/COFC Plan.

(ix) Number of TOFC/COFC Units.

(x) TOFC/COFC Unit Ownership.

(xi) TOFC/COFC Unit Type (Trailer or Container).

(xii) Hazardous/Bulk Material in Box Car Flag.

(xiii) Commodity Code—Excluding STCC 49/50 (All 5 digit STCC Codes, except STCC 19).

(xiv) Billed Weight in Tons.

(xv) Actual Weight in Tons.

(xvi) Linehaul Freight Revenue.

(xvii) Transit Revenue.

(xviii) Miscellaneous Revenue.

(xix) Interstate/Intrastate Code.

(xx) Type of Move (Import/Export/Minibridge).

(xxi) All Rail/Intermodal Code.

(xxii) Type Move Via Water.

(xxiii) Outbound Transit Code.

(xxiv) Substituted Truck for Rail Service.

(xxv) Rebill Code.

(xxvi) Estimate of Miles.

(xxvii) Stratum Identification.

(xxviii) Replicate Number.

(xxix) Population Count/Strata Count (expansion factor).

(xxx) Theoretical Expansion Factor.

(xxxi) Number of Interchanges.

(xxxii) Origin BEA (omitted if STCC and BEA pair reveals competitively sensitive shipper data).

(xxxiii) Origin STB Rate Territory.

(xxxiv) States of Interchanges (first through ninth).

(xxxv) Termination BEA (omitted if STCC and BEA pair reveals competitively sensitive shipper data).

(xxxvi) Termination STB Rate Territory.

(xxxvii) Waybill Reporting Period Length.

(xxxviii) AAR Provided UMBLER Data.

(xl) Bad Routing Code.

(xli) Miscellaneous Factored Expanded Data (e.g., carloads).

(c) *Other Users.* (1) Users other than those described in paragraphs (b)(1) through (b)(5) of this section may file written requests in accordance with paragraph (e) of this section for permission to use data from the STB Waybill Sample.

(2) All written requests filed by such users are subject to the notice and protest procedures described in paragraph (d) of this section.

(d) *Notice and protest procedures for waybill requests by other users.* Railroads and shippers will be notified and afforded the opportunity to protest waybill requests filed by users other than those described in paragraphs (b)(1) through (b)(5) of this section in accordance with the following procedures:

(1) *Notice of request for confidential waybill data.* Affected railroads and shippers will receive notice by FEDERAL REGISTER Publication. If railroad specific or shipper specific data are requested, those parties will be given written notice of the request.

(2) *Form of notice.* The notice shall identify the parties requesting the data; describe the type of waybill data requested; and state the purpose for which the data is requested. The notice shall include a statement that parties seeking information concerning the filing of objections should refer to Ex Parte No. 385 (Sub-No. 2), 49 CFR 1224.8, or contact the Surface Transportation Board's Office of Economics, Environmental Analysis, and Administration.

(3) *Objections to release.* (i) Objections to release of the confidential waybill data must be filed by the railroad and/or shipper no later than 14 calendar days from publication of the notice in the FEDERAL REGISTER.

(ii) An original and 3 copies of each objection shall be filed with the Director, Office of Economics, Environmental Analysis, and Administration, Surface Transportation Board, Washington, DC 20423.

(iii) The objection shall identify the parties seeking the confidential waybill data, reiterate the purpose for which the data is sought, and state all grounds for objection to full or partial disclosure of the requested data.

(4) *Board determination.* (i) The Director of the Office of Economics, Environmental Analysis, and Administration will consider all objections in determining whether to release the requested waybill data. Each railroad or shipper who filed objections will be sent written notice of the Director's decision not less than 14 calendar days prior to the disclosure date.

(ii) The Board reserves the right to deny the release of waybill data although no objections may be filed.

(iii) Appeals must be filed with the Chairman within 10 days of the date of the Director's decision. Responses to appeals must be filed within 10 days thereafter (49 CFR 1011.7(b)(1)). The filing of an appeal will automatically stay the effect of the Director's decision.

(e) *Content of waybill requests.* (1) All requestors under paragraphs (b)(4) and (c) of this section shall include the following information:

(i) A complete and detailed explanation of the purpose for which the requested data are needed.

(ii) A description of the specific waybill data or fields actually required (including pertinent geographic areas).

(iii) A detailed justification as to why the specified waybill data are needed.

(2) An original and 2 copies of the waybill request shall be filed with the Director, Office of Economics, Environmental Analysis, and Administration, Surface Transportation Board, Washington, DC 20423.

(f) Aggregation of confidential shipper data.

(1) Any shipper data obtained from the Waybill Sample shall not be publicly released unless the data are aggregated to include at least three shippers.

(2) To aggregate the waybill data to the level of three shippers, the three-FSAC Rule shall be used. Under this rule, there must be at least three different freight stations as identified by the Freight Station Accounting Code (FSAC) on one railroad or there must be at least two more FSAC's than there are railroads present in the waybill data being aggregated.

(3) The three-FSAC Rule shall apply to every number and calculation publicly released.

(4) The Director of OTA will consider requests to apply an alternative aggregation method provided the requestor establishes that a particular project necessitates an alternative approach and that approach effectively protects the identity of individual shippers.

(g) *Complaint procedures.* (1) Complaints for alleged breaches of confidentiality or misuse of confidential waybill data must include the following:

(i) Identification of all known parties involved in the alleged violation.

(ii) The approximate date(s) of the alleged violations.

(iii) A full and detailed description of the alleged violation.

(iv) A description of any resulting harm to the complainant.

(2) Prior to filing a complaint, a complainant, upon written request, may obtain a copy of the incoming waybill request and the applicable confidentiality agreement. This request must identify the party involved, give the approximate date the data was released, briefly describe the alleged violation, and substantiate the need for this information for purposes of filing a complaint.

(3) An original and three (3) copies of the complaint shall be filed with the Director, Office of Economics, Environmental Analysis, and Administration, Surface Transportation Board, Washington, DC 20423. A copy of the complaint shall also be served on the alleged violator(s).

(4) An answer must be filed within 20 days after service of the complaint.

(5) All parties will be notified in writing of the Director's decision. If the Director determines that a violation has occurred, the offending parties will be denied access to the waybill sample for a period of time commensurate with the nature of the violation.

(6) Appeals to the Director's determination shall be filed in accordance with paragraph (d)(4)(iii) of this section.

(h) *Munitions shipments.* All waybill requests for munition data at the 3-digit Standard Transportation Commodity Code (STCC) level or greater will be forwarded by the STB to the Department of Defense's Military Traffic Management Command (MTMC). The STB will not release this type of information without MTMC's consent.

[52 FR 12416, Apr. 16, 1987. Redesignated at 65 FR 37711, June 16, 2000, as amended at 67 FR 57534, Sept. 11, 2002]

PART 1245—CLASSIFICATION OF RAILROAD EMPLOYEES; REPORTS OF SERVICE AND COMPENSATION

Sec.
1245.1 Rules governing classification of employees, service, and compensation.
1245.2 Reports of railroad employees, service and compensation.
1245.3 Employees; definition, service hours, and compensation.
1245.4 Forms required to be used.
1245.5 Classification of job titles.
1245.6 Cross reference to standard occupational classification manual.

AUTHORITY: 49 U.S.C. 721, 11145.

SOURCE: 32 FR 20462, Dec. 20, 1967, unless otherwise noted.

NOTE: The report forms prescribed by part 1245 are available upon request from the Office of the Secretary, Surface Transportation Board, Washington, DC 20423.

§ 1245.1 Rules governing classification of employees, service, and compensation.

The rules governing the classification of railroad employees and reports of their service and compensation outlined in §§ 1245.3 and 1245.4 are required, and all Class I railroads within the scope of Section 11145 of the Interstate Commerce Act shall be governed by such rules in the preparation and submission of their annual and other periodic reports to the Surface Transportation Board in accordance with the forms adopted for such returns (§ 1245.2); and also with respect to any other matters covered by these rules.

[47 FR 53867, Nov. 30, 1982]

§ 1245.2 Reports of railroad employees, service and compensation.

Beginning with the reporting period commencing January 1, 1983, and quarterly thereafter until further ordered, each Class I railroad is required to file a Quarterly Report of Railroad Employees, Service, and Compensation, (Form QRSC). In addition, such carriers shall also file an Annual Report of Railroad Employees, Service, and Compensation, (Form ARSC) for each calendar year. Both reports shall be filed with the Bureau of Accounts, Surface Transportation Board, Washington, DC 20423. The quarterly report shall be

filed within thirty days after the end of each calendar quarter. The annual report shall be filed within forty five days after the end of the reporting year.

[47 FR 53867, Nov. 30, 1982]

§ 1245.3 Employees; definition, service hours, and compensation.

(a) *Definition of ''employees''.* The word *employees,* as used in this part, is intended to include every person in the service of the reporting carrier subject to its continuing authority to supervise and direct the manner of rendition of his service. Persons engaged to render only specifically defined service and not subject to the continuing authority of the carrier to supervise and control their acts, such as customhouse brokers, lawyers retained only for specific cases and not under general or continuing retainer, etc., are not employees in the meaning of the term used in this part.

(b) *Counting employees.* Since the number of employees fluctuates, carriers are required to classify and count all of their employees at twelve different times each year.

(c) *Joint employees.* Each person jointly employed shall, if carried on the payrolls of the several joint employers, be counted by each employer and represented in its return of number of employees by a fraction based on the number of employers reporting him; if a person, for example, is reportable by three employers, each should include him in its number of employees as one-third of an employee. When the entire compensation of a joint employee is shown on the payroll of a single joint employer and is paid to the employee by that employer such employee should, for the purpose of returns, be treated as if employed solely by such employer.

(d) *Service hours.* (1) The number of hours on duty, or held for duty, and the number of hours paid for are to be ascertained and recorded for every class of employee. For enginemen and trainmen, the actual number of miles run and miles paid for but not run are to be recorded, as well as the number of hours on duty and the number of hours paid for. (The service time of all classes of employees shall be recorded in hours instead of days or hours as heretofore.)

(2) Whenever an employee works at more than one occupation, or in more than one class of service, both the number of hours worked and the compensation paid, should be separated and reported under the proper Reporting Divisions.

(3) If an employee is paid a day's wage for a smaller number of hours than constitutes a day's work, the number of hours paid for as well as the actual number of hours the employee is on duty should be ascertained and recorded. Time allowed for meals, part holidays, holidays, absences on leave, vacations, etc., should be excluded from time actually worked, but if such time is paid for it should be appropriately reported as ''Time paid for but not worked'' on Form A or as a ''constructive allowance'' on Form B. These requirements apply to enginemen and trainmen paid on the basis of trips or of miles run, and to employees paid at piece rates, as well as to employees paid on hourly, daily, weekly, monthly, or other time basis. Service hours for officers and employees who do not receive payment for overtime should be reported as the number of hours in each month at 8 hours per day contemplated for the position.

(e) *Compensation.* The compensation of employees as defined in the rules in this part is to be stated in such manner and detail as the forms adopted for periodical returns require.

§ 1245.4 Forms required to be used.

(a) The report of information to the Surface Transportation Board on railroad employees, service and compensation includes two forms. Form A relates to employees other than train and engine service employees. Form B relates to train and engine service employees.

(b) With general reference to the statement of the compensation of employees in Forms A and B, it should be understood that the total compensation received by the employees in each Reporting Division, as well as the amount of work they perform, should be shown properly distributed under the prescribed column heads as indicated by the forms. It should be noted

that if the work of an employee varies during a report period, his time and compensation should be apportioned accordingly. Amounts reported should be gross compensation paid.

Illustrations. (a) In the course of a month, an employee works as a Machinist, and as such earns $200 and he works also as a Gang Foreman and earns $130. The pay received by him in the occupation of Machinist with corresponding time should be included in returns for Division 61, ''Machinists'', and his other pay and time as indicated should be included in returns for Division 53, ''Gang Foremen and Gang Leaders''. (b) When an employee works at two or more of the occupations of engineer, fireman, conductor, and brakeman, his time and compensation should be assigned in accordance with the facts. For example, in a certain month an employee earns as a Through Freight Engineer $110, as a Local or Way Freight Engineer $140, as a Yard Engineer $100, and as a Local or Way Freight Fireman $75. The time and the compensation of this employee should be correspondingly distributed among Reporting Divisions 122, 123, 124, and 127 as they are respectively applicable, without regard to the predominance of the time worked or the amount earned by him in one occupation.

(c) As elsewhere indicated, the statement of the number of employees in the service of a company with respect to Reporting Divisions depends upon the allocation of the individual employees as of the day of count.

(d) The Reporting Divisions shown in Forms A and B following will also be used in connection with the employees' schedule in the annual reports of railroads of classes I and II to the Board. Railroads of class III and lessor companies shall report only the information required in the annual report forms prescribed for such companies.

[32 FR 20462, Dec. 20, 1967, as amended at 47 FR 53867, Nov. 30, 1982]

§ 1245.5 Classification of job titles.

Number	Classification	Description	Typical titles	Relation to present classification
100	EXECUTIVES, OFFICIALS, AND STAFF ASSISTANTS			
101	Executives and General Officers	Chief executives, corporate department heads and major subdepartment heads.	President, Vice President, Assistant Vice President, Controller, Treasurer, Director (head of subdepartment), General Superintendent (subdepartment head), Chief Engineer, General Manager (department or subdepartment head).	More precisely defined than present No. 1, limited to executive management positions; adds new titles.
102	Corporate Staff Managers	Corporate executives and managers assisting department and subdepartment heads.	Director (other than subdepartment head), Assistant Director, Assistant General Manager (not regional), Manager, Assistant Manager, Assistant Chief Engineer, Purchasing Agent, Superintendent (not division), Assistant to (corporate executive or general officer), Executive Assistant (to corporate executive) Budget Officer.	New classification, providng a specific assignment for staff managers; adds new title.
103	Regional and Division Officers, Assistants and Staff Assistants.	Regional managers and assistants below the executive management level, and chief division officers.	Assistant General Manager, Assistant Regional Manager, General Superintendent, Assistant to General Manager, Division Superintendent, Master Mechanic, Division Sales Manager, District Sales Manager, Assistant Master Mechanic, District Engineer, Assistant Superintendent, Captain of Police, Division Engineer, Manager of Materials, Safety Inspector, Real Estate Agent, Real Estate Supervisor, Tax Agent, Buyer, Assistant Buyer, Sales Agent, Assistant Sales Agent.	Similar to present No. 2 but limited to regional and divisional management; adds new title.
104	Transportation Officers/Managers.	Managers directly supervising train and yard operations.	Train Master, Assistant Train Master, General Yardmaster, General Road Foreman, Road Foreman, Assistant Road Foreman, Chief Power Supervisor (motive).	New classification providing specific assignment for Operations Managers.
200	PROFESSIONAL AND ADMINISTRATIVE			
201	Professionals (other than those reported in 101 and 102).	Technical occupations requiring a high degree of training and/or supervising subprofessionals and technicians.	General Counsel, Assistant General Counsel, General Attorney, Assistant General Attorney, Attorney, Commerce Counsel, Chief Medical Officer, Medical Officer, Surgeon, Company Surgeon, Engineer, Architect, Chief Chemist, Nurse, Tax Accountant, Internal Auditor to General Accountant, Corporate Accountant, Supervisor Programing, Senior Computer System Specialist, Senior System Analyst.	Corresponds to present STB No. 3, but limited to professionals; adds new titles.
202	Subprofessionals	Technical occupations requiring a high degree of knowledge and/or skill.	Draftsman, Chemist, Assistant Chemist, X-ray Technician, Supervisor Estimating, Junior Engineer, Engineering Trainee, Photographer, Computer Programmer, Computer Analyst, Market Analyst, Pricing Analyst, Employment Supervisor, Research Analyst.	Corresponds to present STB No. 3 but limited to subprofessionals; adds new titles.
203	Auditors, Traveling Auditors or Accountants.	Title is descriptive	Traveling Auditor, Accounting Specialist Auditors, Operations Traveling Auditors, Station Auditors.	Corresponds to present STB No. 13.
204	General and Administrative Supervisors.	Supervisors responsible for administrative activity of a department, subdepartment, office or region.	General Supervisor, Supervisor, Chief Clerk, Office Supervisor, Supervisor Administration, Office Manager, Supervising Clerk, Head Clerk, Assistant Chief Clerk, Supervising Cashier, Division Supervisor, Regional Supervisor, Budget Supervisor, Administrative Supervisor, Administrative Assistant.	Consolidation of present STB Nos. 4 and 5; adds new titles.

205	Sales and Traffic Representatives and Agents.	Non-supervisory occupations with predominant responsibilities for sales and customer relations.	Freight Traffic Agent, Coal Traffic Agent, Sales Representative, Freight Sales Representative, Freight Traffic Representative, Passenger Sales Representative.	New classification, containing a portion of present STB No. 19; adds new titles.
206	Freight and Other Claim Agents and Investigators.	Occupations which have predominant duties investigating and handling freight and personal injury claims.	Claim Agent, Claim Investigator, Freight Claim Agent, Freight Claim Investigator.	Consolidates present STB Nos. 20 and 21; adds new titles.
207	Supervising and Chief Claim Agents.	Title is descriptive	Chief Claim Agent, Chief Freight Claim Agent, Assistant Chief Claim Agent, Chief District Claim Agent, District Freight Claim Agent, Chief Claim Investigator.	Corresponds with present STB No. 22.
208	Lieutenants and Sergeants of Police.	Title is descriptive	Police Lieutenant, Police Sergeant	Corresponds to present STB No. 17.
209	Police Officers, Watchmen and Guards (Except Crossing and Bridge).	Title is descriptive	Police Officer, Patrolman, Watchman, Guard	Corresponds with present STB No. 18.
210	Inspectors (Except Maintenance of Way and Equipment), Other Investigators, Examiners, Instructors, and Other Agents (Except Station Agents).	Miscellaneous occupations which have predominant duties of investigating, inspecting, reviewing, and instructing and which require a high degree of technical knowledge.	Rules Examiner, Supervisor Rules, Safety Supervisor, Fire Marshall, Fire Chief, Instructor, Supervisor Procedures, Supervisor Yard Procedures.	Classification for a portion of similar occupations included in present STB No. 19; adds new titles.
212	Clerical Technicians and Clerical Specialists.	Clerical occupations with duties to perform independently responsible work requiring special financial cost, accounting, or other technical knowledge.	Lead Clerk, Staff Assistant (clerical), Statistician, Cashier, Teller, Assistant Statistician, Rate Clerk, Pricing Clerk, Computer Technician.	Corresponds to present STB No. 6; adds new titles.
213	Office Machine and Data Equipment Operators.	Occupations with predominant duties of operating office machines and computer equipment.	Machine Operator, Clerk, Computer Operator, Keypunch Operator Office Machine Technician.	Corresponds to present STB No. 8; adds new titles.
214	Secretaries, Stenographers, and Typists.	Secretaries, Stenographers, and Typists.	Secretary, Stenographer, Typists, Clerk Typist, Steno-clerk	Consolidates present STB Nos. 9 and 10.
215	General and Other Clerks (excluding yard clerk and crew dispatcher).	Clerical occupations not otherwise classified.	File Clerk, General Clerk, Bookkeeper, Ticket Clerk, Records Clerk, Trace Clerk, Assignment Clerk, Personnel Clerk, M of W Clerks, M of E Clerks.	Corresponds to present STB NO. 7; adds new titles.
216	Telephone and Switchboard Operators.	Title is descriptive	Switchboard Operator, Chief Operator	Present STB No. 14.
217	Building and Office Attendants	Miscellaneous occupations associated with office building functions.	Elevator Operator, Elevator Starter, Janitor, Cleaner, Porter	Consolidates present STB Nos. 16 and 26.
218	Messengers and Office Persons	Title is descriptive	Messenger, Office Person	Present STB No. 15.
219	Motor Vehicle Operators	Occupations associated with automobile and truck driving.	Truck Driver, Bus Driver, Driver, Chauffeur	Consolidates present STB Nos. 24 and 25.
300	MAINTENANCE OF WAY AND STRUCTURES			

Number	Classification	Description	Typical titles	Relation to present classification
301	Supervisors, Maintenance of Way, Structures, Communication and Signals.	Occupations with supervisor responsibility for maintenance of way and structures (other than regional and divisional officers).	Roadmaster, Division Roadmaster, Supervisor Track, Supervisor Bridges and Buildings, Supervisor Communications and Signals, Assistant Supervisor, General Foreman (MW&S), Assistant General Foreman (MW&S), Master Carpenter, Chief Draftsman.	Corresponds with present STB Nos. 27 and 44.
302	Maintenance of Way, Structures, Communication and Signals, and Scale Inspectors.	Title is descriptive	Chief Bridge and Building Inspector, Chief Scale Inspector, Bridge and Building Inspector, Scale Inspector, Roadway Equipment Inspector, Track and Roadway Inspector, Instrument Man, Rodman, Chainman, Inspector Communications and Signals, Signal Inspector.	Corresponds with present STB No. 28 plus part of old No. 44.
303	Bridge and Building Gang Foreman.	Title is descriptive	Gang Foreman, Lead Workman	Consolidates present STB No. 29 with bridge and building portion of present STB No. 39.
304	Bridge and Building Carpenters	Title is descriptive	Carpenter	Corresponds with present STB No. 30.
305	Bridge and Building Ironworkers	Title is descriptive	Ironworker	Corresponds with present STB No. 31.
306	Bridge and Building Painters	Title is descriptive	Painter, Sign Painter	Corresponds with present STB No. 32.
307	Masons, Bricklayers, Plasterers, and Plumbers.	Title is descriptive	Mason, Bricklayer, Plasterer, Plumber, Operator, Grinder, Welder (M of W).	Corresponds with present STB Nos. 23 and 33.
308	Bridge and Building Helpers and Apprentices.	Title is descriptive	Carpenter Helper, Ironworker Helper, Mason Helper, Plumber Helper, Painter Helper, Apprentice Carpenter, Apprentice Ironworker, Apprentice Mason, Plumber Apprentice, Apprentice Painter, Welder Helper.	Corresponds with present STB No. 34; adds new titles.
309	Bridge and Building Gang and Bridge and Building Department Laborers.	Title is descriptive	Bridge and Building Laborer	Corresponds with present STB No. 43.
310	Track Gang Foremen (Extra Gang work train laborers).	Title is descriptive	Gang Foreman, Assistant Foreman	Corresponds with present STB No. 38.
311	Gang or Section Foreman	Title is descriptive	Gang Foreman, Assistant Foreman, Section Foreman	Corresponds with present STB No. 40.
312	Extra Gang Laborers	Title is descriptive	Trackman, Fence Laborer	Corresponds with present STB No. 41.
313	Section Laborers	Title is descriptive	Trackman, Track and Roadway Section Laborer	Corresponds with present STB No. 42.
314	Machine Operators	Title is descriptive	Craneman, Portable Equipment Engineer, Portable Equipment Operator, Machine Operator, Helper.	Consolidates present STB No. 35, 36, and 37.
315	Gang Foremen, Communications and Signals.	Title is descriptive	Gang Foreman, Assistant Gang Foreman, Lead Signal Maintainer	Consolidates present STB No. 45 with communications and signals occupations included in present STB No. 39.
316	Signalmen and Signal Maintainers.	Title is descriptive	Signalman, Signal Maintainer	Corresponds with present STB No. 46.
317	Linemen and Groundmen and Communications Craftsman.	Communications equipment installers, Maintainers, and repairmen.	Electrical Worker (Lineman), Electrical Worker (Groundman) Communications maintainer.	Corresponds with present STB No. 47.
318	Assistant Signalmen and Assistant Signal Maintainers.	Title is descriptive	Assistant Signalman, Assistant Signal Maintainer	Corresponds with present STB No. 48.
319	Signal Helpers and Signal Maintainer Helpers.	Title is descriptive	Signalman Helper, Signal Maintainer Helper	Corresponds with present STB No. 49.
320	Camp Car Cooks	Occupations engage in food service in camp cars.	Camp Car Cook, Camp Car Helper	Corresponds with part of present STB No. 97.

400	MAINTENANCE OF EQUIPMENT AND STORES			
401	Supervisors and General Foremen, Maintenance of Equipment.	Occupations with supervisory responsibility for maintenance of equipment (other than regional and division officers).	General Foreman Shop, General Foreman Enginehouse, General Foreman Diesel Terminal, Assistant General Foreman (M of E).	Corresponds with present STB No. 50; adds new titles.
402	Supervisors and General Foremen, Materials and Stores.	Occupations with supervisory responsibility for stores and materials.	Supervisor Materials, Assistant Supervisor Materials, General Foreman Stores, General Foreman Reclamation Plant, Assistant General Foreman.	Corresponds with present STB No. 51; adds new titles.
403	Equipment, Shop, Electrical Inspectors.	Title is descriptive	Chief Electrical Inspector, Chief Shop and Equipment Inspector, Electrical Inspector, Equipment Inspector, Inspector Diesel Locomotive, Fuel Inspector.	Corresponds with part of present STB No. 52.
404	Materials and Supplies Inspectors.	Title is descriptive	Materials and Supplies Inspector, Chief Materials and Supplies Inspector, Timber Inspector, Tie Inspector.	Corresponds with part of present STB No. 52.
405	Storekeeper	Title is descriptive	Storekeeper, Assistant Storekeeper, Materials Clerk, Store Clerk	Corresponds to materials and stores occupation in present STB No. 11.
406	Gang Foremen, Maintenance of Equipment.	Title is descriptive	Gang Foreman	Consolidates present STB Nos. 53 and 68.
407	Blacksmiths	Title is descriptive	Blacksmith	Corresponds with present STB No. 54.
408	Boilermakers	Title is descriptive	Boilermaker	Corresponds with present STB No. 55.
409	Carmen (Freight)	Repair and inspect freight cars	Car Repairmen, Car Inspector, Carman, Painter	Corresponds with present STB No. 57.
410	Carmen (Other)	Title is descriptive	Carmen	Corresponds with present STB No. 56.
411	Electrical Workers (A)	Electricians	Electrician, Electrical Worker	Corresponds with present STB No. 58.
412	Electrical Workers (B)	Electrical workers—occupations specialized in operating heavy equipment.	Crane Operator, Load Dispatcher, Power Station Operator, Assistant Power Director.	Corresponds with present STB No. 59.
413	Electrical Workers (C)	Electrical Workers—occupation specialized in heavy equipment operating at coal, grain, and ore docks.	Coal and Ore Elevator Operator (electrical), Grain Elevator Operator (electrical).	Corresponds with present STB No. 60.
414	Machinists	Title is descriptive	Machinist	Corresponds with present STB No. 61.
415	Sheet Metal Workers	Title is descriptive	Sheet Metal Worker	Corresponds with present STB No. 63.
416	Skilled Trades, Helpers, Maintenance of Equipment and Stores.	Title is descriptive	Helper	Corresponds with present STB No. 64.
417	Apprentices, Maintenance of Equipment and Stores.	Title is descriptive	Apprentice, Helper Apprentice	Consolidates present STB Nos. 65 and 66.
418	Coach Cleaners	Title is descriptive	Coach Cleaner	Corresponds with present STB No. 67.
419	Laborers: Shops, Enginehouses, and Power Plants.	Title is descriptive	Laborer	Consolidates present STB Nos. 70 and 71.
420	Gang Foremen, Materials and Stores.	Title is descriptive	Gang Foremen	Corresponds with present STB No. 69.
421	Equipment Operators and General Laborers, Materials and Stores.	Title is descriptive	Laborer, Materials Handler, Equipment Operators, Machine Operators.	Corresponds with present STB No. 72, plus part of STB No. 24.
422	Stationary Engineers	Title is descriptive	Chief Engineer (Steam Plant) Engineer, Stationary Engineer	Corresponds with present STB No. 73.
423	Stationary Firemen	Title is descriptive	Stationary Fireman, Power Equipment Operator Helper, Oiler	Corresponds with present STB No. 74.
500	TRANSPORTATION, OTHER THAN TRAIN AND ENGINE			

Number	Classification	Description	Typical titles	Relation to present classification
501	Transportation Supervisor and Chief Train Dispatcher.	Occupational directly supervising train operation.	Chief Train Dispatcher, Supervisor Train Operations, Transportation Supervisor, Supervisor Train Operations, Supervisor Locomotive and Car Distribution, Assistant Chief Train Dispatcher.	Corresponds with present STB No. 75; adds new titles.
502	Train Dispatchers	Title is descriptive	Train Dispatcher	Corresponds with present STB No. 76.
503	Station, Freight and Passenger Agents.	Occupations with responsibility for station operations.	Supervising Station Agent, Assistant Supervising Station Agent, Station Agent, Freight Agent, Passenger Agent, Ticket Agent, Traveling Agent, Agent Operators.	Consolidates present STB Nos. 12, 78, 79, and 80.
504	Chief Operators and Wire Chiefs	Title is descriptive	Supervising Operator, Chief Operator, Assistant Supervising Operator, Wire Chief.	Corresponds with present STB No. 81.
505	Clerk Operators, Towerman, Train Directors.	Title is descriptive	Clerk Operator, Block Operator, Operator, Towerman, Train Directors.	Consolidates present STB Nos. 77, 82 and 83.
506	Station Masters and Assistants, Supervising Baggage Agents, Baggage Agents and Assistants.	Title is descriptive	Stationmaster, Assistant Stationmaster, Supervising Baggage Agent, Baggage Agent, Assistant Baggage Agent, Parcel Room Agent.	Consolidates present STB Nos. 84, 85, and 86.
507	Baggage, Parcel Room and Station Attendants.	Title is descriptive	Baggage Attendant, Parcel Room Attendant, Station Attendant, Gateman, Announcer, Station Usher, Red Cap, Information Bureau Attendant.	Corresponds with present STB No. 87.
508	General and Assistant General Foremen, Stations, Warehouses, Grain Elevators, and Docks.	Title is descriptive	General Foreman, Assistant General Foreman	Consolidates present STB Nos. 88 and 89.
509	Gang Foremen, Stations, Warehouses, Grain Elevators and Docks.	Title is descriptive	Gang Foreman	Corresponds with present STB No. 90.
510	Grain Elevator, and Dock Laborers.	Title is descriptive	Laborer	Consolidates present STB Nos. 93 and 94.
511	Station, and Warehouse Laborers.	Title is descriptive	Loader, Sealer	Corresponds with present STB No. 91.
512	Truckers (Station, Warehouse and Platforms).	Title is descriptive	Trucker	Corresponds with present STB No. 92.
513	Food and Lodging Manager, Supervisors.	Occupations with responsibility for supervision of food service or lodging.	Manager Lodging House, Restaurant Manager, Dining Car Supervisor, Dining Car Steward.	Corresponds with present STB No. 95.
514	Transportation and Dining-Service Inspectors.	Title is descriptive	Instructor Chef, Restaurant Inspector, Freight Service Inspector, Baggage Inspector.	Corresponds with present STB No. 99.
515	Waiters and Kitchen Helpers (Restaurant and Dining Car).	Title is descriptive	Waiter-in-charge, Waiter	Corresponds with present STB No. 97.
516	Chefs and Cooks (Restaurant and Dining Car).	Title is descriptive	Chef, Cook	Corresponds with present STB No. 96.
517	Marine Officers and Workers and Shore Workers.	All occupations with predominant duties which are the operation of marine service.	Captain, Engineer, Mate, Deckhand, Oiler, Purser, Boat Master, Fireman, Wharf Master, Able Seaman, Baggageman, Boat Dispatcher.	Corresponds with present STB No. 98.
518	Train Attendants	Passenger train occupations other than train service and dining car operation.	Porter, Buffet Lounge Attendant, Stewardess	Consolidates present STB Nos. 100 and 101.
519	Bridge Operators and Helpers	Title is descriptive	Bridge Operator	Corresponds with present STB No. 102.

520	Bridge and Crossing Flagmen and Gatemen.	Title is descriptive	Bridge Flagman, Crossing Gateman	Corresponds with present STB No. 103.
521	Yard Clerks	Clerical occupations situated in yards and yard offices.	Yard Clerk, Yard Clerk Caller, Yard Demurrage Clerk, Yard Dispatcher Clerk, Piggyback Clerk.	New classification.
522	Crew Dispatchers	Title is descriptive	Crew Dispatcher, Crew Caller	New classification.
523	Yardmasters and Assistant Yardmasters.	Title is descriptive	Yardmaster, Assistant Yardmaster	Consolidates present STB No. 105 and 106.
600	TRANSPORTATION, TRAIN AND ENGINE			
601	Switchtenders	Title is descriptive	Switchtender	Corresponds to present STB No. 107.
602	Car Retarder Operators and Ground Service Employees.	Ground occupations not part of yard crew.	Car Retarder Operator, Skatesman, Herder, Yard Pilot	New classification—part of present STB No. 119; adds new titles.
603	Outside Hostlers	Title is descriptive	Outside Hostler	Corresponds to present STB No. 108.
604	Outside Hostler Helpers	Title is descriptive	Outside Hostler Helper	Corresponds to present STB No. 110.
605	Inside Hostler	Title is descriptive	Inside Hostler	Corresponds to present STB No. 109.
606	Road Passenger Conductors	Title is descriptive	Passenger Conductor	Corresponds to present STB No. 111.
607	Assistant Road Passenger Conductors and Ticket Collectors.	Title is descriptive	Assistant Passenger Conductor, Ticket Collector	Corresponds to present STB No. 112.
608	Road Freight Conductors (Through Freight).	Title is descriptive	Freight Conductor, Work Train Conductor, (paid through rate)	Corresponds to present STB No. 113.
609	Road Freight Conductors (Local and Way Freight).	Title is descriptive	Freight Conductor, Work Train Conductor, (paid local rate)	Corresponds to present STB No. 114.
610	Road Passenger Baggageperson.	Title is descriptive	Baggageperson	Corresponds to present STB No. 115.
611	Road Passenger Brakemen and Flagmen.	Title is descriptive	Passenger Brakeman, Passenger Flagman	Corresponds to present STB No. 116.
612	Road Freight Brakemen and Flagmen (Through Freight).	Title is descriptive	Freight Brakeman, Freight Flagman, Work Train Brakeman (paid through rate).	Corresponds to present STB No. 117.
613	Road Freight Brakemen and Flagmen (Local and Way Freight).	Title is descriptive	Freight Brakeman, Freight Flagman, Work Train Brakeman, (paid local rate).	Corresponds to present STB No. 118.
614	Yard Conductors and Yard Foremen.	Title is descriptive	Yard Conductor, Yard Foreman	Corresponds to present STB No. 119 Less Car Retarder Operator and other ground occupations not part of Yard Crew.
615	Yard Brakemen and Yard Helpers.	Title is descriptive	Yard Brakeman, Yard Helper	Corresponds to present STB No. 120; adds new titles.
616	Road Passenger Engineers and Motormen.	Title is descriptive	Passenger Engineer, Motorman, Operator	Corresponds to present STB No. 121.
617	Road Freight Engineers (Through Freight).	Title is descriptive	Freight Engineer, Work Train Engineer, (paid through rate)	Corresponds to present STB No. 122.
618	Road Freight Engineers (Local and Way Freight).	Title is descriptive	Freight Engineer, Work Train Engineer, (paid local rate)	Corresponds to present STB No. 123.
619	Yard Engineers	Title is descriptive	Yard Engineer	Corresponds to present STB No. 124.
620	Road Passenger Firemen and Helpers.	Title is descriptive	Passenger Fireman	Corresponds to present STB No. 125.
621	Road freight Firemen and Helpers (Through Freight).	Title is descriptive	Freight Fireman	Corresponds to present STB No. 126.
622	Road Freight Firemen and Helpers (Local and Way Freight).	Title is descriptive	Freight Fireman	Corresponds to present STB No. 127.

Number	Classification	Description	Typical titles	Relation to present classification
623	Yard Firemen and Helpers	Title is descriptive	Yard Fireman	Corresponds to present STB No. 128.

[47 FR 53868, Nov. 30, 1982, as amended at 50 FR 947, Jan. 8, 1985]

§ 1245.6 Cross reference to standard occupational classification manual.

Job title	SOC
100 *Executives, Officials and Staff Assistants*	
101 Executive and General Officers:	
President	121.
Vice President	121.
Assist. Vice President	121.
Controller	122.
Treasurer	122.
Director (Head of Sub-Department)	139.
General Superintendent	139.
Subdepartment Head	139.
Chief Engineer	1342 and 1639.
General Manager (Dept. or Subdepartment Head).	137.
102 Corporate Staff Managers:	
Director (Other Than Sub-department Head).	139.
Assist. Director	139.
Assist. General Manager (Not Regional).	137.
Manager	137.
Assist. Manager	137.
Assist. Chief Engineer	1639.
Purchasing Agent	1449.
Superintendent (Not Division)	1342.
Assist. to (Corporate Executive or Gen. Officer).	149.
Executive Assist. (To Corporate Executive).	149.
Budget Officer	1419.
103 Regional and Division Officers, Assistants and Staff Assistants:	
Assist. General Manager	137.
Assist. Regional Manager	1342.
General Superintendent	1342.
Assist. to General Manager	137.
Division Superintendent	1342.
Master Mechanic	6117.
Division Sales Manager	125.
District Sales Manager	125.
Assist. Master Mechanic	6117.
District Engineer	1342 and 1639.
Assist. Superintendent	1342.
Captain of Police	5112.
Division Engineer	1638 and 1342.
Manager of Materials	4525.
Safety Inspector	1473.
Real Estate Agent	1353.
Real Estate Supv	1353.
Tax Agent	1412.
Buyer	1449.
Assist. Buyer	1449.
Sales Agent	4235.
Assist. Sales Agent	4235.
104 Transportation Officers/Managers:	
Train Master	1342.
Assist. Train Master	1342.
General Yard Master	8113.
General Road Foreman	1342.
Road Foreman	1342.
Assist. Road Foreman	1342.
Chief, Power Supervisor (Motive)	1342.
200 *Professional and Administrative*	
201 Professionals (Other Than Those Reported in 101 and 102):	
General Counsel	211.
Assist. General Counsel	211.
General Attorney	211.
Assist. General Attorney	211.
Attorney	211.
Commerce Counsel	211.
Chief Medical Officer	261.
Medical Officer	261.
Surgeon	261.
Company Surgeon	261.
Engineer	1639.
Architect	161.
Chief Chemist	1845.
Nurse	29 and 366.
Tax Accountant	1412.
Internal Auditor to Gen. Accountant	1412.
Corporate Accountant	1412.
Supervisor Programming	137.
Senior Computer System	1712.
Specialist Senior System Analyst	1712.
202 Subprofessionals:	
Draftsman	372.
Chemist	1845.
Assist. Chemist	1845.
X-ray Technician	365.
Supv. Estimating	149.
Junior Engineer	1639.
Engineer Trainee	1639.
Photographer	326.
Computer Programmer	397.
Computer Analyst	1712.
Market Analyst	1912.
Pricing Analyst	4716.
Employment Supv.	123.
Research Analyst	1721.
203 Auditors, Traveling Auditors or Accountants:	
Traveling Auditor	1412.
Accounting Specialist Auditor	1412.
Operations Traveling Auditor	1412
Station Auditors	1412.
204 General and Administrative Supervisors:	
General Supv.	4511 and 137.
Supv.	4511 and 137.
Chief Clerk	4511 and 137.
Office Supv.	4511 and 137.
Supv. Admin.	149.
Office Manager	137.
Supv. Clerk	4511 and 137.
Head Clerk	4511 and 137.
Assist. Chief Clerk	4511 and 137.
Supv. Cashier	4529.
Division Supv.	4511 and 137.
Regional Supv.	4511 and 137.
Budget Supv.	1419.
Admin. Supv.	149.
Admin. Assist.	149.
205 Sales and Traffic Representatives and Agents:	
Freight Traffic Agent	4152.
Coal Traffic Agent	4152.
Sales Representative	4152.
Freight Sales Representative	4152.
Freight Traffic Representative	4152.
Passenger Sales Representative	4152.
206 Freight and other Claim Agents and Investigators:	
Claim Agent	4712.
Claim Investigator	4783.
Freight Claim Agent	4712.
Freight Claim Investigator	4783.
207 Supervising and Chief Claim Agents:	
Chief Claim Agent	4529 and 1473.
Chief Freight Claim Agent	4528.
Assist. Chief Claim Agent	4528 and 1473.
Chief District Claim Agent	4528.
District Freight Claim Agent	4528.
Chief Claim Investigator	4783.

Job title	SOC
208 Lieutenants and Sergeants of Police:	
Police Lieutenant	5112.
Police Sergeant	5112.
209 Police Officers, Watchmen and Guards (Except Crossing and Bridge):	
Police Officer	5132.
Patrolman	5144.
Watchman	5144.
Guard	5144.
210 Inspectors (Except Maintenance of Wage and Equipment) other Investigators, Examiners, Instructors, and other Agents (except Station Agents):	
Rules Examiner	1473.
Supv. Rules	1473.
Safety Supv.	1473.
Fire Marshall	5122.
Fire Chief	1131 and 5111.
Instructor	239.
Supv. Procedures	4525.
Supv. Yard Procedure	4525.
212 Clerical Technicians and Clerical Specialists:	
Lead Clerk	4511 and 463.
Staff Assistant (Clerical)	4511 and 463.
Statistician	1733.
Cashier	4364.
Teller	4364.
Assist. Statistician	1733.
Rate Clerk	4716.
Pricing Clerk	4716.
Computer Technician	4612.
213 Office Machine and Data Equipment Operators:	
Machine Operator	4718.
Clerk	463
Computer Operator	4612.
Keypunch Operator	4793.
Office Machine Technician	4718.
214 Secretaries, Stenographers, and Typists:	
Secretary	4622.
Stenographer	4623.
Typist	4624.
Clerk Typists	4624.
Steno. Clerk	4623.
215 General and other Clerks (Excluding Yard Clerk and Crew Dispatcher):	
File Clerk	4696.
General Clerk	463.
Bookkeeper	4712.
Ticket Clerk	4644.
Records Clerk	4696.
Trace Clerk	463.
Assignment Clerk	4752.
Personnel Clerk	4692.
M of W Clerks	4699.
M of E Clerks	4699.
216 Telephone and Switchboard Operators:	
Switchboard Operator	4732.
Chief Operator	4523.
217 Building and Office Attendants:	
Elevator Operator	5245.
Elevator Starter	5241.
Janitor	5244.
Cleaner	5244.
Porter	5244.
218 Messengers and Office Persons:	
Messenger	4745.
Office Person	4745.
219 Motor Vehicle Operators:	
Truck Driver	8213 and 8214.
Bus Driver	8215.
Driver Chauffeur	8216.
300 *Maintenance of Way and Structures*	
301 Supervisors, Maintenance of Way, Structures, Communication and Signals:	
Roadmaster	1342.
Division Roadmaster	1342.
Supv. Track	812.
Supv. Bridges and Buildings	133.
Supv. Communications & Signals	1341.
Assist. Supv	1341.
General Foreman	1342.
Assist. General Foreman	1342.
Master Carpenter	6313.
Chief Draftsman	372.
302 Maintenance of Way, Structures, Communication and Signals, and Scale Inspectors:	
Chief Bridges & Building Inspector	782.
Chief Scale Inspector	782.
Bridge & Building Inspector	1472.
Scale Inspector	782.
Roadway Equipment Inspector	828.
Track and Roadway Inspector	828.
Instrument Man	6881 and 6151.
Roadman	1472 and 8769.
Chainman	613.
Inspector Communications & Signals.	1341.
Signal Inspector	1341.
303 Bridge and Building Gang Foreman:	
Gang Foreman	6318.
Lead Foreman	6318.
304 Bridge and Building Carpenter: Carpenter.	6422.
305 Bridge and Building Ironworkers: Iron Worker.	6473.
306 Bridge and Building Painter:	
Painter	6442.
Sign Painter	6863.
307 Masons, Bricklayers, Plasterers, and Plumbers:	
Mason	6413, 6444, 6463, and 6412.
Bricklayer	6412.
Plasterer	6444.
Plumber	645.
Operator	6467.
Grinder	6467.
Welder	7714.
308 Bridge and Building Helpers and Apprentices:	
Bridge and Building Helper Appr	6473.
Carpenter Helper	8642.
Iron Worker Helper	6473 and 862.
Mason Helper	8641.
Plumber Helper	8645.
Painter Helper	8644.
Apprentice, Carpenter	6422.
Apprentice, Iron Worker	6473.
Apprentice Mason	6412, 6413, 6444, and 6463.
Plumber Apprentice	645.
Apprentice Painter	6442 and 8644.
Welder Helper	862.
309 Bridge and Building Gang and Bridge and Building Department Labors: Bridge and Building Labor.	871.
310 Track Gang Foreman (Extra Gang Work Train Laborers):	
Gang Foreman (Track)	6318.

Job title	SOC
Assist. Foreman	6318.
311 Gang or Section Foreman:	
Gang Foreman	6318.
Assist. Foreman	6318.
Section Foreman	6318.
312 Extra Gang Laborers:	
Trackman	6467.
Fence Laborer	6479 and 8769.
313 Section Laborers:	
Trackman	8769.
Track & Roadway Section Labor	8769.
314 Machine Operators:	
Craneman	8315.
Portable Equipment Engineer	8312.
Portable Equipment Operator	8319.
Machine Operator	8319.
Helper	8618.
315 Gang Foreman, Communications and Signals:	
Gang foreman	6318.
Assist. Gang Foreman	6318.
Lead Signal Maintainer	6318.
316 Signal and Signal Maintainer:	
Signalman	8233.
Signal Maintainer	6151 and 8233.
317 Linemen and Groundmen and Communications Craftsman:	
Electrical Worker (lineman)	6433.
Electrical Worker (groundsman)	6432.
Communications Maintainer	6151.
318 Assistant Signalmen and Assistant Signalmen Maintainers:	
Assist. Signalman	8233 and 6151.
Assist. Signal Maintainer	6151 and 8233.
319 Signal Helpers and Signal Maintainer Helpers:	
Signalman Helper	8635.
Signalman Maintainer Helper	8635.
320 Camp Car Cooks:	
Camp Car Cook	5214.
Camp Car Helper	5219.
400 *Maintenance of Equipment and Stores*	
401 Supervisors and General Foreman, Maintenance of Equipment:	
General Foreman Shop	6318 and 1342.
General Foreman Enginehouse	6318 and 1342.
General Foreman Diesel Terminal	6318 and 1342.
Assist. General Foreman (M&E)	6318 and 1342.
402 Supervisors and General Foreman, Materials and Stores:	
Supv. Materials	4525.
Assist. Supv. Materials	4525.
General Foreman Stores	4524.
General Foreman Reclamations Plant.	6318.
Assist. General Foreman	6318.
403 Equipment, Shop, Electrical Inspectors:	
Chief Electrical Inspector	6314.
Chief Shop & Equipment Inspector	1472.
Electrical Inspector	1472.
Equipment Inspector	6881.
Inspector Diesel locomotive	6881.
Fuel Inspector	6831.
404 Materials and Supplies Inspector:	
Materials and Supplies Inspector	782.
Chief Materials and Supplies	4525.
Inspector	782.
Timber Inspector	782.
Tie Inspector	782.
405 Storekeeper:	
Storekeeper	4754.
Assist. Storekeeper	4754.
Materials Clerk	4754.
Store Clerk	4754.
406 Gang Foreman, Maintenance of Equipment: Gang Foreman.	6318.
407 Blacksmith:.	
Blacksmiths	6179.
408 Boilermakers:.	
Boilermaker	6814.
409 Carmen (Freight):	
Car Repairmen	6117.
Car Inspector	828.
Car Painter	6442.
410 Carmen (other):.	
Carman	6117.
411 Electrical Workers (A):	
Electrician	6432.
Electrical Worker	6159.
412 Electrical Workers (B):	
Crane Operator	8315.
Load Dispatcher	4751.
Power Station Operator	6932.
Assist. Power Director	6932.
413 Electrical Workers (C):	
Coal and Ore Elevator Operator (elec).	8319.
Grain Elevator Operator (electrical)	8319.
414 Machinists:.	
Machinist	6813.
415 Sheet Metal Workers:.	
Sheet Metal Worker	6824.
416 Skilled Trades, Helpers, Maintenance of Equipment and Stores: Helper.	861, 862, 863, and 864.
417 Apprentices, Maintenance of Equipment and Stores:	
Apprentice	863.
Helper Apprentices	863.
418 Coach Cleaners: Coach Cleaner	875.
419 Laborers; Shops, Enginehouses, and Power Plants: Laborer.	8769, 86, and 87.
420 Gang Foreman, Materials and Stores: Gang Foreman.	6318.
421 Equipment Operators and General Laborers, Materials and Stores:	
Laborer	8725, and 8769.
Materials Handler	8726.
Equipment Operator	8239.
Machine Operator	8319.
422 Stationary Engineers:	
Chief Engineer (Steam Plant)	6932.
Engineer	6932.
Stationary Engineer	6931.
423 Stationary Firemen:	
Stationary Fireman	5122 and 8619.
Power Equipment Operator Helper	8319.
Oiler	614.
500 *Transportation other Than Train and Engine*	
501 Transportation Supervisor and Chief Train Dispatcher:	
Chief Train Dispatcher	8113.
Supv. Train Operator	1342.
Transportation Supv	1342.
Supv. Locomotives and Car Dist	4759 and 8111.
Assist. Chief Train Dispatcher	8113.
502 Train Dispatchers: Train Dispatcher.	8113.
503 Station, Freight and Passenger Agents:	
Supv. Station Agent	4514.
Assist. Supv. Station Agent	4514.
Station Agent	4514.
Freight Agent	4644.
Passenger Agent	4644.

Job title	SOC
Ticket Agent	4644.
Traveling Agent	4644.
Agent Operators	4514.
504 Chief Operators and Wire Chiefs:	
Supv. Operator	4523.
Chief Operator	4523.
Assist. Supv. Operator	4523.
Wire Chief	4523 and 60.
505 Clerk Operators, Towerman, Train Directors:	
Clerk Operator	4632.
Block Operator	4632.
Operator	4632.
Towerman	8239.
Train Director	8113.
506 Station Masters and Assistants, Supervising Baggage Agents, Baggage Agents and Assistants:	
Stationmaster	1342.
Assist. Station Master	1342.
Supv. Baggage Agent	4525.
Baggage Agent	5262.
Assist. Baggage Agent	5262.
Parcel Room Agent	4744.
507 Baggage Parcel Room and Station Attendants:	
Baggage Attendant	5262.
Parcel Room Attendant	4744.
Station Attendant	4514.
Gateman	5144.
Announcer	4649.
Station Usher	5256.
Red Cap	5262.
Information Bureau Attendant	4649.
508 General and Assistant General Foreman, Stations. Warehouses, Grain Elevators and Docks:	
General Foreman	6318.
Assist. General Foreman	6318.
509 Gang Foreman, Stations, Warehouses, Grain Elevators and Docks:	
Gang Foreman	6318.
510 Grain Elevator and Dock Laborers:	
Laborer	8242.
511 Station and Warehouse Laborers:	
Loader	8726.
Sealer	8769 and 8724.
512 Trucks (Station, Warehouse and Platforms):	
Trucker	8214.
513 Food and Lodging Manager, Supervisors:	
Manager Lodging House	1351.
Restaurant Manager	1351.
Dining Car Supv.	5211, and 1473.
Dinning car Steward	5211.
514 Transportation and Dining Service Inspectors:	
Instructor Chef	5214.
Restaurant Inspector	828.
Freight Service Inspector	828.
Baggage Inspector	828.
515 Waiters and Kitchen Helpers (Restaurant and Dining):	
Waiter-in-Charge	5211.
Waiter	5211.
516 Chefs and Cooks (Restaurant and Dining Car):	
Chef	5211.
Cook	5211 and 5214.
517 Marine Officers and Workers and Shore Workers:	
Captain	8242.
Engineer	8244.
Mate	8242.
Deckhand	8243.
Oiler Purser	8244.
Boat Master	8241.
Fireman	8243.
Wharf Master	1342.
Able Seaman	8243.
Baggageman	5262.
Boat Dispatcher	1342.
518 Train Attendants:	
Porter	5262.
Buffet Lounge Attendant	4366.
Stewardess	5211.
519 Bridge Operators and Helpers: Bridge Operator.	8245.
520 Bridge and Crossing Flagmen and Gatemen:	
Bridge Flagman	8769.
Crossing Gateman	5144.
521 Yard Clerks:	
Yard Clerk	4754.
Yard Caller	4745.
Yard Dispatcher Clerk	4752.
Piggyback Clerk	4753.
Yard Demurrage Clerk	4715.
522 Crew Dispatchers:	
Crew Dispatcher	4751 and 4525.
Crew Caller	4745.
523 Yardmasters and Assistant Yardmasters:	
Yardmaster	8113.
Assist. Yardmaster	8113.
600 *Transportation, Train and Engine*	
601 Switchtenders: Switchtender	8233.
602 Car Retarder Operators and Ground Service Employees:	
Car Retarder Operator	8239.
Skatesman	8769.
Herder	8769.
Yard Pilot	8113.
603 Outside Hostlers: Outside Hostler	8232.
604 Outside Hostlers Helpers: Outside Hostler Helper.	8232.
605 Inside Hostlers: Inside Hostler	8232.
606 Road Passenger Conductors: Passenger Conductor.	8113.
607 Assistant Road Passenger Conductor and Ticket Collectors:	
Assistant Passenger Conductor	8113.
Ticket Collector	5256.
608 Road Freight Conductors (Through Freight):	
Freight Conductor	8113.
Work Train Conductor	8113.
609 Road Freight Conductors (Local and Way Freight):	
Freight Conductor	8113.
Work Train Conductor	8113.
610 Road Passenger Baggagepersons: Baggageperson.	5262.
611 Road Passenger Brakeman and Flagman:	
Passenger Brakeman	8233.
Passenger Flagman	5142.
612 Road Freight Brakemen and Flagmen (Through Freight):	
Freight Brakeman	8233.
Freight Flagman	5142.
Work Train Brakeman	8233.
613 Road Freight Brakemen and Flagmen (Local and Way Freight):	
Freight Brakeman	8233.
Freight Flagman	5142.

Job title	SOC
Work Train Brakeman	8233.
614 Yard Conductors and Yard Foremen:	
Yard Conductor	8113.
Yard Foreman	8113.
615 Yard Brakemen and Yard Helpers:	
Yard Brakeman	8233.
Yard Helper	8769.
616 Road Passengers Engineers and Motormen:	
Passenger Engineer	8232.
Motorman Operator	8232.
617 Road Freight Engineers (Through Freight):	
Freight Engineer	8232.
Work Train Engineer	8232.
618 Road Freight Engineers (Local and Way Freight):	
Freight Engineer	8232.
Work Train Engineer	8232.
619 Yard Engineers: Yard Engineer	8232.
620 Road Passenger Firemen and Helpers: Passenger Fireman.	8232.
621 Road Freight Firemen and Helpers (Through Freight): Freight Fireman.	8232.
622 Road Freight Firemen and Helpers (Local and Way Freight): Freight Fireman.	8232.
623 Yard Firemen and Helpers: Yard Fireman.	8232.

[47 FR 53871, Nov. 30, 1982, as amended at 50 FR 947, Jan. 8, 1985]

PART 1246—NUMBER OF RAILROAD EMPLOYEES

AUTHORITY: 49 U.S.C. 721, 11145.

§ 1246.1 Monthly report of number of railroad employees.

Each class I railroad shall file a Monthly Report of Number of Railroad Employees (Form MRRE) each month. The report should be mailed to Bureau of Accounts, Surface Transportation Board, Washington, DC 20423, by the end of the month to which it applies.

[47 FR 53868, Nov. 30, 1982]

NOTE: The report forms prescribed by parts 1245 and 1246 are available upon request from the Office of the Secretary, Surface Transportation Board, Washington, DC 20423.

PART 1247—REPORT OF CARS LOADED AND CARS TERMINATED

AUTHORITY: 49 U.S.C. 721, 10707, 11144, 11145.

SOURCE: 66 FR 1052, Jan. 5, 2001, unless otherwise noted.

§ 1247.1 Annual Report of Cars Loaded and Cars Terminated.

Beginning with the reporting period commencing January 1, 2001, and annually thereafter, each Class I railroad shall file Form STB–54, Annual Report of Cars Loaded and Cars Terminated, together with the accompanying certification, with the Office of Economics, Environmental Analysis, and Administration (OEEAA), Surface Transportation Board, Washington, DC 20243, within 90 days after the end of the reporting year. Blank forms and instructions are available on the Board's web site (*http://www.stb.dot.gov/infoex1.htm#forms*) or can be obtained by contacting OEEAA.

PART 1248—FREIGHT COMMODITY STATISTICS

Subpart A—Railroads

Sec.
1248.1 Freight commodity statistics.
1248.2 Items to be reported.
1248.3 Carload and L.C.L. traffic defined.
1248.4 Originating and connecting line traffic.
1248.5 Report forms and date of filing.
1248.6 Public inspection—railroad reports.

Subpart B—Commodity Code

1248.100 Commodity classification designated.
1248.101 Commodity codes required.

NOTE: The report forms prescribed by part 1248 are available upon request from the Office of the Secretary, Surface Transportation Board, Washington, DC 20423.

Subpart A—Railroads

AUTHORITY: 49 U.S.C. 721, 11144 and 11145.

§ 1248.1 Freight commodity statistics.

All class I railroads, as described in § 1240.1 of this chapter, subject to Part I of the Interstate Commerce Act, shall compile and report freight commodity statistics on the basis of the commodity codes named in § 1248.101. Carriers shall report quarterly on the basis of the 3, 4 and 5-digit commodity codes named in that section. Such reports shall be made in conformity with the outline of terms set forth in §§ 1248.2 to 1248.5, inclusive, as supplemented by

instructions included in the appropriate report form to be supplied to the reporting railroads.

[47 FR 6880, Feb. 17, 1982]

§ 1248.2 Items to be reported.

(a) The following items are to be reported quarterly and annually by class I railroads:

(1) Average number of miles of road operated in freight service.

(2) For each commodity code used in reporting, except that the number of carloads for commodity code 431, ''Small packaged freight shipments,'' shall be omitted, the following items:

Revenue freight originating on respondent's road:
  Terminating on line:
    Number of carloads.
    Number of tons (2,000 pounds).
  Delivered to connecting rail carriers.
    Number of carloads.
    Number of tons (2,000 pounds).
Revenue freight received from connecting rail carriers:
  Terminating on line:
    Number of carloads.
    Number of tons (2,000 pounds).
  Delivered to connecting rail carriers:
    Number of carloads.
    Number of tons (2,000 pounds).
  Total revenue freight carried:
    Number of carloads.
    Number of tons (2,000 pounds).
  Gross freight revenue.

(b) [Reserved]

[32 FR 20466, Dec. 20, 1967, as amended at 47 FR 6880, Feb. 17, 1982]

§ 1248.3 Carload and L.C.L. traffic defined.

(a) Commodity codes 01 through 422 and 44 through 462, named in § 1248.101, shall include only carload traffic. All shipments weighing less than 10,000 pounds shall be included in commodity code 431, ''Small packaged freight shipments.''

(b) A *carload* for the purpose of this order shall consist of a shipment of not less than 10,000 pounds of one commodity. A mixed carload for the purpose of this order shall be treated as a carload of that commodity which forms the major portion of the shipment in weight. If a single shipment is loaded into more than one car, each car used shall be reported as a carload. If more than one *carload* shipment is loaded into one car, each shipment shall be reported separately as a carload.

[32 FR 20466, Dec. 20, 1967]

§ 1248.4 Originating and connecting line traffic.

(a) Revenue freight reported as *received from connecting rail carriers* shall include all shipments received from connecting rail carriers, either directly or indirectly, so far as apparent from information on the waybills or abstracts.

(b) Revenue freight reported as *originating on respondent's road* shall include shipments originating on line and shipments received from water lines and highway motor truck lines, except when identified as having had previous rail transportation, as provided in paragraph (a) of this section.

(c) Freight which receives its first line-haul on respondent's road, but originates on switching roads connecting directly or indirectly with respondent's line, shall be reported as freight originated by respondent.

(d) Revenue freight reported as *delivered to connecting rail carriers* shall include shipments delivered to connecting rail carriers, either directly or indirectly, as far as apparent from information on waybills or abstracts.

(e) Revenue freight reported as *terminating on respondent's road* shall include shipments terminating on line and shipments delivered to water lines and highway motor truck lines, except when identified as to receive further rail transportation as provided in paragraph (d) of this section.

(f) Freight which receives its last line haul on respondent's line, but is delivered to a switching road connecting directly or indirectly with respondent's line, shall be reported as freight terminated by respondent.

(g) Import and export traffic received from or delivered to water carriers and traffic from and to outlying possessions of the United States received from or delivered to water carriers shall be reported as originating or terminating at the port of entry or exit.

(h) Traffic interchanged with connecting rail lines operating in Canada and Mexico shall be reported as delivered to or received from connecting rail carriers.

(i) Lake cargo coal delivered to lower Lake and St. Lawrence River ports for transshipment by vessel shall be reported as *delivered to connecting rail carrier*. Lake cargo coal received at upper Lake ports shall be reported as *received from connecting rail carriers*.

(j) Iron ore delivered to upper Lake ports for transshipment by vessel shall be reported as *delivered to connecting rail carriers*. Iron ore received at lower Lake and St. Lawrence River ports shall be reported as *received from connecting rail carriers*.

(k) Tidewater coal to Atlantic ports shall be reported as ''delivered to connecting rail carriers.'' Tidewater coal from Atlantic ports shall be reported as ''received from connecting rail carriers.''

(l) Freight accorded transit privileges shall be reported as ''originated on respondent's road'' at the transit point, even though the outbound shipment may move under transit balances or proportional rates.

(m) ''Gross freight revenue'' means respondent's gross revenue from freight without adjustment for absorptions or corrections.

(n) Commodity codes 44 and 441, ''Freight forwarder traffic,'' as named in § 1248.101, include freight traffic in carloads shipped by or consigned to any forwarder holding a certificate under Part IV of the Interstate Commerce Act.

[32 FR 20466, Dec. 20, 1967]

§ 1248.5 Report forms and date of filing.

(a) Reports required from class I carriers by this section shall be filed in duplicate with the Bureau of Accounts, Surface Transportation Board, Washington, DC 20423, on forms which will be furnished to the carriers. Data required under § 1248.2 shall be filed on Form QCS on or before the 60th day succeeding the close of the period for which they are compiled.

(b) [Reserved]

NOTE: The outline of Report Form QCS follows the tenor of the order.

[32 FR 20466, Dec. 20, 1967, as amended at 47 FR 6881, Feb. 17, 1982]

§ 1248.6 Public inspection—railroad reports.

The individual commodity statistics reports of class I railroads, required to be filed, for the year beginning January 1, 1964, or for quarters thereof, and for the quarters of 1965, as the case might be, under the terms of § 123.1, shall not be open to public inspection, and such required commodity statistics reports, to be filed for the years beginning January 1, 1965, and for the quarters of the year beginning January 1, 1966, and later, to the extent that they involve traffic of less than three shippers, reportable in one of the commodity reporting classes, may be excluded from a railroad's regular freight commodity statistics report and filed in a supplemental report which will not be open for public inspection, except that access to supplemental reports may be given upon approval by the Board.

[32 FR 20466, Dec. 20, 1967, as amended at 47 FR 6881, Feb. 17, 1982]

Subpart B—Commodity Code

AUTHORITY: 49 U.S.C. 721, 11144, 11145.

§ 1248.100 Commodity classification designated.

Commencing with reports for the year or quarter beginning January 1, 1964, as the case might be, and thereafter until further order, reports of commodity statistics required to be made to the Board, shall be based on the commodity codes, up to 5 digits, in groups 01 through 40, in the Commodity Classification for Transportation Statistics, 1963, issued by the Bureau of the Budget, and on additional codes 411 through 462 shown in § 1248.101.

[32 FR 20466, Dec. 20, 1967. Redesignated at 46 FR 9116, Jan. 28, 1981, and 46 FR 10745, Feb. 4, 1981]

§ 1248.101 Commodity codes required.

Commodity codes required to be reported, as referred to in this part, are as follows:

Code	Description
01	FARM PRODUCTS.
011	Field Crops.
0112	Cotton, raw.

Code	Description
01121	Cotton in bales.
01131	Barley.
01132	Corn, except popcorn.
01133	Oats.
01134	Rice, rough.
01135	Rye.
01136	Sorghum grains.
01137	Wheat, except buckwheat.
01139	Grain, n.e.c.
0114	Oil seeds, oil nuts, and oil kernels, except edible tree nuts.
01144	Soybeans.
0115	Field seeds, except oil seeds.
0119	Miscellaneous field crops.
01193	Leaf tobacco.
01195	Potatoes, other than sweet.
01197	Sugar beets.
012	Fresh Fruits and Tree Nuts.
0121	Citrus fruits.
0122	Deciduous fruits.
01221	Apples.
01224	Grapes.
01226	Peaches.
0123	Tropical fruits, except citrus.
01232	Bananas.
0129	Miscellaneous fresh fruits and tree nuts.
01295	Coffee, green.
013	Fresh Vegetables.
0131	Bulbs, roots, and tubers, with or without tops except potatoes.
01318	Onions, dry.
0133	Leafy fresh vegetables.
01334	Celery.
01335	Lettuce.
0134	Dry ripe vegetable seeds, etc. (except artifically dried).
01341	Beans, dry ripe.
01342	Peas, dry.
0139	Miscellaneous fresh vegetables:
01392	Watermelons.
01394	Tomatoes.
01398	Melons, except watermelons (cantaloupes, muskmelons, etc.).
014	Livestock and Livestock Products.
0141	Livestock.
01411	Cattle.
01413	Hogs and pigs.
01414	Sheep and lambs.
0142	Dairy farm products, except pasteurized.
0143	Animal fibers.
01431	Wool.
015	Poultry and Poultry Products.
0151	Live poultry.
0152	Poultry eggs.
019	Miscellaneous Farm Products.
0191	Horticultural specialities.
0192	Animal specialties.
08	FOREST PRODUCTS
084	Gums and Barks, Crude.
08423	Latex and allied gums (crude natural rubber).
086	Miscellaneous Forest Products.
09	FRESH FISH AND OTHER MARINE PRODUCTS.
091	Fresh Fish and Other Marine Products.
0912	Fresh fish and whale products, including frozen unpackaged fish.
09131	Shells (oyster, crab, clam, etc.)
10	METALLIC ORES.
101	Iron Ores.
10112	Beneficiating-grade ore, crude.
102	Copper Ores.
103	Lead and Zinc Ores.
1031	Lead ores.
1032	Zinc ores.
104	Gold and Silver Ores.
105	Bauxite and Other Aluminum Ores.
106	Manganese Ores.
107	Tungsten Ores.
108	Chromium Ores.
109	Miscellaneous Metal Ores.
11	COAL.
111	Anthracite Coal.
11111	Raw anthracite (lump).
11112	Cleaned or prepared anthracite (crushed, screened, or sized).
112	Bituminous Coal and Lignite.
1121	Bituminous coal.
13	CRUDE PETROLEUM, NATURAL GAS, AND NATURAL GASOLINE.
131	Crude Petroleum and Natural Gas.
132	Natural Gasoline.
14	NONMETALLIC MINERALS, EXCEPT FUELS.
141	Dimension Stone, quarry.
142	Crushed and Broken Stone, including riprap.
14211	Agricultural limestone.
14219	Crushed and broken stone, including riprap, n.e.c.
144	Sand and Gravel.
14411	Sand (aggregate and ballast).
14412	Gravel (aggregate and ballast).
14413	Industrial sand and gravel.
145	Clay, Ceramic and Refractory Minerals.
14511	Bentonite.
14512	Fire clay.
14514	Kaolin and ball clay.
147	Chemical and Fertilizer Minerals.
14711	Barite.
14713	Potash, soda and borate.
14714	Phosphate rock.
14715	Rock salt.
14716	Sulphur.
149	Miscellaneous Nonmetallic Minerals. Except Fuels.
14911	Gypsum and anhydrite.
14913	Native asphalt and bitumens.
14914	Pumice and pumicite.
19	ORDINANCE AND ACCESSORIES.
191	Guns, Howitzers, Mortars, and Related Equipment, Over 30 mm.
192	Ammunition, Except for Small Arms (over 30 mm.).
193	Full Tracked Combat Vehicles and Parts.
194	Sighting and Fire Control Equipment.
195	Small Arms, 30 mm. and Under.
196	Small Arms Ammunition, 30 mm. and Under.
199	Miscellaneous Ordnance and Accessories.
20	FOOD AND KINDRED PRODUCTS.
201	Meat (Including Poultry and Small Game): Fresh, Chilled, or Frozen.
2011	Meat, fresh or chilled, except salted.
2012	Meat, fresh-frozen.
2013	Meat products.
2014	Animal by-products, inedible.
20141	Hides, skins, and pelts, not tanned (cattle, pig, goat, sheep, mule, and horse).
2015	Dressed poultry, small game, and related products, fresh, chilled or canned.
2016	Dressed poultry, small game and related products, fresh-frozen.
202	Dairy Products.
2021	Creamery butter.
2023	Condensed, evaporated milk and dry milk.
2024	Ice cream and related frozen desserts.
2025	Cheese and other special dairy products.
2026	Processed whole milk, skim milk, cream and other fluid products.
203	Canned and Preserved Fruits, Vegetables and Sea Foods.

Code	Description
2031	Canned and cured sea foods.
2032	Canned specialties.
2033	Canned fruits and vegetables.
2034	Dried and dehydrated fruits and vegetables (except field dried) and soup mix.
2035	Pickled fruits and vegetables; sauces and seasoning; salad dressing.
2036	Fresh or frozen packaged fish.
2037	Frozen fruits, fruit juices, vegetables and specialties.
204	Grain Mill Products.
2041	Flour and other grain mill products.
20411	Wheat flour, except blended and prepared.
20421	Prepared feeds for animals and fowls, except canned.
20423	Canned feed for animals and poultry.
2043	Cereal preparations.
2044	Milled rice, flour and meal.
2045	Blended and prepared flour.
2046	Corn starch, sirup, oil, sugar and by-products (wet process).
20461	Corn sirup.
20462	Corn starch.
20463	Corn sugar.
205	Bakery Products.
206	Sugar (beet and cane).
2061	Sugar mill products and by-products.
20611	Raw cane and beet sugar.
20616	Sugar molasses, except blackstrap.
20617	Blackstrap molasses.
2062	Sugar, refined: Cane and beet.
20625	Sugar refining by-products.
20626	Pulp, molasses, beet.
207	Confectionery and related products.
208	Beverages and flavoring extracts.
20821	Beer, ale, porter, stout: Bottled, barrels, kegs.
20823	Malt extract and brewers's spent grains.
2083	Malt.
2084	Wines, brandy, and brandy spirits.
20851	Distilled, rectified and blended liquors.
20859	By-products of liquor distilling.
2086	Bottled and canned soft drinks and carbonated and mineral waters.
2087	Miscellaneous flavoring extracts and flavoring sirups and compounds except chocolate syrups.
209	Miscellaneous Food Preparations and Kindred Products.
20911	Cottonseed oil, crude or refined.
20914	Cottonseed cake, meal and other by-products.
20921	Soybean oil, crude or refined.
20923	Soybean cake, meal, flour, grits, and other by-products.
2093	Vegetable and nut oils and by-products, except cottonseed and soybean.
2094	Marine fats and oils.
2095	Roasted coffee, including instant coffee.
2096	Shortening, table oils, margarine and other edible fats and oils, n.e.c.
2097	Ice, natural or manufactured.
2098	Macaroni, spaghetti, vermicelli, and noodles.
21	TOBACCO PRODUCTS:
211	Cigarettes.
212	Cigars.
213	Chewing and Smoking Tobacco and Snuff.
214	Stemmed and Redried Tobacco.
22	BASIC TEXTILES:
221	Cotton Broad Woven Fabrics.
222	Man-made Fiber and Silk Broad Woven Fabrics.
223	Wool Broad Woven Fabrics.
224	Narrow Fabrics.
225	Knit Fabrics.
227	Carpets and Rugs, Textile.
228	Yarn and Thread.
229	Miscellaneous Basic Textiles.
2296	Tire cord and fabrics.
2297	Wool and mohair (scoured, combed, carbonized): Tops, noils, nubs, slubs and grease.
2298	Cordage and twine.
23	APPAREL AND OTHER FINISHED TEXTILE PRODUCTS INCLUDING KNIT.
231	Men's, Youths', and Boys' Clothing.
233	Women's, Misses', Girls', and Infants' Clothing.
235	Millinery, Hats and Caps.
237	Fur Goods.
238	Miscellaneous Apparel and Accessories.
239	Miscellaneous Fabricated Textile Products.
24	LUMBER AND WOOD PRODUCTS, EXCEPT FURNITURE.
241	Primary Forest Products (Pulpwood, Piling, Posts, Logs, Bolts, etc.).
24114	Pulpwood logs.
24115	Pulpwood chips.
24116	Woodposts, poles and piling.
242	Lumber and Dimension Stock:
2421	Lumber and dimension stock:
24212	Sawed ties (railroads, mine, etc.).
2429	Miscellaneous sawmill and planing mill products (shingles, cooperage stock, etc.).
243	Millwork, Veneer, Plywood, Prefabricated Structural Wood Products.
2431	Millwood.
2432	Veneer and plywood.
244	Wooden Containers.
249	Miscellaneous Wood Products.
2491	Creosoted or oil treated wood products.
25	FURNITURE AND FIXTURES
251	Household and Office Furniture.
253	Public Building and Related Furniture.
254	Partitions, Shelving, Lockers, Office, and Store Fixtures.
259	Miscellaneous Furniture and Fixtures.
26	PULP, PAPER AND ALLIED PRODUCTS
261	Pulp and pulp mill products.
26111	Pulp.
262	Paper, except building paper.
26211	Newsprint.
26216	Coarse paper, including wrapping paper.
263	Paperboard, pulpboard and fiberboard, except insulating board.
264	Converted paper and paperboard products, except containers and boxes.
2643	Paper bags.
265	Containers and boxes, paperboard, fiberboard and pulpboard.
266	Building paper and building board.
2661	Building paper and building board.
26613	Wallboard.
27	PRINTED MATTER.
271	Newspapers.
272	Periodicals.
273	Books.
274	Miscellaneous Printed Matter.
276	Manifold Business Forms.
277	Greeting Cards, Seals, Labels, And Tags.
278	Blankbooks, Looseleaf Binders and Devices.
279	Products of Service Industries for the Printing Trades.
28	CHEMICAL AND ALLIED PRODUCTS
281	Industrial Inorganic and Organic Chemicals.
2812	Sodium, potassium, and other basic inorganic chemical compounds and chlorine.
28123	Sodium compounds, except sodium alkalies.
2813	Industrial gases (compressed and liquefied).
2814	Crude products from coal tar, petroleum and natural gas.

Code	Description
2816	Inorganic pigments.
2818	Miscellaneous industrial organic chemicals.
28184	Alcohols.
2819	Miscellaneous industrial inorganic chemicals.
28193	Sulphuric acid.
282	Plastics Materials and Synthetic Resins, Synthetic Rubbers and Fibers.
28212	Synthetic rubber.
28213	Synthetic organic fibers.
283	Drugs (Biological Products, Medicinal Chemicals, Botanical Products and Pharmaceutical Preparations).
284	Soap, Detergents, and Cleaning Preparations, Perfumes, Cosmetics and Other Toilet Preparations.
2841	Soap and other detergents, except specialty cleansers.
285	Paints, Varnishes, Lacquers, Enamels, and Allied Products.
286	Gum and Wood Chemicals.
287	Agricultural Chemicals.
2871	Fertilizers.
289	Miscellaneous Chemical Products.
2892	Explosives.
28991	Salt.
29	PETROLEUM AND COAL PRODUCTS.
291	Products of Petroleum Refining.
29111	Gasoline, jet fuels and other high volatile petroleum fuels, except natural gasoline.
29112	Kerosene.
29113	Distillate fuel oil.
29114	Lubricating and similar oils and derivatives.
29115	Lubricating greases.
29116	Asphalt, tar and pitches (petroleum, cokeoven, coal tar).
29117	Residual fuel oil and other low volatile petroleum fuels.
29119	Products of petroleum refining, n.e.c.
2912	Liquefied petroleum gases and coal gases.
295	Paving and Roofing Materials.
2951	Paving mixtures and blocks.
2952	Asphalt felt and coatings.
299	Miscellaneous Petroleum and Coal Products.
29911	Coke and coal briquettes.
30	RUBBER AND MISCELLANEOUS PLASTIC PRODUCTS.
301	Tires and Inner Tubes.
302	Rubber Footwear.
303	Reclaimed Rubber.
306	Miscellaneous Fabricated Rubber Products.
307	Miscellaneous Plastics Products.
31	LEATHER AND LEATHER PRODUCTS.
311	Leather.
312	Industrial Leather Belting and Packing.
313	Boot and Shoe Cut Stock and Findings, All Materials.
314	Footwear, Except Rubber.
315	Leather Gloves and Mittens.
316	Luggage, Handbags, and Other Personal Leather Goods (all materials).
319	Miscellaneous Leather Goods.
32	STONE, CLAY AND GLASS PRODUCTS.
321	Flat Glass.
322	Glass and Glassware, Pressed and Blown.
3221	Glass containers.
324	Hydraulic Cement.
32411	Cement, hydraulic; Portland, natural, masonry, puzzolan.
325	Structural Clay Products.
3251	Brick and structural clay tile.
32511	Brick, except ceramic glazed and refractory brick.
3253	Ceramic wall and floor tile.
3255	Refractories, clay and nonclay.
3259	Miscellaneous structural clay products.
32594	Roofing tile.
326	Pottery and Related Products.
327	Concrete, Gypsum, and Plaster Products.
3271	Concrete products.
3274	Lime.
3275	Gypsum products.
328	Cut Stone and Stone Products.
329	Abrasives, Asbestos, and Miscellaneous Nonmetallic Mineral Products.
3291	Abrasive products.
33	PRIMARY METAL PRODUCTS.
331	Steel Works and Rolling Mill Products.
33111	Pig iron.
33112	Slag.
33113	Coke, screenings and breeze.
33119	Coke oven and blast furnace products, n.e.c.
3312	Primary iron and steel products, except coke oven by-products.
33121	Steel ingot and semi-finished shapes.
3313	Ferro-alloys.
3315	Steel wire, nails, and spikes.
332	Iron and Steel Castings.
33211	Iron and steel cast pipe and fittings.
333	Nonferrous Metals Primary Smelter Products (Slab, Ingot, Pig, etc., and Residues).
3331	Primary copper and copper base alloys smelter products.
3332	Primary lead and lead base alloys smelter products.
3333	Primary zinc and zinc base alloys smelter products.
3334	Primary aluminum and aluminum base alloys smelter products.
335	Nonferrous Metal Basic Shapes.
3351	Copper, brass or bronze and other copper base alloy basic shapes.
3352	Aluminum and aluminum base alloy basic shapes except aluminum foil.
3357	Nonferrous wire, including insulated wire.
336	Nonferrous and Nonferrous Base Alloy Castings.
3361	Aluminum and aluminum base alloy castings.
2262	Brass, bronze, copper, and copper base alloy castings.
339	Miscellaneous Primary Metal Products.
3391	Iron and steel forgings.
3392	Nonferrous forgings.
34	FABRICATED METAL PRODUCTS, EXCEPT ORDNANCE, MACHINERY, AND TRANSPORTATION EQUIPMENT.
341	Metal Cans.
342	Cutlery, Hand Tools, and General Hardware.
343	Plumbing Fixtures and Heating Apparatus, Except Electric.
3433	Heating equipment, except electric.
344	Fabricated structural metal products.
3441	Fabricated structural metal products.
345	Bolts, Nuts, Screws, Rivets, Washers, and Other Industrial Fasteners.
346	Metal Stampings.
348	Miscellaneous Fabricated Wire Products.
349	Miscellaneous Fabricated Metal Products.
3491	Metal barrels, drums, kegs, and pails.
3494	Valves and pipe fittings (except plumbers' brass goods and fittings), fabricated pipe and fabricated pipe fittings.
35	MACHINERY, EXCEPT ELECTRICAL.
351	Engines and Turbines.
352	Farm Machinery and Equipment.
353	Construction, Mining and Materials Handling Equipment.
3531	Construction machinery and equipment.
3532	Mining machinery and equipment, except oil field machinery and equipment.

Code	Description
3533	Oil field machinery and equipment.
3537	Industrial trucks, tractors, trailers, and stackers.
354	Metalworking Machinery and Equipment.
355	Special Industry Machinery, Except Metalworking Machinery.
356	General Industrial Machinery and Equipment.
357	Office, Computing, and Accounting Machines.
358	Service Industry Machines.
359	Miscellaneous Machinery and Parts, Except Electrical.
36	ELECTRICAL MACHINERY, EQUIPMENT AND SUPPLIES.
361	Electrical Transmission and Distribution Equipment.
362	Electrical Industrial Apparatus.
363	Household Appliances.
3631	Household cooking equipment, all types.
3632	Household refrigerators and home and farm freezers.
3633	Household laundry equipment.
364	Electric Lighting and Wiring Equipment.
365	Radio and TV Receiving Sets, Except Communication Types.
366	Communication Equipment.
367	Electronic Components and Accessories.
369	Miscellaneous Electrical Machinery, Equipment, and Supplies.
37	TRANSPORTATION EQUIPMENT.
371	Motor Vehicles and Motor Vehicle Equipment.
3711	Motor vehicles.
37111	Passenger cars, assembled.
37112	Truck tractors, and trucks, assembled.
37113	Motor coaches, assembled (including trolley busses) and fire department vehicles.
3712	Passenger car bodies and body parts.
3713	Truck and bus bodies and body parts.
3714	Motor vehicle parts and accessories.
3715	Truck trailers.
372	Aircraft and Parts.
373	Ships and Boats.
374	Railroad Equipment.
375	Motorcycles, Bicycles, and Parts.
379	Miscellaneous Transportation Equipment.
38	INSTRUMENTS, PHOTOGRAPHIC AND OPTICAL GOODS, WATCHES AND CLOCKS.
381	Engineering, Laboratory, and Scientific Instruments.
382	Measuring, Controlling, and Indicating Instruments.
383	Optical Instruments and Lenses.
384	Surgical, Medical, and Dental Instruments and Supplies.
385	Ophthalmic or Opticians' Goods.
386	Photographic Equipment and Supplies.
387	Watches, Clocks, Clockwork Operated Devices, and Parts.
39	MISCELLANEOUS PRODUCTS OF MANUFACTURING.
391	Jewelry, Silverware, and Plated Ware.
393	Musical Instruments and Parts.
394	Toys, Amusement, Sporting and Athletic Goods.
3949	Sporting and athletic goods.
395	Pens, Pencils, and Other Office and Artists' Materials.
396	Costume Jewelry, Novelties, Buttons, and Notions.
398	Miscellaneous Manufactured Products—A.
399	Miscellaneous Manufactured Products—B.
40	WASTE AND SCRAP MATERIALS.
401	Ashes.
402	Waste and Scrap, Except Ashes.
4021	Metal scrap, waste and tailings.
40211	Iron and steel scrap, wastes and tailings.
4022	Textile waste, scrap and sweepings.
4024	Paper waste and scrap.
4026	Rubber and plastic scrap and waste.
41	MISC. FREIGHT SHIPMENTS.
411	Misc. Freight Shipments.
41111	Outfits or kits.
41114	Articles, used except for repair, reconditioning (41115), returned empty (421), remelting 4021).
41115	Articles, used, returned for repair, incl. for reconditioning.
412	Miscellaneous Commodities Not Taken in Regular Freight Service.
42	CONTAINERS, SHIPPING, RETURNED EMPTY.
421	Containers, Shipping, Returned Empty Inc. Carriers or Devices.
422	Trailers, Semi-Trailers, Returned Empty.
44	FREIGHT FORWARDER TRAFFIC.
441	Freight Forwarder Traffic, Carload or Truckload.
45	SHIPPER ASSOCIATION OR SIMILAR TRAFFIC.
451	Shipper Association or Similar Traffic, Carload or Truckload.
46	MISCELLANEOUS MIXED SHIPMENTS EXC. FORWARDER SEE 44 SHIPPER ASSOCIATION SEE 45.
461	All Freight Rate Shipments, N.E.C., Inc. TOFC.
462	Mixed Shipments on One Factor Rates Cnstg. of Commodities Representing Two or More Major Industry Groups Where it is Impossible to Determine the Predominant Industry.
47	SMALL PACKAGED FREIGHT SHIPMENTS.
471	Small Packaged Freight Shipments, Including LCL or LTL.

[32 FR 20466, Dec. 20, 1967. Redesignated at 46 FR 9116, Jan. 28, 1981, and 46 FR 10745, Feb. 4, 1981]

PARTS 1250–1252 [RESERVED]

PART 1253—RATE-MAKING ORGANIZATION; RECORDS AND REPORTS

Sec.
1253.10 Accounts.
1253.20 Other records.
1253.30 Retention of records.

AUTHORITY: 49 U.S.C. 721, 10706, 13703, 11144, and 11145.

NOTE: The report forms prescribed by part 1253 are available upon request from the Office of the Secretary, Surface Transportation Board, Washington, DC 20423.

§ 1253.10 Accounts.

Accounts shall be kept by each conference, bureau, committee, or other organization subject to sections 5a or 5b to record all receipts and expenditures of moneys. Such accounts shall be kept with sufficient particularity to show the facts pertaining to all transactions reflected in the entries made in the accounts. All receipts shall be supported by records, including records

showing the basis for charges to members. All disbursements shall be supported by vouchers, payrolls, canceled checks, and other evidences of expenditures, including the basis for any apportionment of expense items to members.

[32 FR 20474, Dec. 20, 1967]

§ 1253.20 Other records.

Each such organization subject to sections 5a or 5b shall maintain:

(a)(1) A file for each proposal relating to rates, fares, classifications, divisions, allowances, or charges (including charges between carriers and compensation paid or received for the use of facilities and equipment), or rules and regulations pertaining thereto, which shall contain the complete proposal, all procedural documents issued, protests, memoranda, amendments, reports, etc., submitted and any other correspondence respecting the matter proposed. Also reports or minutes of all proceedings at any oral, committee or public hearing held thereon and the determination relating thereto;

(2) a file covering each petition or protest filed by the organization against tariff publications of a member for suspension of rates or other matters published for such member carrier;

(3) a file covering each instruction or request for publication by independent action.

(b) All accounts and other records covered by this part shall be filed in such manner as to be readily accessible for examination by representatives of the Board.

(c) All rate bureaus are required to (1) advise the Board of any change in legal address by notifying the Office of the Secretary and (2) submit information to the Board when requested.

(49 U.S.C. 10706, 11145; 5 U.S.C. 553)

[32 FR 20474, Dec. 20, 1967, as amended at 47 FR 37904, Aug. 27, 1982]

§ 1253.30 Retention of records.

Each organization subject to sections 5a or 5b shall retain records or documents relating to its transactions or activities in accordance with part 1220, Preservation of Records, of this chapter.

[40 FR 50389, Oct. 29, 1975]

PARTS 1260–1269—VALUATION

NOTE: Forms prescribed in parts 1260–1269 are available upon request from the Office of the Secretary, Surface Transportation Board, Washington, DC 20423.

PARTS 1260–1261 [RESERVED]

PARTS 1280–1299—CLASSIFICATION AND DECLASSIFICATION OF NATIONAL SECURITY INFORMATION AND MATERIAL

PART 1280—HANDLING OF NATIONAL SECURITY INFORMATION AND CLASSIFIED MATERIAL

Sec.
1280.1 Purpose.
1280.2 Policy.
1280.3 Authority to classify.
1280.4 Responsibility for handling of classified documents.
1280.5 Safeguarding of classified material.
1280.6 Storage of classified documents.
1280.7 Education of employees.
1280.8 Requests for mandatory review.

AUTHORITY: E.O. 12356.

SOURCE: 49 FR 7832, Mar. 2, 1984, unless otherwise noted.

§ 1280.1 Purpose.

To set forth those provisions of the Surface Transportation Board Security Regulations to the extent that they affect the general public.

§ 1280.2 Policy.

It is the policy of the Surface Transportation Board to act in accordance with Executive Order 12356, dated April 6, 1982, in matters relating to national security information.

§ 1280.3 Authority to classify.

The Board does not have authority of its own to classify any of its internally generated documents. The only documents handled by the Board which are classified as confidential, secret, or top secret are those generated by Executive Branch Agencies with original classification authority.

§ 1280.4 Responsibility for handling of classified documents.

(a) Responsible Official. Primary responsibility for the handling of classified documents shall rest with the Assistant to the Director of the Office of Compliance and Consumer Assistance, who is also Emergency Coordinator for the Board. All documents bearing the terms ''Top Secret,'' ''Secret,'' and ''Confidential'' shall be delivered to the Emergency Coordinator or his/her alternate immediately upon receipt. The alternate is also an Assistant to the Director of the Office of Compliance and Consumer Assistance as set forth in § 1280.4(b) of the rules. All potential recipients of such documents shall be advised of the name of the Emergency Coordinator. In the event that the Emergency Coordinator or his/her alternate is not available to receive such documents, they shall be turned over to the Associate Director, Office of Compliance and Consumer Assistance, and secured, unopened, in the combination safe located in Room 5325 of the headquarters building until the Emergency Coordinator or alternate is available. All material not immediately deliverable to either the Emergency Coordinator, alternate, or the Associate Director, Office of Compliance and Consumer Assistance, shall be delivered at the earliest opportunity. Under no circumstances shall classified material that cannot be delivered to the Emergency Coordinator be stored other than in the designated safe in Room 5325 of the STB headquarters building.

(b) The alternate to the Emergency Coordinator for the receipt and handling of documents mentioned in paragraph (a) of this section, shall be the other Assistant to the Director, Office of Compliance and Consumer Assistance.

(c) Any person whose position requires access to classified information must execute Form SF #189.

(d) Any contracts with media representatives by personnel with access to classified material and involving such material will be cleared through the Emergency Coordinator and more than one person shall be present during any briefing or interview.

§ 1280.5 Safeguarding of classified material.

(a) Reproduction of classified material shall take place only when absolutely necessary, and in accordance with section 2001.46 of the Directive. Should copies be made, they are subject to the same controls as the original document. Records showing the number and distribution of copies shall be maintained by the Emergency Coordinator and the log stored with the original documents.

(b) Any suspected or actual unauthorized disclosures of classified information shall be reported to the Emergency Coordinator or Alternate. An immediate investigation will be undertaken by the Emergency Coordinator or Alternate to establish all facts surrounding the disclosure. The Emergency Coordinator or Alternate shall ascertain the nature of the information disclosed and the extent to which it has been disseminated and will maintain records of disclosures as evaluated and investigated.

(c) Any suspected or actual unauthorized disclosure of classified information will be reported as soon as possible to the Department of Justice and the Information Security Oversight Office.

(d) Any unauthorized disclosure of classified information or any failure to cooperate with the investigation of unauthorized disclosures by an employee shall be cause for appropriate disciplinary or other remedial action as provided in the Board's Canons of Conduct, 49 CFR 1000.735–31.

[49 FR 7832, Mar. 2, 1984, as amended at 54 FR 38998, Sept. 22, 1989]

§ 1280.6 Storage of classified documents.

All classified documents shall be stored in the safe located in Room 5325 of the STB headquarters building. In those instances where the Emergency Coordinator is not available to receive classified documents, they may be stored, unopened, in the safe located in Room 5325.

§ 1280.7 Education of employees.

All employees who have been granted a security clearance and who have occasion to handle classified materials shall be advised of the procedures outlined in 49 CFR part 1280. They shall also be required to review Executive Order 12356 and appropriate directives of the Information Security Oversight Office (ISOO). This shall be achieved by a memorandum to all affected employees at the time these procedures are implemented, and by appropriate instructions to new employees receiving security clearances in the future.

§ 1280.8 Requests for mandatory review.

Because the Board does not itself generate classified documents, any requests made for mandatory review shall be coordinated by the Emergency Coordinator with appropriate officials of the Department or Agency responsible for issuance of the document involved.

PARTS 1281–1299 [RESERVED]

SUBCHAPTER D—CARRIER RATES AND SERVICE TERMS

PART 1300—DISCLOSURE, PUBLICATION, AND NOTICE OF CHANGE OF RATES AND OTHER SERVICE TERMS FOR RAIL COMMON CARRIAGE

Sec.
1300.1 Scope; definitions.
1300.2 Disclosure requirement for existing rates.
1300.3 Response to request for establishment of a new rate.
1300.4 Notice requirement.
1300.5 Additional publication requirement for agricultural products and fertilizer.

AUTHORITY: 49 U.S.C. 721(a) and 11101(f).

SOURCE: 61 FR 35140, July 5, 1996, unless otherwise noted.

§ 1300.1 Scope; definitions.

(a) The provisions of this part address the requirements imposed on rail carriers by 49 U.S.C. 11101(b), 11101(c), 11101(d) and 11101(f).

(b) Except as otherwise provided in this section, the provisions of this part apply to any common carriage transportation or service provided by a rail carrier subject to the jurisdiction of the Surface Transportation Board under 49 U.S.C. 10501.

(c) The provisions of this part do not apply to any transportation or service provided by a rail carrier under a contract authorized under 49 U.S.C. 10709 or former 49 U.S.C. 10713 (repealed effective January 1, 1996).

(d) The provisions of this part do not apply to any transportation or service provided by a rail carrier to the extent that such transportation or service is exempted from rate notice and disclosure requirements pursuant to an exemption issued under 49 U.S.C. 10502 or former 49 U.S.C. 10505 (repealed effective January 1, 1996).

(e) For the purposes of this part, ''service terms'' means all classifications, rules, and practices that affect the rates, charges, or level of service for rail transportation.

§ 1300.2 Disclosure requirement for existing rates.

(a) A rail carrier must disclose to any person, upon formal request, the specific rate(s) requested (or the basis for calculating the specific rate(s)), as well as all charges and service terms that may be applicable to transportation covered by the rate(s). For purposes of § 1300.4(a)(1) of this part, a formal request under this part is one that clearly notifies the railroad that the requester seeks not only immediate information but also notification of any future increases in the rate(s) involved or changes in pertinent service terms.

(b) The information provided by a rail carrier under this section must be provided immediately. (It is expected that the response will be sent within hours, or at least by the next business day, in most situations.) Such information may be provided either in written or electronic form as agreed to by the parties. If the parties cannot agree, such information is to be provided in electronic (non-passive) form where both parties have the requisite capabilities; otherwise, it is to be provided in writing.

(c) A rail carrier may, at its option, require that all requests submitted under this section be in written or electronic form, although the carrier may permit oral requests.

§ 1300.3 Response to request for establishment of a new rate.

Where a shipper or a prospective shipper or person acting on behalf of a shipper or a prospective shipper requests that the carrier establish a rate in the absence of an existing rate for particular transportation, the carrier must promptly establish and provide to the requester a rate and applicable service terms. The information may be provided either in written or electronic form, as agreed to by the parties. If the parties cannot agree, such information is to be provided in electronic (non-passive) form where both parties have the requisite capabilities; otherwise, it is to be provided in writing. The response

should be provided as soon as reasonably possible, but no later than 10 business days from receipt of the request. If a carrier determines that additional information is required from the requester before a rate or term can be established, the carrier must so notify the requester as soon as possible, but no later than 10 business days after receipt of the request. Once the additional information is received, the carrier must set the rate and related service terms, and relay them to the requester, as soon as reasonably possible, but no later than 10 business days from the receipt of the additional information. (However, the parties may agree to a different time period, in which case these time periods would not apply.) A rail carrier may, at its option, require that requests submitted under this section be in written or electronic form, although the carrier may permit oral requests.

§ 1300.4 Notice requirement.

(a) A rail carrier may not increase any rates or charges, or change any service terms (except for changes that are equivalent to rate reductions), unless 20 days have expired after written or electronic notice has been provided to all persons who, within the previous 12 months:

(1) Have formally requested under § 1300.2 or § 1300.3 of this part the affected rates or service terms; or

(2) Have made arrangements with the carrier for a future shipment that would be subject to the increased rates or changed service terms.

(b) The notice required by this section may be in written or electronic form, as agreed to by the parties. If the parties cannot agree, the information is to be provided in electronic (non-passive) form where both parties have the requisite capabilities; otherwise, it is to be provided in writing.

(c) For purposes of this section, a mailed notice is deemed ''provided'' on the date such notice is postmarked.

(d) The notice required by this section must clearly identify the increases in rates or charges or the changes in service terms.

§ 1300.5 Additional publication requirement for agricultural products and fertilizer.

(a) With respect to transportation of agricultural products (including grain, as defined in 7 U.S.C. 75, and all products thereof) and fertilizer, a rail carrier shall publish, make available, and retain for public inspection its currently effective rates, schedules of rates, charges, and other service terms, and any scheduled changes to such rates, charges, and service terms. This requirement is in addition to the requirements imposed by §§ 1300.2, 1300.3, and 1300.4 of this part.

(b) The information published under this section must include an accurate description of the services offered to the public; must provide the specific applicable rates (or the basis for calculating the specific applicable rates), charges, and service terms; and must be arranged in a way that allows for the determination of the exact rate, charges, and service terms applicable to any given shipment (or to any given group of shipments). Increases, reductions and other changes must be symbolized or highlighted in some way to facilitate ready identification of the changes, the nature of those changes and their effective dates.

(c) A rail carrier must make the information available at offices where it normally keeps rate information. Access to the information at such offices must be provided to any person, without charge, during normal business hours.

(d) A rail carrier must also make the required publications available to all persons (hereinafter referred to as subscribers) who have subscribed to a publication service operated either by the rail carrier itself or by an agent acting at the rail carrier's direction. Such publications may be made available either in printed or in electronic form as agreed to by the parties. Any scheduled changes must be published in a manner that provides timely notice to subscribers. A rail carrier may impose reasonable charges for such publications. Publications may be limited to the specific information requested by the subscriber, and charges for such limited publications should be set accordingly.

PART 1301 [RESERVED]

PART 1302—EXPORT AND IMPORT SHIPMENTS; RAILROADS

CHARGES FOR RAIL TRANSPORTATION WHEN WATER TRANSPORTATION PERFORMED IN VESSELS NOT DOCUMENTED UNDER LAWS OF THE UNITED STATES

Sec.
1302.41 Suspension of statute.
1302.42 Further suspension of statute.
1302.43 Applicable rates on shipments in transit when statute becomes effective.

AUTHORITY: 49 U.S.C. 884.

SOURCE: 32 FR 20541, Dec. 20, 1967, unless otherwise noted.

CROSS REFERENCES: For United States Customs Service, Department of the Treasury; see Customs Duties, 19 CFR Chapter I. For Foreign-Trade Zones Board; see Commerce, 15 CFR Chapter IV. For regulations of International Trade Administration concerning foreign trade statistics; see Commerce, 15 CFR Chapter III.

CHARGES FOR RAIL TRANSPORTATION WHEN WATER TRANSPORTATION PERFORMED IN VESSELS NOT DOCUMENTED UNDER LAWS OF THE UNITED STATES

§ 1302.41 Suspension of statute.

The provisions of section 28 of the Merchant Marine Act, 1920, are hereby further suspended from and including the first day of January, 1921, until further order of this Board.

§ 1302.42 Further suspension of statute.

(a) Order of March 11, 1924, as modified, which terminated order of June 14, 1920, as modified, suspending provisions of section 28 of the Merchant Marine Act, 1920, until further order of the Board, is hereby vacated and set aside.

(b) The provisions of said order of June 14, 1920, as modified by the supplemental orders of July 27, 1920, December 11, 1920, and February 7, 1921, specified in paragraph (a) of this section, shall continue in force until further order of the Board.

§ 1302.43 Applicable rates on shipments in transit when statute becomes effective.

The following conditions are hereby prescribed as supplemental to the orders aforesaid suspending the provisions of section 28 of the Merchant Marine Act, that is to say, that notwithstanding the provisions of the aforesaid section 28 may become effective during the time when export or import shipments are in transit to or from the ports of export or import the following conditions shall be observed.

(a) With respect to all export shipments delivered to and receipted for by common carriers subject to the provisions of section 6 of the Interstate Commerce Act (section 6, 24 Stat. 380, as amended; 49 U.S.C. 6(13)) the rates to the ports in force and applicable upon said shipments via the lines of said carriers upon the date of delivery to and receipt by such carriers shall be applied to said shipments; and,

(b) With respect to all import shipments delivered to and receipted for by common carriers subject to the provisions of section 6 of the Interstate Commerce Act (49 U.S.C. 6 (13)) the rates from the ports in force and applicable to said shipments over the lines of said carriers upon the date of delivery to and receipt by such carriers shall be applied to said shipments.

PART 1305—DISCLOSURE AND NOTICE OF CHANGE OF RATES AND OTHER SERVICE TERMS FOR PIPELINE COMMON CARRIAGE

Sec.
1305.1 Scope; definitions.
1305.2 Disclosure requirement for existing rates.
1305.3 Response to request for establishment of a new rate.
1305.4 Notice requirement.

AUTHORITY: 49 U.S.C. 721(a) and 15701(e).

SOURCE: 61 FR 35141, July 5, 1996, unless otherwise noted.

§ 1305.1 Scope; definitions.

(a) The provisions of this part address the requirements imposed on pipeline carriers by 49 U.S.C. 15701(b) and 15701(c). Such requirements apply to pipeline carriers only with respect to the transportation of commodities other than water, gas, or oil.

(b) Except as otherwise provided in paragraph (c) of this section, the provisions of this part apply to any transportation or service provided by a pipeline carrier subject to the jurisdiction of the Surface Transportation Board under 49 U.S.C. 15301.

(c) The provisions of this part do not apply to any transportation or service provided by a pipeline carrier to the extent that such transportation or service is exempted from rate notice and disclosure requirements pursuant to 49 U.S.C. 15302.

(d) For the purposes of this part, *service terms* means all classifications, rules, and practices that affect the rates, charges, or level of service for pipeline transportation.

§ 1305.2 Disclosure requirement for existing rates.

(a) A pipeline carrier must disclose to any person, on request, the specific rate(s) requested (or the basis for calculating the specific rate(s)), as well as all charges and service terms that may be applicable to transportation covered by those rate(s).

(b) The information provided by a pipeline carrier under this section must be provided immediately. (It is expected that the response will be sent within hours, or at the latest by the next business day, in most situations.) Such information may be provided either in writing or in electronic form, as agreed to by the parties. If the parties cannot agree, such information is to be provided in electronic form where both parties have the requisite capabilities; otherwise, it is to be provided in writing.

(c) A pipeline carrier may, at its option, require that all requests submitted under this section be in writing or electronic form, or the carrier may permit oral requests.

§ 1305.3 Response to request for establishment of a new rate.

Where a shipper or a prospective shipper, or a person acting on behalf of a shipper or a prospective shipper, requests that the carrier establish a rate in the absence of an existing rate for particular transportation, the carrier must promptly establish and provide to the requester a rate and applicable service terms. The information may be provided either in writing or in electronic form, as agreed to by the parties. If the parties cannot agree, such information is to be provided in electronic form where both parties have the requisite capabilities; otherwise, it is to be provided in writing. The response should be provided as soon as reasonably possible, but no later than 10 business days from receipt of the request. If a carrier determines that additional information is required from the requester before a rate or term can be established, the carrier must so notify the requester as soon as possible, but no later than 10 business days after receipt of the request. Once the additional information is received, the carrier must set the rate and related service terms, and relay them to the requester, as soon as possible, but no later than 10 business days. The time period for response set forth in this section will not apply when the parties agree to a different time period. A pipeline carrier may, at its option, require that requests submitted under this section be in writing or electronic form, or the carrier may permit oral requests.

§ 1305.4 Notice requirement.

(a) A pipeline carrier may not increase any rates or charges, or change any service terms (except for changes that are equivalent to rate reductions) unless 20 days have expired after written or electronic notice has been provided to all persons who, within the previous 12 months:

(1) Have requested, under § 1305.2 or § 1305.3, the affected rates or service terms; or

(2) Have made arrangements with the carrier for a shipment that would be subject to the increased rates or changed service terms.

(b) The notice required by this section may be provided either in writing or in electronic form, as agreed to by the parties. If the parties cannot agree, the information is to be provided in electronic form where both parties have the requisite capabilities; otherwise, it is to be provided in writing.

(c) For purposes of this section, a mailed notice is deemed ''provided'' on the date such notice is postmarked.

(d) The notice required by this section must clearly identify the increase in rates or charges or the change in service terms.

PART 1310—TARIFF REQUIREMENTS FOR HOUSEHOLD GOODS CARRIERS

Sec.

1310.1 Scope; definitions.
1310.2 Requirement to maintain tariffs.
1310.3 Contents of tariffs.
1310.4 Incorporation of tariff provisions by reference.
1310.5 Availability of tariffs at carrier offices.
1310.6 Furnishing copies of tariff publications.

AUTHORITY: 49 U.S.C. 721(a), 13702(a), 13702(c) and 13702(d).

SOURCE: 62 FR 5171, Feb. 4, 1997, unless otherwise noted.

§ 1310.1 Scope; definitions.

(a) The provisions of this part address the tariff requirements imposed by 49 U.S.C. 13702 on motor carriers and freight forwarders for the transportation of household goods, and the notice requirements with which such carriers must comply in order to be entitled to enforce the provisions of their tariffs against individuals whose shipments are subject to such tariffs.

(b) The provisions of this part apply to all movements of household goods defined in paragraph (c)(1) of this section, and to those movements of household goods defined in paragraph (c)(2) of this section that are not provided under contracts entered into pursuant to 49 U.S.C. 14101(b) or former 49 U.S.C. 10702 (repealed January 1, 1996).

(c) For the purposes of this part, the term *household goods* means personal effects and property used or to be used in a dwelling, when a part of the equipment or supply of such dwelling, and similar property if the transportation of such effects or property is:

(1) Arranged and paid for by the householder, including transportation of property from a factory or store when the property is purchased by the householder with intent to use in his or her dwelling; or

(2) Arranged and paid for by another party.

(d) For the purposes of this part *service terms* means all classifications, rules, regulations and practices that affect the rates, charges, or level of service for movements of household goods.

§ 1310.2 Requirement to maintain tariffs.

(a) Except when providing transportation for charitable purposes without charge, carriers subject to the Board's jurisdiction under Chapter 135 of Title 49 of the United States Code may provide transportation or service for movements of household goods only if the rates, and related rules and practices, for such transportation or service are contained in a published tariff that is in effect under this section. The carrier may not charge or receive a different compensation for the transportation or service than the rate specified in the tariff, whether by returning a part of that rate to a person, by giving a person a privilege, by allowing the use of a facility that affects the value of that transportation or service, or through another device. Tariffs shall be published in the English language and rates shall be stated in money of the United States.

(b) Tariffs maintained pursuant to this part must be available for inspection by the Board, and must be provided to the Board promptly and free of charge, upon request, by mail or other delivery service.

(c) A carrier that maintains a tariff pursuant to this part may not enforce the provisions of the tariff unless the carrier has given notice that the tariff is available for inspection in its bill of lading or by other actual notice to individuals whose shipments are subject to the tariff, as provided in § 1310.4 of this part.

(d) The Board may invalidate a tariff prepared by or on behalf of a carrier under this part if that tariff violates 49 U.S.C. 13702 or the regulations contained in this part.

§ 1310.3 Contents of tariffs.

(a) Tariffs prepared under this part must include an accurate description of the services offered to the public; must provide the specific applicable rates, charges and service terms; and must be

arranged in a way that allows for the determination of the exact rate, charges and service terms applicable to any given shipment. Increases, reductions and other changes must be symbolized or highlighted in some way to facilitate ready identification of the changes and their effective dates.

(b) All information necessary to determine applicable rates, charges and service terms for a given shipment need not be contained in a single tariff, but if multiple tariffs are used to convey that information, the tariff containing the rates must make specific reference to all other tariffs required to determine applicable rates, charges and service terms. The carrier(s) party to the rate(s) must participate in all of the tariffs so linked and all such tariffs must be made available to shippers upon reasonable request.

§ 1310.4 Incorporation of tariff provisions by reference.

(a) Carriers that maintain tariffs pursuant to this part may incorporate the terms of such tariffs by reference (i.e., without stating their full text) into the bill of lading or other document embodying the contract of carriage for the transportation of household goods, provided that:

(1) The bill of lading or other document must contain a conspicuous notice that the contract of carriage incorporates the terms of the carrier's tariffs; the carrier must give notice that its tariffs are available for inspection in its bill of lading or by other actual notice to individuals whose shipments are subject to such tariffs; and the carrier must make the full text of incorporated terms readily available for inspection by the shipper, free of charge, upon request. If such terms cannot be made available immediately, they must be made available promptly and free of charge by mail or other delivery service.

(2) If the incorporated terms include any of the terms set forth in paragraphs (a)(2)(i) through (a)(2)(iii) of this section, the notice on the bill of lading or other document must indicate that such terms are included; the shipper must be provided with a brief summary of the principal features of such terms on or with the document; and the shipper must be able to obtain a more complete explanation of such terms upon request.

(i) Limits on the carrier's liability for loss, damage, or delay of goods, including fragile or valuable goods.

(ii) Claim restrictions, including time periods within which 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 impose monetary penalties on shippers or consignees, increase the price of the transportation, or change any terms of the contract.

(b) 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 tariff term that is incorporated by reference under this section unless the carrier has complied with the requirements of paragraph (a) of this section.

(c) The disclosure requirements established by this section preempt any State requirements on the same subject, for tariff terms that are incorporated by reference into the bill of lading or other document embodying the contract of carriage for the transportation of household goods.

§ 1310.5 Availability of tariffs at carrier offices.

(a) Each carrier shall maintain, at its principal office, a complete set of its effective tariffs and those to which it is a party.

(b) Each carrier shall also maintain some or all of its tariffs at its other business offices, upon request. Carriers shall provide information regarding all locations where tariffs may be viewed.

(c) At all points where tariffs are maintained, they shall be made available for inspection by any person during the carrier's normal business hours. The tariffs shall be accessible and readable. The carrier shall also display, in a conspicuous place in those locations, a notice, in large print, which contains a statement that the tariffs are available for public inspection.

(d) At all other carrier business offices, the carrier shall display a notice advising the public of the location of the nearest available tariff. The notice

shall be in large print and posted in a conspicuous place. In addition, the carrier shall, upon request, make its tariffs available at that location as soon as possible but not later than within 20 days, or provide the sought information orally if satisfactory to the requestor.

(e) Any publication referred to in a tariff must be maintained with that tariff.

(f) If any tariff maintained pursuant to paragraph (b) of this section has not been used for a substantial length of time, the availability of that tariff, including its reissues, may be discontinued at that office until such time as it is again requested. It shall then be made available within 20 days.

§ 1310.6 Furnishing copies of tariff publications.

(a) Copies of tariffs, specific tariff provisions or tariff subscriptions shall be provided upon request to any interested person.

(b) Except for providing to shippers the full text of tariff terms incorporated by reference into the bill of lading or other document embodying the contract of carriage for the transportation of household goods, as described in § 1310.4(a)(1), carriers may assess charges for furnishing copies of tariff publications to interested persons. If a charge is made, the charge must be reasonable, and identical for the same publications and delivery service.

PART 1312—REGULATIONS FOR THE PUBLICATION, POSTING AND FILING OF TARIFFS FOR THE TRANSPORTATION OF PROPERTY BY OR WITH A WATER CARRIER IN NONCONTIGUOUS DOMESTIC TRADE

Sec.

1312.1 Scope; definitions.
1312.2 Requirement to publish and file a tariff.
1312.3 Tariff contents and standards; Essential criteria.
1312.4 Filing of tariffs.
1312.5 Amendments to tariffs.
1312.6 Advance notice required.
1312.7 STB tariff designation.
1312.8 Identification of tariff publication.
1312.9 Statement of tariff application and other title page requirements.
1312.10 Notification of tariff changes and nature of changes.
1312.11 Special notification for ordered matter.
1312.12 Posting requirements.
1312.13 Furnishing copies of tariff publications.
1312.14 Powers of attorney and concurrences.
1312.15 Change of carrier or agent.
1312.16 Substitution of service.

AUTHORITY: 49 U.S.C. 721(a), 13702(a), 13702(b) and 13702(d).

SOURCE: 62 FR 19058, Apr. 18, 1997, unless otherwise noted.

§ 1312.1 Scope; definitions.

(a) *Applicability*. The provisions of this part address the requirements in 49 U.S.C. 13702 that carriers subject to the Board's jurisdiction under 49 U.S.C. Chapter 135 and providing transportation or service for the movement of property (except bulk cargo, forest products, recycled metal scrap, waste paper, and paper waste) by or with a water carrier in noncontiguous domestic trade shall publish and file with the Board tariffs containing the rates for such transportation.

(b) *Exceptions*. The provisions of this part do not apply to:

(1) Any transportation or service provided by a carrier pursuant to 49 U.S.C. 14101(b); or

(2) The transportation of any cargo or type of cargo or service which was not subject to regulation by, or under the jurisdiction of, either the Federal Maritime Commission (FMC) or the Interstate Commerce Commission under Federal law in effect on November 1, 1995.

(c) *Definitions*. For the purposes of this part:

Act means part B of subtitle IV of title 49 of the United States Code.

Agent means a person, association or corporation authorized to publish and file rates and provisions on behalf of one or more carriers in tariffs published in the agent's name.

Agent's tariff means a tariff filed in the name of an agent.

Board means the Surface Transportation Board.

Bound tariff means a tariff consisting of two or more sheets bound at the left edge in pamphlet or book form or a single-sheet tariff.

Carrier means a motor carrier, water carrier or freight forwarder subject to the Board's jurisdiction under 49 U.S.C. Chapter 135.

Carrier's tariff means a tariff filed in the name of a carrier.

Collectively established tariff matter means a rate, charge, rule or other tariff provision established pursuant to 49 U.S.C. 13703.

Independently established tariff matter means any rate, charge, rule or other tariff provision not established pursuant to 49 U.S.C. 13703.

Item means a tariff provision of any kind bearing an item number designation.

Joint rate means a rate that applies over the lines or routes of two or more carriers made by an agreement between the carriers and effected by a concurrence or power of attorney.

Joint tariff means a tariff that contains joint rates or provisions affecting joint rates.

Local rate means a rate that applies only to one carrier.

Local tariff means a tariff that contains local rates or provisions affecting local rates.

Looseleaf page means a single page published as part of a new or reissued looseleaf tariff or as an amendment to such a tariff.

Looseleaf tariff means a tariff consisting of looseleaf pages.

Noncontiguous domestic trade means transportation subject to jurisdiction under 49 U.S.C. Chapter 135 involving traffic originating in or destined to Alaska, Hawaii, or a territory or possession of the United States.

Original tariff means a bound or looseleaf tariff as originally filed excluding amendments.

Page means that portion of a tariff or supplement printed on one side of a sheet.

Post refers to making filed tariffs available to the public.

Publication means a bound tariff, a tariff supplement, or a looseleaf tariff page.

Rate means a rate or charge.

Service terms mean all classifications, rules and practices that affect the rates or level of service.

Supplement means a single sheet, or two or more sheets bound at the left edge in pamphlet or book form, identified as a supplement and published to amend or cancel a bound or looseleaf tariff.

Tariff means an issuance (in whole or in part) bearing designations required by this part and containing rates, rules, regulations, classifications or other provisions published and filed with the Board for compliance with 49 U.S.C. 13702.

[62 FR 19058, Apr. 18, 1997, as amended at 64 FR 5195, Feb. 3, 1999]

§ 1312.2 Requirement to publish and file a tariff.

(a) *Requirement for tariff.* Except when providing transportation for charitable purposes without charge, or when providing transportation or service described in § 1312.1(b), carriers subject to the Board's jurisdiction under 49 U.S.C. Chapter 135 may provide transportation or service described in § 1312.1(a) only if the rates, and related rules and practices, for such transportation or service are contained in a published tariff that is on file with the Board and in effect under this part.

(b) *Adherence to tariff.* The carrier may not charge or receive a different compensation for the transportation or service than the rate specified in the tariff, whether by returning a part of that rate to a person, giving a person a privilege, allowing the use of a facility that affects the value of that transportation or service, or another device. The carrier shall keep such tariffs available for public inspection and shall make such tariffs available to subscribers as required in this part.

(c) *Other information.* Provisions for information purposes only may be included in a tariff, provided they are clearly identified as such. Such provisions may include rates and service terms covering transportation not subject to regulation by the Board, and advertising and promotional material.

(d) *Effect of filing.* The tender of a tariff and its receipt and acceptance by the Board do not relieve a carrier of liability for violations of the Act, other laws, the Board's regulations, or any decision of the Board or a court, or have any effect on the rights of persons

to file complaints for substantive violations of the Act or the Board's regulations.

(e) *Tariff relief*. Relief from the provisions of this part may be sought. Requests for such relief shall be submitted in duplicate and accompanied by the appropriate fee (see 49 CFR part 1002). Packages containing applications for relief shall be prominently marked ''SPECIAL TARIFF AUTHORITY APPLICATION.'' The application shall cite all pertinent tariff matter and shall provide complete information regarding applicant's justification, purpose and manner of relief sought.

(f) *Invalidation of tariffs*. Tariffs that violate section 13702 of the Act, or a regulation of the Board carrying out that section, may be invalidated by the Board. When a tariff is invalidated, the party that filed it will be furnished a written explanation of the reasons for such action. Tariffs issued in lieu of invalidated tariffs shall so state.

§ 1312.3 Tariff contents and standards; Essential criteria.

(a) *Contents*. Tariffs filed with the Board must include an accurate description of the services offered to the public; must provide the specific applicable rates (or the basis for calculating the specific applicable rates) and service terms; and must be arranged in a way that allows for the determination of the exact rate(s) and service terms applicable to any given shipment (or to any given group of shipments).

(b) *Use of multiple tariffs*. All information necessary to determine applicable rates and service terms for a given shipment need not be contained in a single tariff, but if multiple tariffs are used to convey that information, the tariff containing the rates must make specific reference (by STB tariff designation) to all other tariffs required to determine applicable rates and service terms, and the carrier(s) party to the rates must participate in all of the tariffs so linked.

(c) *Clarity*. Tariff information must be presented in a way that facilitates the determination of the prices and services offered, and the related service terms. Ambiguous terms and complex methods of presentation shall not be used.

(d) *Explanations*. Reference marks and abbreviations, other than commonly used abbreviations, shall be explained either in the item in which they are used or in a separate item.

§ 1312.4 Filing of tariffs.

(a) *Filing requirements*. (1) Tariffs shall be filed in English with rates explicitly stated in U.S. dollars and cents. Two copies of each tariff publication shall be filed with the Board. Packages containing tariff filings should be prominently marked ''TARIFF FILING'' and addressed to: Section of Tariffs, Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

(2) A tariff filing must be accompanied by an authorized document of transmittal identifying each publication filed, and by the appropriate filing fee (see 49 CFR part 1002). Acknowledgment of Board receipt of a tariff filing can be obtained by enclosing a duplicate transmittal letter and a postage-paid, self-addressed return envelope. Each transmittal letter shall clearly indicate in the upper left-hand corner thereof:

(i) The assigned alpha code of the issuing carrier or agent;

(ii) The number of pages transmitted;

(iii) The filing fee enclosed, the account number to be billed, or the credit card to be charged;

(iv) The transmittal number if the filer utilizes transmittal numbers; and

(v) If the filing fee is charged to a credit card, the credit card number and expiration date, and an authorized signature.

(b) *Paper size*. Tariffs shall be printed on paper not larger than 8½×11 inches.

§ 1312.5 Amendments to tariffs.

(a) *Manner of making changes*. An amendment is a change in, addition to, or cancellation of part of a tariff. Supplements are the tariff publications used to amend bound tariffs, and new or revised pages are the tariff publications normally used to amend looseleaf tariffs, although looseleaf tariffs can also be amended by supplements. Tariffs can also be canceled by new or reissued tariffs (see § 1312.7).

(b) *Supplements.* Supplements issued to amend a tariff shall be consecutively numbered. Each new supplement shall identify any supplement(s) that it cancels, and any supplement(s) that are still in effect. A tariff amendment published in a supplement may be carried forward to later supplements if it is identified as reissued without change from the supplement in which it was originally published.

(c) *Looseleaf pages.* Looseleaf pages to an original tariff shall be designated as ''Original'' (e.g., Original Title Page, Original Page 1, Original Page 2, etc.). Looseleaf pages issued to amend the tariff shall bear consecutive revision numbers and shall cancel the prior version(s) of the same page (e.g., 1st Revised Page 1 Cancels Original Page 1, 2nd Revised Page 1 Cancels 1st Revised Page 1, etc.). Additional original pages may also be issued to amend a tariff, by adding new numbered pages after the last numbered page, or by adding existing numbered pages with alphabetic suffixes (e.g., a page designated as Original Page 2–A could be added between pages 2 and 3, etc.). Each looseleaf tariff shall include a Check Sheet, a Correction Number Check Sheet, or some other method of determining the looseleaf pages issued to amend such tariff.

§ 1312.6 Advance notice required.

(a) *Notice requirement.* Unless otherwise specifically authorized by the Board, tariffs must be filed with the Board on not less than the notice shown in paragraph (b) of this section. Notice means the number of days the publication is on file with the Board prior to its effective date(s). The date the publication is received by the Board counts as the first day of notice.

(b) *Length of notice.* A tariff may not become effective earlier than:

(1) Thirty days after filing for all collectively established tariff matter.

(2) Seven workdays after filing for independently established increased tariff matter.

(3) Upon filing for independently established new tariff matter, independently established reduced tariff matter, the addition or restoration of a carrier's participation in a tariff, a correction to the list of participating carriers in a tariff (other than the cancellation of a carrier's participation), an extension of the expiration date of tariff matter, or a postponement of the effective date of proposed tariff matter.

(c) *Receipt of tariffs by the Board.* The Board will receive tariff filings between the hours of 8:30 A.M. and 5:00 P.M. Eastern Time on workdays. Tariff filings delivered to the Board on other than a workday, or after 5:00 P.M. on a workday, will be considered as received the next workday.

(d) *Definitions.* For the purposes of this section:

Increased means any tariff change that results in higher charges to the payer of freight charges or reduced service at the same rate;

New means an initial rate or other provision for a new service;

Reduced means any tariff change that results in lower charges to the payer of freight charges or expanded service at the same rate; and

Workdays means all days except Saturdays, Sundays and all Federal holidays observed in the District of Columbia.

[62 FR 19058, Apr. 18, 1997, as amended at 64 FR 5195, Feb. 3, 1999]

§ 1312.7 STB tariff designation.

(a) *Format.* Every tariff shall show an authorized tariff designation consisting of:

(1) The characters ''STB'';

(2) The assigned alpha code of the carrier or agent issuing the tariff; and

(3)(i) The tariff number (selected by the carrier or agent) to distinguish that tariff from all other tariffs filed by the same issuing carrier or agent. Tariff numbers shall not exceed 5 numerical digits and may be followed by not more than 2 letter suffixes. Examples of tariff numbers are:

STB XXXX 100
STB XX 8000–A
STB XXXX 12345–AB

(ii) Suffixes may be used only to designate reissues of tariffs. As an example, a reissue of tariff 1000 could be designated 1000–A, a reissue of tariff 1000–A could be designated 1000–B, etc.

(b) *Alpha codes.* Alpha codes are assigned to carriers and tariff agents by

the National Motor Freight Traffic Association, Inc., 2200 Mill Road, Alexandria, VA 22314.

(c) *Fees for assignment*. Fees may be assessed for the assignment of codes, but may not exceed the processing costs.

(d) *Code listing*. A list of the assigned alphabetical codes, and the names of the carriers and agents to which they are assigned, as well as subsequent changes to the list, shall be submitted to the Board's Section of Tariffs.

§ 1312.8 Identification of tariff publication.

(a) Every tariff publication filed with the Board shall include:

(1) The STB tariff designation;

(2) The name of the issuing carrier or agent;

(3) The name of the tariff; and

(4) The issue and effective dates of the publication.

(b) If the publication contains matter effective on other than the general effective date, the notation (Except as Noted) shall be included with the general effective date.

§ 1312.9 Statement of tariff application and other title page requirements.

Every new or reissued tariff or supplement filed with the Board shall lead with a title page. The title page of each tariff or supplement shall include the expiration date of the tariff or supplement, if applicable. The title page of each tariff shall also provide the complete name and address of the issuing carrier or agent; a contact person and telephone number; the certificate or operating authority number, if applicable; and a succinct statement of territorial application, mode of serving carrier(s), type of rates, and description of tariff content. EXAMPLES:

(a) Local water carrier rates on FREIGHT, ALL KINDS from points in Alaska to points in the United States.

(b) Joint motor/water commodity rates in containerized service between interior points in the United States and ports in Puerto Rico and Hawaii; and governing rules.

§ 1312.10 Notification of tariff changes and nature of changes.

Every publication filed with the Board containing tariff changes shall clearly identify such changes and their nature (whether an increase or decrease in service, rates or transportation charges).

§ 1312.11 Special notification for ordered matter.

Every tariff publication containing matter filed in compliance with a Board decision or court order shall indicate in the publication the relevant decision or order, and as well the number of days' notice authorized or required.

§ 1312.12 Posting requirements.

(a) *General posting requirements*. (1) Each carrier shall maintain, at its principal office, a complete set of its tariffs (proposed and effective) and those to which it is a party.

(2) Each carrier shall also maintain some or all of its tariffs at other locations, as may be useful. Carriers shall provide information regarding all locations where tariffs may be viewed.

(3) At all points where tariffs are posted, they shall be made available for inspection by any person during the carrier's normal business hours. The tariffs shall be accessible and readable. The carrier shall also post, in a conspicuous place in those locations, a notice, in large print, which contains a statement that the tariffs are available for public inspection.

(4) At all other carrier business offices, the carrier shall display a notice advising the public of the location of the nearest available tariff. The notice shall be in large print and posted in a conspicuous place. In addition, the carrier shall, upon request, make particular tariffs available at that location as soon as possible but not later than within 20 days, or provide the sought information orally if satisfactory to the requestor.

(5) Any publication referred to in a tariff must be posted with that tariff.

(b) *Exception to the posting requirements*. If any tariff maintained pursuant to paragraph (a)(2) of this section has not been used for a substantial

length of time, the posting of that tariff, including its reissues, may be discontinued at that station until such time as a request is made to have it reposted. It shall then be reposted within 20 days.

§ 1312.13 Furnishing copies of tariff publications.

(a) *Definitions. Subscriber*, as used in this section, means any person (other than carrier participants in a tariff) that is voluntarily furnished, or that requests that it be furnished, one or more copies of a particular tariff with or without subsequent amendments or reissues of that tariff.

(b) *Sending new publications to subscribers.* (1) The publishing carrier or agent shall send each newly-issued tariff, supplement, or loose-leaf page as requested to each subscriber by first class mail, or other means requested in writing by the subscriber.

(2) Newly-issued tariffs, supplements, or loose-leaf pages shall be sent to each subscriber not later than the time the copies for official filing are sent to the Board.

(3) Carriers or agents may, if acceptable to a subscriber, furnish only specific portions of original tariffs and amendments affecting those portions.

(c) *Certification.* The letter of transmittal accompanying the copies filed with the Board shall contain the following certification:

I certify that compliance with 49 CFR 1312.13 has been made.

(d) *Charges.* (1) If any charge is made, the charge for copies of tariff publications sent to subscribers shall be reasonable, and identical for the same publications.

(2) No charge may be made (even for the cost of sending the publication) for any publication that is invalidated by the Board.

(e) *Notice of invalidation.* If a publication is invalidated, the subscribers shall be notified.

(f) *Alternative subscription services.* The service described in this section must be available to any subscriber requesting it; however, the requirement to offer such service does not preclude the offering of different services to subscribers requesting those services.

§ 1312.14 Powers of attorney and concurrences.

(a) *Authorization.* Rates and services of a carrier must be filed in a tariff issued in that carrier's name unless they are filed:

(1) In an agent's tariff when the carrier has executed a power of attorney authorizing that individual or entity to serve as its tariff agent; or

(2) In a tariff of another carrier through issuance of a concurrence to the latter carrier authorizing the first carrier's participation in joint rates and through routes.

(b) *Disclosure of authorization.* If two or more carriers execute powers of attorney to the same agent, it is not necessary for those carriers to exchange concurrences to participate in joint rates in that agent's tariffs. Powers of attorney and concurrences are not to be filed with the Board, but shall be provided to any person on request.

§ 1312.15 Change of carrier or agent.

(a) *Change in carrier.* When a carrier's name is lawfully changed, or a fiduciary assumes possession and control of a carrier's property, all affected tariffs must be amended to reflect the change. The amendments required by this paragraph shall be filed promptly and, if possible, prior to their effective date, but in no case later than 60 days thereafter. Regardless of the date the tariff is actually filed, the effective date for an amendment required by this paragraph is the date the event occurs.

(b) *Change of agent.* When a new agent is appointed to take over an agency, or when an alternate agent assumes the duties of the principal agent, each of the superseded agent's effective tariffs shall immediately be amended to reflect the change, bearing an effective date the same as the date of the transfer. In the case of a new agent, this may only occur after one or more of the participating carriers issues a power of attorney to the new agent, and revokes the previous power of attorney. At the same time, all affected tariffs will be amended to reflect the new powers of attorney, and all carriers who have not issued them must be canceled from the tariff.

§ 1312.16 Substitution of service.

If a water or motor carrier (hereafter referred to as Carrier A) desires to have the option of substituting the services of a carrier of a different transportation mode (hereafter referred to as Carrier B) for part of its movement of a shipment, it may do so if:

(a) The shipment moves on the bill of lading that would be used if Carrier A were performing the service;

(b) Carrier A assumes the responsibility for the lading while it is in the possession of Carrier B; and

(c) Movement of the lading has been made prior to, or will be made subsequent to, the service performed by Carrier B.

PART 1313—RAILROAD CONTRACTS FOR THE TRANSPORTATION OF AGRICULTURAL PRODUCTS

Sec.

1313.1 Scope; definition of terms.
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1313.10 Procedures for complaints and discovery.

AUTHORITY: 49 U.S.C. 721(a) and 10709.

SOURCE: 61 FR 68669, Dec. 30, 1996, unless otherwise noted.

§ 1313.1 Scope; definition of terms.

(a) This part addresses the provisions of 49 U.S.C. 10709 that require rail carriers to file with the Board a summary of each contract for the transportation of agricultural products (including grain, as defined in 7 U.S.C. 75 and products thereof) and that allow complaints to be filed with the Board regarding such contracts.

(b) The provisions of this part do not apply to any transportation that is exempted from the Board's contract regulation pursuant to an exemption issued under 49 U.S.C. 10502 or former 49 U.S.C. 10505 (repealed effective January 1, 1996).

(c) For purposes of this part, the term contract means an agreement, including any amendment thereto, entered into by one or more rail carriers and one or more purchasers of rail services to provide specified transportation of agricultural products (including grain, as defined in 7 U.S.C. 75 and products thereof) under specified rates and conditions. The term amendment includes contract modifications agreed to by the parties.

(d) An amended contract is treated as a new contract under this part. Remedies are revived and review is again available, upon complaint.

§ 1313.2 Contract summary filing requirement.

(a) Rail carriers subject to the jurisdiction of the Surface Transportation Board under 49 U.S.C. 10501 must promptly file with the Board a summary of each contract entered into for the transportation of agricultural products.

(b) Contract summaries not in compliance with this part may be rejected by the Board. If a contract summary is rejected, it will be considered as not filed, and the carrier must promptly file a corrected contract summary to replace the rejected summary.

§ 1313.3 Board review; contract disapproval.

(a) Board review. (1) No later than 30 days after a contract summary is filed, the Board may, on complaint, begin a proceeding to review such contract on the grounds described in § 1313.9.

(2) If the Board begins a proceeding, it shall determine, within 30 days after the proceeding is commenced, whether the contract is in violation of 49 U.S.C. 10709.

(b) Contract disapproval. If the Board finds that the contract is in violation of 49 U.S.C. 10709, it will:

(1) Disapprove the contract; or

(2) Where the Board finds unreasonable discrimination, in accordance with 49 U.S.C. 10709(g)(2)(B)(i), order the contracting carrier(s) to provide to the complainant(s) rates and service

substantially similar to those contained in the contract at issue, with such differences in terms and conditions as are justified by the evidence.

(c) *Applicable rates/charges if a contract is disapproved.* If the Board disapproves a contract (or contract amendment), the appropriate non-contract rates/charges (or the contract provisions otherwise in effect) will be applicable.

§ 1313.4 Filing procedures and formats for contract summaries.

(a) *Filing of Summaries.* (1) Two copies of each contract summary, containing the applicable information specified in §§ 1313.6, 1313.7, or 1313.8, as appropriate, must be filed with the Board as soon as possible, but no longer than 7 days after the date of the contract (or contract amendment).

(2) The outside envelope or wrapper containing one or more contract summaries must be prominently marked ''Rail Contract Summary'' and addressed to: Tariffs Branch, Surface Transportation Board, Washington, DC 20423.

(3) A transmittal letter identifying the submitted publication(s), and the name and telephone number of a contact person, must accompany each filing of one or more contract summaries. Each transmittal letter shall clearly indicate in the upper left-hand corner thereof:

(i) The assigned alpha code of the filing carrier;

(ii) The number of summaries transmitted;

(iii) The filing fee enclosed, the account number to be billed, or the credit card to be charged;

(iv) The transmittal number if the filer utilizes transmittal numbers; and

(v) If the filing fee is charged to a credit card, the information must include the credit card number and expiration date, and an authorized signature.

(b) *Contract summary title page.* The title page of each contract summary must contain only the following information:

(1) In the upper right corner, the contract summary number (see paragraph (c) of this section), followed by the amendment number if an amended contract summary.

(2) In the center of the page, the filing carrier's name, followed by the words ''CONTRACT SUMMARY'' or ''AMENDED CONTRACT SUMMARY'', as applicable, in large print.

(3) Date of contract and its effective date.

(4) In the center lower portion, the individual submitting the filing, and the name of the individual(s) for service of complaints (if not the same individual). If not otherwise noted, a complainant may rely on service to the individual submitting the filing.

(c) *Contract summary numbering system.* (1) The contract summary identification number must include the word ''STB,'' the standard carrier alphabetic code for the filing railroad (limited to four letters), the letter ''C,'' and a sequential number, with each separated by a hyphen. The following is an example: the 357th contract summary filed by the Conrail would have the following identification number: ''STB-CR-C-357.''

(2) At its option, the carrier may issue contract summaries with nonconsecutive numbers if it assigns blocks of numbers for specific uses. An index to the blocks of reserved numbers shall be filed with the Board.

(d) *Format requirements for contract summary information.* (1) The contract summary must enumerate and have each item required in §§ 1313.6, 1313.7 or 1313.8 of this part, as applicable, completed. When the item does not pertain to the contract, the term ''Not Applicable'' (''NA'') shall be used.

(2) Changes in prior contract summaries must be underscored and must be followed by the words ''addition,'' ''deletion,'' ''extension,'' ''cancellation,'' or other appropriate descriptive phrase in parentheses. If the change to the contract is only in confidential matter, a statement to that effect must be made in the amended contract summary and must indicate the particular feature to which the change applies (i.e., rate, special feature, etc.). If ''not applicable'' is permitted in the original summary under §§ 1313.6 through 1313.8 of this part, the amended summary may use ''not applicable''

with a notation that a change pertained only to confidential data.

(3) Amended contract summaries may not substitute phrases such as ''not applicable'' or ''no change'' where disclosure was required in the original contact summary (such as in the commodity description); amended contract summaries must set forth all required non-confidential terms in the contract, whether amended or not.

§ 1313.5 Contract and contract summary availability.

(a)(1) A contract summary filed under these rules shall be made available for public inspection in the Tariffs Branch of the Surface Transportation Board.

(2) A contract summary filed under these rules also shall be made available by the carrier(s) participating in the contract, upon reasonable request.

(b) Where not already required by § 1313.10(a)(5) of this part, the contract for which a summary is filed under these rules shall be provided immediately to the Board, upon request, for its use in carrying out its functions under the statute.

§ 1313.6 Contract summary for agricultural commodities.

(a) *Summary information*. The summary of a contract for the transportation of agricultural commodities must contain the following information:

(1) *Carrier names*. A list, alphabetically arranged, of the corporate names of all carriers that are parties to the contract, and their addresses for service of complaints.

(2) *Specific commodity*. The specific commodity or commodities to be transported under the contract. Vague commodity descriptions such as ''grain'' are not permitted, even if that is the commodity description in the contract.

(3) *Shipper identity*. The specific identity of the shipper party to the contract, as well as any other party or parties on whose behalf that shipper is acting (to the extent known).

(4) *Specific origins, destinations, transit points, and other shipper facilities*. (i) Each specific origin and destination point to and from which the contract applies. Vague descriptions such as ''various points in Kansas'' are not acceptable. Broad geographic descriptions such as ''all stations in Kansas'' are permitted only to the extent such terms are actually used in the contract and such origins and destinations are subject to specific identification by reference to available publications.

(ii) Each port involved.

(iii) Each transit point identified in the contract.

(iv) Each shipper facility affecting performance under the contract (if not included in the origin/destination points or transit points), to the extent identified in the contract or known to the contracting parties.

(5) *Contract duration*. (i) The date on which the contract has or will become applicable to the transportation services covered by the contract.

(ii) The termination date of the contract, and any terms for automatic extension or renewal of the contract.

(iii) Any provisions for optional extension.

(6) *Rail car data*. (i) Either the information in paragraph (a)(6)(A) of this section or the certified statement in paragraph (a)(6)(B) of this section as follows:

(A) The number of dedicated cars (or, at the carrier's option, car days), by major car type, to be used to fulfill the contract or contract options, including those that are:

(*1*) Available and owned by the carrier(s) listed in paragraph (a)(1) of this section;

(*2*) Available and leased by those carrier(s), with average number of bad-order cars identified; and

(*3*) (Optional) On order (for ownership or lease), along with delivery dates.

(B) A certified statement that:

(*1*) The shipper will furnish the rail cars used for the transportation provided under the contract, and that those rail cars will not be leased from the carrier; or

(*2*) The contract is restricted to services which do not entail car supply.

(ii) For contract summaries filed on or before September 30, 1998, a certified statement that the cumulative equipment total for all contracts for the transportation of agricultural commodities (including forest products,

but not including wood pulp, wood chips, pulpwood or paper) does not exceed 40 percent of the capacity of carrier-owned and -leased cars by applicable car type.

(7) *Rates and charges.* (i) The specific base rates and/or charges that would apply without the contract.

(ii) A summary of any escalation provisions in the contract.

(8) *Volume.* All volume, car and/or train size requirements, as set forth in the contract, including:

(i) Movement type (single-car, multiple-car, unit-train).

(ii) Minimum and actual volume requirements under the contract, by applicable period(s) (annual, quarterly, etc.).

(iii) Volume breakpoints affecting the contract.

(9) *Special features.* The existence (but not the terms or amount) of any special features, such as transit-time commitments, credit terms, discounts, switching, special demurrage, guaranteed or minimum percentages, etc.

(b) *Supplemental information.* In the event a complaint is filed that is directed at a carrier's ability to fulfill its common carrier obligation with carrier-furnished cars, the carrier(s) shall immediately supplement the information contained in the contract summary by submitting to the Board, and supplying to the complainant, additional data on the cars used to fulfill the challenged contract. This additional data shall include (by major car type used to fulfill the contract):

(1) Total bad-car orders;

(2) Assigned car obligations; and

(3) Free-running cars.

§ 1313.7 Contract summary for grain products—involving a port.

(a) *Summary information.* The summary of a contract for the transportation of grain products that involves service to or from a port must contain the following information:

(1) *Carrier names.* A list, alphabetically arranged, of the corporate names of all carriers that are parties to the contract, and their addresses for service of complaints.

(2) *Specific commodity.* The specific commodities to be transported under the contract. Broad commodity descriptions such as ''grain products'' are permitted only to the extent that is the commodity description in the contract.

(3) *Contract duration.* (i) The date on which the contract has or will become applicable to the transportation services covered by the contract.

(ii) The termination date of the contract, and any terms for automatic extension or renewal of the contract.

(4) *Rates and charges.* (i) The specific base rates and/or charges that would apply without the contract.

(ii) The existence (but not the terms or amount) of any escalation provisions.

(5) *Volumes.* The existence (but not the terms or amount) of any provisions regarding movement type (e.g. single-car, multiple-car, unit-train) or minimum volume requirements.

(6) *Special features.* The existence (but not the terms or amount) of special features such as transit time commitments, guaranteed car supply, minimum percentage of traffic requirements, credit terms, discounts, etc.

(7) *Rail car data.* Either the information in paragraph (a)(7)(i) of this section or the certified statement in paragraph (a)(7)(ii) of this section as follows:

(i) The number of dedicated cars (or, at the carrier's option, car days), by major car type, to be used to fulfill the contract or contract options, including those that are:

(A) Available and owned by the carrier(s) listed in paragraph (a)(1) of this section;

(B) Available and leased by those carrier(s), with average number of bad-order cars identified; and

(C) (Optional) On order (for ownership or lease), along with delivery dates.

(ii) A certified statement that:

(A) The shipper will furnish the rail cars used for the transportation provided under the contract, and that those rail cars will not be leased from the carrier; or

(B) The contract is restricted to services which do not entail car supply.

(8) *Ports.* (i) The port(s) involved.

(ii) Either the mileages (rounded to the nearest 50 miles) between the port and each inland origin or destination,

or the specific inland origin and destination points.

(b) *Supplemental information*. In the event a complaint is filed that is directed at a carrier's ability to fulfill its common carrier obligation with carrier-furnished cars, the carrier(s) shall immediately supplement the information contained in the contract summary by submitting to the Board, and supplying to the complainant, additional data on the cars used to fulfill the challenged contract. This additional data shall include (by major car type used to fulfill the contract):

(1) Total bad-car orders;

(2) Assigned car obligations; and

(3) Free-running cars.

§ 1313.8 Contract summary for grain products—not involving a port.

(a) *Summary information*. The summary of a contract for the transportation of grain products that does not involve service to or from a port must contain the information specified in § 1313.7, paragraphs (a)(1), (2), (3) and (7). It must also contain the information specified in § 1313.7(a)(6) if the contract contains such terms.

(b) *Supplemental information*. In the event a complaint is filed that is directed at a carrier's ability to fulfill its common carrier obligation with carrier-furnished cars, the carrier(s) shall immediately supplement the information contained in the contract summary by submitting to the Board, and supplying to the complainant, additional data specified in § 1313.7(b).

§ 1313.9 Grounds for complaints and contract review.

(a) A complaint may be filed against a contract covered by this part:

(1) By any shipper on the ground that such shipper individually will be harmed because the contract unduly impairs the ability of the contracting rail carrier or carriers to meet their common carrier obligations to the complainant under 49 U.S.C. 11101;

(2) By a port on the ground that such port individually will be harmed because the contract will result in unreasonable discrimination against such port; and

(3) By a shipper of agricultural commodities on the ground that such shipper individually will be harmed because:

(i) The rail carrier has unreasonably discriminated by refusing to enter into a contract with such shipper for rates and services for the transportation of the same type of commodity under similar conditions to the contract at issue, and that such shipper was ready, willing, and able to enter into such a contract at a time essentially contemporaneous with the period during which the contract at issue was offered; or

(ii) The contract constitutes a destructive competitive practice.

(b) *Unreasonable discrimination*, for purposes of paragraph (a)(3)(i) of this section, has the same meaning as the term has under 49 U.S.C. 10741.

§ 1313.10 Procedures for complaints and discovery.

(a) *Complaints, discovery petitions, replies, and appeals*—(1) *Initial filing*. Complaints must be filed by the 18th day after the contract summary is filed. Any discovery petition must accompany the complaint.

(2) *Complaint*. A complaint must contain the correct, unabbreviated names and addresses of the complainant(s) and defendant(s). The complainant must set out the statutory provisions under which it has standing to file a complaint, and its reasons for requesting that the Board find the challenged contract unlawful.

(3) *Discovery petition*. A discovery petition must note on the front page "Petition for Discovery of Rail Contract" and note the contract (and any applicable amendment) number. It should provide the following information:

(i) *Standing—grounds*. The ground upon which the petitioner's complaint is based under § 1313.9.

(ii) *Standing—affected party*. Pertinent information regarding the petitioner's actual or potential participation in the relevant market, including:

(A) The nature and volume of petitioner's relevant business.

(B) The relevant commodities that petitioner ships or receives.

(C) Comparisons of the petitioner's commodities, locations of shipping facilities and serving carriers, actual or

potential traffic patterns and serving carrier(s), with the traffic patterns and serving carrier(s) identified in the contract summary. State whether petitioner is a consignor or consignee.

(D) The petitioner's ability to ship the commodity in question at a time generally simultaneous with the challenged contract.

(E) The potential effect of the contract on the petitioner's relevant business.

(F) Any additional supporting information, including prior negotiations, if any.

(iii) *Relevance*. The relevance of the information sought to the petitioner's challenge to the contract.

(iv) *Nexus*. Where the complaint challenges a carrier's ability to perform its common carrier obligation, the nexus between the information sought and the common carrier obligation of the contracting carrier(s).

(4) *Service of pleadings*. The complainant must certify that 2 copies of the complaint, and discovery petition if filed, have been sent to the contracting carrier(s) either by hand, express mail, or other overnight delivery service the same day as filed at the Board. The contracting carrier shall in turn serve the contracting shipper with a copy of the complaint and petition. Replies shall be served in the same manner on complainant/petitioner.

(5) *Submission of contract*. Immediately upon the filing of a complaint, the rail carrier filing the contract summary shall forward to the Board, by hand, express mail, or other overnight delivery service, the subject contract or amended contract.

(6) *Replies*. Replies to the complaint/petition are due within 5 days from the date of filing of the complaint/petition, and in no event later than noon on the 23rd day following filing of the contract summary.

(7) *Copies*. An original and 10 copies of complaints, petitions and replies must be filed with the Board in a package marked ''Confidential Rail Contract Material''.

(8) *Discovery appeals*. If action on a petition for discovery is taken under delegated authority, that action may be appealed to the Board, subject to the following:

(i) An appeal must be received within 2 days of the initial decision, but in no event later than the 28th day after the contract summary is filed.

(ii) The appeal must be marked ''Appeal of Delegated Authority Action Regarding Rail Contract Discovery''.

(iii) Telegraphic notice or its equivalent must be given to the opposing parties.

(iv) Replies to the appeal must be filed within one day after the appeal is filed.

(v) An original and 10 copies of appeals and replies must be filed with the Board.

(9) *Furnishing of information*. If discovery is granted, the carrier must furnish the required information to the petitioner by the 1st working day after the Board issues its decision.

(b) *Informal discovery*. (1) Prior to filing a petition for formal discovery under paragraph (a) of this section, a petitioner may request discovery from the carrier.

(2) The carrier must promptly grant or deny the request.

(3) Agreements between carriers and shippers for informal discovery are permitted under these rules.

(c) *Confidentiality*. If confidential contract data are filed with the Board in a pleading, the party filing these data should submit them as a separate package, clearly marked on the outside ''Confidential Material Subject to Protective Order.'' The order in paragraph (d) of this section applies to the parties specified in the order who receive confidential information through proceedings before the Board or through informal discovery.

(d) *Protective order*. Petitioner and carriers, and their duly authorized agents, shall limit to the contract complaint proceeding the use of contract information or other confidential commercial information which may be revealed in the contract, the complaint, reply, or in any other pleading relating to the contract. This restriction shall be a condition to release of any contract term to a petitioner/complainant and shall operate similarly on a carrier

in possession of confidential information which may be contained in a complaint, petition for discovery, or request for informal disclosure. Any information pertaining to parties to the contract or subject to the contract (including consignors, consignees and carriers), or pertaining to the terms of the contract, or relating to the petitioner's/complainant's confidential commercial information, must be kept confidential. Neither the information nor the existence of the information shall be disclosed to third parties, except for: consultants or agents who agree, in writing, to be bound by this regulation; information which is publicly available; information which, after receipt, becomes publicly available through no fault of the party seeking to disclose the information after it has become publicly available, or is acquired from a third party free of any restriction as to its disclosure. The petitioner/complainant or carrier must take all necessary steps to assure that the information will be kept confidential by its employees and agents. No copies of the contract terms or other confidential information are to be retained by the parties not originally privy to the data subsequent to the termination of the proceeding.

(e) *Contract review proceeding*. If the Board institutes a proceeding to review the contract, the complainant's case-in-chief is due 9 days after the institution of the proceeding, but no later than 39 days after the filing of the contract summary. Replies are due 16 days after the institution of the proceeding, but no later than 46 days after the filing of the contract summary.

PART 1319—EXEMPTIONS

AUTHORITY: 49 U.S.C. 721(a) and 13541.

SOURCE: 62 FR 9110, Feb. 28, 1997, unless otherwise noted.

§ 1319.1 Exemption of freight forwarders in the noncontiguous domestic trade from tariff filing requirements.

Freight forwarders subject to the Board's jurisdiction under 49 U.S.C. 13531 are exempted from the tariff filing requirements of 49 U.S.C. 13702.

PARTS 1320–1324 [RESERVED]

PART 1325—EXTENSION OF CREDIT TO CANDIDATES FOR FEDERAL OFFICE OR THEIR REPRESENTATIVES

Sec.

1325.1 Extension of unsecured credit prohibited.
1325.2 Credit agreements.
1325.3 Federal office.

AUTHORITY: Pub. L. 92–225, the Federal Election Campaign Act of 1971, enacted Feb. 7, 1972.

SOURCE: 37 FR 10446, May 23, 1972, unless otherwise noted.

§ 1325.1 Extension of unsecured credit prohibited.

Persons subject to regulation by the Surface Transportation Board shall not knowingly and willfully provide, for candidates for Federal office or their representatives, service or goods related to their campaign without obtaining either prepayment or a binding guarantee of payment through a sufficient deposit, bond, collateral, or other means of security. The extension of credit to such persons shall not exceed the amount of the security posted.

§ 1325.2 Credit agreements.

(a) All agreements to extend credit to candidates for Federal office or their representatives by persons subject to regulation by the Surface Transportation Board (1) must be in writing, (2) must contain a detailed description of the deposit, bond, collateral, or other means of security, used to secure payment of the debt, and (3) must be signed by all parties to the agreement. A copy of each such agreement must be filed with this Board's Bureau of Operations in Washington, DC, within 20 days of the date of its execution.

(b) [Reserved]

§ 1325.3 Federal office.

For the purposes of this section, *Federal office* means the office of President or Vice President of the United States; or of Senator or Representative in, or Delegate or Resident Board Member to, the Congress of the United States.

PART 1331—APPLICATIONS UNDER 49 U.S.C. 10706 AND 13703

Sec.
1331.1 Form and content of application.
1331.2 Required exhibits.
1331.3 Procedure.
1331.4 New parties to an agreement.
1331.5 Additional standards for retaining antitrust immunity by passenger bus industry rate bureaus.

AUTHORITY: 49 U.S.C. 721, 10706 and 13703.

SOURCE: 55 FR 11206, Mar. 27, 1990, unless otherwise noted.

§ 1331.1 Form and content of application.

The application and supporting exhibits shall conform to 49 CFR part 1104 and shall show, in the order and with the paragraph designations indicated, the following:

(a) Full name and business address of the carrier applicant(s); whether each applicant is a corporation, individual, or partnership; if a corporation, the State of incorporation; and if a partnership, the names of the partners and date of the partnership's formation.

(b) Full name and business address of each entity on whose behalf the application is filed and whether it is a corporation, individual, or partnership.

(c) Whether applicant and each entity on whose behalf the application is filed is a rail, motor, or water carrier, a household goods freight forwarder, or express, sleeping-car, or pipeline company.

(d) If the agreement of which approval is sought pertains to a conference, bureau, committee, or other organization, a complete description of such organization, including any subunits, and of its or their functions and methods of operation, together with a description of the territorial scope of such operations, and a complete description of any working or other arrangement or relationship that such organization has with any other organization. If the agreement is of any other character, a precise statement of its nature and scope and the mode of procedure thereunder.

(e) The facts and circumstances relied upon to establish that the agreement will promote the national transportation policy at 49 U.S.C. 10101.

(f) The name, title, and address of the person to whom correspondence is to be sent.

§ 1331.2 Required exhibits.

There shall be filed with and made a part of each original application, and each copy, the following exhibits:

(a) As Exhibit 1, a true copy of the agreement.

(b) If the agreement pertains to a conference, bureau, committee, or other organization:

(1) As Exhibit 2, a copy of the constitution, bylaws, or other documents or writings specifying the organization's powers, duties, and procedures, unless incorporated in the agreement filed as Exhibit 1;

(2) As Exhibit 3, an organization chart; and

(3) As Exhibit 4, a schedule of its charges to members or a statement showing how the expenses are divided among the members.

(c) As Exhibit 5, opinion of counsel that the application meets the requirements of 49 U.S.C. 10706, with specific reference to any specially pertinent provisions of articles of incorporation or association.

§ 1331.3 Procedure.

(a) Applicant shall serve a copy of the application by first class mail upon the regulatory body having jurisdiction over rates, fares, or charges of each State or territory covered by the agreement, and the original application filed with the Board shall include a certificate naming the bodies upon whom the application has been served.

(b) The Board will publish in the FEDERAL REGISTER a notice that an application has been filed under these rules and indicating how a hearing on the application may be obtained.

(c) A protest to an application should conform to 49 CFR part 1104.

(d) The Board's general rules of practice govern procedural matters not specifically covered by these rules.

§ 1331.4 New parties to an agreement.

Where a carrier becomes a party to an agreement which has been approved by the Board, such approval will extend to such carrier upon the filing with the Board by the carrier or its authorized

agent of a verified statement that it has become a party to the agreement, which statement shall show the information prescribed at §1331.1(b). Such carrier may provide transportation under joint rates or over through routes, but may not otherwise act with carriers of a different class (as defined at 49. U.S.C. 10706(d)).

§1331.5 Additional standards for retaining antitrust immunity by passenger bus industry rate bureaus.

(a) Rate bureaus must comply with the terms of their agreements, as approved by the Board. Failure to do so will result in lack of immunity for that activity.

(b) The bureaus are required to maintain detailed minutes of all meetings where immunized matters are discussed. The bureaus will be subject to withdrawal of their immunity for serious continuing violations of Board standards, and individual tariff publications will be subject to rejection, suspension, or investigation for improprieties in the rate bureau process.

(c) Absent Board approval, no other changes may be made in any approved agreement.

(d) For the purposes of the statute, the following definitions shall apply:

(1) A *general increase* is a proposed general adjustment of substantially all the rates published in a rate bureau's tariff(s).

(2) A *broad change in tariff structure* modifies in a relatively non-uniform fashion the relationship between most rates published in a rate bureau's tariff, and applies to a large area, either nationally or regionally.

(3) An *innovative fare* will be determined on a case-by-case basis; the Board will, on request, issue opinions on whether particular rate proposals may be regarded as innovative. Two examples of an innovative fare are:

(i) A fare for unlimited passenger travel; and

(ii) An experimental fare providing for transportation at the passenger's option over the line of one or more carriers.

(4) A *promotional fare* generally has three characteristics:

(i) Limited duration;

(ii) Attractive price or level of service quality; and

(iii) Some added feature in addition to those normally offered.

PART 1332—FILING CONTRACTS FOR SURFACE MAIL TRANSPORTATION

Sec.
1332.1 Applicability.
1332.2 Availability of contracts.
1332.3 Manner of submitting contracts.

AUTHORITY: Sec. 5005(b)(3), 84 Stat. 767, 39 U.S.C. 5005.

§1332.1 Applicability.

The provisions of this part shall apply to copies of all contracts or agreements entered into by the U.S. Postal Service with any common carrier by rail or motor vehicle (including passenger-carrying vehicle), or freight forwarder, express company, or other person, for the surface transportation of mail as authorized by Chapters 50 and 52 of Title 39, United States Code, as revised and reenacted by the Postal Reorganization Act, 84 Stat. 719, 39 U.S.C. 5001 and 5201.

[36 FR 6426, Apr. 3, 1971]

§1332.2 Availability of contracts.

Upon request from any member of the public to inspect a contract(s) or agreement(s) described in §1332.1, at any time between the effective date of such contract(s) or agreement(s) and 15 days prior thereto, the Board will obtain the requested contract(s) or agreement(s) from the U.S. Postal Service and make it (them) available for inspection.

[57 FR 23539, June 4, 1992]

§1332.3 Manner of submitting contracts.

The U.S. Postal Service will submit to the Board, upon request, a copy of the requested contract(s) or agreement(s). Such contract(s) or agreement(s) will be submitted by facsimile transmission or messenger service where feasible, and, where such services are not feasible, by the fastest available mail service.

[57 FR 23539, June 4, 1992]

CHAPTER XI—RESEARCH AND INNOVATIVE TECHNOLOGY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION [RESERVED]

CHAPTER XII—TRANSPORTATION SECURITY ADMINISTRATION, DEPARTMENT OF HOMELAND SECURITY

EDITORIAL NOTE: Nomenclature changes to chapter XII appear at 68 FR 49720, Aug. 19, 2003.

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SUBCHAPTER A—ADMINISTRATIVE AND PROCEDURAL RULES

PART 1500—APPLICABILITY, TERMS, AND ABBREVIATIONS

Sec.
1500.1 Applicability.
1500.3 Terms and abbreviations used in this chapter.
1500.5 Rules of construction.

AUTHORITY: 49 U.S.C. 114, 5103, 40113, 44901–44907, 44913–44914, 44916–44918, 44935–44936, 44942, 46105.

SOURCE: 67 FR 8351, Feb. 22, 2002, unless otherwise noted.

§ 1500.1 Applicability.

This chapter, this subchapter, and this part apply to all matters regulated by the Transportation Security Administration.

§ 1500.3 Terms and abbreviations used in this chapter.

As used in this chapter:

Administrator means the Under Secretary of Transportation for Security identified in 49 U.S.C. 114(b) who serves as the Administrator of the Transportation Security Administration.

Person means an individual, corporation, company, association, firm, partnership, society, joint-stock company, or governmental authority. It includes a trustee, receiver, assignee, successor, or similar representative of any of them.

Transportation Security Regulations (TSR) means the regulations issued by the Transportation Security Administration, in title 49 of the Code of Federal Regulations, chapter XII, which includes parts 1500 through 1699.

TSA means the Transportation Security Administration.

United States, in a geographical sense, means the States of the United States, the District of Columbia, and territories and possessions of the United States, including the territorial sea and the overlying airspace.

[67 FR 8351, Feb. 22, 2002, as amended at 68 FR 49720, Aug. 19, 2003]

§ 1500.5 Rules of construction.

(a) In this chapter, unless the context requires otherwise:

(1) Words importing the singular include the plural.

(2) Words importing the plural include the singular.

(3) Words importing the masculine gender include the feminine.

(b) In this chapter, the word:

(1) ''Must'' is used in an imperative sense;

(2) ''May'' is used in a permissive sense to state authority or permission to do the act prescribed, and the words ''no person may * * *'' or ''a person may not * * *'' mean that no person is required, authorized, or permitted to do the act prescribed; and

(3) ''Includes'' means ''includes but is not limited to''.

PART 1502—ORGANIZATION, FUNCTIONS, AND PROCEDURES

AUTHORITY: 5 U.S.C. 3345, 49 U.S.C. 114, 40113, 44901–44907, 44913–44914, 44916–44920, 44935–44936, 44942, 46101–46105, 45107, 46110.

SOURCE: 67 FR 48049, July 23, 2002, unless otherwise noted.

§ 1502.1 Responsibilities of the Administrator.

(a) The Administrator is responsible for the planning, direction, and control of the Transportation Security Administration (TSA) and for security in all modes of transportation. The Administrator's responsibility includes carrying out chapter 449 of title 49, United States Code, relating to civil aviation security, and related research and development activities, and security responsibilities over other modes of transportation that are exercised by the Department of Transportation.

(b) The Deputy Administrator is the ''first assistant'' to the Administrator for purposes of the Federal Vacancies Reform Act of 1998, and shall, in the event the Administrator dies, resigns, or is otherwise unable to perform the functions and duties of the office, serve as the Acting Administrator, subject to the limitations in the Federal Vacancies Reform Act of 1998. In the event of the absence or disability of both the

Administrator and the Deputy Administrator, officials designated by TSA's internal order on succession shall serve as Acting Deputy Administrator and shall perform the duties of the Administrator, except for any non-delegable statutory and/or regulatory duties.

PART 1503—INVESTIGATIVE AND ENFORCEMENT PROCEDURES

Subpart A [Reserved]

Subpart B—Scope of Investigative and Enforcement Procedures

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1503.101 TSA requirements.
1503.103 Terms used in this part.

Subpart C—Investigative Procedures

1503.201 Reports of violations.
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1503.205 Records, documents, and reports.

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1503.661 Judicial review of a final order.

Subpart H—Judicial Assessment of Civil Penalties

1503.701 Applicability of this subpart.
1503.703 Civil penalty letter; referral.

Subpart I—Formal Complaints

1503.801 Formal complaints.

AUTHORITY: 18 U.S.C. 6002; 28 U.S.C. 2461 (note); 49 U.S.C. 114, 20109, 31105, 40113–40114, 40119, 44901–44907, 46101–46107, 46109–46110, 46301, 46305, 46311, 46313–46314; Sec. 1413(i), Public Law 110–53, 121 Stat. 414 (6 U.S.C. 1142).

SOURCE: 74 FR 36039, July 21, 2009, unless otherwise noted.

Subpart A [Reserved]

Subpart B—Scope of Investigative and Enforcement Procedures

§ 1503.101 TSA requirements.

(a) The investigative and enforcement procedures in this part apply to TSA's investigation and enforcement of violations of TSA requirements.

(b) For purposes of this part, the term *TSA requirements* means the following statutory provisions and a regulation prescribed or order issued under any of those provisions:

(1) Those provisions of title 49 U.S.C. administered by the Administrator; and

(2) 46 U.S.C. chapter 701.

§ 1503.103 Terms used in this part.

In addition to the terms in § 1500.3 of this chapter, the following definitions apply in this part:

Administrative law judge or *ALJ* means an ALJ appointed pursuant to the provisions of 5 U.S.C. 3105.

Agency attorney means the Deputy Chief Counsel for Enforcement or an attorney that he or she designates. An *agency attorney* will not include—

(1) Any attorney in the Office of the Chief Counsel who advises the TSA decision maker regarding an initial decision or any appeal to the TSA decision maker; or

(2) Any attorney who is supervised in a civil penalty action by a person who provides such advice to the TSA decision maker in that action or a factually related action.

Attorney means any person who is eligible to practice law in, and is a member in good standing of the bar of, the highest court of any State, possession, territory, or Commonwealth of the United States, or of the District of Columbia, and is not under any order suspending, enjoining, restraining, disbarring, or otherwise restricting him or her in the practice of law.

Enforcement Investigative Report or *EIR* means a written report prepared by a TSA Inspector or other authorized agency official detailing the results of an inspection or investigation of a violation of a TSA requirement, including copies of any relevant evidence.

Mail includes regular First Class U.S. mail service, U.S. certified mail, or U.S. registered mail.

Party means the respondent or TSA.

Personal delivery includes hand-delivery or use of a contract or express messenger service, including an overnight express courier service. *Personal delivery* does not include the use of Government interoffice mail service.

Pleading means a complaint, an answer, motion and any amendment of these documents permitted under this subpart as well as any other written submission to the ALJ or a party during the course of the hearing proceedings.

Properly addressed means a document that shows an address contained in agency records, a residential, business, or other address submitted by a person on any document provided under this part, or any other address obtained by other reasonable and available means.

Public transportation agency means a publicly owned operator of public transportation eligible to receive Federal assistance under 49 U.S.C. chapter 53.

Respondent means the person named in a Notice of Proposed Civil Penalty, a Final Notice of Proposed Civil Penalty and Order, or a complaint.

TSA decision maker means the Administrator, acting in the capacity of the decision maker on appeal, or any person to whom the Administrator has delegated the Administrator's decision-making authority in a civil penalty action. As used in this part, the *TSA decision maker* is the official authorized to issue a final decision and order of the Administrator in a civil penalty action.

Subpart C—Investigative Procedures

§ 1503.201 Reports of violations.

(a) Any person who knows of a violation of a TSA requirement should report it to appropriate personnel of any TSA office.

(b) TSA will review each report made under this section, together with any other information TSA may have that is relevant to the matter reported, to determine the appropriate response, including additional investigation or administrative or legal enforcement action.

§ 1503.203 Investigations.

(a) *General.* The Administrator, or a designated official, may conduct investigations, hold hearings, issue subpoenas, require the production of relevant documents, records, and property, and take evidence and depositions.

(b) *Delegation of authority.* For the purpose of investigating alleged violations of a TSA requirement, the Administrator's authority may be exercised by the agency's various offices for matters within their respective areas for all routine investigations. When the compulsory processes of 49 U.S.C. 46104 are invoked, the Administrator's authority has been delegated to the Chief Counsel, each Deputy Chief Counsel, and in consultation with the Office of Chief Counsel, the Assistant Administrator for Security Operations, the Assistant Administrator for Transportation Sector Network Management, the Assistant Administrator for Inspections, the Assistant Administrator for Law Enforcement/Director of the Federal Air Marshal Service, each Special Agent in Charge, and each Federal Security Director.

§ 1503.205 Records, documents, and reports.

Each record, document, and report that regulations issued by the Transportation Security Administration require to be maintained, exhibited, or submitted to the Administrator may be used in any investigation conducted by the Administrator; and, except to the extent the use may be specifically limited or prohibited by the section that imposes the requirement, the records, documents, and reports may be used in any civil penalty action or other legal proceeding.

Subpart D—Non-Civil Penalty Enforcement

§ 1503.301 Warning notices and letters of correction.

(a) If TSA determines that a violation or an alleged violation of a TSA requirement does not require the assessment of a civil penalty, an appropriate official of the TSA may take administrative action in disposition of the case.

(b) An administrative action under this section does not constitute a formal adjudication of the matter, and may be taken by issuing the alleged violator—

(1) A ''Warning Notice'' that recites available facts and information about the incident or condition and indicates that it may have been a violation; or

(2) A ''Letter of Correction'' that confirms the TSA decision in the matter and states the necessary corrective action the alleged violator has taken or agrees to take. If the agreed corrective action is not fully completed, legal enforcement action may be taken.

(c) The issuance of a Warning Notice or Letter of Correction is not subject to appeal under this part.

(d) In the case of a public transportation agency that is determined to be in violation of a TSA requirement, an appropriate TSA official will seek correction of the violation through a written ''Notice of Noncompliance'' to the public transportation agency giving the public transportation agency reasonable opportunity to correct the violation or propose an alternative means of compliance acceptable to TSA.

(e) TSA will not take legal enforcement action against a public transportation agency under subpart E unless it has provided the Notice of Noncompliance described in paragraph (d) of this section and the public transportation agency fails to correct the violation or propose an alternative means of compliance acceptable to TSA within the timeframe provided in the notice.

(f) TSA will not initiate civil enforcement action for violations of administrative and procedural requirements pertaining to the application for, and the expenditure of, funds awarded pursuant to transportation security grant programs under Public Law 110–53.

Subpart E—Assessment of Civil Penalties by TSA

§ 1503.401 Maximum penalty amounts.

(a) *General.* TSA may assess civil penalties not exceeding the following amounts against a person for the violation of a TSA requirement.

(b) *In general.* Except as provided in paragraph (c) of this section, in the case of violation of title 49 U.S.C. or 46 U.S.C. chapter 701, or a regulation prescribed or order issued under any of those provisions, TSA may impose a civil penalty in the following amounts:

(1) $10,000 per violation, up to a total of $50,000 per civil penalty action, in

the case of an individual or small business concern, as defined in section 3 of the Small Business Act (15 U.S.C. 632); and

(2) $10,000 per violation, up to a total of $400,000 per civil penalty action, in the case of any other person.

(c) *Certain aviation related violations.* In the case of a violation of 49 U.S.C. chapter 449 (except sections 44902, 44903(d), 44907(a)–(d)(1)(A), 44907(d)(1)(C)–(f), 44908, and 44909), or 49 U.S.C. 46302 or 46303, or a regulation prescribed or order issued under any of those provisions, TSA may impose a civil penalty in the following amounts:

(1) $10,000 per violation, up to a total of $50,000 per civil penalty action, in the case of an individual (except an airman serving as an airman), any person not operating an aircraft for the transportation of passengers or property for compensation, or a small business concern, as defined in section 3 of the Small Business Act (15 U.S.C. 632).

(2) $25,000 per violation, up to a total of $400,000 per civil penalty action, in the case of a person operating an aircraft for the transportation of passengers or property for compensation (except an individual serving as an airman).

(d) *Inflation adjustment.* TSA may adjust the maximum civil penalty amounts in conformity with the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 (note). Minimum and maximum civil penalties within the jurisdiction of TSA are adjusted for inflation as follows:

TABLE 1—MINIMUM AND MAXIMUM CIVIL PENALTIES—ADJUSTED FOR INFLATION, EFFECTIVE DECEMBER 12, 2003 TO AUGUST 20, 2009

United States Code citation	Civil penalty description	Minimum penalty	Adjusted minimum penalty	Maximum penalty amount when last set or adjusted pursuant to law	Maximum penalty amount
49 U.S.C. 46301(a)(1), (4)	Violation of 49 U.S.C. ch. 449 (except secs. 44902, 44903(d), 44907(a)–(d)(1)(A), 44907(d)(1)(C)–(f), 44908, and 44909), or 49 U.S.C. 46302 or 46303, a regulation prescribed, or order issued thereunder by a person operating an aircraft for the transportation of passengers or property for compensation.	N/A	N/A	$25,000 per violation, reset 12/12/2003.	$25,000 per violation.
49 U.S.C. 46301(a)(1), (4)	Violation of 49 U.S.C. ch. 449 (except secs. 44902, 44903(d), 44907(a)–(d)(1)(A), 44907(d)(1)(C)–(f), 44908, and 44909), or 49 U.S.C. 46302 or 46303, a regulation prescribed, or order issued thereunder by an individual (except an airman serving as an airman), any person not operating an aircraft for the transportation of passengers or property for compensation, or a small business concern.	N/A	N/A	$10,000 per violation, reset 12/12/2003.	$10,000 per violation.

TABLE 2—MINIMUM AND MAXIMUM CIVIL PENALTIES—ADJUSTED FOR INFLATION, EFFECTIVE AUGUST 20, 2009

United States Code Citation	Civil penalty description	Minimum penalty	Adjusted minimum penalty	Maximum penalty amount when last set or adjusted pursuant to law	Maximum penalty amount
49 U.S.C. 46301(a)(1), (4)	Violation of 49 U.S.C. ch. 449 (except secs. 44902, 44903(d), 44907(a)–(d)(1)(A), 44907(d)(1)(C)–(f), 44908, and 44909), or 49 U.S.C. 46302 or 46303, a regulation prescribed, or order issued thereunder by a person operating an aircraft for the transportation of passengers or property for compensation.	N/A	N/A	$25,000 per violation, reset 12/12/2003.	$27,500 per violation.
49 U.S.C. 46301(a)(1), (4)	Violation of 49 U.S.C. ch. 449 (except secs. 44902, 44903(d), 44907(a)–(d)(1)(A), 44907(d)(1)(C)–(f), 44908, and 44909), or 49 U.S.C. 46302 or 46303, a regulation prescribed, or order issued thereunder by an individual (except an airman serving as an airman), any person not operating an aircraft for the transportation of passengers or property for compensation, or a small business concern.	N/A	N/A	$10,000 per violation, reset 12/12/2003.	$11,000 per violation.
49 U.S.C. 114(v)	Violation of any other provision of title 49 U.S.C. or of 46 U.S.C. ch. 701, a regulation prescribed, or order issued under thereunder.	N/A	N/A	NA	$10,000 per violation.

§ 1503.403 Delegation of authority.

The Administrator delegates the following authority to the Chief Counsel and the Deputy Chief Counsel for Enforcement, which authority may be redelegated as necessary:

(a) To initiate and assess civil penalties under 49 U.S.C. 114 and 46301 and this subpart for a violation a TSA requirement;

(b) To compromise civil penalties initiated under this subpart; and

(c) To refer cases to the Attorney General of the United States, or the delegate of the Attorney General, for the collection of civil penalties.

§ 1503.405 Injunctions.

Whenever it is determined that a person has engaged, or is about to engage, in any act or practice constituting a violation of a TSA requirement, the Chief Counsel or the Deputy Chief Counsel for Enforcement may request the Attorney General of the United States, or the delegate of the Attorney General, to bring an action in the appropriate United States district court for such relief as is necessary or appropriate, including mandatory or prohibitive injunctive relief, interim equitable relief, and punitive damages, as provided by 49 U.S.C. 114 and 46107.

§ 1503.407 Military personnel.

If a report made under this part indicates that, while performing official duties, a member of the Armed Forces, or a civilian employee of the Department of Defense who is subject to the Uniform Code of Military Justice (10 U.S.C. chapter 47), has violated a TSA requirement, an agency official will send a copy of the report to the appropriate military authority for such disciplinary action as that authority considers appropriate and a report to the Administrator thereon.

§ 1503.409 Service of documents.

(a) *General*. This section governs service of documents required to be made under this part.

(b) *Type of service*. A person may serve documents by:

(1) Personal delivery;

(2) Mail, or

(3) Electronic mail or facsimile transmission, if consented to in writing by the person served, except that such service is not effective if the party making service receives credible information indicating that the attempted service did not reach the person to be served.

(c) If a party serves a pleading on another party during the course of hearing proceedings by electronic mail or facsimile transmission, the party making service must file with the Enforcement Docket Clerk a copy of the consent of the receiving party to accept such method of service.

(d) *Date of service*. The date of service will be:

(1) The date of personal delivery.

(2) If mailed, the mailing date stated on the certificate of service, the date shown on the postmark if there is no certificate of service, or other mailing date shown by other evidence if there is no certificate of service or postmark.

(3) If sent by electronic mail or facsimile transmission, the date of transmission.

(e) *Valid service*. A document served by mail or personal delivery that was properly addressed, was sent in accordance with this part, and that was returned, that was not claimed, or that was refused, is deemed to have been served in accordance with this part. The service will be considered valid as of the date and the time that the document was deposited with a contract or express messenger, the document was mailed, or personal delivery of the document was attempted and refused.

(f) *Presumption of service*. There will be a presumption of service where a party or a person, who customarily receives mail, or receives it in the ordinary course of business, at either the person's residence or the person's principal place of business, acknowledges receipt of the document.

(g) *Additional time after service by mail*. Whenever a party has a right or a duty to act or to make any response within a prescribed period after service by mail, or on a date certain after service by mail, 5 days will be added to the prescribed period.

(h) *Service of documents filed with the Enforcement Docket*. A person must serve a copy of any document filed

with the Enforcement Docket on each party and the ALJ or the chief ALJ if no judge has been assigned to the proceeding at the time of filing. Service on a party's attorney of record or a party's designated representative is service on the party.

(i) *Certificate of service.* Each party must attach a certificate of service to any document tendered for filing with the Enforcement Docket Clerk. A certificate of service must consist of a statement, dated and signed by the person who effected service, of the name(s) of the person(s) served, and the method by which each person was served and the date that the service was made.

(j) *Service by the ALJ.* The ALJ must serve a copy of each document he or she issues including, but not limited to, notices of pre-hearing conferences and hearings, rulings on motions, decisions, and orders, upon each party to the proceedings.

§ 1503.411 Computation of time.

(a) This section applies to any period of time prescribed or allowed by this part, or by notice or order of an ALJ.

(b) The date of an act, event, or default, after which a designated time period begins to run, is not included in a computation of time under this subpart.

(c) The last day of a time period is included in a computation of time unless it is a Saturday, Sunday, a legal holiday, or a day on which the enforcement docket is officially closed. If the last day of the time period is a Saturday, Sunday, legal holiday, or a day on which the enforcement docket is officially closed, the time period runs until the end of the next day that is not a Saturday, Sunday, legal holiday, or a day on which the enforcement docket is officially closed.

§ 1503.413 Notice of Proposed Civil Penalty.

(a) *Issuance.* TSA may initiate a civil penalty action under this section by serving a Notice of Proposed Civil Penalty on the person charged with a violation of a TSA requirement. TSA will serve the Notice of Proposed Civil Penalty on the individual charged with a violation or on the president of the corporation or company charged with a violation, or other representative or employee previously identified in writing to TSA as designated to receive such service. A corporation or company may designate in writing to TSA another person to receive service of any subsequent documents in that civil penalty action.

(b) *Contents.* The Notice of Proposed Civil Penalty contains a statement of the facts alleged, the statute, regulation, or order allegedly violated, the amount of the proposed civil penalty, and a certificate of service.

(c) *Response.* Not later than 30 days after receipt of the Notice of Proposed Civil Penalty, the person charged with a violation may take one, and only one, of the following options.

(1) Submit a certified check or money order in the amount of the proposed civil penalty made payable to Transportation Security Administration, at the address specified in the Notice of Proposed Civil Penalty, or make payment electronically through *http://www.pay.gov.*

(2) Submit to the agency attorney who issued the Notice of Proposed Civil Penalty one of the following:

(i) A written request that TSA issue an Order Assessing Civil Penalty in the amount stated in the Notice of Proposed Civil Penalty without further notice, in which case the person waives the right to request a Formal Hearing, and payment is due within 30 days of receipt of the Order.

(ii) Written information and other evidence, including documents and witness statements, demonstrating that a violation of the regulations did not occur as alleged, or that the proposed penalty is not warranted by the circumstances.

(iii) A written request to reduce the proposed civil penalty, the amount of requested reduction, together with any documents supporting a reduction of the proposed civil penalty, which reflect a current financial inability to pay or records showing that payment of the proposed civil penalty would prevent the person from continuing in business.

(iv) A written request for an Informal Conference, at a date to be determined by the agency attorney, to discuss the matter with the agency attorney and

to submit supporting evidence and information to the agency attorney before the date of the Informal Conference.

(3) Submit to the agency attorney and to TSA's Enforcement Docket Clerk a written request for a Formal Hearing before an ALJ in accordance with subpart G of this part. TSA's Enforcement Docket Clerk is currently located at the United States Coast Guard (USCG) ALJ Docketing Center, 40 S. Gay Street, Room 412, Baltimore, Maryland 21202–4022. If this location changes, TSA will provide notice of the change by notice in the FEDERAL REGISTER.

§ 1503.415 Request for portions of the enforcement investigative report (EIR).

(a) Upon receipt of a Notice of Proposed Civil Penalty, a person charged with a violation of a TSA requirement, or a representative designated in writing by that person, may request from the agency attorney who issued the Notice of Proposed Civil Penalty portions of the relevant EIR that are not privileged (*e.g.*, under the deliberative process, attorney work-product, or attorney-client privileges). This information will be provided for the sole purpose of providing the information necessary to prepare a response to the allegations contained in the Notice of Proposed Civil Penalty. Sensitive Security Information (SSI) contained in the EIR may be released pursuant to 49 CFR part 1520. Information released under this section is not produced under the Freedom of Information Act.

(b) Any person not listed in paragraph (a) of this section that is interested in obtaining a copy of the EIR must submit a FOIA request pursuant to 5 U.S.C. 552, *et seq.*, 49 CFR part 7, and any applicable DHS regulations. Portions of the EIR may be exempt from disclosure pursuant to FOIA.

§ 1503.417 Final Notice of Proposed Civil Penalty and Order.

(a) *Issuance*. TSA may issue a Final Notice of Proposed Civil Penalty and Order (''Final Notice and Order'') to a person charged with a violation in the following circumstances:

(1) The person has failed to respond to a Notice of Proposed Civil Penalty within 30 days after receipt of that notice.

(2) The person requested an Informal Conference under § 1503.413(c)(2), but failed to attend the conference or continuation of the conference or provide the agency attorney with a written request showing good cause for rescheduling of the informal conference to a specified alternate date.

(3) The parties have participated in an Informal Conference or other informal proceedings as provided in § 1503.413(c)(2) and the parties have not agreed to compromise the action or the agency attorney has not agreed to withdraw the notice of proposed civil penalty.

(b) *Contents*. The Final Notice and Order will contain a statement of the facts alleged, the law allegedly violated by the respondent, and the amount of the proposed civil penalty. The Final Notice and Order may reflect a modified allegation or proposed civil penalty as a result of information submitted to the agency attorney during the informal proceedings held under § 1503.413(c)(2).

§ 1503.419 Order Assessing Civil Penalty.

(a) *Issuance pursuant to a settlement*. TSA will issue an Order Assessing Civil Penalty if the parties have participated in an Informal Conference or other informal proceedings as provided in § 1503.413(c)(2) and agreed to a civil penalty amount in compromise of the matter, in which case the person waives the right to request a formal hearing, and payment is due within 30 days of receipt of the Order.

(b) *Automatic issuance*. A Final Notice and Order automatically converts to an Order Assessing Civil Penalty if—

(1) The person charged with a violation submits a certified check or money order in the amount reflected in the Final Notice and Order to Transportation Security Administration, to the address specified in the Final Notice and Order, or makes such payment electronically through *http://www.pay.gov*; or

(2) The person fails to respond to the Final Notice and Order or request a

formal hearing within 15 days after receipt of that notice.

§ 1503.421 Streamlined civil penalty procedures for certain security violations.

(a) *Notice of violation*. TSA, at the agency's discretion, may initiate a civil penalty action through issuance of a Notice of Violation for violations described in the section and as otherwise provided by the Administrator. TSA may serve a Notice of Violation on an individual who violates a TSA requirement by presenting a weapon, explosive, or incendiary for screening at an airport or in checked baggage, where the amount of the proposed civil penalty is less than $5,000.

(b) *Contents*. A Notice of Violation contains a statement of the charges, the amount of the proposed civil penalty, and an offer to settle the matter for a lesser specified penalty amount.

(c) *Response*. Not later than 30 days after receipt of the Notice of Violation, the individual charged with a violation must respond to TSA by taking one, and only one, of the following options.

(1) Submit a certified check or money order for the lesser specified penalty amount in the Notice of Violation, made payable to Transportation Security Administration and sent to the address specified in the Notice of Violation, or make such payment electronically through *http://www.pay.gov*.

(2) Submit to the office identified in the Notice of Violation one of the following:

(i) Written information and other evidence, including documents and witness statements, demonstrating that a violation of the regulations did not occur as alleged, or that the proposed penalty is not warranted by the circumstances.

(ii) A written request to reduce the proposed civil penalty, the amount of requested reduction, together with any documents supporting a reduction of the proposed civil penalty, which reflect a current financial inability to pay or records showing that payment of the proposed civil penalty would prevent the person from continuing in business.

(iii) A written request for an Informal Conference, at a date to be determined by an agency official, to discuss the matter with the agency official and to submit supporting evidence and information to the agency official before the date of the Informal Conference.

(3) Submit to the office identified in the Notice of Violation and to TSA's Enforcement Docket Clerk a written request for a formal hearing before an ALJ in accordance with subpart G. A request for a formal hearing before an ALJ must be submitted to the address provided in § 1503.413(c)(3).

(d) *Final Notice of Violation and Civil Penalty Assessment Order*. TSA may issue a Final Notice of Violation and Civil Penalty Assessment Order (''Final Notice and Order'') to the recipient of a Notice of Violation in the following circumstances:

(1) The individual has failed to respond to a Notice of Violation within 30 days after receipt of that notice.

(2) The individual requested an Informal Conference under § 1503.421(c)(2)(iii) but failed to attend the conference or continuation of the conference or provide the agency official with a written request showing good cause for rescheduling the informal conference to a specified alternate date.

(3) The parties have participated in an Informal Conference or other informal proceedings as provided in § 1503.421(c)(2) and the parties have not agreed to compromise the action or the agency official has not agreed to withdraw the Notice of Violation.

(e) *Order Assessing Civil Penalty*. A Final Notice and Order automatically converts to an Order Assessing Civil Penalty if—

(1) The individual charged with a violation submits a certified check or money order in the amount reflected in the Final Notice and Order to Transportation Security Administration at the address specified in the Final Notice and Order, or makes such payment electronically through *http://www.pay.gov*; or

(2) The individual fails to respond to the Final Notice and Order or request a formal hearing within 15 days after receipt of that notice.

(f) *Delegation of authority*. The authority of the Administrator, under 49 U.S.C. 46301, to initiate, negotiate, and settle civil penalty actions under this

section is delegated to the Assistant Administrator for Security Operations. This authority may be further delegated.

§ 1503.423 Consent orders.

(a) *Issuance.* At any time before the issuance of an Order Assessing Civil Penalty under this subpart, an agency attorney and a person subject to a Notice of Proposed Civil Penalty, or an agency official and a person subject to a Notice of Violation, may agree to dispose of the case by the issuance of a consent order by TSA.

(b) *Contents.* A consent order contains the following:

(1) An admission of all jurisdictional facts.

(2) An admission of agreed-upon allegations.

(3) A statement of the law violated.

(4) A finding of violation.

(5) An express waiver of the right to further procedural steps and of all rights to administrative and judicial review.

§ 1503.425 Compromise orders.

(a) *Issuance.* At any time before the issuance of an Order Assessing Civil Penalty under this subpart, an agency attorney and a person subject to a Notice of Proposed Civil Penalty, or an agency official and a person subject to a Notice of Violation, may agree to dispose of the case by the issuance of a compromise order by TSA.

(b) *Contents.* A compromise order contains the following:

(1) All jurisdictional facts.

(2) All allegations.

(3) A statement that the person agrees to pay the civil penalty specified.

(4) A statement that TSA makes no finding of a violation.

(5) A statement that the compromise order will not be used as evidence of a prior violation in any subsequent civil penalty proceeding.

§ 1503.427 Request for a formal hearing.

(a) *General.* Any respondent may request a formal hearing, pursuant to § 1503.413(c)(3) or § 1503.421(c)(3), to be conducted in accordance with the procedures in subpart G of this part. The filing of a request for a formal hearing does not guarantee a person an opportunity to appear before an ALJ in person, because the ALJ may issue an initial decision or dispositive order resolving the case prior to the commencement of the formal hearing.

(b) *Form.* The person submitting a request for hearing must date and sign the request, and must include his or her current address. The request for hearing must be typewritten or legibly handwritten.

(c) *Submission of request.* A person requesting a hearing must file a written request for a hearing with the Enforcement Docket Clerk in accordance with § 1503.429 and must serve a copy of the request on the agency attorney or other agency official who issued the Notice of Proposed Civil Penalty, or Notice of Violation, as applicable, and any other party, in accordance with § 1503.429.

§ 1503.429 Filing of documents with the Enforcement Docket Clerk.

(a) *General.* This section governs filing of documents with the Enforcement Docket Clerk when required under this part.

(b) *Type of service.* A person must file a document with the Enforcement Docket Clerk by delivering two copies of the document as follows:

(1) By personal delivery or mail, to United States Coast Guard (USCG) ALJ Docketing Center, ATTN: Enforcement Docket Clerk, at the address specified in § 1503.413(c)(3).

(2) By electronic mail, to *ALJdocket@ALJBalt.USCG.MIL.* If this e-mail address changes, TSA will provide notice of the change by notice in the FEDERAL REGISTER.

(3) By facsimile transmission, to 410–962–1746. If this number changes, TSA will provide notice of the change by notice in the FEDERAL REGISTER.

(c) *Contents.* Unless otherwise specified in this part, each document must contain a short, plain statement of the facts supporting the person's position and a brief statement of the action requested in the document. Each document must be typewritten or legibly handwritten.

(d) *Date of filing.* The date of filing will be as follows:

(1) The date of personal delivery.

(2) If mailed, the mailing date stated on the certificate of service, the date shown on the postmark if there is no certificate of service, or other mailing date shown by other evidence if there is no certificate of service or postmark.

(3) If sent by electronic mail or facsimile transmission, the date of transmission.

(e) *Service of documents filed with the Enforcement Docket.* A person must serve a copy of any document filed with the Enforcement Docket on each party and the ALJ or the chief ALJ if no judge has been assigned to the proceeding at the time of filing. Service on a party's attorney of record or a party's designated representative is service on the party.

§ 1503.431 Certification of documents.

(a) *General.* This section governs each document tendered for filing with the Enforcement Docket Clerk under this part.

(b) *Signature required.* The attorney of record, the party, or the party's representative must sign each document tendered for filing with the Enforcement Docket Clerk, or served on the ALJ, the TSA decision maker on appeal, or each party.

(c) *Effect of signing a document.* By signing a document, the attorney of record, the party, or the party's representative certifies that he or she has read the document and, based on reasonable inquiry and to the best of that person's knowledge, information, and belief, the document is—

(1) Consistent with the rules in this part;

(2) Warranted by existing law or that a good faith and nonfrivolous argument exists for extension, modification, or reversal of existing law;

(3) Not unreasonable or unduly burdensome or expensive, not made to harass any person, not made to cause unnecessary delay, not made to cause needless increase in the cost of the proceedings, or for any other improper purpose; and

(4) Supported by evidence, and any denials of factual contentions are warranted on the evidence.

(d) *Sanctions.* On motion of a party, if the ALJ or TSA decision maker finds that any attorney of record, the party, or the party's representative has signed a document in violation of this section, the ALJ or the TSA decision maker, as appropriate, will do the following:

(1) Strike the pleading signed in violation of this section.

(2) Strike the request for discovery or the discovery response signed in violation of this section and preclude further discovery by the party.

(3) Deny the motion or request signed in violation of this section.

(4) Exclude the document signed in violation of this section from the record.

(5) Dismiss the interlocutory appeal and preclude further appeal on that issue by the party who filed the appeal until an initial decision has been entered on the record.

(6) Dismiss the appeal of the ALJ's initial decision to the TSA decision maker.

Subpart F [Reserved]

Subpart G—Rules of Practice in TSA Civil Penalty Actions

§ 1503.601 Applicability.

(a) This subpart applies to a civil penalty action in which the requirements of paragraphs (a)(1) through (a)(3) of this section are satisfied.

(1) There is an alleged violation of a TSA requirement.

(2) The amount in controversy does not exceed—

(i) $50,000 if the violation was committed by an individual or a small business concern;

(ii) $400,000 if the violation was committed by any other person.

(3) The person charged with the violation has requested a hearing in accordance with § 1503.427 of this part.

(b) This subpart does not apply to the adjudication of the validity of any TSA rule or other requirement under the U.S. Constitution, the Administrative Procedure Act, or any other law.

§ 1503.603 Separation of functions.

(a) Civil penalty proceedings, including hearings, will be prosecuted only by an agency attorney, except to the

extent another agency official is permitted to issue and prosecute civil penalties under § 1503.421 of this part.

(b) An agency employee engaged in the performance of investigative or prosecutorial functions in a civil penalty action must not, in that case or a factually related case, participate or give advice in a decision by the ALJ or by the TSA decision maker on appeal, except as counsel or a witness in the public proceedings.

(c) The Chief Counsel or an agency attorney not covered by paragraph (b) of this section will advise the TSA decision maker regarding an initial decision or any appeal of a civil penalty action to the TSA decision maker.

§ 1503.605 Appearances and rights of parties.

(a) Any party may appear and be heard in person.

(b) Any party may be accompanied, represented, or advised by an attorney or representative designated by the party and may be examined by that attorney or representative in any proceeding governed by this subpart. An attorney or representative who represents a respondent and has not previously filed a pleading in the matter must file a notice of appearance in the action, in the manner provided in § 1503.429, and must serve a copy of the notice of appearance on each party, in the manner provided in § 1503.409, before participating in any proceeding governed by this subpart. The attorney or representative must include the name, address, and telephone number of the attorney or representative in the notice of appearance.

§ 1503.607 Administrative law judges.

(a) *Powers of an ALJ.* In accordance with the rules of this subpart, an ALJ may:

(1) Give notice of, and hold, prehearing conferences and hearings.

(2) Issue scheduling orders and other appropriate orders regarding discovery or other matters that come before him or her consistent with the rules of this subpart.

(3) Administer oaths and affirmations.

(4) Issue subpoenas authorized by law.

(5) Rule on offers of proof.

(6) Receive relevant and material evidence.

(7) Regulate the course of the hearing in accordance with the rules of this subpart.

(8) Hold conferences to settle or to simplify the issues on his or her own motion or by consent of the parties.

(9) Rule on procedural motions and requests.

(10) Make findings of fact and conclusions of law, and issue an initial decision.

(11) Strike unsigned documents unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

(12) Order payment of witness fees in accordance with § 1503.649.

(b) *Limitations on the power of the ALJ.* (1) The ALJ may not:

(i) Issue an order of contempt.

(ii) Award costs to any party.

(iii) Impose any sanction not specified in this subpart.

(iv) Adopt or follow a standard of proof or procedure contrary to that set forth in this subpart.

(v) Decide issues involving the validity of a TSA regulation, order, or other requirement under the U.S. Constitution, the Administrative Procedure Act, or other law.

(2) If the ALJ imposes any sanction not specified in this subpart, a party may file an interlocutory appeal of right pursuant to § 1503.631(c)(3).

(3) This section does not preclude an ALJ from issuing an order that bars a person from a specific proceeding based on a finding of obstreperous or disruptive behavior in that specific proceeding.

(c) *Disqualification.* The ALJ may disqualify himself or herself at any time. A party may file a motion, pursuant to § 1503.629(f)(6), requesting that an ALJ be disqualified from the proceedings.

§ 1503.609 Complaint.

(a) *Filing.* The agency attorney must file the complaint with the Enforcement Docket Clerk in accordance with § 1503.429, or may file a written motion pursuant to § 1503.629(f)(2)(i) instead of filing a complaint, not later than 30

days after receipt by the agency attorney of a request for hearing. The agency attorney should suggest a location for the hearing when filing the complaint.

(b) *Contents.* A complaint must set forth the facts alleged, any statute, regulation, or order allegedly violated by the respondent, and the proposed civil penalty in sufficient detail to provide notice of any factual or legal allegation and proposed civil penalty.

§ 1503.611 Answer.

(a) *Filing.* A respondent must file a written answer to the complaint in accordance with § 1503.429, or may file a written motion pursuant to § 1503.629(f)(1)–(4) instead of filing an answer, not later than 30 days after service of the complaint. Subject to paragraph (c) of this section, the answer may be in the form of a letter, but must be dated and signed by the person responding to the complaint. An answer may be typewritten or may be legibly handwritten. The person filing an answer should suggest a location for the hearing when filing the answer.

(b) *Contents.* An answer must specifically state any affirmative defense that the respondent intends to assert at the hearing. A person filing an answer may include a brief statement of any relief requested in the answer.

(c) *Specific denial of allegations required.* A person filing an answer must admit, deny, or state that the person is without sufficient knowledge or information to admit or deny, each numbered paragraph of the complaint. Any statement or allegation contained in the complaint that is not specifically denied in the answer may be deemed an admission of the truth of that allegation. A general denial of the complaint is deemed a failure to file an answer.

(d) *Failure to file answer.* A person's failure to file an answer without good cause, as determined by the ALJ, will be deemed an admission of the truth of each allegation contained in the complaint.

§ 1503.613 Consolidation and separation of cases.

(a) *Consolidation.* If two or more actions involve common questions of law or fact, the Chief Administrative Law Judge may do the following:

(1) Order a joint hearing or trial on any or all such questions.

(2) Order the consolidation of such actions.

(3) Otherwise make such orders concerning the proceedings as may tend to avoid unnecessary costs or delay.

(b) *Consolidation shall not affect the applicability of this part.* Consolidation of two or more actions that individually meet the jurisdictional amounts set forth in § 1503.601(a)(2) shall not cause the resulting consolidated action to come under the exclusive jurisdiction of the district courts of the United States as specified in 49 U.S.C. 46301(d)(4)(A).

(c) *Separate trials.* The Chief Administrative Law Judge, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, or of any separate issue, or any number of claims or issues.

§ 1503.615 Notice of hearing.

(a) *Notice.* The ALJ must give each party at least 60 days notice of the date, time, and location of the hearing. With the consent of the ALJ, the parties may agree to hold the hearing on an earlier date than the date specified in the notice of hearing.

(b) *Date, time, and location of the hearing.* The ALJ to whom the proceedings have been assigned must set a reasonable date, time, and location for the hearing. The ALJ must consider the need for discovery and any joint procedural or discovery schedule submitted by the parties when determining the hearing date. The ALJ must give due regard to the convenience of the parties, the location where the majority of the witnesses reside or work, and whether the location is served by a scheduled air carrier.

§ 1503.617 Extension of time.

(a) *Oral requests.* The parties may agree to extend for a reasonable period the time for filing a document under this subpart. If the parties agree, the ALJ must grant one extension of time to each party. The party seeking the extension of time must submit a draft

order to the ALJ to be signed by the ALJ and filed with the Enforcement Docket Clerk. The ALJ may grant additional oral requests for an extension of time where the parties agree to the extension.

(b) *Written motion.* A party must file a written motion for an extension of time not later than 7 days before the document is due unless the party shows good cause for the late filing. The ALJ may grant the extension of time if the party shows good cause.

(c) *Request for continuance of hearing.* Either party may request in writing a continuance of the date of a hearing, for good cause shown, no later than seven days before the scheduled date of the hearing. Good cause does not include a scheduling conflict involving the parties or their attorneys which by due diligence could have been foreseen.

(d) *Failure to rule.* If the ALJ fails to rule on a written motion for an extension of time by the date the document was due, the motion for an extension of time is deemed granted for no more than 20 days after the original date the document was to be filed. If the ALJ fails to rule on a request for continuance by the scheduled hearing date, the request is deemed granted for no more than 10 days after the scheduled hearing date.

§ 1503.619 Intervention.

(a) A person may file a motion for leave to intervene as a party in a civil penalty action. The person must file a motion for leave to intervene not later than 10 days before the hearing unless the person shows good cause for the late filing.

(b) If the ALJ finds that intervention will not unduly broaden the issues or delay the proceedings, the ALJ may grant a motion for leave to intervene if the person will be bound by any order or decision entered in the action or the person has a property, financial, or other legitimate interest that may not be addressed adequately by the parties. The ALJ may determine the extent to which an intervenor may participate in the proceedings.

§ 1503.621 Amendment of pleadings.

(a) *Filing and service.* A party must file the amendment with the Enforcement Docket Clerk and must serve a copy of the amendment on the ALJ and all parties to the proceeding.

(b) *Time.* A party must file an amendment to a complaint or an answer within the following:

(1) Not later than 15 days before the scheduled date of a hearing, a party may amend a complaint or an answer without the consent of the ALJ.

(2) Less than 15 days before the scheduled date of a hearing, the ALJ may allow amendment of a complaint or an answer only for good cause shown in a motion to amend.

(c) *Responses.* The ALJ must allow a reasonable time, but not more than 20 days from the date of filing, for other parties to respond if an amendment to a complaint, answer, or other pleading has been filed with the ALJ.

§ 1503.623 Withdrawal of complaint or request for hearing.

At any time before or during a hearing, an agency attorney may withdraw a complaint or a respondent may withdraw a request for a hearing without the consent of the ALJ. If an agency attorney withdraws the complaint or a party withdraws the request for a hearing and the answer, the ALJ must dismiss the proceedings under this subpart with prejudice, unless the withdrawing party shows good cause for dismissal without prejudice, except that a party may withdraw a request for hearing without prejudice at any time before a complaint has been filed.

§ 1503.625 Waivers.

Waivers of any rights provided by statute or regulation must be in writing or by stipulation made at a hearing and entered into the record. The parties must set forth the precise terms of the waiver and any conditions.

§ 1503.627 Joint procedural or discovery schedule.

(a) *General.* The parties may agree to submit a schedule for filing all prehearing motions, a schedule for conducting discovery in the proceedings, or a schedule that will govern all prehearing motions and discovery in the proceedings.

(b) *Form and content of schedule.* If the parties agree to a joint procedural or

discovery schedule, one of the parties must file the joint schedule with the ALJ, setting forth the dates to which the parties have agreed, and must serve a copy of the joint schedule on each party.

(1) The joint schedule may include, but need not be limited to, requests for discovery, any objections to discovery requests, responses to discovery requests to which there are no objections, submission of prehearing motions, responses to prehearing motions, exchange of exhibits to be introduced at the hearing, and a list of witnesses that may be called at the hearing.

(2) Each party must sign the original joint schedule to be filed with the Enforcement Docket Clerk.

(c) *Time.* The parties may agree to submit all prehearing motions and responses and may agree to close discovery in the proceedings under the joint schedule within a reasonable time before the date of the hearing, but not later than 15 days before the hearing.

(d) *Order establishing joint schedule.* The ALJ must approve the joint schedule filed by the parties. One party must submit a draft order establishing a joint schedule to the ALJ to be signed by the ALJ and filed with the Enforcement Docket Clerk.

(e) *Disputes.* The ALJ must resolve disputes regarding discovery or disputes regarding compliance with the joint schedule as soon as possible so that the parties may continue to comply with the joint schedule.

(f) *Sanctions for failure to comply with joint schedule.* If a party fails to comply with the ALJ's order establishing a joint schedule, the ALJ may direct that party to comply with a motion or discovery request or, limited to the extent of the party's failure to comply with a motion or discovery request, the ALJ may do the following:

(1) Strike that portion of a party's pleadings.

(2) Preclude prehearing or discovery motions by that party.

(3) Preclude admission of that portion of a party's evidence at the hearing.

(4) Preclude that portion of the testimony of that party's witnesses at the hearing.

§ 1503.629 Motions.

(a) *General.* A party applying for an order or ruling not specifically provided in this subpart must do so by motion. A party must comply with the requirements of this section when filing a motion. A party must serve a copy of each motion on each party.

(b) *Form and contents.* A party must state the relief sought by the motion and the particular grounds supporting that relief. If a party has evidence in support of a motion, the party must attach any supporting evidence, including affidavits, to the motion.

(c) *Filing of motions.* A motion made prior to the hearing must be in writing or orally on the record. Unless otherwise agreed by the parties or for good cause shown, a party must file any prehearing motion, and must serve a copy on each party, not later than 30 days before the hearing. Motions introduced during a hearing may be made orally on the record unless the ALJ directs otherwise.

(d) *Reply to motions.* Any party may file a reply, with affidavits or other evidence in support of the reply, not later than 10 days after service of a written motion on that party. When a motion is made during a hearing, the reply may be made at the hearing on the record, orally or in writing, within a reasonable time determined by the ALJ. At the discretion of the ALJ, the moving party may file a response to the reply.

(e) *Rulings on motions.* The ALJ must rule on all motions as follows:

(1) *Discovery motions.* The ALJ must resolve all pending discovery motions not later than 10 days before the hearing.

(2) *Prehearing motions.* The ALJ must resolve all pending prehearing motions not later than 7 days before the hearing. If the ALJ issues a ruling or order orally, the ALJ must serve a written copy of the ruling or order, within 3 days, on each party. In all other cases, the ALJ must issue rulings and orders in writing and must serve a copy of the ruling or order on each party.

(3) *Motions made during the hearing.* The ALJ may issue rulings and orders on motions made during the hearing orally. Oral rulings or orders on motions must be made on the record.

(f) *Specific motions.* A party may file, but is not limited to, the following motions with the Enforcement Docket Clerk:

(1) *Motion to dismiss for insufficiency.* A respondent may file a motion to dismiss the complaint for insufficiency instead of filing an answer. If the ALJ denies the motion to dismiss the complaint for insufficiency, the respondent must file an answer not later than 20 days after service of the ALJ's denial of the motion. A motion to dismiss the complaint for insufficiency must show that the complaint fails to state a violation of a TSA requirement. If the ALJ grants the motion to dismiss the complaint for insufficiency, the agency attorney may amend the complaint in accordance with § 1503.621.

(2) *Motion to dismiss.* A party may file a motion to dismiss, specifying the grounds for dismissal. If an ALJ grants a motion to dismiss in part, a party may appeal the ALJ's ruling on the motion to dismiss under § 1503.631(b).

(i) *Motion to dismiss a request for a hearing.* An agency attorney may file a motion to dismiss a request for a hearing as untimely instead of filing a complaint. If the motion to dismiss is not granted, the agency attorney must file the complaint and must serve a copy of the complaint on each party not later than 20 days after service of the ALJ's ruling or order on the motion to dismiss. If the motion to dismiss is granted and the proceedings are terminated without a hearing, the respondent may file an appeal pursuant to § 1503.657. If required by the decision on appeal, the agency attorney must file a complaint and must serve a copy of the complaint on each party not later than 30 days after service of the decision on appeal.

(ii) *Motion to dismiss a complaint.* A respondent may file a motion to dismiss a complaint instead of filing an answer, on the ground that the complaint was not timely filed or on other grounds. If the ALJ does not grant the motion to dismiss, the respondent must file an answer and must serve a copy of the answer on each party not later than 30 days after service of the ALJ's ruling or order on the motion to dismiss. If the ALJ grants the motion to dismiss and the proceedings are terminated without a hearing, the agency attorney may file an appeal pursuant to § 1503.657. If required by the decision on appeal, the respondent must file an answer and must serve a copy of the answer on each party not later than 20 days after service of the decision on appeal.

(iii) *Motion to dismiss based on settlement.* A party may file a motion to dismiss based on a mutual settlement of the parties.

(3) *Motion for more definite statement.* A party may file a motion for more definite statement of any pleading that requires a response under this subpart. A party must set forth, in detail, the indefinite or uncertain allegations contained in a complaint or response to any pleading and must submit the details that the party believes would make the allegation or response definite and certain.

(i) *Complaint.* A respondent may file a motion requesting a more definite statement of the allegations contained in the complaint instead of filing an answer. If the ALJ grants the motion, the agency attorney must supply a more definite statement not later than 15 days after service of the ruling granting the motion. If the agency attorney fails to supply a more definite statement, the ALJ must strike the allegations in the complaint to which the motion is directed. If the ALJ denies the motion, the respondent must file an answer and must serve a copy of the answer on each party not later than 20 days after service of the order of denial.

(ii) *Answer.* An agency attorney may file a motion requesting a more definite statement if an answer fails to respond clearly to the allegations in the complaint. If the ALJ grants the motion, the respondent must supply a more definite statement not later than 15 days after service of the ruling on the motion. If the respondent fails to supply a more definite statement, the ALJ must strike those statements in the answer to which the motion is directed. The respondent's failure to supply a more definite statement may be deemed an admission of unanswered allegations in the complaint.

(4) *Motion to strike.* Any party may move to strike any insufficient allegation or defense, or any redundant, immaterial, or irrelevant matter in a pleading. A party must file a motion to strike before a response is required under this subpart or, if a response is not required, not later than 10 days after service of the pleading.

(5) *Motion for decision.* A party may move for decision, regarding all or any part of the proceedings, at any time before the ALJ has issued an initial decision in the proceedings. A party may include with a motion for decision affidavits as well as any other evidence in support of the motion. The ALJ must grant a party's motion for decision if the pleadings, depositions, answers to interrogatories, admissions, affidavits, matters that the ALJ has officially noticed, or evidence introduced during the hearing show that there is no genuine issue of material fact and that the party making the motion is entitled to a decision as a matter of law. The party moving for decision has the burden of showing that there is no genuine issue of material fact.

(6) *Motion for disqualification.* A party may file the motion at any time after the ALJ has been assigned to the proceedings but must make the motion before the ALJ files an initial decision in the proceedings.

(i) *Motion and supporting affidavit.* A party must state the grounds for disqualification, including, but not limited to, personal bias, pecuniary interest, or other factors supporting disqualification, in the motion for disqualification. A party must submit an affidavit with the motion for disqualification that sets forth, in detail, the matters alleged to constitute grounds for disqualification.

(ii) *Answer.* A party must respond to the motion for disqualification not later than 5 days after service of the motion for disqualification.

(iii) *Decision on motion for disqualification.* The ALJ must render a decision on the motion for disqualification not later than 20 days after the motion has been filed. If the ALJ finds that the motion for disqualification and supporting affidavit show a basis for disqualification, the ALJ must withdraw from the proceedings immediately. If the ALJ finds that disqualification is not warranted, the ALJ must deny the motion and state the grounds for the denial on the record. If the ALJ fails to rule on a party's motion for disqualification within 20 days after the motion has been filed, the motion is deemed granted.

(iv) *Appeal.* A party may appeal the ALJ's denial of the motion for disqualification in accordance with § 1503.631(b).

§ 1503.631 Interlocutory appeals.

(a) *General.* Unless otherwise provided in this subpart, a party may not appeal a ruling or decision of the ALJ to the TSA decision maker until the initial decision has been entered on the record. A decision or order of the TSA decision maker on the interlocutory appeal does not constitute a final order of the Administrator for the purposes of judicial appellate review under 49 U.S.C. 46110.

(b) *Interlocutory appeal for cause.* If a party files a written request for an interlocutory appeal for cause with the ALJ, or orally requests an interlocutory appeal for cause, the proceedings are stayed until the ALJ issues a decision on the request. If the ALJ grants the request, the proceedings are stayed until the TSA decision maker issues a decision on the interlocutory appeal. The ALJ must grant an interlocutory appeal for cause if a party shows that delay of the appeal would be detrimental to the public interest or would result in undue prejudice to any party.

(c) *Interlocutory appeals of right.* If a party notifies the ALJ of an interlocutory appeal of right, the proceedings are stayed until the TSA decision maker issues a decision on the interlocutory appeal. A party may file an interlocutory appeal, without the consent of the ALJ, before an initial decision has been entered in the following cases:

(1) A ruling or order by the ALJ barring a person from the proceedings.

(2) Failure of the ALJ to dismiss the proceedings in accordance with § 1503.215.

(3) A ruling or order by the ALJ in violation of § 1503.607(b).

(4) A ruling or order by the ALJ regarding public access to a particular docket or documents.

(d) *Procedure*. Not later than 10 days after the ALJ's decision forming the basis of an interlocutory appeal of right or not later than 10 days after the ALJ's decision granting an interlocutory appeal for cause, a party must file a notice of interlocutory appeal, with supporting documents, and the party must serve a copy of the notice and supporting documents on each party. Not later than 10 days after service of the appeal brief, a party must file a reply brief, if any, and the party must serve a copy of the reply brief on each party. The TSA decision maker must render a decision on the interlocutory appeal, on the record and as a part of the decision in the proceedings, within a reasonable time after receipt of the interlocutory appeal.

(e) *Frivolous appeals*. The TSA decision maker may reject frivolous, repetitive, or dilatory appeals, and may issue an order precluding one or more parties from making further interlocutory appeals in a proceeding in which there have been frivolous, repetitive, or dilatory interlocutory appeals.

§ 1503.633 Discovery.

(a) *Initiation of discovery*. Any party may initiate discovery described in this section, without the consent or approval of the ALJ, at any time after a complaint has been filed in the proceedings.

(b) *Methods of discovery*. The following methods of discovery are permitted under this section: depositions on oral examination or written questions of any person; written interrogatories directed to a party; requests for production of documents or tangible items to any person; and requests for admission by a party. A party is not required to file written discovery requests and responses with the ALJ or the Enforcement Docket Clerk. In the event of a discovery dispute, a party must attach a copy of these documents in support of a motion made under this section.

(c) *Service on the agency*. A party must serve each discovery request directed to the agency or any agency employee on the agency attorney of record.

(d) *Time for response to discovery requests*. Unless otherwise directed by this subpart, agreed by the parties, or by order of the ALJ, a party must respond to a request for discovery, including filing objections to a request for discovery, not later than 30 days after service of the request.

(e) *Scope of discovery*. Subject to the limits on discovery set forth in paragraph (f) of this section, a party may discover any matter that is not privileged and that is relevant to the subject matter of the proceeding. A party may discover information that relates to the claim or defense of any party including the existence, description, nature, custody, condition, and location of any document or other tangible item and the identity and location of any person having knowledge of discoverable matter. A party may discover facts known, or opinions held, by an expert who any other party expects to call to testify at the hearing. A party may not object to a discovery request on the basis that the information sought would not be admissible at the hearing if the information sought during discovery is reasonably calculated to lead to the discovery of admissible evidence.

(f) *Limiting discovery*. The ALJ must limit the frequency and extent of discovery permitted by this section if a party shows that—

(1) The information requested is cumulative or repetitious;

(2) The information requested can be obtained from another less burdensome and more convenient source;

(3) The party requesting the information has had ample opportunity to obtain the information through other discovery methods permitted under this section; or

(4) The method or scope of discovery requested by the party is unduly burdensome or expensive.

(g) *Disclosure of Sensitive Security Information (SSI)*. At the request of a party, TSA may provide SSI to the party when, in the sole discretion of TSA, access to the SSI is necessary for the party to prepare a response to allegations contained the complaint. TSA may provide such information subject to such restrictions on further disclosure and such safeguarding requirements as TSA determines appropriate.

(h) *Confidential orders.* A party or person who has received a discovery request for information, other than SSI, that is related to a trade secret, confidential or sensitive material, competitive or commercial information, proprietary data, or information on research and development, may file a motion for a confidential order with the ALJ and must serve a copy of the motion for a confidential order on each party.

(1) The party or person making the motion must show that the confidential order is necessary to protect the information from disclosure to the public.

(2) If the ALJ determines that the requested material is not necessary to decide the case, the ALJ must preclude any inquiry into the matter by any party.

(3) If the ALJ determines that the requested material may be disclosed during discovery, the ALJ may order that the material may be discovered and disclosed under limited conditions or may be used only under certain terms and conditions.

(4) If the ALJ determines that the requested material is necessary to decide the case and that a confidential order is warranted, the ALJ must provide the following:

(i) An opportunity for review of the document by the parties off the record.

(ii) Procedures for excluding the information from the record.

(iii) An order that the parties must not disclose the information in any manner and the parties must not use the information in any other proceeding.

(i) *Protective orders.* A party or a person who has received a request for discovery may file a motion for protective order and must serve a copy of the motion for protective order on each party. The party or person making the motion must show that the protective order is necessary to protect the party or the person from annoyance, embarrassment, oppression, or undue burden or expense. As part of the protective order, the ALJ may do the following:

(1) Deny the discovery request.

(2) Order that discovery be conducted only on specified terms and conditions, including a designation of the time or place for discovery or a determination of the method of discovery.

(3) Limit the scope of discovery or preclude any inquiry into certain matters during discovery.

(j) *Duty to supplement or amend responses.* A party who has responded to a discovery request has a duty to supplement or amend the response, as soon as the information is known, as follows:

(1) A party must supplement or amend any response to a question requesting the identity and location of any person having knowledge of discoverable matters.

(2) A party must supplement or amend any response to a question requesting the identity of each person who will be called to testify at the hearing as an expert witness and the subject matter and substance of that witness' testimony.

(3) A party must supplement or amend any response that was incorrect when made or any response that was correct when made but is no longer correct, accurate, or complete.

(k) *Depositions.* The following rules apply to depositions taken pursuant to this section:

(1) *Form.* A deposition must be taken on the record and reduced to writing. The person being deposed must sign the deposition unless the parties agree to waive the requirement of a signature.

(2) *Administration of oaths.* Within the United States, or a territory or possession subject to the jurisdiction of the United States, a party must take a deposition before a person authorized to administer oaths by the laws of the United States or authorized by the law of the place where the examination is held. Outside the United States, a party will take a deposition in any manner allowed by the Federal Rules of Civil Procedure (28 U.S.C. App.).

(3) *Notice of deposition.* A party must serve a notice of deposition, stating the time and place of the deposition and the name and address of each person to be examined, on the person to be deposed, on the ALJ, on the Enforcement Docket Clerk, and on each party not later than 7 days before the deposition. A party may serve a notice of deposition less than 7 days before the deposition only with consent of the ALJ and for good cause shown. If a subpoena

''duces tecum'' is to be served on the person to be examined, the party must attach a copy of the subpoena duces tecum that describes the materials to be produced at the deposition to the notice of deposition.

(4) *Use of depositions.* A party may use any part or all of a deposition at a hearing authorized under this subpart only upon a showing of good cause. The deposition may be used against any party who was present or represented at the deposition or who had reasonable notice of the deposition.

(l) *Interrogatories.* A party, the party's attorney, or the party's representative may sign the party's responses to interrogatories. A party must answer each interrogatory separately and completely in writing. If a party objects to an interrogatory, the party must state the objection and the reasons for the objection. An opposing party may use any part or all of a party's responses to interrogatories at a hearing authorized under this subpart to the extent that the response is relevant, material, and not repetitious.

(1) A party must not serve more than 30 interrogatories to each other party. Each subpart of an interrogatory will be counted as a separate interrogatory.

(2) Before serving additional interrogatories on a party, a party must file a motion for leave to serve additional interrogatories on a party with the ALJ and must serve a copy on each party before serving additional interrogatories on a party. The ALJ may grant the motion only if the party shows good cause for the party's failure to inquire about the information previously and that the information cannot reasonably be obtained using less burdensome discovery methods or be obtained from other sources.

(m) *Requests for admission.* A party may serve a written request for admission of the truth of any matter within the scope of discovery under this section or the authenticity of any document described in the request. A party must set forth each request for admission separately. A party must serve copies of documents referenced in the request for admission unless the documents have been provided or are reasonably available for inspection and copying.

(1) *Time.* A party's failure to respond to a request for admission, in writing and signed by the attorney or the party, not later than 30 days after service of the request, is deemed an admission of the truth of the statement or statements contained in the request for admission. The ALJ may determine that a failure to respond to a request for admission is not deemed an admission of the truth if a party shows that the failure was due to circumstances beyond the control of the party or the party's attorney.

(2) *Response.* A party may object to a request for admission and must state the reasons for objection. A party may specifically deny the truth of the matter or describe the reasons why the party is unable to truthfully deny or admit the matter. If a party is unable to deny or admit the truth of the matter, the party must show that the party has made reasonable inquiry into the matter or that the information known to, or readily obtainable by, the party is insufficient to enable the party to admit or deny the matter. A party may admit or deny any part of the request for admission. If the ALJ determines that a response does not comply with the requirements of this rule or that the response is insufficient, the matter is deemed admitted.

(3) *Effect of admission.* Any matter admitted or deemed admitted under this section is conclusively established for the purpose of the hearing and appeal.

(n) *Motion to compel discovery.* A party may move to compel discovery if a person refuses to answer a question during a deposition, a party fails or refuses to answer an interrogatory, if a person gives an evasive or incomplete answer during a deposition or when responding to an interrogatory, or a party fails or refuses to produce documents or tangible items. During a deposition, the proponent of a question may complete the deposition or may adjourn the examination before moving to compel if a person refuses to answer.

(o) *Failure to comply with a discovery order or order to compel.* If a party fails to comply with a discovery order or an order to compel, the ALJ, limited to the extent of the party's failure to comply with the discovery order or motion to compel, may do the following:

(1) Strike that portion of a party's pleadings.

(2) Preclude prehearing or discovery motions by that party.

(3) Preclude admission of that portion of a party's evidence at the hearing.

(4) Preclude that portion of the testimony of that party's witnesses at the hearing.

§ 1503.635 Evidence.

(a) *General.* A party is entitled to present the party's case or defense by oral, documentary, or demonstrative evidence, to submit rebuttal evidence, and to conduct any cross-examination that may be required for a full and true disclosure of the facts.

(b) *Admissibility.* A party may introduce any oral, documentary, or demonstrative evidence in support of the party's case or defense. The ALJ must admit any oral, documentary, or demonstrative evidence introduced by a party, but must exclude irrelevant, immaterial, or unduly repetitious evidence.

(c) *Hearsay evidence.* Hearsay evidence is admissible in proceedings governed by this subpart. The fact that evidence submitted by a party is hearsay goes only to the weight of the evidence and does not affect its admissibility.

§ 1503.637 Standard of proof.

The ALJ may issue an initial decision or may rule in a party's favor only if the decision or ruling is supported by a preponderance of the evidence contained in the record. In order to prevail, the party with the burden of proof must prove the party's case or defense by a preponderance of the evidence.

§ 1503.639 Burden of proof.

(a) Except in the case of an affirmative defense, the burden of proof is on the agency.

(b) Except as otherwise provided by statute or rule, the proponent of a motion, request, or order has the burden of proof.

(c) A party who has asserted an affirmative defense has the burden of proving the affirmative defense.

§ 1503.641 Offer of proof.

A party whose evidence has been excluded by a ruling of the ALJ may offer the evidence for the record on appeal.

§ 1503.643 Public disclosure of evidence.

This section applies to information other than Sensitive Security Information (SSI). All release of SSI is governed by § 1503.415 and 49 CFR part 1520.

(a) The ALJ may order that any other information contained in the record be withheld from public disclosure. Any person may object to disclosure of information in the record by filing a written motion to withhold specific information with the ALJ and serving a copy of the motion on each party. The party must state the specific grounds for nondisclosure in the motion.

(b) The ALJ must grant the motion to withhold information in the record if, based on the motion and any response to the motion, the ALJ determines that disclosure would be detrimental to transportation safety, disclosure would not be in the public interest, or that the information is not otherwise required to be made available to the public.

§ 1503.645 Expert or opinion witnesses.

An employee of the agency may not be called as an expert or opinion witness, for any party other than TSA, in any proceeding governed by this subpart. An employee of a respondent may not be called by an agency attorney as an expert or opinion witness for TSA in any proceeding governed by this subpart to which the respondent is a party.

§ 1503.647 Subpoenas.

(a) *Request for subpoena.* A party may obtain a subpoena to compel the attendance of a witness at a deposition or hearing, or to require the production of documents or tangible items, from the ALJ who is assigned to the case, or, if no ALJ is assigned or the assigned law judge is unavailable, from the chief ALJ. The party must complete the subpoena, stating the title of the action and the date and time for the witness' attendance or production of documents or items. The party who obtained the

subpoena must serve the subpoena on the witness or the custodian of the documents or tangible items sought to be produced.

(b) *Motion to quash or modify the subpoena.* A party, or any person upon whom a subpoena has been served, may file a motion to quash or modify the subpoena at or before the time specified in the subpoena for compliance. The applicant must describe, in detail, the basis for the application to quash or modify the subpoena including, but not limited to, a statement that the testimony, document, or tangible evidence is not relevant to the proceeding, that the subpoena is not reasonably tailored to the scope of the proceeding, or that the subpoena is unreasonable and oppressive. A motion to quash or modify the subpoena will stay the effect of the subpoena pending a decision by the ALJ on the motion.

(c) *Enforcement of subpoena.* Upon a showing that a person has failed or refused to comply with a subpoena, a party may apply to the U.S. district court having jurisdiction to seek judicial enforcement of the subpoena in accordance with 49 U.S.C. 46104.

§ 1503.649 Witness fees.

(a) *General.* Unless otherwise authorized by the ALJ, the party who applies for a subpoena to compel the attendance of a witness at a deposition or hearing, or the party at whose request a witness appears at a deposition or hearing, must pay the witness fees described in this section.

(b) *Amount.* Except for an employee of the agency who appears at the direction of the agency, a witness who appears at a deposition or hearing is entitled to the same fees and mileage expenses as are paid to a witness in a court of the United States in comparable circumstances.

§ 1503.651 Record.

(a) *Exclusive record.* The request for hearing, complaint, answer, transcript of all testimony in the hearing, all exhibits received into evidence, and all motions, responses to motions, applications, requests, and rulings will constitute the exclusive record for decision of the proceedings and the basis for the issuance of any orders in the proceeding.

(b) *Examination and copying of record.* (1) *Generally.* Any person interested in reviewing or obtaining a copy of a record may do so only by submitting a Freedom of Information Act (FOIA) request under 5 U.S.C. 552, *et seq.*, 49 CFR part 7, and any applicable DHS regulations. Portions of the record may be exempt from disclosure pursuant to FOIA.

(2) *Docket Files or Documents Not for Public Disclosure.* (i) Only the following persons may review docket files or particular documents that are not for public disclosure:

(A) Parties to the proceedings.

(B) Their designated representatives.

(C) Persons who have a need to know as determined by the Administrator.

(ii) Those persons with permission to review these documents or docket files may view the materials at the TSA Headquarters, 601 South 12th Street, Arlington, Virginia 20598–6002. Persons with access to these records may have a copy of the records after payment of reasonable costs.

§ 1503.653 Argument before the ALJ.

(a) *Arguments during the hearing.* During the hearing, the ALJ must give the parties a reasonable opportunity to present arguments on the record supporting or opposing motions, objections, and rulings if the parties request an opportunity for argument. The ALJ may request written arguments during the hearing if the ALJ finds that submission of written arguments is necessary before the ALJ issues the ruling or order.

(b) *Final oral argument.* At the conclusion of the hearing and before the ALJ issues an initial decision in the proceedings, the parties are entitled to submit oral proposed findings of fact and conclusions of law, exceptions to rulings of the ALJ, and supporting arguments for the findings, conclusions, or exceptions. At the conclusion of the hearing, a party may waive final oral argument.

(c) *Posthearing briefs.* The ALJ may request written posthearing briefs before the ALJ issues an initial decision in the proceedings. If a party files a written posthearing brief, the party

must include proposed findings of fact and conclusions of law, exceptions to rulings of the ALJ, and supporting arguments for the findings, conclusions, or exceptions. The ALJ must give the parties a reasonable opportunity, not more than 30 days after receipt of the transcript, to prepare and submit the briefs.

§ 1503.655 Initial decision.

(a) *Contents.* The ALJ may issue an initial decision after the conclusion of the hearing or after the submission of written posthearing briefs, if so ordered. In each oral or written decision, the ALJ must include findings of fact and conclusions of law, and the grounds supporting those findings and conclusions, upon all material issues of fact, the credibility of witnesses, the applicable law, any exercise of the ALJ's discretion, the amount of any civil penalty found appropriate by the ALJ, and a discussion of the basis for any order issued in the proceedings. The ALJ is not required to provide a written explanation for rulings on objections, procedural motions, and other matters not directly relevant to the substance of the initial decision. If the ALJ refers to any previous unreported or unpublished initial decision, the ALJ must make copies of that initial decision available to all parties and the TSA decision maker.

(b) *Written decision.* At the conclusion of the hearing, the ALJ may issue the initial decision and order orally on the record. The ALJ must issue a written initial decision and order not later than 30 days after the conclusion of the hearing or submission of the last posthearing brief. The ALJ must serve a copy of any written initial decision on each party.

(c) *Order assessing civil penalty.* Unless appealed pursuant to § 1503.657, the initial decision issued by the ALJ will be considered an order assessing civil penalty if the ALJ finds that an alleged violation occurred and determines that a civil penalty, in an amount found appropriate by the ALJ, is warranted.

(d) *Effect of initial decision.* An initial decision of an ALJ is persuasive authority in any other civil penalty action, unless appealed and reversed by the TSA decision maker or a court of competent jurisdiction.

§ 1503.657 Appeal from initial decision.

(a) *Notice of appeal.* Either party may appeal the initial decision, and any decision not previously appealed pursuant to § 1503.631, by filing a notice of appeal with the Enforcement Docket Clerk. A party must file the notice of appeal with USCG ALJ Docketing Center, ATTN: Enforcement Docket Clerk, 40 S. Gay Street, Room 412, Baltimore, Maryland 21202–4022. A party must file the notice of appeal not later than 10 days after entry of the oral initial decision on the record or service of the written initial decision on the parties and must serve a copy of the notice of appeal on each party. Upon filing of a notice of appeal, the effectiveness of the initial decision is stayed until a final decision and order of the TSA decision maker have been entered on the record.

(b) *Issues on appeal.* A party may appeal only the following issues:

(1) Whether each finding of fact is supported by a preponderance of the evidence.

(2) Whether each conclusion of law is made in accordance with applicable law, precedent, and public policy.

(3) Whether the ALJ committed any prejudicial errors during the hearing that support the appeal.

(c) *Perfecting an appeal.* Unless otherwise agreed by the parties, a party must perfect an appeal, not later than 50 days after entry of the oral initial decision on the record or service of the written initial decision on the party, by filing an appeal brief with the Enforcement Docket Clerk.

(1) *Extension of time by agreement of the parties.* The parties may agree to extend the time for perfecting the appeal with the consent of the TSA decision maker. If the TSA decision maker grants an extension of time to perfect the appeal, the Enforcement Docket Clerk will serve a letter confirming the extension of time on each party.

(2) *Written motion for extension.* If the parties do not agree to an extension of time for perfecting an appeal, a party desiring an extension of time may file a written motion for an extension with the Enforcement Docket Clerk and

must serve a copy of the motion on each party. The TSA decision maker may grant an extension if good cause for the extension is shown in the motion.

(d) *Appeal briefs*. A party must file the appeal brief with the Enforcement Docket Clerk and must serve a copy of the appeal brief on each party.

(1) In the appeal brief, a party must set forth, in detail, the party's specific objections to the initial decision or rulings, the basis for the appeal, the reasons supporting the appeal, and the relief requested in the appeal. If, for the appeal, the party relies on evidence contained in the record for the appeal, the party must specifically refer in the appeal brief to the pertinent evidence contained in the transcript.

(2) The TSA decision maker may dismiss an appeal, on the TSA decision maker's own initiative or upon motion of any other party, where a party has filed a notice of appeal but fails to perfect the appeal by timely filing an appeal brief.

(e) *Reply brief*. Unless otherwise agreed by the parties, any party may file a reply brief not later than 35 days after the appeal brief has been served on that party. The party filing the reply brief must serve a copy of the reply brief on each party. If the party relies on evidence contained in the record for the reply, the party must specifically refer to the pertinent evidence contained in the transcript in the reply brief.

(1) *Extension of time by agreement of the parties*. The parties may agree to extend the time for filing a reply brief with the consent of the TSA decision maker. If the TSA decision maker grants an extension of time to file the reply brief, the Enforcement Docket Clerk will serve a letter confirming the extension of time on each party.

(2) *Written motion for extension*. If the parties do not agree to an extension of time for filing a reply brief, a party desiring an extension of time may file a written motion for an extension and will serve a copy of the motion on each party. The TSA decision maker may grant an extension if good cause for the extension is shown in the motion.

(f) *Other briefs*. The TSA decision maker may allow any person to submit an amicus curiae brief in an appeal of an initial decision. A party may not file more than one appeal brief or reply brief. A party may petition the TSA decision maker, in writing, for leave to file an additional brief and must serve a copy of the petition on each party. The party may not file the additional brief with the petition. The TSA decision maker may grant leave to file an additional brief if the party demonstrates good cause for allowing additional argument on the appeal. The TSA decision maker will allow a reasonable time for the party to file the additional brief.

(g) *Number of copies*. A party must file the original appeal brief or the original reply brief, and two copies of the brief, with the Enforcement Docket Clerk.

(h) *Oral argument*. The TSA decision maker has sole discretion to permit oral argument on the appeal. On the TSA decision maker's own initiative or upon written motion by any party, the TSA decision maker may find that oral argument will contribute substantially to the development of the issues on appeal and may grant the parties an opportunity for oral argument.

(i) *Waiver of objections on appeal*. If a party fails to object to any alleged error regarding the proceedings in an appeal or a reply brief, the party waives any objection to the alleged error. The TSA decision maker is not required to consider any objection in an appeal brief or any argument in the reply brief if a party's objection is based on evidence contained in the record and the party does not specifically refer to the pertinent evidence from the record in the brief.

(j) *The TSA decision maker's decision on appeal*. The TSA decision maker will review the briefs on appeal and the oral argument, if any, to determine if the ALJ committed prejudicial error in the proceedings or that the initial decision should be affirmed, modified, or reversed. The TSA decision maker may affirm, modify, or reverse the initial decision, make any necessary findings, or may remand the case for any proceedings that the TSA decision maker determines may be necessary.

(1) The TSA decision maker may raise any issue, on the TSA decision maker's own initiative, that is required

for proper disposition of the proceedings. The TSA decision maker will give the parties a reasonable opportunity to submit arguments on the new issues before making a decision on appeal. If an issue raised by the TSA decision maker requires the consideration of additional testimony or evidence, the TSA decision maker will remand the case to the ALJ for further proceedings and an initial decision related to that issue. If the TSA decision maker raises an issue that is solely an issue of law, or the issue was addressed at the hearing but was not raised by a party in the briefs on appeal, the TSA decision maker need not remand the case to the ALJ for further proceedings but has the discretion to do so.

(2) The TSA decision maker will issue the final decision and order of the Administrator on appeal in writing and will serve a copy of the decision and order on each party. Unless a petition for review is filed pursuant to § 1503.659, a final decision and order of the Administrator will be considered an order assessing civil penalty if the TSA decision maker finds that an alleged violation occurred and a civil penalty is warranted.

(3) A final decision and order of the Administrator after appeal is binding precedent in any other civil penalty action unless appealed and reversed by a court of competent jurisdiction.

(4) The TSA decision maker will determine whether the decision and order of the TSA decision maker, with the ALJ's initial decision or order attached, may be released to the public, either in whole or in redacted form. In making this determination, the TSA decision maker will consider whether disclosure of any of the information in the decision and order would be detrimental to transportation security, would not be in the public interest, or should not otherwise be required to be made available to the public.

§ 1503.659 Petition to reconsider or modify a final decision and order of the TSA decision maker on appeal.

(a) *General.* Any party may petition the TSA decision maker to reconsider or modify a final decision and order issued by the TSA decision maker on appeal from an initial decision. A party must file a petition to reconsider or modify not later than 30 days after service of the TSA decision maker's final decision and order on appeal and must serve a copy of the petition on each party. The TSA decision maker will not reconsider or modify an initial decision and order issued by an ALJ that has not been appealed by any party to the TSA decision maker and filed with the Enforcement Docket Clerk.

(b) *Form and number of copies.* A party must file in writing a petition to reconsider or modify. The party must file the original petition with the Enforcement Docket Clerk and must serve a copy of the petition on each party.

(c) *Contents.* A party must state briefly and specifically the alleged errors in the final decision and order on appeal, the relief sought by the party, and the grounds that support the petition to reconsider or modify.

(1) If the petition is based, in whole or in part, on allegations regarding the consequences of the TSA decision maker's decision, the party must describe and support those allegations.

(2) If the petition is based, in whole or in part, on new material not previously raised in the proceedings, the party must set forth the new material and include affidavits of prospective witnesses and authenticated documents that would be introduced in support of the new material. The party must explain, in detail, why the new material was not discovered through due diligence prior to the hearing.

(d) *Repetitious and frivolous petitions.* The TSA decision maker will not consider repetitious or frivolous petitions. The TSA decision maker may summarily dismiss repetitious or frivolous petitions to reconsider or modify.

(e) *Reply petitions.* Any other party may reply to a petition to reconsider or modify, not later than 10 days after service of the petition on that party, by filing a reply with the Enforcement Docket Clerk. A party must serve a copy of the reply on each party.

(f) *Effect of filing petition.* Unless otherwise ordered by the TSA decision maker, filing a petition pursuant to this section will stay the effective date of the TSA decision maker's final decision and order on appeal.

(g) *The TSA decision maker's decision on petition*. The TSA decision maker has sole discretion to grant or deny a petition to reconsider or modify. The TSA decision maker will grant or deny a petition to reconsider or modify within a reasonable time after receipt of the petition or receipt of the reply petition, if any. The TSA decision maker may affirm, modify, or reverse the final decision and order on appeal, or may remand the case for any proceedings that the TSA decision maker determines may be necessary.

§ 1503.661 Judicial review of a final order.

For violations of a TSA requirement, a party may petition for review of a final order of the Administrator only to the courts of appeals of the United States or the United States Court of Appeals for the District of Columbia pursuant to 49 U.S.C. 46110. A party seeking judicial review of a final order must file a petition for review not later than 60 days after the final order has been served on the party.

Subpart H—Judicial Assessment of Civil Penalties

§ 1503.701 Applicability of this subpart.

(a) *Jurisdictional minimums*. This subpart applies to a civil penalty action under this part in which the total amount in controversy exceeds the following amounts.

(b) *In general*. Except as provided in paragraph (c) of this section, in the case of violation of title 49 U.S.C. or 46 U.S.C chapter 701, a regulation prescribed, or order issued under any of those provisions, the amount in controversy exceeds the following:

(1) $50,000, in the case of violation by an individual or small business concern, as defined in section 3 of the Small Business Act (15 U.S.C. 632).

(2) $400,000, in the case of violation by any other person.

(c) *Certain aviation related violations*. In the case of a violation of 49 U.S. C. chapter 449 (except sections 44902, 44903(d), 44907(a)–(d)(1)(A), 44907(d)(1)(C)–(f), 44908, and 44909), or a regulation prescribed or order issued under any of those provisions, the amount in controversy exceeds the following:

(1) $50,000, in the case of violation by an individual (except an airman serving as an airman), any person not operating an aircraft for the transportation of passengers or property for compensation, or a small business concern, as defined in section 3 of the Small Business Act (15 U.S.C. 632).

(2) $400,000, in the case of violation by a person operating an aircraft for the transportation of passengers or property for compensation (except an individual serving as an airman).

§ 1503.703 Civil penalty letter; referral.

(a) *Issuance*. In a civil penalty action in which the amount in controversy exceeds the amounts set forth in § 1503.701, the Administrator will send a civil penalty letter to the person charged with a violation of a TSA requirement.

(b) *Contents*. The civil penalty letter will contain a statement of the charges; the applicable law, rule, regulation, or order; the amount of civil penalty that the Administrator will accept in full settlement of the action or an offer to compromise the civil penalty.

(c) *Response*. Not later than 30 days after receipt of the civil penalty letter, the person charged with a violation may present to the agency attorney any material or information in answer to the charges, either orally or in writing, that may explain, mitigate, or deny the violation or that may show extenuating circumstances. The Administrator will consider any material or information submitted in accordance with this paragraph (c) to determine whether the person is subject to a civil penalty or to determine the amount for which the Administrator will compromise the action.

(d) *Compromise*. If the person charged with a violation offers to compromise the civil penalty action for a specific amount, that person must send payment in a form and manner acceptable to TSA for that amount to the agency, made payable to the Transportation Security Administration, or make payment electronically through *http://www.pay.gov*. The Chief Counsel or the

Deputy Chief Counsel for Civil Enforcement may accept the payment or may refuse and return the payment. If the Administrator accepts the offer to compromise, the agency will send a letter to the person charged with the violation stating that the payment is accepted in full settlement of the civil penalty action and that the matter is closed.

(e) *Referral for prosecution and collection.* If the parties cannot agree to compromise the civil penalty action or the offer to compromise is rejected and the payment submitted in compromise is returned, the Administrator may refer the civil penalty action to the United States Attorney General, or the delegate of the Attorney General, to begin proceedings in a United States district court, pursuant to the authority in 49 U.S.C. 114 or 46305 to prosecute and collect the civil penalty.

(f) The Administrator delegates to the Chief Counsel and the Deputy Chief Counsel for Enforcement the authority to carry out any function of the Administrator described in this § 1503.703.

Subpart I—Formal Complaints

§ 1503.801 Formal complaints.

(a) Any person may file a complaint with the Administrator with respect to any act or omission by any person in contravention of 49 U.S.C., subtitle VII, part A, (except sections 44902, 44903(d), 44907(a)–(d)(1)(A), 44907(d)(1)(C)–(f), 44908, and 44909) administered by the Administrator, or a regulation prescribed or order issued under any of those provisions. This section does not apply to complaints against the Administrator or employees of the TSA acting within the scope of their employment.

(b) Complaints filed under this section must—

(1) Be submitted in writing and identified as a complaint filed for the purpose of seeking an appropriate order or other enforcement action;

(2) Be submitted to the U.S. Department of Homeland Security, Transportation Security Administration, by following the instructions to complete a ''complaint'' contact form by following the instructions on the TSA Web site, currently accessible at *http://www.tsa.gov/contact/index.shtm.*

(3) Set forth the name and address, if known, of each person who is the subject of the complaint and, with respect to each person, the specific provisions of the statute, regulation, or order that the person filing the complaint believes were violated;

(4) Contain a concise, but complete, statement of the facts relied upon to substantiate each allegation;

(5) State the name, address, and telephone number of the person filing the complaint; and

(6) Be signed by the person filing the complaint or a duly authorized representative.

(c) TSA will consider complaints that do not meet the requirements of paragraph (b) of this section as reports under § 1503.1.

(d) TSA will place complaints that meet the requirements of paragraph (b) of this section in the docket and will mail a copy to each person named in the complaint.

(e) TSA will refer any complaint against a member of the Armed Forces of the United States acting in the performance of official duties to the Secretary of the Department concerned in accordance with the procedures set forth in § 1503.407.

(f) The person named in the complaint must file an answer within 20 days after service of a copy of the complaint.

(g) After the complaint has been answered or after the allotted time in which to file an answer has expired, the Administrator, or a designated official, will determine if there are reasonable grounds for investigating the complaint.

(h) If the Administrator, or a designated official, determines that a complaint does not state facts that warrant an investigation or action, the Administrator or designated official may dismiss the complaint without a hearing and, if so, will provide the reason for the dismissal, in writing, to the person who filed the complaint and the person(s) named in the complaint.

(i) If the Administrator, or a designated official, determines that reasonable grounds exist, an informal investigation may be initiated. Each person named in the complaint will be advised which official has been delegated the responsibility under § 1503.203 for conducting the investigation.

(j) If the investigation substantiates the allegations set forth in the complaint, a notice of proposed order may be issued or other enforcement action taken in accordance with this part.

(k) The complaint and other pleadings and official TSA records relating to the disposition of the complaint are maintained in current docket form at: U.S. Department of Homeland Security, Transportation Security Administration, Office of the Chief Counsel, TSA–2, Complaint Docket, 601 South 12th Street, Arlington, VA 20598–6002. If this location changes, TSA will give notice of the change by publishing a notice in the FEDERAL REGISTER.

(1) *Generally*. Any person interested in reviewing or obtaining a copy of a record may do so only by submitting a Freedom of Information Act (FOIA) request under 5 U.S.C. 552, *et seq.* and 49 CFR part 7. Portions of the record may be exempt from disclosure pursuant to FOIA.

(2) *Docket files or documents not for public disclosure*. (i) Only the following persons may review docket files or particular documents that are not for public disclosure:

(A) Parties to the proceedings.

(B) Representatives designated in writing by a party.

(C) Persons who have a need to know as determined by the Administrator.

(ii) Those persons with permission to review these documents or docket files may view the materials at the Complaint Docket, TSA Headquarters, Visitor Center, 601 South 12th Street, Arlington, Virginia 20598–6002, Attn: Office of Chief Counsel. If this address changes, TSA will give notice by publishing a notice in the FEDERAL REGISTER. Persons with access to these records may have a copy of the records after payment of reasonable costs.

PART 1507—PRIVACY ACT-EXEMPTIONS

Sec.
1507.1 Scope.
1507.3 Exemptions.

AUTHORITY: 49 U.S.C. 114(l)(1), 40113, 5 U.S.C. 552a(j) and (k).

SOURCE: 69 FR 35537, June 25, 2004, unless otherwise noted.

§ 1507.1 Scope.

This part implements provisions of the Privacy Act of 1974 (the Act) that permit TSA to exempt any system of records within the agency from certain requirements of the Act. The procedures governing access to, and correction of, records in a TSA system of records are set forth in 6 CFR part 5, subpart B.

§ 1507.3 Exemptions.

The following TSA systems of records are exempt from certain provisions of the Privacy Act of 1974 pursuant to 5 U.S.C. 552a(j), (k), or both, as set forth in this section. During the course of normal agency functions, exempt materials from one system of records may become part of one or more other systems of records. To the extent that any portion of system of records becomes part of another Privacy Act system of records, TSA hereby claims the same exemptions as were claimed in the original primary system of which they are a part and claims any additional exemptions in accordance with this part.

(a) *Transportation Security Enforcement Record System (DHS/TSA 001)*. The Transportation Security Enforcement Record System (TSERS) (DHS/TSA 001) enables TSA to maintain a system of records related to the screening of passengers and property and they may be used to identify, review, analyze, investigate, and prosecute violations or potential violations of criminal statutes and transportation security laws. Pursuant to exemptions (j)(2), (k)(1), and (k)(2) of the Privacy Act, DHS/TSA 001 is exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(3), (e)(4)(G), (H), and (I), and (f). Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation and reveal investigative interest on the part of TSA, as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to transportation security, law enforcement efforts, and efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation and avoid detection or apprehension, which undermines the entire system.

(2) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation and reveal investigative interest on the part of TSA, as well as the recipient agency. Access to the records would permit the individual who is the subject of a record to impede the investigation and avoid detection or apprehension. Amendment of the records would interfere with ongoing investigations and law enforcement activities, and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated. The information contained in the system may also include properly classified information, the release of which would pose a threat to national defense and/or foreign policy. In addition, permitting access and amendment to such information also could disclose sensitive security information, which could be detrimental to transportation security.

(3) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of transportation security laws, the accuracy of information obtained or introduced occasionally may be unclear or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective enforcement of transportation security laws, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(4) From subsection (e)(3) (Privacy Act Statement) because disclosing the authority, purpose, routine uses, and potential consequences of not providing information could reveal the investigative interests of TSA, as well as the nature and scope of an investigation, the disclosure of which could enable individuals to circumvent agency regulations or statutes.

(5) From subsections (e)(4)(G), (H), and (I) (Agency Requirements), and (f) (Agency Rules), because this system is exempt from the access provisions of subsection (d).

(b) *Transportation Workers Employment Investigations System (DHS/TSA 002).* The Transportation Workers Employment Investigations System (TWEI) (DHS/TSA 002) enables TSA to facilitate the performance of background checks on employees of transportation operators and others who are issued credentials or clearances by transportation operators, other than TSA employees. Pursuant to exemptions (k)(1) and (k)(2) of the Privacy Act, DHS/TSA 002 is exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f). Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) (Accounting for Disclosures), because release of the accounting of disclosures could reveal investigative interest on the part of the recipient agency that obtained the record pursuant to a routine use. Disclosure of the accounting could therefore present a serious impediment to law enforcement efforts on the part of the recipient agency, as the individual who is the subject of a record would learn of third-agency investigate interests and thereby avoid detection or apprehension.

(2) From subsection (d) (Access to Records), because access to the records contained in this system could reveal investigate techniques and procedures in the transportation workers employment investigation process, as well as the nature and scope of the employment investigation, the disclosure of

which could enable individuals to circumvent agency regulations or statutes and obtain access to sensitive information and restricted areas in the transportation industry. The information contained in the system might include properly classified information, the release of which would pose a threat to national defense and/or foreign policy. In addition, permitting access and amendment to such information could reveal sensitive security information protected pursuant to 49 U.S.C. 114(s), the disclosure of which could be detrimental to the security of transportation.

(3) From subsection (e)(1) (Relevancy and Necessity of Information), because third-agency records obtained or made available to TSA during the course of an employment investigation may occasionally contain information that is not strictly relevant or necessary to a specific employment investigation. In the interests of administering an effective and comprehensive transportation worker employment investigation program, it is appropriate and necessary for TSA to retain all such information that may aid in that process.

(4) From subsections (e)(4)(G), (H), and (I) (Agency Requirements), and (f) (Agency Rules), because this system is exempt from the access provisions of subsection (d).

(c) *Personnel Background Investigation File System (DHS/TSA 004)*. The Personnel Background Investigation File System (PBIFS) (DHS/TSA 004) enables TSA to maintain investigative and background material used to make suitability and eligibility determinations regarding current and former TSA employees, applicants for TSA employment, and TSA contract employees. Pursuant to exemptions (k)(1) and (k)(5) of the Privacy Act, the Personnel Background Investigation File System is exempt from 5 U.S.C. 552a(c)(3) (Accounting of Disclosures) and (d) (Access to Records). Exemptions from the particular subsections are justified because this system contains investigatory material compiled solely for determining suitability, eligibility, and qualifications for Federal civilian employment. To the extent that the disclosure of material would reveal any classified material or the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence, the applicability of exemption (k)(5) will be required to honor promises of confidentiality should the data subject request access to or amendment of the record, or access to the accounting of disclosures of the record. Exemption (k)(1) will be required to protect any classified information that may be in this system.

(d) *Internal Investigation Record System (DHS/TSA 005)*. The Internal Investigation Record System (IIRS) (DHS/TSA 005) contains records of internal investigations for all modes of transportation for which TSA has security-related duties. This system covers information regarding investigations of allegations or appearances of misconduct of current or former TSA employees or contractors and provides support for any adverse action that may occur as a result of the findings of the investigation. It is being modified to cover investigations of security-related incidents and reviews of TSA programs and operations. Pursuant to exemptions (j)(2), (k)(1), and (k)(2) of the Privacy Act, DHS/TSA 005 is exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(3), (e)(4)(G), (H), and (I), and (f). Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) (Accounting for Disclosures) because release of the accounting of disclosures could reveal investigative interest on the part of the recipient agency that obtained the record pursuant to a routine use. Disclosure of the accounting could, therefore, present a serious impediment to law enforcement efforts on the part of the recipient agency, as the individual who is the subject of a record would learn of third-agency investigative interests and thereby avoid detection or apprehension, as well as to TSA investigative efforts.

(2) From subsection (d) (Access to Records) because access to the records contained in this system could reveal

investigative techniques and procedures of the investigators, as well as the nature and scope of the investigation, the disclosure of which could enable individuals to circumvent agency regulations or statutes. The information contained in the system might include properly classified information, the release of which would pose a threat to national defense and/or foreign policy. In addition, permitting access and amendment to such records could reveal sensitive security information protected pursuant to 49 U.S.C. 114(s), the disclosure of which could be detrimental to the security of transportation.

(3) From subsection (e)(1) (Relevancy and Necessity of Information) because third agency records obtained or made available to TSA during the course of an investigation may occasionally contain information that is not strictly relevant or necessary to a specific investigation. In the interests of administering an effective and comprehensive investigation program, it is appropriate and necessary for TSA to retain all such information that may aid in that process.

(4) From subsection (e)(3) (Privacy Act Statement) because disclosing the authority, purpose, routine uses, and potential consequences of not providing information could reveal the targets of interests of the investigating office, as well as the nature and scope of an investigation, the disclosure of which could enable individuals to circumvent agency regulations or statutes.

(5) From subsections (e)(4)(G), (H) and (I) (Agency Requirements), and (f) (Agency Rules), because this system is exempt from the access provisions of subsection (d).

(e) *Correspondence and Matters Tracking Records (DHS/TSA 006).* The Correspondence and Matters Tracking Records (CMTR) (DHS/TSA 006) system allows TSA to manage, track, retrieve, and respond to incoming correspondence, inquiries, claims and other matters presented to TSA for disposition, and to monitor the assignment, disposition and status of such matters. This system covers information coming into TSA from individuals as well as information recorded by TSA employees in the performance of their duties. Pursuant to exemptions (k)(1) and (k)(2) of the Privacy Act, DHS/TSA 006 is exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f). Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) (Accounting for Disclosures), because release of the accounting of disclosures could reveal investigative interest on the part of the recipient agency that obtained the record pursuant to a routine use. Disclosure of the accounting could therefore present a serious impediment to law enforcement efforts on the part of the recipient agency, as the individual who is the subject of a record would lean of third-agency investigative interests and thereby avoid detection or apprehension.

(2) From subsection (d) (Access to Records), because access to the records contained in this system could reveal investigative interest on the part of TSA or other agency and the nature of that interest, the disclosure of which could enable individuals to circumvent agency regulations or statutes. The information contained in the system might include properly classified information, the release of which would pose a threat to national defense and/or foreign policy. In addition, permitting access and amendment to such information could reveal sensitive security information protected pursuant to 49 U.S.C. 114(s), the disclosure of which could be detrimental to transportation security.

(3) From subsection (e)(1) (Relevancy and necessity of Information), because third-agency records obtained or made available to TSA during the course of an investigation may occasionally contain information that is not strictly relevant or necessary to a specific investigation. In the interests of administering an effective and comprehensive investigation program, it is appropriate and necessary for TSA to retain all such information that may aid in that process.

(4) From subsections (e)(4)(G), (H) and (I) (Agency Requirements), and (f) (Agency rules), because this system is exempt from the access provisions of subsection (d).

(f) *Freedom of Information and Privacy Act Records (DHS/TSA 007).* The Freedom of Information and Privacy Act (FOIA/PA) Records System (DHS/TSA 007) system enables TSA to maintain records that will assist in processing access requests and administrative appeals under FOIA and access and amendments requests and appeals under the PA; participate in associated litigation; and assist TSA in carrying out any other responsibilities under FOIA/PA. Pursuant to exemptions (k)(1) and (k)(2) of the Privacy Act, Freedom of Information and Privacy Act Records are exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f). Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) (Accounting for Disclosures), because release of the accounting of disclosures could reveal investigative interest on the part of the recipient agency that obtained the record pursuant to a routine use. Disclosure of the accounting could therefore present a serious impediment to law enforcement efforts on the part of the recipient agency, as the individual who is the subject of a record would learn of third-agency investigative interests and thereby avoid detection or apprehension.

(2) From subsection (d) (Access to Records), because access to the records contained in this system could reveal investigative interest on the part of TSA or other agency and the nature of that interest, the disclosure of which could enable individuals to circumvent agency regulations or statutes. The information contained in the system might include properly classified information, the release of which would pose a threat to national defense and/or foreign policy. In addition, permitting access and amendment to such information could reveal sensitive security information protected pursuant to 49 U.S.C. 114(s), the disclosure of which would be detrimental to transportation security.

(3) From subsection (e)(1) (Relevancy and necessity of Information), because third-agency records obtained or made available to TSA during the course of an investigation may occasionally contain information that is not strictly relevant or necessary to a specific investigation. In the interests of administering an effective and comprehensive investigation program, it is appropriate and necessary for TSA to retain all such information that may aid in that process.

(4) From subsections (e)(4)(G), (H) and (I) (Agency Requirements), and (f) (Agency Rules), because this system is exempt from the access provisions of subsection (d).

(g) *General Legal Records System (DHS/TSA 009).* The General Legal Records (GLR) System (DHS/TSA 009) enables TSA to maintain records that will assist attorneys to perform their functions within the office of Chief Counsel, to include providing legal advice, responding to claims filed by employees and others, and assisting in litigation and in the settlement of claims. Pursuant to exemptions (k)(1) and (k)(2) of the Privacy Act, DHS/TSA 009 is exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f). Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) (Accounting for Disclosures), because release of the accounting of disclosures could reveal investigative interest on the part of the recipient agency that obtained the record pursuant to a routine use. Disclosure of the accounting could therefore present a serious impediment to law enforcement efforts on the part of the recipient agency, as the individual who is the subject of a record would learn of third-agency investigative interests and thereby avoid detection or apprehension.

(2) From subsection (d) (Access to Records), because access to the records contained in this system could reveal investigative interest on the part of TSA or other agency and the nature of that interest, the disclosure of which would enable individuals to circumvent agency regulations or statutes. The information contained in the system might include properly classified information, the release of which would pose a threat to national defense and/or foreign policy. In addition, permitting access and amendment to such information could reveal sensitive security information protected pursuant to 49

U.S.C. 114(s), the disclosure of which could be detrimental to transportation security.

(3) From subsection (e)(1) (Relevancy and Necessity of Information), because third-agency records obtained or made available to TSA during the course of an investigation may occasionally contain information that is not strictly relevant or necessary to a specific investigation. In the interests of administering an effective and comprehensive investigation program, it is appropriate and necessary for TSA to retain all such information that may aid in that process.

(4) From subsections (e)(4)(G), (H) and (I) (Agency Requirements), and (f) (Agency Rules), because this system is exempt from the access provisions of subsections (d).

(h) *Federal Flight Deck Officer Records System (DHS/TSA 013).* The Federal Flight Deck Officer Record System (FFDORS) (DHS/TSA 013) enables TSA to maintain a system of records documenting the application, selection, training, and requalification of pilots deputized by TSA to perform the duties of a Federal Flight Deck Officer (FFDO). Pursuant to exemptions (k)(1), (k)(2), and (k)(6) of the Privacy Act, DHS/TSA 013 is exempt from 5 U.S.C. 552a(c)(3), (d), and (e)(1). Exemptions from the particular subsections are justified for the following reasons:

(1) From (c)(3) (Accounting of Certain Disclosures) and (d) (Access to Records), because access to the accounting of disclosures in this system could reveal the identity of a confidential source that provided information during the background check process. Without the ability to protect the identity of a confidential source, the agency's ability to gather pertinent information about candidates for the program may be limited. In addition, the system might contain information that is properly classified, the release of which would pose a threat to national security and/or foreign policy, or information the disclosure of which could be detrimental to the security of transportation pursuant to 49 U.S.C. 114(s). Finally, the agency must be able to protect against access to testing or examination material as release of this material could compromise the effectiveness of the testing and examination procedure itself. The examination material contained in this system is so similar in form and content to the examination material used in the selection process for TSA security screeners, or potential selection processes that TSA may utilize in the future, that release of the material would compromise the objectivity or fairness of the testing or examination process of those TSA employees.

(2) From (e)(1) (Relevancy and Necessity of Information), because information obtained or made available to TSA from other agencies and other sources during the evaluation of an individual's suitability for an FFDO position may occasionally include information that is not strictly relevant or necessary to the specific determination regarding that individual. In the interests of effective program administration, it is appropriate and necessary for TSA to collect all such information that may aid in the FFDO selection process.

(i) *Registered Traveler Operations Files (DHS/TSA 015).* The purpose of this system is to pre-screen and positively identify volunteer travelers using advanced identification technologies and conduct a security threat assessment to ensure that the volunteer does not pose a security threat. This system may expedite the pre-boarding process for the traveler and improve the allocation of TSA's security resources on individuals who may pose a security threat. Pursuant to exemptions (k)(1) and (k)(2) of the Privacy Act, DHS/TSA 015 is exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f). Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of heightened security concerns relating to an actual or potential criminal, civil, or regulatory violation to the existence of an investigative interest on the part of the Department of Homeland Security or another Federal law enforcement or other

recipient agency. Disclosure of the accounting would therefore present a serious impediment to transportation security law enforcement efforts and efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the program suitability determination, which undermines the entire system.

(2) From subsection (d) (Access to Records) because access to some of the records contained in this system of records could permit the individual who is the subject of a record to impede the program suitability determination. Amendment of the records would interfere with ongoing security assessment investigations and program suitability determinations and impose an impossible administrative burden by requiring such investigations to be continuously reinvestigated. The information contained in the system may also include classified information, the release of which would pose a threat to national defense and/or foreign policy. In addition, permitting access and amendment to such information also could disclose sensitive security information protected pursuant to 49 U.S.C. 114(s) and 49 CFR part 1520, the disclosure of which could be detrimental to transportation security.

(3) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of screening applicants for program suitability, TSA must be able to review information from a variety of sources. What information is relevant and necessary may not always be apparent until after the evaluation is completed. In the interests of transportation security, it is appropriate to include a broad range of information that may aid in determining an applicant's suitability for the Registered Traveler program.

(4) From subsections (e)(4)(G), (H) and (I) (Agency Requirements), and (f) (Agency Rules), because this system is exempt from the access and amendment provisions of subsection (d).

(j) *Transportation Security Intelligence Service (TSIS) Operations Files.* Transportation Security Intelligence Service Operations Files (TSIS) (DHS/TSA 011) enables TSA to maintain a system of records related to intelligence gathering activities used to identify, review, analyze, investigate, and prevent violations or potential violations of transportation security laws. This system also contains records relating to determinations about individuals' qualifications, eligibility, or suitability for access to classified information. Pursuant to exemptions (j)(2), (k)(1), (k)(2), and (k)(5) of the Privacy Act, DHS/TSA 011 is exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f). Exemptions from particular subsections are justified for the following reasons:

(1) From subsection (c)(3) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of intelligence gather operations and reveal investigative interest on the part of the Transportation Security Administration, as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to transportation security law enforcement efforts and efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede operations and avoid detection and apprehension, which undermined the entire system. Disclosure of the accounting may also reveal the existence of information that is classified or sensitive security information, the release of which would be detrimental to the security of transportation.

(2) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of intelligence gathering operations and reveal investigative interest on the part of the Transportation Security Administration. Access to the records would permit the individual who is the subject of a record to impede operations and possibly avoid detection or apprehension. Amendment of the records would interfere with ongoing intelligence and law enforcement activities and impose an impossible administrative burden by requiring investigations to be continually reinvestigated. The information contained in the system may also include properly classified information, the release of which would pose a

threat to national defense and/or foreign policy. In addition, permitting access and amendment to such information also could disclose sensitive security information, which could be detrimental to transportation security if released. This system may also include information necessary to make a determination as to an individual's qualifications, eligibility, or suitability for access to classified information, the release of which would reveal the identity of a source who received an express or implied assurance that their identity would not be revealed to the subject of the record.

(3) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of gathering and analyzing information about potential threats to transportation security, the accuracy of information obtained or introduced occasionally may be unclear or the information may not be strictly relevant or necessary to a specific operation. In the interests of transportation security, it is appropriate to retain all information that may aid in identifying threats to transportation security and establishing other patterns of unlawful activity.

(4) From subsections (e)(4)(G), (H), and (I) (Agency Requirements), and (f) (Agency Rules), because this system is exempt from the access and amendment provisions of subsection (d).

(k) *Secure Flight Records.* (1) Secure Flight Records (DHS/TSA 019) enables TSA to maintain a system of records related to watch list matching applied to air passengers and to non-traveling individuals authorized to enter an airport sterile area. Pursuant to 5 U.S.C. 552a(j)(2) and (k)(2), TSA is claiming the following exemptions for certain records within the Secure Flight Records system: 5 U.S.C. 552a(c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (4)(G) through (I), (5), and (8); (f), and (g).

(2) In addition to records under the control of TSA, the Secure Flight system of records may include records originating from systems of records of other law enforcement and intelligence agencies which may be exempt from certain provisions of the Privacy Act. However, TSA does not assert exemption to any provisions of the Privacy Act with respect to information submitted by or on behalf of individual passengers or non-travelers in the course of making a reservation or seeking access to a secured area under the Secure Flight program.

(3) To the extent the Secure Flight system contains records originating from other systems of records, TSA will rely on the exemptions claimed for those records in the originating system of records. Exemptions for certain records within the Secure Flight Records system from particular subsections of the Privacy Act are justified for the following reasons:

(i) From subsection (c)(3) (Accounting for Disclosures) because giving a record subject access to the accounting of disclosures from records concerning him or her could reveal investigative interest on the part of the recipient agency that obtained the record pursuant to a routine use. Disclosure of the accounting could therefore present a serious impediment to law enforcement efforts on the part of the recipient agency because the individual who is the subject of the record would learn of third agency investigative interests and could take steps to evade detection or apprehension. Disclosure of the accounting also could reveal the details of watch list matching measures under the Secure Flight program, as well as capabilities and vulnerabilities of the watch list matching process, the release of which could permit an individual to evade future detection and thereby impede efforts to ensure transportation security.

(ii) From subsection (c)(4) because portions of this system are exempt from the access and amendment provisions of subsection (d).

(iii) From subsections (d)(1), (2), (3), and (4) because these provisions concern individual access to and amendment of certain records contained in this system, including law enforcement counterterrorism, investigatory and intelligence records. Compliance with these provisions could alert the subject of an investigation of the fact and nature of the investigation, and/or the investigative interest of intelligence or law enforcement agencies; compromise

sensitive information related to national security; interfere with the overall law enforcement process by leading to the destruction of evidence, improper influencing of witnesses, fabrication of testimony, and/or flight of the subject; identify a confidential source or disclose information which would constitute an unwarranted invasion of another's personal privacy; reveal a sensitive investigative or intelligence technique; or constitute a potential danger to the health or safety of law enforcement personnel, confidential informants, and witnesses. Amendment of these records would interfere with ongoing counterterrorism, law enforcement, or intelligence investigations and analysis activities and impose an impossible administrative burden by requiring investigations, analyses, and reports to be continuously reinvestigated and revised.

(iv) From subsection (e)(1) because it is not always possible for TSA or other agencies to know in advance what information is both relevant and necessary for it to complete an identity comparison between aviation passengers or certain non-travelers and a known or suspected terrorist. In addition, because TSA and other agencies may not always know what information about an encounter with a known or suspected terrorist will be relevant to law enforcement for the purpose of conducting an operational response.

(v) From subsection (e)(2) because application of this provision could present a serious impediment to counterterrorism, law enforcement, or intelligence efforts in that it would put the subject of an investigation, study or analysis on notice of that fact, thereby permitting the subject to engage in conduct designed to frustrate or impede that activity. The nature of counterterrorism, law enforcement, or intelligence investigations is such that vital information about an individual frequently can be obtained only from other persons who are familiar with such individual and his/her activities. In such investigations, it is not feasible to rely upon information furnished by the individual concerning his own activities.

(vi) From subsection (e)(3), to the extent that this subsection is interpreted to require TSA to provide notice to an individual if TSA or another agency receives or collects information about that individual during an investigation or from a third party. Should the subsection be so interpreted, exemption from this provision is necessary to avoid impeding counterterrorism, law enforcement, or intelligence efforts by putting the subject of an investigation, study or analysis on notice of that fact, thereby permitting the subject to engage in conduct intended to frustrate or impede that activity.

(vii) From subsections (e)(4)(G) and (H) (Agency Requirements) and (f) (Agency Rules), because this system is exempt from the access provisions of 5 U.S.C. 552a(d).

(viii) From subsection (e)(5) because many of the records in this system coming from other system of records are derived from other domestic and foreign agency record systems and therefore it is not possible for TSA to ensure their compliance with this provision, however, TSA has implemented internal quality assurance procedures to ensure that data used in the watch list matching process is as thorough, accurate, and current as possible. In addition, in the collection of information for law enforcement, counterterrorism, and intelligence purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light. The restrictions imposed by (e)(5) would limit the ability of those agencies' trained investigators and intelligence analysts to exercise their judgment in conducting investigations and impede the development of intelligence necessary for effective law enforcement and counterterrorism efforts. However, TSA has implemented internal quality assurance procedures to ensure that the data used in the watch list matching process is as thorough, accurate, and current as possible.

(ix) From subsection (e)(8) because to require individual notice of disclosure of information due to compulsory legal

process would pose an impossible administrative burden on TSA and other agencies and could alert the subjects of counterterrorism, law enforcement, or intelligence investigations to the fact of those investigations when not previously known.

(x) From subsection (f) (Agency Rules) because portions of this system are exempt from the access and amendment provisions of subsection (d).

(xi) From subsection (g) to the extent that the system is exempt from other specific subsections of the Privacy Act.

[69 FR 35537, June 25, 2004, as amended at 70 FR 33384, June 8, 2005; 71 FR 44227, Aug. 4, 2006; 72 FR 63709, Nov. 9, 2007]

PART 1510—PASSENGER CIVIL AVIATION SECURITY SERVICE FEES

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AUTHORITY: 49 U.S.C. 114, 40113, and 44940.

SOURCE: 66 FR 67701, Dec. 31, 2001, unless otherwise noted.

§ 1510.1 Applicability and purpose.

This part prescribes a uniform fee to be paid by passengers of direct air carriers and foreign air carriers in air transportation, foreign air transportation, and intrastate air transportation originating at airports in the United States to pay for the costs of providing civil aviation security services as described in 49 U.S.C. 44940.

§ 1510.3 Definitions.

The following definitions apply in this part:

Administrator means the Administrator of the Transportation Security Administration or the Administrator's designee.

Air carrier means a citizen of the United States who undertakes directly to engage in or provide air transportation.

Air transportation means intrastate, interstate or foreign air transportation.

Aircraft means a device that is used or intended to be used for flight in the air.

Airport means any landing area used regularly by aircraft for receiving or discharging passengers or cargo.

Direct air carrier and foreign air carrier means a selling carrier.

Foreign air carrier means any person other than a citizen of the United States who undertakes directly to engage in or provide air transportation.

Foreign air transportation means the carriage by aircraft of persons for compensation or hire between a place in the United States and any place outside of the United States.

Frequent flyer award means a zero-fare award of air transportation that a domestic air carrier or foreign air carrier provides to a passenger in exchange for accumulated travel mileage credits in a customer loyalty program, whether or not the term frequent flyer is used in the definition of that program.

Interstate air transportation means the carriage by aircraft of persons for compensation or hire within the United States.

Intrastate air transportation means the carriage of persons for compensation or hire wholly within the same State of the United States.

Nonrevenue passenger means a passenger receiving air transportation from an air carrier or foreign air carrier for which the air carrier or foreign air carrier does not receive remuneration.

One-way trip means any trip that is not a round trip.

Origin point means the location at which a trip on a complete air travel itinerary begins.

Passenger enplanement means a person boarding in the United States in scheduled or nonscheduled service on aircraft in intrastate, interstate, or foreign air transportation.

Principal means the aggregate amount of all passenger security services fees due to be remitted to the

Transportation Security Administration by an air carrier as required by this part.

Round trip means a trip on an air travel itinerary that terminates at the origin point.

Selling carrier means an air carrier or foreign air carrier that provides or offers to provide air transportation and has control over the operational functions performed in providing that air transportation.

[66 FR 67701, Dec. 31, 2001, as amended at 68 FR 49720, Aug. 19, 2003]

§ 1510.5 Imposition of security service fees.

(a) The security service fee will be $2.50 per passenger enplanement. The security service fee is imposed only on passengers of direct air carriers and foreign air carrier described in § 1510.9(a). Passengers may not be charged for more than two enplanements per one-way trip or four enplanements per round trip.

(b) The security service fee will be imposed on all flight segments originating at an airport in the United States.

(c) The security service fee must be imposed on passengers who obtained the ticket for air transportation with a frequent flyer award, but may not be imposed on any other nonrevenue passengers.

(d) Passengers enplaning a flight segment outside of the United States are not subject to the security service fee for that enplanement.

§ 1510.7 Air transportation advertisements and solicitations.

A direct air carrier and foreign air carrier must identify the security service fee imposed by this part as ''September 11th Security Fee'' in all its advertisements and solicitations for air transportation.

§ 1510.9 Collection of security service fees.

(a) The following direct air carriers and foreign air carriers must collect security service fees from passengers enplaning:

(1) A scheduled passenger or public charter passenger operation with an aircraft having passenger seating configuration of more than 60 seats.

(2) A scheduled passenger or public charter passenger operation with an aircraft having a passenger seating configuration of less than 61 seats when passengers are enplaned from or deplaned into a sterile area.

(b) Direct air carriers and foreign air carriers must collect from each passenger, to the extent provided in § 1510.5, a security service fee on air transportation sold on or after February 1, 2002. The security service fee must be based on the air travel itinerary at the time the air transportation is sold. Any changes by the passenger to the itinerary that alter the number of enplanements are subject to additional collection or refund of the security service fee by the direct air carrier or foreign air carrier as appropriate. Direct air carriers and foreign air carriers are solely liable to TSA for additional security service fees imposed because of involuntary enplanement changes to the itinerary.

(c) Whether or not the security service fee is collected as required by this part, the direct air carrier or foreign air carrier selling the air transportation is solely liable to TSA for the fee and must remit the fee as required in § 1510.13.

(d) Direct air carriers and foreign air carriers may not collect security service fees not imposed by this part.

§ 1510.11 Handling of security service fees.

(a) Direct air carriers and foreign air carriers are responsible for the safekeeping of all security service fees from the time of collection to remittance.

(b) Security service fees collected by a direct air carrier or foreign air carrier are held in trust by that direct carrier for the beneficial interest of the United States in paying for the costs of providing civil aviation security services described in 49 U.S.C. 44940. The direct air carrier or foreign air carrier holds neither legal nor equitable interest in the security service fees except for the right to retain any accrued interest on the principal amounts collected pursuant to § 1510.13(b).

(c) Direct air carriers and foreign air carriers must account for security service fees separately, but the fees may be commingled with the carriers' other sources of revenue.

(d) Direct air carriers and foreign air carriers must disclose in their financial statements the existence and the amount of security service fee held in trust.

§ 1510.13 Remittance of security service fees.

(a) Each direct air carrier and foreign air carrier must remit all security service fees imposed each calendar month to TSA, as directed by the Administrator, by the last calendar day of the month following the imposition.

(b) Direct air carriers and foreign air carriers may retain any interest that accrues on the principal amounts collected between the date of collection and the date the fee is remitted to TSA in accordance with paragraph (a) of this section.

(c) Direct air carriers and foreign air carriers are prohibited from retaining any portion of the principal to offset the costs of collecting, handling, or remitting the passenger security service fees.

(d) Security service fees are payable to the ''Transportation Security Administration'' in U.S. currency and drawn on a U.S. bank.

(1) Fees of $1,000 or more must be remitted by electronic funds transfer.

(2) Fees under $1,000 may be remitted by electronic funds transfer, check, money order, wire transfer, or draft.

(e) Direct air carriers and foreign air carriers are responsible for paying any bank processing charges on the security service fees collected or remitted under this part when such charges are assessed on the U.S. government.

§ 1510.15 Accounting and auditing requirements.

(a) Direct air carriers and foreign air carriers must establish and maintain an accounting system to account for the security service fees imposed, collected, refunded and remitted. The accounting records must identify the airports at which the passengers were enplaned.

(b) Each direct air carrier and foreign air carrier that collects security services fees from more than 50,000 passengers annually must provide for an audit at least annually of its security service fee activities or accounts.

(c) Audits pursuant to paragraph (b) of this section must be performed by an independent certified public accountant and may be of limited scope. The accountant must express an opinion on the fairness and reasonableness of the direct air carrier's and foreign air carrier's procedures for collecting, holding, and remitting the fees. The opinion must also address whether the quarterly reports required in § 1510.17 fairly represent the net transactions in the security service fee accounts.

§ 1510.17 Reporting requirements.

(a) Each direct air carrier and foreign air carrier collecting security service fees must provide TSA with quarterly reports that provide an accounting of fees imposed, collected, refunded and remitted.

(b) Quarterly reports must state:

(1) The direct air carrier or foreign air carrier involved;

(2) The total amount of September 11th Security Fees imposed on passengers in U.S. currency for each month during the previous quarter of the calendar year;

(3) The net amount of September 11th Security Fees collected in U.S. currency by the direct air carrier or foreign air carrier for each month during the previous quarter of the calendar year;

(4) The total amount of September 11th Security Fees refunded in U.S. currency by the direct air carrier or foreign air carrier for each month during the previous quarter of the calendar year; and

(5) The total amount of September 11th Security Fees remitted in U.S. currency by the direct air carrier or foreign air carrier for each month during the previous quarter of the calendar year.

(c) The report must be filed by the last day of the calendar month following the quarter of the calendar year in which the fees were imposed.

[66 FR 67701, Dec. 31, 2001, as amended at 67 FR 14881, Mar. 28, 2002]

§ 1510.19 Federal oversight.

Direct air carriers and foreign air carriers must allow any authorized representative of the Administrator, the Secretary of Transportation, the Secretary of Homeland Security, the Inspector General of the Department of Transportation, the Inspector General of the Department of Homeland Security, or the Comptroller General of the United States to audit or review any of its books and records and provide any other information necessary to verify that the security service fees were properly collected and remitted consistent with this part.

[68 FR 49720, Aug. 19, 2003]

§ 1510.21 Enforcement.

A direct air carrier's or foreign air carrier's failure to comply with the requirements 49 U.S.C. 44940 or the provisions of this part may be considered to be an unfair and deceptive practice in violation of 49 U.S.C. 41712 and may also result in a claim due the United States by the carrier collectable pursuant to 49 CFR part 89. These remedies are in addition to any others remedies provided by law.

PART 1511—AVIATION SECURITY INFRASTRUCTURE FEE

Sec.

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APPENDIX A TO PART 1511—AVIATION SECURITY INFRASTRUCTURE FEE.

AUTHORITY: 49 U.S.C. 114, 40113, 44901, and 44940.

SOURCE: 67 FR 7929, Feb. 20, 2002, unless otherwise noted.

§ 1511.1 Applicability and purpose.

(a) This part prescribes the imposition of a fee on air carriers and foreign air carriers in air transportation to pay for the costs of providing U.S. civil aviation security services as described in 49 U.S.C. 44940.

(b) For purposes of this part, the fee will be described as the ''Aviation Security Infrastructure Fee.''

§ 1511.3 Definitions.

The following definitions apply for purposes of this part. For other definitions that may be applicable to this part refer to 49 U.S.C. 40102.

Administrator means the Administrator of the Transportation Security Administration or the Administrator's designee.

Air transportation means the carriage by passenger aircraft of persons or property for compensation or hire in intrastate air transportation, interstate air transportation, or foreign air transportation.

Aircraft means a device that is used or intended to be used for flight in the air.

Fiscal year means the fiscal year for the Federal government, which begins each year October 1 and ends on September 30. The fiscal year is designated by the calendar year in which it ends, *e.g.*, fiscal year 2002 is the year beginning October 1, 2001, and ending September 30, 2002.

Foreign air transportation means air transportation between a place in the United States and any place outside of the United States.

Interstate air transportation means air transportation within the United States.

Intrastate air transportation means air transportation wholly within the same State of the United States.

Passenger aircraft means an aircraft that is used to transport passengers in air transportation.

Property means mail, cargo, carry-on and checked baggage, and any other articles transported by passenger aircraft operated by an air carrier or foreign air carrier in air transportation, but excluding property transported under the ''Known Shipper Program.''

[67 FR 7929, Feb. 20, 2002, as amended at 68 FR 49720, Aug. 19, 2003]

§ 1511.5 Imposition of Aviation Security Infrastructure Fees.

(a) Effective February 18, 2002, an Aviation Security Infrastructure Fee

will be imposed on air carriers and foreign air carriers engaged in air transportation.

(b) The amount of the Aviation Security Infrastructure Fee for each fiscal year will not exceed, in the aggregate, the amounts paid in calendar year 2000 by air carriers and foreign air carriers for the screening of passengers and property transported by passenger aircraft in the United States, as determined by the Administrator.

(c) For fiscal years 2002, 2003 and 2004, the amount of the Aviation Security Infrastructure Fee imposed on each air carrier and foreign air carrier will not exceed the amount each such carrier paid for the screening of passengers and property transported by passenger aircraft in the United States during calendar year 2000, as determined by the Administrator.

(d) Each air carrier and foreign air carrier that paid for the screening of passengers and property in calendar year 2000 must fully complete the form set forth in Appendix A to this part titled, ''Calendar Year 2000 Costs Paid for Passenger and Property Screening,'' and submit the completed form to the Transportation Security Administration by May 18, 2002.

(e) In the case of a merger, acquisition, corporate restructuring, reorganization, or name change involving an air carrier or foreign air carrier that paid for the screening of passengers and property transported by passenger aircraft in the United States during calendar year 2000, the successor entity must include those screening costs in Appendix A of this part and submit those costs together with its own costs on one form in accordance with paragraph (d) of this section. Any other air carrier or foreign air carrier that paid for the screening of passengers and property transported by passenger aircraft in the United States during calendar year 2000 but is no longer providing air transportation must also complete the form set forth in Appendix A and submit the form in accordance with paragraph (d) of this section.

(f) The Administrator has determined that the information submitted pursuant to this part and 49 U.S.C. 44940(a)(2)(B) is Sensitive Security Information and is subject to the non-disclosure requirements of 49 U.S.C. 40119(b).

(g) The amount of the Aviation Security Infrastructure Fee imposed on each air carrier and foreign air carrier will be redetermined for fiscal years 2005 and beyond, and such redeterminations may be based on the carrier's respective market share or any other appropriate measure in lieu of the measure provided in paragraph (c) of this section.

§ 1511.7 Remittance of Aviation Security Infrastructure Fees.

(a) No later than May 31, 2002, each air carrier and foreign air carrier engaged in air transportation must remit to TSA.

(1) 3.273 percent of the total amount the carrier has indicated in Appendix A of this part, or an amount as otherwise determined by the Administrator, which will represent the Aviation Security Infrastructure Fee due for the period running from February 18 through February 28, 2002; and,

(2) 16.666 percent of the total amount the carrier has indicated in Appendix A of this part, or an amount as otherwise determined by the Administrator, which will represent the Aviation Security Infrastructure Fee due for period running from March 1 through April 30, 2002.

(b) Each air carrier and foreign air carrier engaged in air transportation must remit to TSA 8.333 percent of the total amount the carrier has indicated in Appendix A of this part, or an amount as otherwise determined by the Administrator, by the last calendar day of each month following May 2002 up to and including September 2004.

(c) Each air carrier and foreign air carrier engaged in air transportation must remit to TSA 8.333 percent of the total amount as determined by the Administrator pursuant to section 1511.5(g) of this part by the last calendar day of each month following September 2004.

(d) Aviation Security Infrastructure Fees must be payable to the ''Transportation Security Administration'' in U.S. currency and drawn on a U.S. bank.

(1) Aviation Security Infrastructure Fees of $1,000 or more must be remitted by electronic funds transfer.

(2) Aviation Security Infrastructure Fees under $1,000 may be remitted by electronic funds transfer, check, money order, wire transfer, or draft.

(e) Air carriers and foreign air carriers are responsible for paying any bank processing charges on Aviation Security Infrastructure Fees remitted under this part when such charges are assessed on the U.S. government.

[67 FR 7929, Feb. 20, 2002; 67 FR 8579, Feb. 25, 2002]

§ 1511.9 Accounting and auditing requirements.

(a) Each air carrier and foreign air carrier must submit an audit performed by an independent certified public accountant of the information provided pursuant to this part to the Transportation Security Administration by July 1, 2002. The cost of the audit will be borne by the carrier. The accountant must express an opinion as to the fairness and reasonableness of the air carrier's and foreign air carrier's procedures used for accounting and remitting the fees. The accountant's working papers with respect to the audit must accompany this submission.

(b) Each air carrier and foreign air carrier must maintain and retain any and all documents, records, or information related to the amount of the Aviation Security Infrastructure Fees imposed on the carrier pursuant to this part, including all information applicable to the costs submitted in Appendix A, and information that is reasonably necessary to complete an audit.

§ 1511.11 Federal oversight.

(a) Upon request, air carriers and foreign air carriers must allow any authorized representative of the Administrator, the Secretary of Transportation, the Secretary of Homeland Security, the Inspector General of the Department of Transportation, the Inspector General of the Department of Homeland Security, or the Comptroller General of the United States to audit or review any of the books and records and provide any other information necessary to verify that:

(1) The information submitted pursuant to 49 U.S.C. 44940(a)(2)(B) and this part, including that provided in Appendix A, is true and correct; or

(2) The Aviation Security Infrastructure Fees were remitted consistent with this part.

[67 FR 7929, Feb. 20, 2002, as amended at 68 FR 49720, Aug. 19, 2003]

§ 1511.13 Enforcement.

(a) In addition to any other remedies allowed by law, willful falsification by any party, directly or indirectly, of information provided by an air carrier or foreign air carrier pursuant to this part, including information submitted in Appendix A as required by section 1511.5 of this part, may be prosecuted criminally resulting in a fine and/or imprisonment under 18 U.S.C 1001.

(b) An air carrier's or foreign air carrier's failure to comply with the requirements of 49 U.S.C. 44940 or the provisions of this part may result in a claim due the United States by the carrier, which claim shall be collectable pursuant to 31 U.S.C. Chapter 37 and the Department of Transportation's implementing regulations at 49 CFR part 89.

APPENDIX A TO PART 1511—AVIATION SECURITY INFRASTRUCTURE FEE

Instructions

General guidance

When filling out this form, the responding air carrier or foreign air carrier shall include all costs incurred in calendar year 2000 by that air carrier for the screening of passengers and property. Costs are those attributed to the screening of passengers and property in the United States for both flights within the United States and flights from the United States to foreign destinations. Reported costs must be consistent with the air carrier's financial accounting information reported in accordance with generally accepted accounting principles.

Where actual costs of screening passengers and property cannot be directly identified through an air carrier's accounting system, the air carrier shall use an appropriate alternate cost assignment methodology. Documentation that explains and supports the assignment methodology used, the applicable pool and the allocation basis must be made available upon request. For costs related to capitalized property, please report the associated depreciation expense incurred during

calendar year 2000. Capitalization policy must also be made available upon request.

To the extent necessary, the reporting air carrier may aggregate those specific costs that have been incurred but cannot be stated in the detailed cost categories requested by this form. However, all of the costs identified by this form must be included in the total calculations. In addition, explanations regarding costs that have been aggregated need to be provided. Costs reported in Appendix A do not need to include costs that may have been incurred for a position higher than those of the air carrier's director of security (or equivalent). Costs incurred for higher positions, such as those of the air carrier's chief executive officer, do not need to be included.

When including cost information on acquired and/or merged air carriers, the successor air carrier must specify the names of all of such entities whose calendar year 2000 passenger and property screening costs are included in that air carrier's submission as Appendix A.

The costs listed below are to be in US dollars, rounded to the nearest dollar. Place a zero in the appropriate box to indicate cost categories in which the air carrier did not incur costs for passenger and property screening in calendar year 2000.

Supporting Notes

Examples of cost types that appear in the supporting notes below are for illustrative purposes only and are not intended to set forth all relevant costs that must be reported by air carriers and foreign air carriers. In submitting information to TSA, air carriers and foreign air carriers must submit all of their relevant costs, regardless of whether those costs have been specifically illustrated in the notes.

Submission of Data

This form will be available electronically from the Department of Transportation's website at *www.dot.gov*. Air carriers are asked to return the completed form by certified mail to: Chief Financial Officer, Transportation Security Administration, Department of Transportation, 400 Seventh Street SW, Washington, DC 20590. Please also submit the same information in Microsoft Word either on a computer disk or by e-mail to *TSA-Fees@ost.dot.gov*.

Confidentiality of Data

Consistent with 49 CFR §1511.5(f), information submitted in Appendix A is deemed to be Sensitive Security Information and will be so protected from public disclosure under 49 U.S.C. 40119(b). In addition, confidential business information and economic information provided in Appendix A will be protected from public disclosure, as appropriate, under 5 U.S.C. §552 (the Freedom of Information Act), 14 CFR §302.12, and 18 U.S.C. §1905. Requests for confidentiality must be filed with the Office of the General Counsel, Department of Transportation (C–10), 400 Seventh Street, SW, Room 10102, Washington, DC 20590.

Calendar Year 2000 Costs for Passenger and Property Screening

Air Carrier name(s): _____ Date Form Completed: _____

		Cost Categories	Costs Incurred Directly by Air Carriers[a]	Costs Incurred Through Security Firm Contracts[b]	Costs Incurred Through Other Means[c]	Total Costs Incurred
A) Screening Personnel and Supervisors:	1	Checkpoint Screening Personnel				
	2	Exit Lane Monitors				
	3	Cargo Screeners				
	4	Checked Baggage Screeners				
	5	Baggage Runners				
	6	Supervisory Personnel				
	7	Non-Labor Costs				
	8	Background Checks				
	9	Training and Testing				
	10	Training Records				
	11	Evaluations				
	12	Drug and Alcohol Testing and Treatment				

		Cost Categories	Costs Incurred Directly by Air Carriers	Costs Incurred Through Security Firm Contracts[b]	Costs Incurred Through Other Means[c]	Total Costs Incurred
	13	Uniforms				
	14	Canines				
	15	Cost of Obtaining Security Clearances				
		Total for Section A				
B) Equipment and Procedures:	16	Screening Equipment Installation				
	17	Operating, Operational Maintenance and Testing of Installed Screening Equipment				
	18	Maintenance of Sterile Areas				
	19	Checkpoint Signs and Related Equipment				
	20	Exceptional Screening for Persons and Property				
	21	Security Company Contracts				
		Total for Section B				
C) Property and Plant:	22	Real Estate				
	23	Utilities				
		Total for Section C				

		Cost Categories	Costs Incurred Directly by Air Carriers	Costs Incurred Through Security Firm Contracts[b]	Costs Incurred Through Other Means[c]	Total Costs Incurred
D) Program Management and Contract Oversight:	24	Ground Security Coordinators				
	25	Security Program Management				
	26	Security Contract Administration and Oversight				
	27	Screener/Supervisor Background Check Audits				
	28	Legal Support				
	29	Accounting Support				
	30	Other Administrative Support				
	31	Insurance				
	32	Law Enforcement Costs				
	33	Recruitment Expenses				
		Total for Section D				
E) Security Consortium Costs:	34	Management Fees for Oversight of Consortium Contracts				
		Total for Section E				

		Cost Categories	Costs Incurred Directly by Air Carriers	Costs Incurred Through Security Firm Contracts[b]	Costs Incurred Through Other Means[c]	Total Costs Incurred
F) Other:	35	Other				
		Total for Section F				
Total for all Sections:						

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Supporting Notes

a. These are costs that the air carrier incurred directly. Includes costs incurred for air carrier personnel salaries and benefits, equipment owned, leased or rented directly by that air carrier and any other costs directly incurred.

b. These are costs that the air carrier incurred through contracts with security firms. Includes personnel, equipment and other costs incurred through contracts with third party security companies.

c. These are costs that the air carrier incurred through other means. Includes costs incurred through air carrier security consortiums.

1. Salary, benefits, overtime, retirement and other costs of checkpoint screening personnel.

2. Salary, benefits, overtime, retirement and other costs of exit lane monitors.

3. Salary, benefits, overtime, retirement and other costs of cargo screeners.

4. Salary, benefits, overtime, retirement and other costs of checked baggage screeners.

5. Salary, benefits, overtime, retirement and other costs of all baggage runners who move property such as baggage to and from screening areas.

6. Salary, benefits, overtime, retirement and other costs of all supervisory personnel, including Checkpoint Screening Supervisors.

7. All associated expensed non-labor costs including computers, communications equipment, time management systems, supplies, parking, identification badging, furniture, fixtures, and travel.

8. All costs of performing required background investigations on all screening personnel and supervisors. Screening personnel and supervisors includes checkpoint screening personnel, exit lane monitors, cargo screeners, checked baggage screeners, baggage runners, and their supervisors.

9. All costs incurred for the training and testing of all screening personnel and supervisors, including initial, recurrent and remedial training. Includes any computer-based training and the development of training programs for the screening of persons and property as well as any travel, room and board, and all other such expenses related to training.

10. The costs of implementing and maintaining training records for all screening personnel and supervisors.

11. The costs of completing evaluations for all screening personnel and supervisors.

12. All costs for drug and alcohol testing as well as any associated counseling and/or treatment for all screening personnel and supervisors.

13. All costs of renting, purchasing, maintaining, and/or cleaning of uniforms and any related equipment such as flashlights and batons for all screening personnel and supervisors.

14. All costs incurred by air carriers for the use of canines and their handlers used for the screening of persons and property.

15. All costs associated with obtaining security clearances for personnel relating to the screening of persons and property.

16. All costs associated with the purchase, installation, and testing of all screening equipment. In instances where the equipment is capitalized, provide the depreciation expense in lieu of costs associated with purchase, installation, and final acceptance testing. This includes such equipment as Metal Detection Devices, Hand Wands, X-ray screening machines, Explosives Trace Detection Devices, Explosives Detection Systems, or any other such similar technologies. Includes any costs incurred or depreciation costs recognized in calendar year 2000 for the modification and/or construction of any facility needed to accommodate screening, including architecture and engineering. Also includes the costs of any refurbishment and/or modernization of the equipment.

17. Costs of operating, maintaining, and calibrating installed screening equipment. This includes such equipment as Metal Detection Devices, Hand Wands, X-ray screening machines, Explosives Trace Detection Devices, Explosives Detection Systems, or any other such similar technologies. Includes such costs as test objects and X-ray radiation surveys, electricity costs and maintenance contract costs incurred for the operations of such equipment.

18. Costs of maintaining integrity of sterile areas. Includes costs of opening sterile areas, emergency evacuations of sterile areas, and re-screenings not included elsewhere.

19. The cost of purchase or rent, installation, testing, and maintenance of checkpoint signs, barriers, lane markers, and exit lane doors.

20. Any additional costs for special screening such as for disabled passengers, VIP passengers, classified and/or high value items.

21. All security company contract costs for the screening of persons and property that cannot be detailed into any other cost category.

22. All direct costs for the real estate utilized for the screening of persons and property. Includes space at airports for the performance of these functions, as well as such space used for break rooms, private screening rooms, storages space, training rooms, and office space. Also includes appropriate space for the oversight of the screening functions outside of airports such as in headquarters or regional offices.

23. All costs for utilities used for screening. Includes electricity, heating/ventilation/cooling, and telecommunications costs not elsewhere specified.

24. All costs incurred for the Ground Security Coordinator's oversight of the screening functions. Includes personnel salaries, benefits, retirement, training, and non-labor costs.

25. All air carrier head office, regional, or airport specific costs associated with the administration and oversight of screening not elsewhere specified. Includes personnel salaries, benefits, retirement, training, and non-labor costs.

26. All costs associated with the administration and oversight of screening contracts. Includes personnel, benefits, retirement, training, and non-labor costs.

27. All costs not elsewhere specified for background audit checks for all screeners and supervisors.

28. All legal support costs incurred during calendar year 2000 relating to aviation security screening. Includes legal assistance for

the implementation and execution of security screening contracts.

29. All costs for accounting and financial services incurred for the support of the screening functions.

30. Includes all labor and non-labor costs for such items as human resource administration, clerical assistance, information technology, and other support functions related to screening.

31. All insurance costs relating to screening. Includes worker's compensation and general liability insurance.

32. All costs incurred by the air carriers for law enforcement personnel costs that were reimbursed by the air carriers for services performed in connection with the screening of persons and property.

33. All costs associated with the recruitment of screening personnel and supervisors. Includes signing bonuses, travel, and other recruitment expenses.

34. Any costs incurred for fees charged by other organizations for the management of contracts for the screening of persons and property.

35. Any costs incurred not elsewhere specified during calendar year 2000 for the screening of passengers and property. These costs should be itemized on a separate sheet. Includes any fines or monetary penalties incurred for screening as well as any profit/bonuses paid to contractors for screening services not included elsewhere on the form.

Certification:

I certify that the information contained in this form (Appendix A-Part 1511) is true and accurate under penalty of law. Willful falsification of any information contained in this form under Part 1511 in Title 49, Chapter XII may be prosecuted criminally and result in a fine and/or imprisonment. (18 U.S.C. 1001)

_____ _____
Certifying Officer (signature) Date

_____ _____
Print Name and Title (CEO, CFO or COO) Telephone Number

Contact Information:
Listed below are the contact name, title, address and telephone number of the person responsible for the payment of the Aviation Security Infrastructure Fees to the Transportation Security Administration:

Name: _____

Title: _____

Address: _____

_____

_____

Telephone: _____

Person Who Prepared Document:

Listed below are the contact name, title, address and telephone number of the person who prepared this document:

Name: _____

Title: _____

Address: _____

_____

_____

Telephone: _____

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PART 1515—APPEAL AND WAIVER PROCEDURES FOR SECURITY THREAT ASSESSMENTS FOR INDIVIDUALS

Sec.

1515.1 Scope.
1515.3 Terms used in this part.
1515.5 Appeal of Initial Determination of Threat Assessment based on criminal conviction, immigration status, or mental capacity.
1515.7 Procedures for waiver of criminal offenses, immigration status, or mental capacity standards.
1515. 9 Appeal of security threat assessment based on other analyses.
1515.11 Review by administrative law judge and TSA Final Decision Maker.

AUTHORITY: 46 U.S.C. 70105; 49 U.S.C. 114, 5103a, 40113, and 46105; 18 U.S.C. 842, 845; 6 U.S.C. 469.

SOURCE: 72 FR 3588, Jan. 25, 2007, unless otherwise noted.

§ 1515.1 Scope.

(a) *Appeal.* This part applies to applicants who are appealing an Initial Determination of Threat Assessment or an Initial Determination of Threat Assessment and Immediate Revocation in a security threat assessment as described in:

(1) 49 CFR part 1572 for a hazardous materials endorsement (HME) or a Transportation Worker Identification Credential (TWIC); or

(2) 49 CFR part 1540, subpart C, for air cargo workers.

(b) *Waivers*. This part applies to applicants for an HME or TWIC who undergo a security threat assessment described in 49 CFR part 1572 and are eligible to request a waiver of certain standards.

EFFECTIVE DATE NOTE: At 74 FR 47695, Sept. 16, 2009, §1515.1 was amended by revising paragraph (a), effective November 16, 2009. For the convenience of the user, the revised text is set forth as follows:

§ 1515.1 Scope.

(a) *Appeal*. This part applies to applicants who are appealing an Initial Determination of Threat Assessment or an Initial Determination of Threat Assessment and Immediate Revocation in a security threat assessment (STA) as described in each of the following:

(1) 49 CFR part 1572 for a hazardous materials endorsement (HME) or a Transportation Worker Identification Credential (TWIC).

(2) 49 CFR part 1540, Subpart C, which includes individuals engaged in air cargo operations who work for certain aircraft operators, foreign air carriers, IACs, certified cargo screening facilities, or validation firms.

* * * * *

§ 1515.3 Terms used in this part.

The terms used in 49 CFR parts 1500, 1540, 1570, and 1572 also apply in this part. In addition, the following terms are used in this part:

Administrative law judge means an administrative law judge appointed pursuant to the provisions of 5 U.S.C. 3105.

Applicant means an individual who has applied for one of the security threat assessments identified in 49 CFR 1515.1. This includes an individual who previously applied for and was found to meet the standards for the security threat assessment but TSA later determined that the individual poses a security threat.

Date of service means—

(1) In the case of personal service, the date of personal delivery to the residential address listed on the application;

(2) In the case of mailing with a certificate of service, the date shown on the certificate of service;

(3) In the case of mailing and there is no certificate of service, 10 days from the date mailed to the address designated on the application as the mailing address;

(4) In the case of mailing with no certificate of service or postmark, the date mailed to the address designated on the application as the mailing address shown by other evidence; or

(5) The date on which an electronic transmission occurs.

Day means calendar day.

Final Agency Order means an order issued by the TSA Final Decision Maker.

Decision denying a review of a waiver means a document issued by an administrative law judge denying a waiver requested under 49 CFR 1515.7.

Mail includes U.S. mail, or use of an express courier service.

Party means the applicant or the agency attorney.

Personal delivery includes hand-delivery or use of a contract or express messenger service, but does not include the use of Government interoffice mail service.

Properly addressed means a document that shows an address contained in agency records, a residential, business, or other address submitted by a person on any document provided under this subpart, or any other address shown by other reasonable and available means.

Substantial Evidence means such relevant evidence as a reasonable person might accept as adequate to support a conclusion.

Security threat assessment means the threat assessment for which the applicant has applied, as described in 49 CFR 1515.1.

TSA Final Decision Maker means the Administrator, acting in the capacity of the decision maker on appeal, or any person to whom the Administrator has delegated the Administrator's decision-making authority. As used in this subpart, the *TSA Final Decision Maker* is the official authorized to issue a final decision and order of the Administrator.

§ 1515.5 Appeal of Initial Determination of Threat Assessment based on criminal conviction, immigration status, or mental capacity.

(a) *Scope*. This section applies to applicants appealing from an Initial Determination of Threat Assessment that was based on one or more of the following:

(1) TSA has determined that an applicant for an HME or a TWIC has a disqualifying criminal offense described in 49 CFR 1572.103.

(2) TSA has determined that an applicant for an HME or a TWIC does not meet the immigration status requirements as described in 49 CFR 1572.105.

(3) TSA has determined that an applicant for an HME or a TWIC is lacking mental capacity as described in 49 CFR 1572.109.

(b) *Grounds for appeal*. An applicant may appeal an Initial Determination of Threat Assessment if the applicant is asserting that he or she meets the standards for the security threat assessment for which he or she is applying.

(1) *Initiating an appeal*. An applicant initiates an appeal by submitting a written reply to TSA, a written request for materials from TSA, or by requesting an extension of time in accordance with § 1515.5(f). If the applicant does not initiate an appeal within 60 days of receipt, the Initial Determination of Threat Assessment becomes a Final Determination of Threat Assessment.

(i) In the case of an HME, TSA also serves a Final Determination of Threat Assessment on the licensing State.

(ii) In the case of a mariner applying for TWIC, TSA also serves a Final Determination of Threat Assessment on the Coast Guard.

(iii) In the case of a TWIC, TSA serves a Final Determination of Threat Assessment on the appropriate Federal Maritime Security Coordinator (FMSC).

(2) *Request for materials*. Within 60 days of the date of service of the Initial Determination of Threat Assessment, the applicant may serve upon TSA a written request for copies of the materials upon which the Initial Determination was based.

(3) *TSA response*. (i) Within 60 days of receiving the applicant's request for materials, TSA serves the applicant with copies of the releasable materials upon the applicant on which the Initial Determination was based. TSA will not include any classified information or other protected information described in paragraph (f) of this section.

(ii) Within 60 days of receiving the applicant's request for materials or written reply, TSA may request additional information or documents from the applicant that TSA believes are necessary to make a Final Determination.

(4) *Correction of records*. If the Initial Determination of Threat Assessment was based on a record that the applicant believes is erroneous, the applicant may correct the record, as follows:

(i) The applicant contacts the jurisdiction or entity responsible for the information and attempts to correct or complete information contained in his or her record.

(ii) The applicant provides TSA with the revised record, or a certified true copy of the information from the appropriate entity, before TSA determines that the applicant meets the standards for the security threat assessment.

(5) *Reply*. (i) The applicant may serve upon TSA a written reply to the Initial Determination of Threat Assessment within 60 days of service of the Initial Determination, or 60 days after the date of service of TSA's response to the applicant's request for materials under paragraph (b)(1) of this section, if the applicant served such request. The reply must include the rationale and information on which the applicant disputes TSA's Initial Determination.

(ii) In an applicant's reply, TSA will consider only material that is relevant to whether the applicant meets the standards applicable for the security threat assessment for which the applicant is applying.

(6) *Final determination*. Within 60 days after TSA receives the applicant's reply, TSA serves a Final Determination of Threat Assessment or a Withdrawal of the Initial Determination as provided in paragraphs (c) or (d) of this section.

(c) *Final Determination of Threat Assessment.* (1) If the Assistant Administrator concludes that an HME or TWIC applicant does not meet the standards described in 49 CFR 1572.103, 1572.105, or 1572.109, TSA serves a Final Determination of Threat Assessment upon the applicant. In addition—

(i) In the case of an HME, TSA serves a Final Determination of Threat Assessment on the licensing State.

(ii) In the case of a TWIC, TSA serves a Final Determination of Threat Assessment on the Coast Guard.

(2) The Final Determination includes a statement that the Assistant Administrator has reviewed the Initial Determination, the applicant's reply and any accompanying information, and any other materials or information available to him or her, and has determined that the applicant poses a security threat warranting denial of the security threat assessment for which the applicant has applied.

(d) *Withdrawal of Initial Determination.* If the Assistant Administrator or Assistant Secretary concludes that the applicant does not pose a security threat, TSA serves a Withdrawal of the Initial Determination upon the applicant, and the applicant's employer where applicable.

(e) *Nondisclosure of certain information.* In connection with the procedures under this section, TSA does not disclose classified information to the applicant, as defined in E.O. 12968 sec. 1.1(d), and reserves the right not to disclose any other information or material not warranting disclosure or protected from disclosure under law.

(f) *Extension of time.* TSA may grant an applicant an extension of time of the limits for good cause shown. An applicant's request for an extension of time must be in writing and be received by TSA within a reasonable time before the due date to be extended; or an applicant may request an extension after the expiration of a due date by sending a written request describing why the failure to file within the time limits was excusable. TSA may grant itself an extension of time for good cause.

(g) *Judicial review.* For purposes of judicial review, the Final Determination of Threat Assessment constitutes a final TSA order of the determination that the applicant does not meet the standards for a security threat assessment, in accordance with 49 U.S.C. 46110. The Final Determination is not a final TSA order to grant or deny a waiver, the procedures for which are in 49 CFR 1515.7 and 1515.11.

(h) *Appeal of immediate revocation.* If TSA directs an immediate revocation, the applicant may appeal this determination by following the appeal procedures described in paragraph (b) of this section. This applies—

(1) If TSA directs a State to revoke an HME pursuant to 49 CFR 1572.13(a).

(2) If TSA invalidates a TWIC by issuing an Initial Determination of Threat Assessment and Immediate Revocation pursuant to 49 CFR 1572.21(d)(3).

[72 FR 3588, Jan. 25, 2007; 72 FR 14049, Mar. 26, 2007]

§ 1515.7 Procedures for waiver of criminal offenses, immigration status, or mental capacity standards.

(a) *Scope.* This section applies to the following applicants:

(i) An applicant for an HME or TWIC who has a disqualifying criminal offense described in 49 CFR 1572.103(a)(5) through (a)(12) or 1572.103(b) and who requests a waiver.

(ii) An applicant for an HME or TWIC who is an alien under temporary protected status as described in 49 CFR 1572.105 and who requests a waiver.

(iii) An applicant applying for an HME or TWIC who lacks mental capacity as described in 49 CFR 1572.109 and who requests a waiver.

(b) *Grounds for waiver.* TSA may issue a waiver of the standards described in paragraph (a) and grant an HME or TWIC if TSA determines that an applicant does not pose a security threat based on a review of information described in paragraph (c) of this section.

(c) *Initiating waiver.* (1) An applicant initiates a waiver as follows:

(i) Providing to TSA the information required in 49 CFR 1572.9 for an HME or 49 CFR 1572.17 for a TWIC.

(ii) Paying the fees required in 49 CFR 1572.405 for an HME or in 49 CFR 1572.501 for a TWIC.

(iii) Sending a written request to TSA for a waiver at any time, but not

later than 60 days after the date of service of the Final Determination of Threat Assessment. The applicant may request a waiver during the application process, or may first pursue some or all of the appeal procedures in 49 CFR 1515.5 to assert that he or she does not have a disqualifying condition.

(2) In determining whether to grant a waiver, TSA will consider the following factors, as applicable to the disqualifying condition:

(i) The circumstances of the disqualifying act or offense.

(ii) Restitution made by the applicant.

(iii) Any Federal or State mitigation remedies.

(iv) Court records or official medical release documents indicating that the applicant no longer lacks mental capacity.

(v) Other factors that indicate the applicant does not pose a security threat warranting denial of the HME or TWIC.

(d) *Grant or denial of waivers.* (1) The Assistant Administrator will send a written decision granting or denying the waiver to the applicant within 60 days of service of the applicant's request for a waiver, or longer period as TSA may determine for good cause.

(2) In the case of an HME, if the Assistant Administrator grants the waiver, the Assistant Administrator will send a Determination of No Security Threat to the licensing State within 60 days of service of the applicant's request for a waiver, or longer period as TSA may determine for good cause.

(3) In the case of a mariner applying for a TWIC, if the Assistant Administrator grants the waiver, the Assistant Administrator will send a Determination of No Security Threat to the Coast Guard within 60 days of service of the applicant's request for a waiver, or longer period as TSA may determine for good cause.

(4) If the Assistant Administrator denies the waiver the applicant may seek review in accordance with 49 CFR 1515.11. A denial of a waiver under this section does not constitute a final order of TSA as provided in 49 U.S.C. 46110.

(e) *Extension of time.* TSA may grant an applicant an extension of the time limits for good cause shown. An applicant's request for an extension of time must be in writing and be received by TSA within a reasonable time before the due date to be extended; or an applicant may request an extension after the expiration of a due date by sending a written request describing why the failure to file within the time limits was excusable. TSA may grant itself an extension of time for good cause.

§ 1515.9 Appeal of security threat assessment based on other analyses.

(a) *Scope.* This section applies to an applicant appealing an Initial Determination of Threat Assessment as follows:

(1) TSA has determined that the applicant for an HME or TWIC poses a security threat as provided in 49 CFR 1572.107.

(2) TSA had determined that an air cargo worker poses a security threat as provided in 49 CFR 1540.205.

(b) *Grounds for appeal.* An applicant may appeal an Initial Determination of Threat Assessment if the applicant is asserting that he or she does not pose a security threat. The appeal will be conducted in accordance with the procedures set forth in 49 CFR 1515.5(b), (e), and (f) and this section.

(c) *Final Determination of Threat Assessment.* (1) If the Assistant Administrator concludes that the applicant poses a security threat, following an appeal, TSA serves a Final Determination of Threat Assessment upon the applicant. In addition—

(i) In the case of an HME, TSA serves a Final Determination of Threat Assessment on the licensing State.

(ii) In the case of a TWIC, TSA serves a Final Determination of Threat Assessment on the Coast Guard.

(iii) In the case of an air cargo worker, TSA serves a Final Determination of Threat Assessment on the operator.

(2) The Final Determination includes a statement that the Assistant Administrator has reviewed the Initial Determination, the applicant's reply and any accompanying information, and any other materials or information available to him or her, and has determined that the applicant poses a security

threat warranting denial of the security threat assessment for which the applicant has applied.

(d) *Withdrawal of Initial Determination*. If the Assistant Administrator concludes that the applicant does not pose a security threat, TSA serves a Withdrawal of the Initial Determination upon the applicant, and the applicant's employer where applicable.

(e) *Further review*. If the Assistant Administrator denies the appeal, the applicant may seek review in accordance with § 1515.11 of this part. A Final Determination issued under this section does not constitute a final order of TSA as provided in 49 U.S.C. 46110.

(f) *Appeal of immediate revocation*. If TSA directs an immediate revocation, the applicant may appeal this determination by following the appeal procedures described in paragraph (b) of this section. This applies—

(1) If TSA directs a State to revoke an HME pursuant to 49 CFR 1572.13(a).

(2) If TSA invalidates a TWIC by issuing an Initial Determination of Threat Assessment and Immediate Revocation pursuant to 49 CFR 1572.21(d)(3).

(3) If TSA withdraws a Determination of No Threat issued for an air cargo worker.

EFFECTIVE DATE NOTE: At 74 FR 47695, Sept. 16, 2009, § 1515.9 was amended by adding paragraphs (a)(3), (c)(1)(iv) and (v) and revising (f)(3), effective November 16, 2009. For the convenience of the user, the added and revised text is set forth as follows:

§ 1515.9 Appeal of security threat assessment based on other analyses.

(a) * * *

(3) TSA had determined that an individual engaged in air cargo operations who works for certain aircraft operators, foreign air carriers, indirect air carriers (IACs), certified cargo screening facilities, or validation firms poses a security threat as provided in 49 CFR 1549.109.

* * * * *

(c) * * *

(1) * * *

(iv) In the case of a certified cargo screening facilities worker, TSA serves a Final Determination of Threat Assessment on the operator.

(v) In the case of a validator of certified cargo screening facilities, TSA serves a Final Determination of Threat Assessment on the operator.

* * * * *

(f) * * *

(3) If TSA withdraws a Determination of No Security Threat for an individual engaged in air cargo operations who works for certain aircraft operators, foreign air carriers, IACs, certified cargo screening facilities, or validation firms.

§ 1515.11 Review by administrative law judge and TSA Final Decision Maker.

(a) *Scope*. This section applies to the following applicants:

(1) An applicant who seeks review of a decision by TSA denying a request for a waiver under 49 CFR 1515.7.

(2) An applicant for an HME or a TWIC who has been issued a Final Determination of Threat Assessment on the grounds that he or she poses a security threat after an appeal as described in 49 CFR 1515.9.

(3) An air cargo worker who has been issued a Final Determination of Threat Assessment after an appeal as described in 49 CFR 1515.9.

(b) *Request for review*. No later than 30 calendar days from the date of service of the decision by TSA denying a waiver or of the Final Determination of Threat Assessment, the applicant may request a review. The review will be conducted by an administrative law judge who possesses the appropriate security clearance necessary to review classified or otherwise protected information and evidence. If the applicant fails to seek review within 30 calendar days, the Final Determination of Threat Assessment will be final with respect to the parties.

(1) The request for review must clearly state the issue(s) to be considered by the administrative law judge (ALJ), and include the following documents in support of the request:

(i) In the case of a review of a denial of waiver, a copy of the applicant's request for a waiver under 49 CFR 1515.7, including all materials provided by the applicant to TSA in support of the waiver request; and a copy of the decision issued by TSA denying the waiver request. The request for review may not include evidence or information that was not presented to TSA in the

request for a waiver under 49 CFR 1515.7. The ALJ may consider only evidence or information that was presented to TSA in the waiver request. If the applicant has new evidence or information, the applicant must file a new request for a waiver under § 1515.7 and the pending request for review of a denial of a waiver will be dismissed.

(ii) In the case of a review of a Final Determination of Threat Assessment, a copy of the Initial Notification of Threat Assessment and Final Notification of Threat Assessment; and a copy of the applicant's appeal under 49 CFR 1515.9, including all materials provided by the applicant to TSA in support of the appeal. The request for review may not include evidence or information that was not presented to TSA in the appeal under § 1515.9. The ALJ may consider only evidence or information that was presented to TSA in the appeal. If the applicant has new evidence or information, the applicant must file a new appeal under § 1515.9 and the pending request for review of the Final Determination will be dismissed.

(2) The applicant may include in the request for review a request for an in-person hearing before the ALJ.

(3) The applicant must file the request for review with the ALJ Docketing Center, U.S. Coast Guard, 40 S. Gay Street, Room 412, Baltimore, Maryland 21202–4022, ATTN: Hearing Docket Clerk.

(c) *Extension of Time*. The ALJ may grant an extension of the time limits described in this section for good cause shown. A request for an extension of time must be in writing and be received by the ALJ within a reasonable time before the due date to be extended; or an applicant may request an extension after the expiration of a due date by sending a written request describing why the failure to file within the time limits was excusable. This paragraph does not apply to time limits set by the administrative law judge during the hearing.

(d) *Duties of the Administrative Law Judge*. The ALJ may:

(1) Receive information and evidence presented to TSA in the request for a waiver under 49 CFR 1515.7 or an appeal under 49 CFR 1515.9.

(2) Consider the following criteria to determine whether a request for an in-person hearing is warranted:

(i) The credibility of evidence or information submitted in the applicant's request for a waiver; and

(ii) Whether TSA's waiver denial was made in accordance with the governing regulations codified at 49 CFR part 1515 and 49 CFR part 1572.

(3) Give notice of and hold conferences and hearings;

(4) Administer oaths and affirmations;

(5) Examine witnesses;

(6) Regulate the course of the hearing including granting extensions of time limits; and

(7) Dispose of procedural motions and requests, and issue a decision.

(e) *Hearing*. If the ALJ grants a request for a hearing, except for good cause shown, it will begin within 60 calendar days of the date of receipt of the request for hearing. The hearing is a limited discovery proceeding and is conducted as follows:

(1) If applicable and upon request, TSA will provide to the applicant requesting a review an unclassified summary of classified evidence upon which the denial of the waiver or Final Determination was based.

(i) TSA will not disclose to the applicant, or the applicant's counsel, classified information, as defined in E.O. 12968 section 1.1(d).

(ii) TSA reserves the right not to disclose any other information or material not warranting disclosure or protected from disclosure by law or regulation.

(2) The applicant may present the case by oral testimony, documentary, or demonstrative evidence, submit rebuttal evidence, and conduct cross-examination, as permitted by the ALJ. Oral testimony is limited to the evidence or information that was presented to TSA in the request for a waiver or during the appeal. The Federal Rules of Evidence may serve as guidance, but are not binding.

(3) The ALJ will review any classified information on an ex parte, in camera basis, and may consider such information in rendering a decision if the information appears to be material and relevant.

(4) The standard of proof is substantial evidence on the record.

(5) The parties may submit proposed findings of fact and conclusions of law.

(6) If the applicant fails to appear, the ALJ may issue a default judgment.

(7) A verbatim transcript will be made of the hearing and will be provided upon request at the expense of the requesting party. In cases in which classified or otherwise protected evidence is received, the transcript may require redaction of the classified or otherwise protected information.

(8) The hearing will be held at TSA's Headquarters building or, on request of a party, at an alternate location selected by the administrative law judge for good cause shown.

(f) *Decision of the Administrative Law Judge*. (1) The record is closed once the certified transcript and all documents and materials have been submitted for the record.

(2) The ALJ issues an unclassified written decision to the applicant no later than 30 calendar days from the close of the record and serves the decision on the parties. The ALJ may issue a classified decision to TSA.

(3) The ALJ's decision may be appealed by either party to the TSA Final Decision Maker in accordance with paragraph (g).

(i) In the case of review of a waiver denial, unless appealed to the TSA Final Decision Maker, if the ALJ upholds the denial of the applicant's request for waiver, TSA will issue a Final Order Denying a Waiver to the applicant.

(ii) In the case of review of a waiver denial, unless appealed to the TSA Final Decision Maker, if the ALJ reverses the denial of the applicant's request for waiver, TSA will issue a Final Order granting a waiver to the applicant; and

(A) In the case of an HME, send a Determination of No Security Threat to the licensing State.

(B) In the case applicant for a TWIC, send a Determination of No Security Threat to the Coast Guard.

(C) In the case of an air cargo worker, send a Determination of No Security Threat to the operator.

(iii) In the case of review of an appeal under 49 CFR 1515.9, unless appealed to the TSA Final Decision Maker, if the ALJ determines that the applicant poses a security threat, TSA will issue a Final Order of Threat Assessment to the applicant.

(iv) In the case of review of an appeal under 49 CFR 1515.9, unless appealed to the TSA Final Decision Maker, if the ALJ determines that the applicant does not pose a security threat, TSA will issue a Withdrawal of the Final Determination to the applicant, and to the applicant's employer where applicable.

(g) *Review by the TSA Final Decision Maker*. (1) Either party may request that the TSA Final Decision Maker review the ALJ's decision by serving the request no later than 30 calendar days after the date of service of the decision of the ALJ.

(i) The request must be in writing, served on the other party, and may only address whether the decision is supported by substantial evidence on the record.

(ii) No later than 30 calendar days after receipt of the request, the other party may file a response.

(2) The ALJ will provide the TSA Final Decision Maker with a certified transcript of the hearing and all unclassified documents and material submitted for the record. TSA will provide any classified materials previously submitted.

(3) No later than 60 calendar days after receipt of the request, or if the other party files a response, 30 calendar days after receipt of the response, or such longer period as may be required, the TSA Final Decision Maker issues an unclassified decision and serves the decision on the parties. The TSA Final Decision Maker may issue a classified opinion to TSA, if applicable. The decision of the TSA Final Decision Maker is a final agency order.

(i) In the case of review of a waiver denial, if the TSA Final Decision Maker upholds the denial of the applicant's request for waiver, TSA issues a Final Order Denying a Waiver to the applicant.

(ii) In the case of review of a waiver denial, if the TSA Final Decision Maker reverses the denial of the applicant's request for waiver, TSA will grant the waiver; and

(A) In the case of an HME, send a Determination of No Security Threat to the applicant and to the licensing State.

(B) In the case of a TWIC, send a Determination of No Security Threat to the applicant and to the Coast Guard.

(C) In the case of an air cargo worker, send a Determination of No Security Threat to the applicant and the operator.

(iii) In the case of review of an appeal under 49 CFR 1515.9, if the TSA Final Decision Maker determines that the applicant poses a security threat, TSA will issue a Final Order of Threat Assessment to the applicant.

(iv) In the case of review of an appeal under 49 CFR 1515.9, if the TSA Final Decision Maker determines that the applicant does not pose a security threat, TSA will issue a Withdrawal of the Final Determination to the applicant, and to the applicant's employer where applicable.

(h) *Judicial Review of a Final Order Denying a Waiver*. A person may seek judicial review of a final order of the TSA Final Decision Maker as provided in 49 U.S.C. 46110.

[72 FR 3588, Jan. 25, 2007; 72 FR 5633, Feb. 7, 2007]

EFFECTIVE DATE NOTE: At 74 FR 47695, Sept. 16, 2009, § 1511.11 was amended by revising paragraph (a)(3), effective November 16, 2009. For the convenience of the user, the revised text is set forth as follows:

§ 1515.11 Review by administrative law judge and TSA Final Decision Maker.

(a) * * *

(3) An individual engaged in air cargo operations who works for certain aircraft operators, foreign air carriers, IACs, certified cargo screening facilities, or validation firms who has been issued a Final Determination of Threat Assessment after an appeal as described in 49 CFR 1515.9.

* * * * *

SUBCHAPTER B—SECURITY RULES FOR ALL MODES OF TRANSPORTATION

PART 1520—PROTECTION OF SENSITIVE SECURITY INFORMATION

Sec.
1520.1 Scope.
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AUTHORITY: 46 U.S.C. 70102–70106, 70117; 49 U.S.C. 114, 40113, 44901–44907, 44913–44914, 44916–44918, 44935–44936, 44942, 46105.

SOURCE: 69 FR 28082, May 18, 2004, unless otherwise noted.

§ 1520.1 Scope.

(a) *Applicability*. This part governs the maintenance, safeguarding, and disclosure of records and information that TSA has determined to be Sensitive Security Information, as defined in § 1520.5. This part does not apply to the maintenance, safeguarding, or disclosure of classified national security information, as defined by Executive Order 12968, or to other sensitive unclassified information that is not SSI, but that nonetheless may be exempt from public disclosure under the Freedom of Information Act. In addition, in the case of information that has been designated as critical infrastructure information under section 214 of the Homeland Security Act, the receipt, maintenance, or disclosure of such information by a Federal agency or employee is governed by section 214 and any implementing regulations, not by this part.

(b) *Delegation*. The authority of TSA and the Coast Guard under this part may be further delegated within TSA and the Coast Guard, respectively.

§ 1520.3 Terms used in this part.

In addition to the terms in § 1500.3 of this chapter, the following terms apply in this part:

Administrator means the Under Secretary of Transportation for Security referred to in 49 U.S.C. 114(b), or his or her designee.

Coast Guard means the United States Coast Guard.

Covered person means any organization, entity, individual, or other person described in § 1520.7. In the case of an individual, *covered person* includes any individual applying for employment in a position that would be a covered person, or in training for such a position, regardless of whether that individual is receiving a wage, salary, or other form of payment. *Covered person* includes a person applying for certification or other form of approval that, if granted, would make the person a covered person described in § 1520.7.

DHS means the Department of Homeland Security and any directorate, bureau, or other component within the Department of Homeland Security, including the United States Coast Guard.

DOT means the Department of Transportation and any operating administration, entity, or office within the Department of Transportation, including the Saint Lawrence Seaway Development Corporation and the Bureau of Transportation Statistics.

Federal Flight Deck Officer means a pilot participating in the Federal Flight Deck Officer Program under 49 U.S.C. 44921 and implementing regulations.

Maritime facility means any facility as defined in 33 CFR part 101.

Rail facility means ''rail facility'' as defined in 49 CFR 1580.3.

Rail hazardous materials receiver means ''rail hazardous materials receiver'' as defined in 49 CFR 1580.3.

Rail hazardous materials shipper means ''rail hazardous materials shipper'' as defined in 49 CFR 1580.3.

Rail secure area means ''rail secure area'' as defined in 49 CFR 1580.3.

Rail transit facility means ''rail transit facility'' as defined in 49 CFR 1580.3.

Rail transit system or *Rail Fixed Guideway System* means ''rail transit system'' or ''Rail Fixed Guideway System'' as defined in 49 CFR 1580.3.

Railroad means ''railroad'' as defined in 49 U.S.C. 20102(1).

Railroad carrier means ''railroad carrier'' as defined in 49 U.S.C. 20102(2).

Record includes any means by which information is preserved, irrespective of format, including a book, paper, drawing, map, recording, tape, film, photograph, machine-readable material, and any information stored in an electronic format. The term *record* also includes any draft, proposed, or recommended change to any record.

Security contingency plan means a plan detailing response procedures to address a transportation security incident, threat assessment, or specific threat against transportation, including details of preparation, response, mitigation, recovery, and reconstitution procedures, continuity of government, continuity of transportation operations, and crisis management.

Security program means a program or plan and any amendments, developed for the security of the following, including any comments, instructions, or implementing guidance:

(1) An airport, aircraft, or aviation cargo operation;

(2) A fixed base operator;

(3) A maritime facility, vessel, or port area; or

(4) A transportation-related automated system or network for information processing, control, and communications.

Security screening means evaluating a person or property to determine whether either poses a threat to security.

SSI means sensitive security information, as described in § 1520.5.

Threat image projection system means an evaluation tool that involves periodic presentation of fictional threat images to operators and is used in connection with x-ray or explosives detection systems equipment.

TSA means the Transportation Security Administration.

Vulnerability assessment means any review, audit, or other examination of the security of a transportation infrastructure asset; airport; maritime facility, port area, or vessel; aircraft; railroad; railroad carrier, rail facility; train; rail hazardous materials shipper or receiver facility; rail transit system; rail transit facility; commercial motor vehicle; or pipeline; or a transportation-related automated system or network to determine its vulnerability to unlawful interference, whether during the conception, planning, design, construction, operation, or decommissioning phase. A vulnerability assessment may include proposed, recommended, or directed actions or countermeasures to address security concerns.

[69 FR 28082, May 18, 2004, as amended at 70 FR 41599, July 19, 2005; 73 FR 72172, Nov. 26, 2008]

EFFECTIVE DATE NOTE: At 74 FR 47695, Sept. 16, 2009, § 1520.3 was amended by removing the definition of ''Security program'' effective November 16, 2009.

§ 1520.5 Sensitive security information.

(a) *In general.* In accordance with 49 U.S.C. 114(s), SSI is information obtained or developed in the conduct of security activities, including research and development, the disclosure of which TSA has determined would—

(1) Constitute an unwarranted invasion of privacy (including, but not limited to, information contained in any personnel, medical, or similar file);

(2) Reveal trade secrets or privileged or confidential information obtained from any person; or

(3) Be detrimental to the security of transportation.

(b) *Information constituting SSI.* Except as otherwise provided in writing by TSA in the interest of public safety or in furtherance of transportation security, the following information, and records containing such information, constitute SSI:

(1) *Security programs and contingency plans.* Any security program or security contingency plan issued, established, required, received, or approved by DOT or DHS, including—

(i) Any aircraft operator, airport operator, or fixed base operator security program, or security contingency plan under this chapter;

(ii) Any vessel, maritime facility, or port area security plan required or directed under Federal law;

(iii) Any national or area security plan prepared under 46 U.S.C. 70103; and

(iv) Any security incident response plan established under 46 U.S.C. 70104.

(2) *Security Directives*. Any Security Directive or order—

(i) Issued by TSA under 49 CFR 1542.303, 1544.305, 1548.19, or other authority;

(ii) Issued by the Coast Guard under the Maritime Transportation Security Act, 33 CFR part 6, or 33 U.S.C. 1221 *et seq*. related to maritime security; or

(iii) Any comments, instructions, and implementing guidance pertaining thereto.

(3) *Information Circulars*. Any notice issued by DHS or DOT regarding a threat to aviation or maritime transportation, including any—

(i) Information circular issued by TSA under 49 CFR 1542.303, 1544.305, 1548.19, or other authority; and

(ii) Navigation or Vessel Inspection Circular issued by the Coast Guard related to maritime security.

(4) *Performance specifications*. Any performance specification and any description of a test object or test procedure, for—

(i) Any device used by the Federal Government or any other person pursuant to any aviation or maritime transportation security requirements of Federal law for the detection of any person, and any weapon, explosive, incendiary, or destructive device, item, or substance; and

(ii) Any communications equipment used by the Federal government or any other person in carrying out or complying with any aviation or maritime transportation security requirements of Federal law.

(5) *Vulnerability assessments*. Any vulnerability assessment directed, created, held, funded, or approved by the DOT, DHS, or that will be provided to DOT or DHS in support of a Federal security program.

(6) *Security inspection or investigative information*. (i) Details of any security inspection or investigation of an alleged violation of aviation, maritime, or rail transportation security requirements of Federal law that could reveal a security vulnerability, including the identity of the Federal special agent or other Federal employee who conducted the inspection or audit.

(ii) In the case of inspections or investigations performed by TSA, this includes the following information as to events that occurred within 12 months of the date of release of the information: the name of the airport where a violation occurred, the airport identifier in the case number, a description of the violation, the regulation allegedly violated, and the identity of any aircraft operator in connection with specific locations or specific security procedures. Such information will be released after the relevant 12-month period, except that TSA will not release the specific gate or other location on an airport where an event occurred, regardless of the amount of time that has passed since its occurrence. During the period within 12 months of the date of release of the information, TSA may release summaries of an aircraft operator's, but not an airport operator's, total security violations in a specified time range without identifying specific violations or locations. Summaries may include total enforcement actions, total proposed civil penalty amounts, number of cases opened, number of cases referred to TSA or FAA counsel for legal enforcement action, and number of cases closed.

(7) *Threat information*. Any information held by the Federal government concerning threats against transportation or transportation systems and sources and methods used to gather or develop threat information, including threats against cyber infrastructure.

(8) *Security measures*. Specific details of aviation, maritime, or rail transportation security measures, both operational and technical, whether applied directly by the Federal government or another person, including—

(i) Security measures or protocols recommended by the Federal government;

(ii) Information concerning the deployments, numbers, and operations of Coast Guard personnel engaged in maritime security duties and Federal Air Marshals, to the extent it is not classified national security information; and

(iii) Information concerning the deployments and operations of Federal Flight Deck Officers, and numbers of Federal Flight Deck Officers aggregated by aircraft operator.

(iv) Any armed security officer procedures issued by TSA under 49 CFR part 1562.

(9) *Security screening information.* The following information regarding security screening under aviation or maritime transportation security requirements of Federal law:

(i) Any procedures, including selection criteria and any comments, instructions, and implementing guidance pertaining thereto, for screening of persons, accessible property, checked baggage, U.S. mail, stores, and cargo, that is conducted by the Federal government or any other authorized person.

(ii) Information and sources of information used by a passenger or property screening program or system, including an automated screening system.

(iii) Detailed information about the locations at which particular screening methods or equipment are used, only if determined by TSA to be SSI.

(iv) Any security screener test and scores of such tests.

(v) Performance or testing data from security equipment or screening systems.

(vi) Any electronic image shown on any screening equipment monitor, including threat images and descriptions of threat images for threat image projection systems.

(10) *Security training materials.* Records created or obtained for the purpose of training persons employed by, contracted with, or acting for the Federal government or another person to carry out aviation, maritime, or rail transportation security measures required or recommended by DHS or DOT.

(11) *Identifying information of certain transportation security personnel.* (i) Lists of the names or other identifying information that identify persons as—

(A) Having unescorted access to a secure area of an airport, a rail secure area, or a secure or restricted area of a maritime facility, port area, or vessel;

(B) Holding a position as a security screener employed by or under contract with the Federal government pursuant to aviation or maritime transportation security requirements of Federal law, where such lists are aggregated by airport;

(C) Holding a position with the Coast Guard responsible for conducting vulnerability assessments, security boardings, or engaged in operations to enforce maritime security requirements or conduct force protection;

(D) Holding a position as a Federal Air Marshal; or

(ii) The name or other identifying information that identifies a person as a current, former, or applicant for Federal Flight Deck Officer.

(12) *Critical aviation, maritime, or rail infrastructure asset information.* Any list identifying systems or assets, whether physical or virtual, so vital to the aviation, maritime, or rail transportation system (including rail hazardous materials shippers and rail hazardous materials receivers) that the incapacity or destruction of such assets would have a debilitating impact on transportation security, if the list is—

(i) Prepared by DHS or DOT; or

(ii) Prepared by a State or local government agency and submitted by the agency to DHS or DOT.

(13) *Systems security information.* Any information involving the security of operational or administrative data systems operated by the Federal government that have been identified by the DOT or DHS as critical to aviation or maritime transportation safety or security, including automated information security procedures and systems, security inspections, and vulnerability information concerning those systems.

(14) *Confidential business information.* (i) Solicited or unsolicited proposals received by DHS or DOT, and negotiations arising therefrom, to perform work pursuant to a grant, contract, cooperative agreement, or other transaction, but only to the extent that the subject matter of the proposal relates to aviation or maritime transportation security measures;

(ii) Trade secret information, including information required or requested by regulation or Security Directive, obtained by DHS or DOT in carrying out aviation or maritime transportation security responsibilities; and

(iii) Commercial or financial information, including information required or requested by regulation or Security Directive, obtained by DHS or DOT in carrying out aviation or maritime

transportation security responsibilities, but only if the source of the information does not customarily disclose it to the public.

(15) *Research and development*. Information obtained or developed in the conduct of research related to aviation, maritime, or rail transportation security activities, where such research is approved, accepted, funded, recommended, or directed by DHS or DOT, including research results.

(16) *Other information*. Any information not otherwise described in this section that TSA determines is SSI under 49 U.S.C. 114(s) or that the Secretary of DOT determines is SSI under 49 U.S.C. 40119. Upon the request of another Federal agency, TSA or the Secretary of DOT may designate as SSI information not otherwise described in this section.

(c) *Loss of SSI designation*. TSA or the Coast Guard may determine in writing that information or records described in paragraph (b) of this section do not constitute SSI because they no longer meet the criteria set forth in paragraph (a) of this section.

[69 FR 28082, May 18, 2004, as amended at 70 FR 41599, July 19, 2005; 71 FR 30507, May 26, 2006; 73 FR 72172, Nov. 26, 2008]

EFFECTIVE DATE NOTE: At 74 FR 47695, Sept. 16, 2009, § 1520.5 was amended by revising paragraph (b)(1), effective November 16, 2009. For the convenience of the user, the revised text is set forth as follows:

§ 1520.5 Sensitive security information.

* * * * *

(b) * * *

(1) *Security programs and contingency plans*. Any security program or security contingency plan issued, established, required, received, or approved by DOT or DHS, including any comments, instructions, or implementing guidance, including—

(i) Any aircraft operator, airport operator, fixed base operator, or air cargo security program, or security contingency plan under this chapter;

(ii) Any vessel, maritime facility, or port area security plan required or directed under Federal law;

(iii) Any national or area security plan prepared under 46 U.S.C. 70103; and

(iv) Any security incident response plan established under 46 U.S.C. 70104.

* * * * *

§ 1520.7 Covered persons.

Persons subject to the requirements of part 1520 are:

(a) Each airport operator, aircraft operator, and fixed base operator subject to the requirements of subchapter C of this chapter, and each armed security officer under subpart B of part 1562.

(b) Each indirect air carrier, as defined in 49 CFR 1540.5.

(c) Each owner, charterer, or operator of a vessel, including foreign vessel owners, charterers, and operators, required to have a security plan under Federal or International law.

(d) Each owner or operator of a maritime facility required to have a security plan under the Maritime Transportation Security Act, (Pub.L. 107–295), 46 U.S.C. 70101 *et seq.*, 33 CFR part 6, or 33 U.S.C. 1221 *et seq*.

(e) Each person performing the function of a computer reservation system or global distribution system for airline passenger information.

(f) Each person participating in a national or area security committee established under 46 U.S.C. 70112, or a port security committee.

(g) Each industry trade association that represents covered persons and has entered into a non-disclosure agreement with the DHS or DOT.

(h) DHS and DOT.

(i) Each person conducting research and development activities that relate to aviation or maritime transportation security and are approved, accepted, funded, recommended, or directed by DHS or DOT.

(j) Each person who has access to SSI, as specified in § 1520.11.

(k) Each person employed by, contracted to, or acting for a covered person, including a grantee of DHS or DOT, and including a person formerly in such position.

(l) Each person for which a vulnerability assessment has been directed, created, held, funded, or approved by the DOT, DHS, or that has prepared a vulnerability assessment that will be provided to DOT or DHS in support of a Federal security program.

(m) Each person receiving SSI under § 1520.15(d) or (e).

(n) Each railroad carrier, rail hazardous materials shipper, rail hazardous materials receiver, and rail

transit system subject to the requirements of part 1580 of this chapter.

[69 FR 28082, May 18, 2004, as amended at 70 FR 41600, July 19, 2005; 73 FR 72173, Nov. 26, 2008]

EFFECTIVE DATE NOTE: At 74 FR 47695, Sept. 16, 2009, § 1520.7 was amended by revising paragraph (b), effective November 16, 2009. For the convenience of the user, the revised text is set forth as follows:

§ 1520.7 Covered persons.

* * * * *

(b) Each indirect air carrier (IAC), as described in 49 CFR part 1548; each validation firm and its personnel, as described in 49 CFR 1522; and each certified cargo screening facility and its personnel, as described in 49 CFR 1549.

* * * * *

§ 1520.9 Restrictions on the disclosure of SSI.

(a) *Duty to protect information.* A covered person must—

(1) Take reasonable steps to safeguard SSI in that person's possession or control from unauthorized disclosure. When a person is not in physical possession of SSI, the person must store it a secure container, such as a locked desk or file cabinet or in a locked room.

(2) Disclose, or otherwise provide access to, SSI only to covered persons who have a need to know, unless otherwise authorized in writing by TSA, the Coast Guard, or the Secretary of DOT.

(3) Refer requests by other persons for SSI to TSA or the applicable component or agency within DOT or DHS.

(4) Mark SSI as specified in § 1520.13.

(5) Dispose of SSI as specified in § 1520.19.

(b) *Unmarked SSI.* If a covered person receives a record containing SSI that is not marked as specified in § 1520.13, the covered person must—

(1) Mark the record as specified in § 1520.13; and

(2) Inform the sender of the record that the record must be marked as specified in § 1520.13.

(c) *Duty to report unauthorized disclosure.* When a covered person becomes aware that SSI has been released to unauthorized persons, the covered person must promptly inform TSA or the applicable DOT or DHS component or agency.

(d) *Additional Requirements for Critical Infrastructure Information.* In the case of information that is both SSI and has been designated as critical infrastructure information under section 214 of the Homeland Security Act, any covered person who is a Federal employee in possession of such information must comply with the disclosure restrictions and other requirements applicable to such information under section 214 and any implementing regulations.

§ 1520.11 Persons with a need to know.

(a) *In general.* A person has a need to know SSI in each of the following circumstances:

(1) When the person requires access to specific SSI to carry out transportation security activities approved, accepted, funded, recommended, or directed by DHS or DOT.

(2) When the person is in training to carry out transportation security activities approved, accepted, funded, recommended, or directed by DHS or DOT.

(3) When the information is necessary for the person to supervise or otherwise manage individuals carrying out transportation security activities approved, accepted, funded, recommended, or directed by the DHS or DOT.

(4) When the person needs the information to provide technical or legal advice to a covered person regarding transportation security requirements of Federal law.

(5) When the person needs the information to represent a covered person in connection with any judicial or administrative proceeding regarding those requirements.

(b) *Federal, State, local, or tribal government employees, contractors, and grantees.* (1) A Federal, State, local, or tribal government employee has a need to know SSI if access to the information is necessary for performance of the employee's official duties, on behalf or in defense of the interests of the Federal, State, local, or tribal government.

(2) A person acting in the performance of a contract with or grant from a

Federal, State, local, or tribal government agency has a need to know SSI if access to the information is necessary to performance of the contract or grant.

(c) *Background check*. TSA or Coast Guard may make an individual's access to the SSI contingent upon satisfactory completion of a security background check or other procedures and requirements for safeguarding SSI that are satisfactory to TSA or the Coast Guard.

(d) *Need to know further limited by the DHS or DOT*. For some specific SSI, DHS or DOT may make a finding that only specific persons or classes of persons have a need to know.

[69 FR 28082, May 18, 2004, as amended at 70 FR 1382, Jan. 7, 2005; 73 FR 72173, Nov. 26, 2008]

§ 1520.13 Marking SSI.

(a) *Marking of paper records*. In the case of paper records containing SSI, a covered person must mark the record by placing the protective marking conspicuously on the top, and the distribution limitation statement on the bottom, of—

(1) The outside of any front and back cover, including a binder cover or folder, if the document has a front and back cover;

(2) Any title page; and

(3) Each page of the document.

(b) *Protective marking*. The protective marking is: SENSITIVE SECURITY INFORMATION.

(c) *Distribution limitation statement*. The distribution limitation statement is:

WARNING: This record contains Sensitive Security Information that is controlled under 49 CFR parts 15 and 1520. No part of this record may be disclosed to persons without a ''need to know'', as defined in 49 CFR parts 15 and 1520, except with the written permission of the Administrator of the Transportation Security Administration or the Secretary of Transportation. Unauthorized release may result in civil penalty or other action. For U.S. government agencies, public disclosure is governed by 5 U.S.C. 552 and 49 CFR parts 15 and 1520.

(d) *Other types of records*. In the case of non-paper records that contain SSI, including motion picture films, videotape recordings, audio recording, and electronic and magnetic records, a covered person must clearly and conspicuously mark the records with the protective marking and the distribution limitation statement such that the viewer or listener is reasonably likely to see or hear them when obtaining access to the contents of the record.

§ 1520.15 SSI disclosed by TSA or the Coast Guard.

(a) *In general*. Except as otherwise provided in this section, and notwithstanding the Freedom of Information Act (5 U.S.C. 552), the Privacy Act (5 U.S.C. 552a), and other laws, records containing SSI are not available for public inspection or copying, nor does TSA or the Coast Guard release such records to persons without a need to know.

(b) *Disclosure under the Freedom of Information Act and the Privacy Act*. If a record contains both SSI and information that is not SSI, TSA or the Coast Guard, on a proper Freedom of Information Act or Privacy Act request, may disclose the record with the SSI redacted, provided the record is not otherwise exempt from disclosure under the Freedom of Information Act or Privacy Act.

(c) *Disclosures to committees of Congress and the General Accounting Office*. Nothing in this part precludes TSA or the Coast Guard from disclosing SSI to a committee of Congress authorized to have the information or to the Comptroller General, or to any authorized representative of the Comptroller General.

(d) *Disclosure in enforcement proceedings*—(1) *In general*. TSA or the Coast Guard may provide SSI to a person in the context of an administrative enforcement proceeding when, in the sole discretion of TSA or the Coast Guard, as appropriate, access to the SSI is necessary for the person to prepare a response to allegations contained in a legal enforcement action document issued by TSA or the Coast Guard.

(2) *Security background check*. Prior to providing SSI to a person under paragraph (d)(1) of this section, TSA or the Coast Guard may require the individual or, in the case of an entity, the individuals representing the entity,

and their counsel, to undergo and satisfy, in the judgment of TSA or the Coast Guard, a security background check.

(e) *Other conditional disclosure.* TSA may authorize a conditional disclosure of specific records or information that constitute SSI upon the written determination by TSA that disclosure of such records or information, subject to such limitations and restrictions as TSA may prescribe, would not be detrimental to transportation security.

(f) *Obligation to protect information.* When an individual receives SSI pursuant to paragraph (d) or (e) of this section that individual becomes a covered person under §1520.7 and is subject to the obligations of a covered person under this part.

(g) *No release under FOIA.* When TSA discloses SSI pursuant to paragraphs (b) through (e) of this section, TSA makes the disclosure for the sole purpose described in that paragraph. Such disclosure is not a public release of information under the Freedom of Information Act.

(h) *Disclosure of Critical Infrastructure Information.* Disclosure of information that is both SSI and has been designated as critical infrastructure information under section 214 of the Homeland Security Act is governed solely by the requirements of section 214 and any implementing regulations.

§ 1520.17 Consequences of unauthorized disclosure of SSI.

Violation of this part is grounds for a civil penalty and other enforcement or corrective action by DHS, and appropriate personnel actions for Federal employees. Corrective action may include issuance of an order requiring retrieval of SSI to remedy unauthorized disclosure or an order to cease future unauthorized disclosure.

§ 1520.19 Destruction of SSI.

(a) *DHS.* Subject to the requirements of the Federal Records Act (5 U.S.C. 105), including the duty to preserve records containing documentation of a Federal agency's policies, decisions, and essential transactions, DHS destroys SSI when no longer needed to carry out the agency's function.

(b) *Other covered persons*—(1) *In general.* A covered person must destroy SSI completely to preclude recognition or reconstruction of the information when the covered person no longer needs the SSI to carry out transportation security measures.

(2) *Exception.* Paragraph (b)(1) of this section does not require a State or local government agency to destroy information that the agency is required to preserve under State or local law.

PART 1522—TSA-APPROVED VALIDATION FIRMS AND VALIDATORS (Eff. 11-16-09)

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Subpart A—General

§ 1522.1 Scope and terms used in this part.

(a) This part governs the use of TSA-approved validation firms and individual validators to assess whether certain persons regulated under this chapter are in compliance with this chapter.

(b) In addition to the terms in §§ 1500.3 and 1540.5 of this chapter, the following terms apply in this part:

Applicant means a firm that seeks to become a TSA-approved validation firm under this part.

Assessment means the physical inspections, records reviews, personnel interviews, and other procedures conducted by a validator to assess whether a person is in compliance with relevant requirements of a security program.

Conflict of interest means a situation in which the validation firm, the validator, or an individual assisting in the assessment, or the spouse or immediate family member of such person, has a relationship with, or an interest in, the person under assessment that may adversely affect the impartiality of the assessment. Examples of conflict of interest situations include, but are not limited to, any of the following:

(1) The validation firm is a parent company or subsidiary of the person under assessment, has a financial interest in the person under assessment, or has common management or organizational governance (for example, interlocking boards of directors) with the person under assessment.

(2) The validation firm, the validator, or an individual who will assist in conducting the assessment, or an immediate family member of such a validator or individual, is a creditor or debtor of the person under assessment.

(3) The validator, or an individual who will assist in conducting the assessment, or the spouse or immediate family member of such a person, is, or within the past two years has been, an employee, officer, or contractor of the person under assessment whose duties did not involve the operations being assessed.

(4) The validator, or an individual who will assist in conducting the assessment, or the spouse or immediate family member of such a person, is, or at any time has been, an individual, officer, or contractor of the person under assessment whose duties or responsibilities did involve the operations being assessed.

(5) The validator, or an individual who will assist in conducting the assessment, or the spouse or immediate family member of such a person, has a financial interest in the person under validation.

Firm means a business enterprise or other non-governmental organization, including a sole proprietorship, partnership, limited liability partnership, limited liability corporation, and a corporation.

National of the United States means a citizen of the United States, or a person who, though not a citizen, owes permanent allegiance to the United States, as defined in 8 U.S.C. 1101(a)(22), and includes American Samoa and Swains Island.

TSA-approved validation firm or *validation firm* means a firm that has been approved under this part to conduct an assessment under this chapter.

Validator means an individual assigned by the validation firm to be responsible for conducting a given assessment under this part.

§ 1522.3 Fraud and intentional falsification of records.

No person may make, or cause to be made, any of the following:

(a) Any fraudulent or intentionally false statement in any application under this part.

(b) Any fraudulent or intentionally false entry in any record or report that is kept, made, or used to show compliance with this subchapter, or used to exercise any privilege under this part.

(c) Any reproduction or alteration, for fraudulent purpose, of any report, record, security program, access medium, or identification medium issued or submitted under this part.

§ 1522.5 TSA inspection authority.

(a) Each validation firm and each validator must allow TSA, during normal business hours, in a reasonable manner, without advance notice, to

enter the facility and make any inspections or tests, including copying records, to—

(1) Determine compliance of a validation firm or validator with this chapter and 49 U.S.C. 114 and Subtitle VII, as amended; or

(2) Carry out TSA's statutory or regulatory authorities, including its authority to—

(i) Assess threats to transportation;

(ii) Enforce security-related regulations, directives, and requirements:

(iii) Inspect, maintain, and test the security of facilities, equipment, and systems;

(iv) Ensure the adequacy of security measures for the transportation of passengers and cargo;

(v) Oversee the implementation, and ensure the adequacy, of security measures at airports and other transportation facilities;

(vi) Review security plans; and

(vii) Carry out such other duties, and exercise such other powers, relating to transportation security as the Assistant Secretary of Homeland Security for the TSA considers appropriate, to the extent authorized by law.

(b) At the request of TSA, each validation firm and validator must provide evidence of compliance with this chapter, including copying records.

(c) TSA and DHS officials working with TSA may conduct inspections under this section without access media or identification media issued or approved by a validation firm or other person, except that the TSA and DHS officials will have identification media issued by TSA or DHS.

Subpart B—TSA-Approved Validation Firms and Validators for the Certified Cargo Screening Program

§ 1522.101 Applicability.

This subpart governs the use of TSA-approved validation firms and validators to assess whether certified cargo screening facilities (CCSFs), or facilities seeking to be approved as such, comply with the requirements of 49 CFR part 1549.

§ 1522.103 Requirements for validation firms.

In addition to the other requirements of this part, a validation firm must meet the following requirements to be approved to assess certified cargo screening facilities:

(a) *Resources*. The validation firm must have sufficient facilities, resources, and personnel to conduct the assessments.

(b) *Security Coordinator*. The validation firm must designate and use a Security Coordinator and at least one alternate Security Coordinator.

(1) The Security Coordinator and alternates must be senior employees or officers of the firm, and must be readily available during normal business hours.

(2) The Security Coordinator and designated alternates must serve as the validation firm's primary contact for security-related activities and communications with TSA.

(3) The Security Coordinator must immediately initiate corrective action for any instance of non-compliance by the validation firm with any applicable TSA security requirement.

(c) *Security Program*. The validation firm must obtain TSA approval of a security program and must implement the security program.

(d) *Personnel*. The validation firm must ensure that its personnel carry out the requirements of this chapter and the validation firm's security program.

(e) *Change in information*. (1) The validation firm must inform TSA, in a form and manner prescribed by TSA, of any change in the information required to be submitted by the validation firm to TSA under this part within seven days of the change.

(2) Changes included within the requirement of this paragraph include, but are not limited to, changes in the validation firm's address, phone number, or other contact information, the identity of the Security Coordinator or alternate, significant changes in ownership of the firm.

§ 1522.105 Adoption and implementation of the security program.

(a) *Security program required*. No person may operate as a validation firm

unless that person holds and carries out an approved security program under this part.

(b) *Content.* The validation firm standard security program together with approved alternate procedures and amendments that TSA has issued to that particular firm constitutes that firm's security program. Each security program under this part must—

(1) Provide for the security of aircraft, as well as that of persons and property traveling in air transportation, against acts of criminal violence and air piracy, and against the introduction into aircraft of any unauthorized explosive, incendiary, and other destructive substance or item;

(2) Describe the processes and procedures to be used to maintain current qualifications, credentials, or accreditations, training, and security threat assessments for relevant personnel;

(3) Describe the facilities, support personnel, and other resources to be used in conducting assessments; and

(4) Require that the validation firm designate and use a Security Coordinator and at least one alternate Security Coordinator.

(c) *Amendment requested by a validation firm or applicant.* A validation firm or applicant may file a request for an amendment to its security program with the TSA designated official at least 45 calendar days before the date it proposes for the amendment to become effective, unless the designated official allows a shorter period. Any validation firm may submit to TSA a group proposal for an amendment that is on behalf of it and other validation firms that co-sign the proposal.

(1) Within 30 calendar days after receiving a proposed amendment, the designated official, in writing, must either approve or deny the request to amend.

(2) An amendment to a validation firm's security program may be approved if the designated official determines that safety and the public interest will allow it, and if the proposed amendment provides the level of security required under this part.

(3) Within 30 calendar days after receiving a denial of the proposed amendment, the validation firm may petition TSA to reconsider the denial. A Petition for Reconsideration must be filed with the designated official.

(4) Upon receipt of a Petition for Reconsideration, the designated official must either approve the request to amend the security program or transmit the petition, along with any pertinent information, to TSA for reconsideration. TSA will make a determination on the petition within 30 calendar days of receipt by either directing the designated official to approve the amendment or by affirming the denial.

(d) *Amendment by TSA.* TSA may amend a security program in the interest of safety and the public interest, as follows:

(1) TSA must notify the validation firm, in writing, of the proposed amendment, fixing a period of not less than 30 calendar days within which the validation firm may submit written information, views, and arguments on the amendment.

(2) After considering all relevant material, the designated official must notify the validation firm of any amendment adopted or rescind the notice of amendment. If the amendment is adopted, it becomes effective not less than 30 calendar days after the validation firm receives the notice of amendment, unless the validation firm disagrees with the proposed amendment and petitions the TSA to reconsider, no later than 15 calendar days before the effective date of the amendment. The validation firm must send the petition for reconsideration to the designated official. A timely Petition for Reconsideration stays the effective date of the amendment.

(3) Upon receipt of a Petition for Reconsideration, the designated official must either amend or withdraw the notice of amendment, or transmit the Petition, together with any pertinent information, to TSA for reconsideration. TSA must make a determination on the Petition within 30 calendar days of receipt, either by directing the designated official to withdraw or amend the notice of amendment, or by affirming the notice of amendment.

(e) *Emergency Amendments.* (1) If TSA finds that there is an emergency requiring immediate action that makes compliance with the procedural requirements in this section contrary to

the public interest, the designated official may issue an emergency amendment, without the prior notice and comment procedures described in paragraph (d) of this section.

(2) The emergency amendment is effective without stay on the date the validation firm receives notification. TSA will incorporate in the notification a brief statement of the reasons and findings for the emergency amendment to be adopted.

(3) The validation firm may file a Petition for Reconsideration with TSA no later than 15 calendar days after TSA issues the emergency amendment. The certified cargo screening facility must send the Petition for Reconsideration to the designated official; however, the filing does not stay the effective date of the emergency amendment.

(f) *Availability*. Each validation firm having a security program must do the following:

(1) Maintain an original of the security program at its corporate office.

(2) Have accessible a complete copy, or the pertinent portions of its security program, or appropriate implementing instructions, at each office where it conducts validation services. An electronic version is adequate.

(3) Make a copy of the security program available for inspection upon the request of TSA.

(4) Restrict the distribution, disclosure, and availability of information contained in its security program to persons with a need to know, as described in part 1520 of this chapter.

(5) Refer requests for such information by other persons to TSA.

§ 1522.107 Application.

(a) *Initial application and approval*. Unless otherwise authorized by TSA, each applicant must apply for a security program and for approval to operate as a validation firm, in a form and a manner prescribed by TSA, not less than 90 calendar days before the applicant intends to begin operations. The application must be in writing and include the following:

(1) The firm's legal name; other names, including doing business as names; state of incorporation or licensing, if applicable; and tax identification number.

(2) The names of the senior officers or employees of the applicant who will serve as the Security Coordinator and alternates.

(3) A signed statement from each person listed in paragraph (a)(2) of this section stating whether he or she has been a senior manager or representative of any operator, whether or not a validation firm, that had its security program withdrawn by TSA.

(4) Copies of Government-issued identification of persons listed in paragraph (a)(2) of this section.

(5) The street address and e-mail address of the applicant.

(6) A statement acknowledging the requirement that all personnel of the applicant who are subject to training under the requirements of this part must successfully complete such training before performing security-related duties.

(7) Other information requested by TSA concerning security threat assessments.

(8) A statement acknowledging that all personnel of the applicant who must successfully complete a security threat assessment under the requirements of this part must do so before the applicant authorizes the personnel to perform duties under this part.

(b) *Standard security program*. After the Security Coordinator successfully completes a security threat assessment, TSA will provide to the applicant the validation firm standard security program, any security directives, and amendments to the security program and other alternative procedures that apply to validation firms. The applicant may either notify TSA that it accepts the standard security program or submit to TSA a proposed modified security program to the designated official for approval. The validation firm must also submit a supplement to the security program that specifies processes and procedures that the firm will use to maintain the qualification of its validators and its personnel assisting validators with assessments to the designated TSA official for approval. TSA will approve the security program under § 1522.109, or issue a written notice to modify under § 1522.109(b).

§ 1522.109 TSA review and approval.

(a) *Review.* TSA will review an application received under § 1522.107 to determine whether—

(1) The applicant has met the requirements of this part, the proposed security program, and any applicable Emergency Amendment and Security Directive;

(2) The applicant is able and willing to carry out the requirements of this part, its security program, and an applicable Emergency Amendment and Security Directive;

(3) The approval of such applicant's security program is not contrary to the interests of security and the public interest;

(4) The applicant has not held a security program that was withdrawn within the previous year, unless otherwise authorized by TSA; and

(5) TSA determines that the applicant is qualified to be a validation firm.

(b) *Notice*—(1) *Approval.* If an application is approved, TSA will send the applicant a written notice of approval of its security program, and approval to operate as a validation firm.

(2) *Commencement of operations.* A validation firm may commence operations when it has received approval under this section, and successfully completed training and security threat assessments for all relevant personnel.

(3) *Disapproval.* If an application is disapproved, TSA will serve a written notice of disapproval to the applicant. The notice of disapproval will include the basis of the disapproval of the application.

(c) *Duration of security program.* A security program approved under this section will remain effective until the end of the calendar month 12 months after the month it was approved or until the program has been surrendered or withdrawn, whichever is earlier.

§ 1522.111 Reconsideration of disapproval of an application.

(a) *Petition for reconsideration.* If TSA disapproves an application under section 1522.107, the applicant may seek reconsideration of the decision by submitting a written petition for reconsideration to the Assistant Secretary or his or her designee within 30 days of receiving the notice of disapproval. The written petition for reconsideration must include a statement and any supporting documentation explaining why the applicant believes the reason for disapproval is incorrect.

(b) *Review of petition.* Upon review of the petition for reconsideration, the Assistant Secretary or designee makes a determination on the petition by either affirming the disapproval of the application or approving the application. The Assistant Secretary or designee may request additional information from the applicant prior to rendering a decision. This disposition is a final agency action for purposes of 49 U.S.C. 46110.

§ 1522.113 Withdrawal of approval.

(a) *Basis for withdrawal of approval.* TSA may withdraw approval of a TSA-approved validation firm if the validation firm ceases to meet the standards for approval, fails to fulfill its responsibilities under this subpart, or if TSA determines that continued operation is contrary to safety and the public interest.

(b) *Notice of withdrawal of approval.* (1) Except as provided in paragraph (c) of this section, TSA will provide a written notice of proposed withdrawal of approval to the validation firm.

(2) The notice of proposed withdrawal of approval will include the basis for the withdrawal of approval.

(3) Unless the validation firm files a written petition for reconsideration under paragraph (d) of this section, the notice of proposed withdrawal of approval will become a final notice of withdrawal of approval 31 days after the validation firm's receipt of the notice of proposed withdrawal of approval.

(c) *Emergency notice of withdrawal of approval.* (1) If TSA finds that there is an emergency requiring immediate action with respect to a TSA-approved validation firm's ability to perform assessments, TSA may withdraw approval of that validation firm without prior notice.

(2) TSA will incorporate in the emergency notice of withdrawal of approval a brief statement of the reasons and findings for the withdrawal of approval.

(3) The emergency notice of withdrawal of approval is effective upon the TSA-approved validation firm's receipt of the notice. The validation firm may file a written petition for reconsideration under paragraph (d) of this section; however, this petition does not stay the effective date of the emergency notice of withdrawal of approval.

(d) *Petition for reconsideration.* A validation firm may seek reconsideration of the withdrawal of approval by submitting a written petition for reconsideration to the Assistant Secretary or designee within 30 days of receiving the notice of withdrawal of approval. The filing of a petition for reconsideration does not stay the effective date of the withdrawal pending the reconsideration.

(e) *Review of petition.* Upon review of the written petition for reconsideration, the Assistant Secretary or designee makes a determination on the petition by either affirming or withdrawing the notice of withdrawal of approval. The Assistant Secretary or designee may request additional information from the validation firm prior to rendering a decision. This disposition is a final decision for purposes of review under 49 U.S.C. 46110.

§ 1522.115 Renewal of TSA approval.

(a) *Application.* Every 12 months, computed from the date of initial approval under § 1522.107, or more frequently as required by TSA, each validation firm must apply, in a form and manner prescribed by TSA, for renewal of approval of its security program, and of approval to operate as a validation firm. If the validation firm submits the information in the month before or after it is due, the validation firm is considered to have submitted the information in the month it is due. If the validation firm timely submits its application for review of approval under this section, the validation firm may continue to conduct assessments under this subpart unless and until TSA denies the application.

(b) *Content.* In addition to any other information required by TSA, the validation firm must submit the following information to TSA when applying for renewal:

(1) If required, evidence that the validators and other individuals of the validation firm with responsibilities for participating in assessments have successfully completed the initial training under § 1522.119(a) and any recurrent training described in § 1522.119(b).

(2) Evidence that the individual validators with responsibilities for conducting assessments continue to be certified or accredited by an organization that TSA recognizes as qualified to certify or accredit a validator.

(3) A statement signed by a senior officer or employee of the validation firm attesting that the firm has reviewed and ensures the continuing accuracy of the contents of its initial application for a security program, subsequent renewal applications, or other submissions to TSA confirming a change of information and noting the date such applications and submissions were made to TSA, including the following certification:

> [Name of validation firm] (hereinafter ''the validation firm'') has adopted and is currently carrying out a security program in accordance with the Transportation Security Regulations as originally approved on [Insert date of TSA initial approval]. In accordance with TSA regulations, the validation firm has notified TSA of any new or changed information required for the validation firm's initial security program. If new or changed information is being submitted to TSA as part of this application for reapproval, that information is stated in this filing.
>
> The validation firm understands that intentional falsification of certification may be subject to both civil and criminal penalties under 49 CFR part 1540 and 18 U.S.C. 1001. Failure to notify TSA of any new or changed information required for initial approval of the validation firm's security program in a timely fashion and in a form acceptable to TSA may result in withdrawal by TSA of approval of the validation firm's security program.

(c) *Renewal.* TSA will renew approval of the security program and the validation firm's authority to conduct assessments if TSA determines that—

(1) The validation firm has met the requirements of this chapter, its security program, and any Security Directive; and

(2) The renewal of approval of the validation firm's security program, and

of the approval to operate as a validation firm, is not contrary to the interests of security or the public interest.

(d) *Effective*. The renewal of approval issued pursuant to this section will remain effective until the end of the calendar month 12 months after the month it was approved or until the program has been surrendered or withdrawn, whichever is earlier.

(e) *Withdrawal*. If a validation firm fails to comply with the requirements of this section, TSA may withdraw approval of the validation firm under § 1522.113.

§ 1522.117 Qualifications of validators.

(a) Each assessment conducted under this subpart must be conducted by a validator who meets the following requirements:

(1) He or she must be a citizen or national of the United States or be an alien lawfully admitted for permanent residence.

(2) He or she must meet the requirements of paragraph (a)(2)(i) or (ii) of this section.

(i) He or she must hold a certification or accreditation from an organization that TSA recognizes as qualified to certify or accredit a validator for assessments and must have at least five years of experience in inspection or validating compliance with State or Federal regulations in the security industry, the aviation industry, or government programs. The five years of experience must have been obtained within 10 years of the date of the application.

(ii) He or she must have at least five years experience as an inspector for a Federal or State government agency performing inspections similar to the inspections called for in this subpart and part 1549. The five years of experience must have been obtained within 10 years of the date of the application.

(3) The validator must have three professional references that address his or her abilities in inspection, validation, and written communications.

(4) The validator must have sufficient knowledge of the rules, regulations, policies, security programs, directives, and orders, pertaining to the certified cargo screening program (CCSP).

(5) The validator must have the ability to apply the concepts, principles, and methods of compliance with the requirements of the certified cargo screening program to include assessment, inspection, investigation, and reporting of compliance with the certified cargo screening program.

(b) Each validator and each individual who assists in conducting assessments must successfully undergo a security threat assessment as required under § 1522.121.

§ 1522.119 Training.

(a) *Initial training*. The validation firm must ensure that its validators and individuals who will assist in conducting assessments have completed the initial training prescribed by TSA before conducting any assessment under this subpart.

(b) *Recurrent training*. The validation firm must ensure that each validator and each individual assisting in conducting assessments under this subpart completes the recurrent training prescribed by TSA not later than 12 months after the validator's or individual's most recent TSA-prescribed training. If the validator or individual completes the recurrent training in the month before or the month after it is due, he or she is considered to have taken it in the month it is due.

(c) *Content*. The training required by this section will include coverage of the applicable provisions of this chapter, including this part, part 1520, and § 1540.105.

§ 1522.121 Security threat assessments for personnel of TSA-approved validation firms.

Each of the following must successfully complete a security threat assessment or comparable security threat assessment described in part 1540, subpart C of this chapter:

(a) Each individual who supervises validators or individuals who will assist validators.

(b) The validation firm's validator authorized to perform assessment services under this subpart.

(c) The validation firm's Security Coordinator and alternates.

(d) Each individual who will assist the validator in conducting assessments.

§ 1522.123 Conduct of assessments.

(a) *Standards for assessment.* Each validator must assess, in a form and manner prescribed by TSA, whether the person seeking to operate or operating as a certified cargo screening facility is in compliance with 49 CFR part 1549. The validator may be assisted by other individuals; however, the validator is directly responsible for the assessment and must sign the assessment report.

(b) *Conflict of interest.* A validator may not conduct an assessment for which there exists a conflict of interest as defined in § 1552.1.

(c) *Immediate notification to TSA.* If during the course of an assessment, the validator believes that there is or may be an instance of noncompliance with TSA requirements that presents an imminent threat to transportation security or public safety, he or she must report the instance immediately to the Security Coordinator, and the Security Coordinator must report the instance immediately to TSA.

(d) *No authorization to take remedial or disciplinary action.* Neither the validation firm nor the validator is authorized to require any remedial action by, or to take any disciplinary or enforcement action against, the facility under assessment.

(e) *Prohibition on consecutive assessments.* Unless otherwise authorized by TSA, a validation firm must not conduct more than two consecutive assessments of a person seeking approval, or renewal of approval, to operate a certified cargo screening facility.

§ 1522.125 Protection of information.

(a) *Sensitive Security Information.* Each validation firm must comply with the requirements in 49 CFR part 1520 regarding the handling and protection of Sensitive Security Information (SSI).

(b) *Non-disclosure of proprietary information.* Unless explicitly authorized by TSA, no validation firm, or any of its officers, Security Coordinators, validators, or employees, or individuals assisting in validations, may make an unauthorized release nor disseminate any information that TSA or an entity being assessed indicates is proprietary information.

§ 1522.127 Assessment report.

(a) Each validator must prepare and submit to TSA a written assessment report, in a manner and form prescribed by TSA, within 30 calendar days of completing each assessment.

(b) The assessment report must include the following information, in addition to any other information otherwise required by TSA:

(1) A description of the facilities, equipment, systems, processes, and/or procedures that were assessed and any other information as determined by TSA.

(2) The validator's assessment regarding the facility's compliance with TSA requirements, including all elements of the applicable security program.

(3) Signed attestation by the individual validator with responsibility for the assessment that no conflicts of interest existed with regard to the assessment and that the assessment was conducted impartially, professionally, and consistent with the standards set forth by TSA.

§ 1522.129 Recordkeeping requirements.

(a) Each validation firm must maintain records demonstrating compliance with all statutes, regulations, directives, orders, and security programs that apply to operation as a validation firm, including the records listed below.

(b) Each validation firm must retain the following records for 180 days after the individual is no longer employed by the validation firm or is no longer acting as the firm's agent.

(1) Records of all training and instruction given to each individual under the requirements of this subpart.

(2) Records demonstrating that the validation firm has complied with the security threat assessment provisions of § 1522.121.

(3) Records about the qualifications of validators it uses to conduct assessments under this subpart.

(c) Each validation firm must retain the following records until completion of the validation firm's next review under § 1522.115, after which the records may be destroyed unless TSA instructs the validation firm to retain the records for a longer period.

(1) Copies of all applications for approval, or renewal of approval, by TSA to operate as a validation firm under part 1522.

(2) Copies of TSA's approval and renewals of approval as required by part 1522.

(d) Each validation firm must retain assessment reports and copies of back-up documentation supporting each assessment report submitted to TSA for 42 months after the assessment.

SUBCHAPTER C—CIVIL AVIATION SECURITY

PART 1540—CIVIL AVIATION SECURITY: GENERAL RULES

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AUTHORITY: 49 U.S.C. 114, 5103, 40113, 44901–44907, 44913–44914, 44916–44918, 44935–44936, 44942, 46105.

SOURCE: 67 FR 8353, Feb. 22, 2002, unless otherwise noted.

Subpart A—General

§ 1540.1 Applicability of this subchapter and this part.

This subchapter and this part apply to persons engaged in aviation-related activities.

§ 1540.3 Delegation of authority.

(a) Where the Administrator is named in this subchapter as exercising authority over a function, the authority is exercised by the Administrator or the Deputy Administrator, or any individual formally designated to act as the Administrator or the Deputy Administrator.

(b) Where TSA or the designated official is named in this subchapter as exercising authority over a function, the authority is exercised by the official designated by the Administrator to perform that function.

§ 1540.5 Terms used in this subchapter.

In addition to the terms in part 1500 of this chapter, the following terms are used in this subchapter:

Air operations area (AOA) means a portion of an airport, specified in the airport security program, in which security measures specified in this part are carried out. This area includes aircraft movement areas, aircraft parking areas, loading ramps, and safety areas, for use by aircraft regulated under 49 CFR part 1544 or 1546, and any adjacent areas (such as general aviation areas) that are not separated by adequate security systems, measures, or procedures. This area does not include the secured area.

Aircraft operator means a person who uses, causes to be used, or authorizes to be used an aircraft, with or without the right of legal control (as owner, lessee, or otherwise), for the purpose of air navigation including the piloting of aircraft, or on any part of the surface of an airport. In specific parts or sections of this subchapter, ''aircraft operator'' is used to refer to specific types of operators as described in those parts or sections.

Airport operator means a person that operates an airport serving an aircraft operator or a foreign air carrier required to have a security program under part 1544 or 1546 of this chapter.

Airport security program means a security program approved by TSA under § 1542.101 of this chapter.

Airport tenant means any person, other than an aircraft operator or foreign air carrier that has a security program under part 1544 or 1546 of this chapter, that has an agreement with the airport operator to conduct business on airport property.

Airport tenant security program means the agreement between the airport operator and an airport tenant that specifies the measures by which the tenant will perform security functions, and approved by TSA, under § 1542.113 of this chapter.

Approved, unless used with reference to another person, means approved by TSA.

Cargo means property tendered for air transportation accounted for on an air waybill. All accompanied commercial courier consignments, whether or not accounted for on an air waybill, are also classified as cargo. Aircraft operator security programs further define the term ''cargo.''

Checked baggage means property tendered by or on behalf of a passenger and accepted by an aircraft operator for transport, which is inaccessible to passengers during flight. Accompanied commercial courier consignments are not classified as checked baggage.

Escort means to accompany or monitor the activities of an individual who does not have unescorted access authority into or within a secured area or SIDA.

Exclusive area means any portion of a secured area, AOA, or SIDA, including individual access points, for which an aircraft operator or foreign air carrier that has a security program under part 1544 or 1546 of this chapter has assumed responsibility under § 1542.111 of this chapter.

Exclusive area agreement means an agreement between the airport operator and an aircraft operator or a foreign air carrier that has a security program under parts 1544 or 1546 of this chapter that permits such an aircraft operator or foreign air carrier to assume responsibility for specified security measures in accordance with § 1542.111 of this chapter.

FAA means the Federal Aviation Administration.

Flightcrew member means a pilot, flight engineer, or flight navigator assigned to duty in an aircraft during flight time.

Indirect air carrier (IAC) means any person or entity within the United States not in possession of an FAA air carrier operating certificate, that undertakes to engage indirectly in air transportation of property, and uses for all or any part of such transportation the services of an air carrier. This does not include the United States Postal Service (USPS) or its representative while acting on the behalf of the USPS.

Loaded firearm means a firearm that has a live round of ammunition, or any component thereof, in the chamber or cylinder or in a magazine inserted in the firearm.

Passenger seating configuration means the total maximum number of seats for which the aircraft is type certificated that can be made available for passenger use aboard a flight, regardless of the number of seats actually installed, and includes that seat in certain aircraft that may be used by a representative of the FAA to conduct flight checks but is available for revenue purposes on other occasions.

Private charter means any aircraft operator flight—

(1) For which the charterer engages the total passenger capacity of the aircraft for the carriage of passengers; the passengers are invited by the charterer; the cost of the flight is borne entirely by the charterer and not directly or indirectly by any individual passenger; and the flight is not advertised to the public, in any way, to solicit passengers.

(2) For which the total passenger capacity of the aircraft is used for the purpose of civilian or military air movement conducted under contract with the Government of the United States or the government of a foreign country.

Public charter means any charter flight that is not a private charter.

Scheduled passenger operation means an air transportation operation (a flight) from identified air terminals at a set time, which is held out to the public and announced by timetable or schedule, published in a newspaper, magazine, or other advertising medium.

Screening function means the inspection of individuals and property for weapons, explosives, and incendiaries.

Screening location means each site at which individuals or property are inspected for the presence of weapons, explosives, or incendiaries.

Secured area means a portion of an airport, specified in the airport security program, in which certain security measures specified in part 1542 of this chapter are carried out. This area is where aircraft operators and foreign air carriers that have a security program under part 1544 or 1546 of this chapter enplane and deplane passengers and sort and load baggage and any adjacent areas that are not separated by adequate security measures.

Security Identification Display Area (SIDA) means a portion of an airport, specified in the airport security program, in which security measures specified in this part are carried out. This area includes the secured area and may include other areas of the airport.

Sterile area means a portion of an airport defined in the airport security program that provides passengers access to boarding aircraft and to which the access generally is controlled by TSA, or by an aircraft operator under part 1544 of this chapter or a foreign air carrier under part 1546 of this chapter, through the screening of persons and property.

Unescorted access authority means the authority granted by an airport operator, an aircraft operator, foreign air carrier, or airport tenant under part 1542, 1544, or 1546 of this chapter, to individuals to gain entry to, and be present without an escort in, secured areas and SIDA's of airports.

Unescorted access to cargo means the authority granted by an aircraft operator or IAC to individuals to have access to air cargo without an escort.

[67 FR 8353, Feb. 22, 2002, as amended at 67 FR 8209, Feb. 22, 2002; 71 FR 30507, May 26, 2006]

EFFECTIVE DATE NOTE: At 74 FR 47700, Sept. 16, 2009, § 1540.5 was amended by adding the definiions of ''certified cargo screening program'', ''certified cargo screening facility'', and ''standard security program'' in alphabetical order, effective November 16, 2009. For the convenience of the user, the added text is set forth as follows:

§ 1540.5 Terms used in this subchapter.

* * * * *

Certified cargo screening program (CCSP) means the program under which facilities are authorized to screen cargo to be offered for transport on certain passenger aircraft in accordance with 49 CFR part 1549.

Certified cargo screening facility (CCSF) means a facility certified by TSA to screen air cargo in accordance with part 1549. As used in this subchapter, ''certified cargo screening facility'' refers to the legal entity that operates a CCSF at a particular location.

* * * * *

Standard security program means a security program issued by TSA that serves as a baseline for a particular type of operator. If TSA has issued a standard security program for a particular type of operator, unless otherwise authorized by TSA, each operator's security program consists of the standard security program together with any amendments and alternative procedures approved or accepted by TSA.

* * * * *

Subpart B—Responsibilities of Passengers and Other Individuals and Persons

§ 1540.101 Applicability of this subpart.

This subpart applies to individuals and other persons.

§ 1540.103 Fraud and intentional falsification of records.

No person may make, or cause to be made, any of the following:

(a) Any fraudulent or intentionally false statement in any application for any security program, access medium, or identification medium, or any amendment thereto, under this subchapter.

(b) Any fraudulent or intentionally false entry in any record or report that

is kept, made, or used to show compliance with this subchapter, or exercise any privileges under this subchapter.

(c) Any reproduction or alteration, for fraudulent purpose, of any report, record, security program, access medium, or identification medium issued under this subchapter.

§ 1540.105 Security responsibilities of employees and other persons.

(a) No person may:

(1) Tamper or interfere with, compromise, modify, attempt to circumvent, or cause a person to tamper or interfere with, compromise, modify, or attempt to circumvent any security system, measure, or procedure implemented under this subchapter.

(2) Enter, or be present within, a secured area, AOA, SIDA or sterile area without complying with the systems, measures, or procedures being applied to control access to, or presence or movement in, such areas.

(3) Use, allow to be used, or cause to be used, any airport-issued or airport-approved access medium or identification medium that authorizes the access, presence, or movement of persons or vehicles in secured areas, AOA's, or SIDA's in any other manner than that for which it was issued by the appropriate authority under this subchapter.

(b) The provisions of paragraph (a) of this section do not apply to conducting inspections or tests to determine compliance with this part or 49 U.S.C. Subtitle VII authorized by:

(1) TSA, or

(2) The airport operator, aircraft operator, or foreign air carrier, when acting in accordance with the procedures described in a security program approved by TSA.

§ 1540.107 Submission to screening and inspection.

(a) No individual may enter a sterile area or board an aircraft without submitting to the screening and inspection of his or her person and accessible property in accordance with the procedures being applied to control access to that area or aircraft under this subchapter.

(b) An individual must provide his or her full name, as defined in § 1560.3 of this chapter, date of birth, and gender when—

(1) The individual, or a person on the individual's behalf, makes a reservation for a covered flight, as defined in § 1560.3 of this chapter, or

(2) The individual makes a request for authorization to enter a sterile area.

(c) An individual may not enter a sterile area or board an aircraft if the individual does not present a verifying identity document as defined in § 1560.3 of this chapter, when requested for purposes of watch list matching under § 1560.105(c), unless otherwise authorized by TSA on a case-by-case basis.

[73 FR 64061, Oct. 28, 2008]

§ 1540.109 Prohibition against interference with screening personnel.

No person may interfere with, assault, threaten, or intimidate screening personnel in the performance of their screening duties under this subchapter.

§ 1540.111 Carriage of weapons, explosives, and incendiaries by individuals.

(a) *On an individual's person or accessible property—prohibitions.* Except as provided in paragraph (b) of this section, an individual may not have a weapon, explosive, or incendiary, on or about the individual's person or accessible property—

(1) When performance has begun of the inspection of the individual's person or accessible property before entering a sterile area, or before boarding an aircraft for which screening is conducted under this subchapter;

(2) When the individual is entering or in a sterile area; or

(3) When the individual is attempting to board or onboard an aircraft for which screening is conducted under §§ 1544.201, 1546.201, or 1562.23 of this chapter.

(b) *On an individual's person or accessible property—permitted carriage of a weapon.* Paragraph (a) of this section does not apply as to carriage of firearms and other weapons if the individual is one of the following:

(1) Law enforcement personnel required to carry a firearm or other

weapons while in the performance of law enforcement duty at the airport.

(2) An individual authorized to carry a weapon in accordance with §§ 1544.219, 1544.221, 1544.223, 1546.211, or subpart B of part 1562 of this chapter.

(3) An individual authorized to carry a weapon in a sterile area under a security program.

(c) *In checked baggage.* A passenger may not transport or offer for transport in checked baggage or in baggage carried in an inaccessible cargo hold under § 1562.23 of this chapter:

(1) Any loaded firearm(s).

(2) Any unloaded firearm(s) unless—

(i) The passenger declares to the aircraft operator, either orally or in writing, before checking the baggage, that the passenger has a firearm in his or her bag and that it is unloaded;

(ii) The firearm is unloaded;

(iii) The firearm is carried in a hard-sided container; and

(iv) The container in which it is carried is locked, and only the passenger retains the key or combination.

(3) Any unauthorized explosive or incendiary.

(d) *Ammunition.* This section does not prohibit the carriage of ammunition in checked baggage or in the same container as a firearm. Title 49 CFR part 175 provides additional requirements governing carriage of ammunition on aircraft.

[67 FR 8353, Feb. 22, 2002, as amended at 67 FR 41639, June 19, 2002; 70 FR 41600, July 19, 2005; 71 FR 30507, May 26, 2006]

§ 1540.113 Inspection of airman certificate.

Each individual who holds an airman certificate, medical certificate, authorization, or license issued by the FAA must present it for inspection upon a request from TSA.

§ 1540.115 Threat assessments regarding citizens of the United States holding or applying for FAA certificates, ratings, or authorizations.

(a) *Applicability.* This section applies when TSA has determined that an individual who is a United States citizen and who holds, or is applying for, an airman certificate, rating, or authorization issued by the Administrator, poses a security threat.

(b) *Definitions.* The following terms apply in this section:

Administrator means the Administrator of the Transportation Security Administration.

Assistant Administrator means the Assistant Administrator for Intelligence for TSA.

Date of service means—

(1) The date of personal delivery in the case of personal service;

(2) The mailing date shown on the certificate of service;

(3) The date shown on the postmark if there is no certificate of service; or

(4) Another mailing date shown by other evidence if there is no certificate of service or postmark.

Deputy Administrator means the officer next in rank below the Administrator.

FAA Administrator means the Administrator of the Federal Aviation Administration.

Individual means an individual whom TSA determines poses a security threat.

(c) *Security threat.* An individual poses a security threat when the individual is suspected of posing, or is known to pose—

(1) A threat to transportation or national security;

(2) A threat of air piracy or terrorism;

(3) A threat to airline or passenger security; or

(4) A threat to civil aviation security.

(d) *Representation by counsel.* The individual may, if he or she so chooses, be represented by counsel at his or her own expense.

(e) *Initial Notification of Threat Assessment*—(1) *Issuance.* If the Assistant Administrator determines that an individual poses a security threat, the Assistant Administrator serves upon the individual an Initial Notification of Threat Assessment and serves the determination upon the FAA Administrator. The Initial Notification includes—

(i) A statement that the Assistant Administrator personally has reviewed the materials upon which the Initial Notification was based; and

(ii) A statement that the Assistant Administrator has determined that the individual poses a security threat.

(2) *Request for Materials.* Not later than 15 calendar days after the date of service of the Initial Notification, the individual may serve a written request for copies of the releasable materials upon which the Initial Notification was based.

(3) *TSA response.* Not later than 30 calendar days, or such longer period as TSA may determine for good cause, after receiving the individual's request for copies of the releasable materials upon which the Initial Notification was based, TSA serves a response. TSA will not include in its response any classified information or other information described in paragraph (g) of this section.

(4) *Reply.* The individual may serve upon TSA a written reply to the Initial Notification of Threat Assessment not later than 15 calendar days after the date of service of the Initial Notification, or the date of service of TSA's response to the individual's request under paragraph (e)(2) if such a request was served. The reply may include any information that the individual believes TSA should consider in reviewing the basis for the Initial Notification.

(5) *TSA final determination.* Not later than 30 calendar days, or such longer period as TSA may determine for good cause, after TSA receives the individual's reply, TSA serves a final determination in accordance with paragraph (f) of this section.

(f) *Final Notification of Threat Assessment*—(1) *In general.* The Deputy Administrator reviews the Initial Notification, the materials upon which the Initial Notification was based, the individual's reply, if any, and any other materials or information available to him.

(2) *Review and Issuance of Final Notification.* If the Deputy Administrator determines that the individual poses a security threat, the Administrator reviews the Initial Notification, the materials upon which the Initial Notification was based, the individual's reply, if any, and any other materials or information available to him. If the Administrator determines that the individual poses a security threat, the Administrator serves upon the individual a Final Notification of Threat Assessment and serves the determination upon the FAA Administrator. The Final Notification includes a statement that the Administrator personally has reviewed the Initial Notification, the individual's reply, if any, and any other materials or information available to him, and has determined that the individual poses a security threat.

(3) *Withdrawal of Initial Notification.* If the Deputy Administrator does not determine that the individual poses a security threat, or upon review, the Administrator does not determine that the individual poses a security threat, TSA serves upon the individual a Withdrawal of the Initial Notification and provides a copy of the Withdrawal to the FAA Administrator.

(g) *Nondisclosure of certain information.* In connection with the procedures under this section, TSA does not disclose to the individual classified information, as defined in Executive Order 12968 section 1.1(d), and reserves the right not to disclose any other information or material not warranting disclosure or protected from disclosure under law.

[68 FR 3761, Jan. 24, 2003, as amended at 68 FR 49721, Aug. 19, 2003]

§ 1540.117 Threat assessments regarding aliens holding or applying for FAA certificates, ratings, or authorizations.

(a) Applicability. This section applies when TSA has determined that an individual who is not a citizen of the United States and who holds, or is applying for, an airman certificate, rating, or authorization issued by the FAA Administrator, poses a security threat.

(b) *Definitions.* The following terms apply in this section:

Assistant Administrator means the Assistant Administrator for Intelligence for TSA.

Date of service means—

(1) The date of personal delivery in the case of personal service;

(2) The mailing date shown on the certificate of service;

(3) The date shown on the postmark if there is no certificate of service; or

(4) Another mailing date shown by other evidence if there is no certificate of service or postmark.

Deputy Administrator means the officer next in rank below the Administrator.

FAA Administrator means the Administrator of the Federal Aviation Administration.

Individual means an individual whom TSA determines poses a security threat.

(c) *Security threat.* An individual poses a security threat when the individual is suspected of posing, or is known to pose—

(1) A threat to transportation or national security;

(2) A threat of air piracy or terrorism;

(3) A threat to airline or passenger security; or

(4) A threat to civil aviation security.

(d) *Representation by counsel.* The individual may, if he or she so chooses, be represented by counsel at his or her own expense.

(e) *Initial Notification of Threat Assessment*—(1) *Issuance.* If the Assistant Administrator determines that an individual poses a security threat, the Assistant Administrator serves upon the individual an Initial Notification of Threat Assessment and serves the determination upon the FAA Administrator. The Initial Notification includes—

(i) A statement that the Assistant Administrator personally has reviewed the materials upon which the Initial Notification was based; and

(ii) A statement that the Assistant Administrator has determined that the individual poses a security threat.

(2) *Request for materials.* Not later than 15 calendar days after the date of service of the Initial Notification, the individual may serve a written request for copies of the releasable materials upon which the Initial Notification was based.

(3) *TSA response.* Not later than 30 calendar days, or such longer period as TSA may determine for good cause, after receiving the individual's request for copies of the releasable materials upon which the Initial Notification was based, TSA serves a response. TSA will not include in its response any classified information or other information described in paragraph (g) of this section.

(4) *Reply.* The individual may serve upon TSA a written reply to the Initial Notification of Threat Assessment not later than 15 calendar days after the date of service of the Initial Notification, or the date of service of TSA's response to the individual's request under paragraph (e)(2) if such a request was served. The reply may include any information that the individual believes TSA should consider in reviewing the basis for the Initial Notification.

(5) *TSA final determination.* Not later than 30 calendar days, or such longer period as TSA may determine for good cause, after TSA receives the individual's reply, TSA serves a final determination in accordance with paragraph (f) of this section.

(f) *Final Notification of Threat Assessment*—(1) *In general.* The Deputy Administrator reviews the Initial Notification, the materials upon which the Initial Notification was based, the individual's reply, if any, and any other materials or information available to him.

(2) *Issuance of Final Notification.* If the Deputy Administrator determines that the individual poses a security threat, the Deputy Administrator serves upon the individual a Final Notification of Threat Assessment and serves the determination upon the FAA Administrator. The Final Notification includes a statement that the Deputy Administrator personally has reviewed the Initial Notification, the individual's reply, if any, and any other materials or information available to him, and has determined that the individual poses a security threat.

(3) *Withdrawal of Initial Notification.* If the Deputy Administrator does not determine that the individual poses a security threat, TSA serves upon the individual a Withdrawal of the Initial Notification and provides a copy of the Withdrawal to the FAA Administrator.

(g) *Nondisclosure of certain information.* In connection with the procedures

under this section, TSA does not disclose to the individual classified information, as defined in Executive Order 12968 section 1.1(d), and TSA reserves the right not to disclose any other information or material not warranting disclosure or protected from disclosure under law.

[68 FR 3768, Jan. 24, 2003]

Subpart C—Security Threat Assessments

SOURCE: 72 FR 3592, Jan. 25, 2007, unless otherwise noted.

EFFECTIVE DATE NOTE: At 74 FR 47700, Sept. 16, 2009, subpart C was revised, effective November 16, 2009. The new subpart appears after the text of this subpart.

§ 1540.201 Applicability and terms used in this subpart.

(a) This subpart includes the procedures that certain aircraft operators, foreign air carriers, and indirect air carriers must use to have security threat assessments done on certain individuals pursuant to 49 CFR 1544.228, 1546.213, 1548.7, 1548.15, and 1548.16. This subpart applies to the following:

(1) Each aircraft operator operating under a full program or full all-cargo program described in 49 CFR 1544.101(a) or (h).

(2) Each foreign air carrier operating under a program described in 49 CFR 1546.101(a), (b), or (e).

(3) Each indirect air carrier operating under a security program described in 49 CFR part 1548.

(4) Each applicant applying for unescorted access to cargo under one of the programs described in (a)(1) through (a)(3) of this section.

(5) Each proprietor, general partner, officer, director, or owner of an indirect air carrier as described in 49 CFR 1548.16.

(b) For purposes of this subpart—

Applicant means the individuals listed in paragraph (a)(4) and (a)(5) of this section.

Operator means an aircraft operator, foreign air carrier, and indirect air carrier listed in paragraphs (a)(1) through (a)(3) of this section.

(c) An applicant poses a security threat under this subpart when TSA determines that he or she is known to pose or suspected of posing a threat—

(1) To national security;

(2) To transportation security; or

(3) Of terrorism.

[72 FR 3592, Jan. 25, 2007; 72 FR 14049, Mar. 26, 2007]

§ 1540.203 Operator responsibilities.

(a) Each operator subject to this subpart must ensure that each applicant described in § 1540.201(a)(4) and (a)(5) completes the Security Threat Assessment described in this section.

(b) Each operator must:

(1) Authenticate the identity of the applicant by—

(i) Reviewing two forms of identification, one of which must be a government-issued picture identification; or

(ii) Other means approved by TSA.

(2) Submit to TSA a Security Threat Assessment application for each applicant that is signed by the applicant and that includes:

(i) Legal name, including first, middle, and last; any applicable suffix; and any other names used previously.

(ii) Current mailing address, including residential address if it differs from the current mailing address, and all other residential addresses for the previous five years, and e-mail address, if the applicant has an e-mail address.

(iii) Date and place of birth.

(iv) Social security number (submission is voluntary, although failure to provide it may delay or prevent completion of the threat assessment).

(v) Gender.

(vi) Country of citizenship, and if naturalized in the United States, date of naturalization and certificate number.

(vii) Alien registration number, if applicable.

(viii) The following statement reading:

Privacy Act Notice: Authority: The authority for collecting this information is 49 U.S.C. 114, 40113, and 49 U.S.C. 5103a. *Purpose:* This information is needed to verify your identity and to conduct a Security Threat Assessment to evaluate your suitability for completing the functions required by this position. Failure to furnish your SSN may result in delays in processing your application, but will not prevent completion of your Security Threat Assessment. Furnishing the other information is also voluntary; however, failure

to provide it may delay or prevent the completion of your Security Threat Assessment, without which you may not be granted authorization to have unescorted access to air cargo subject to TSA security requirements. *Routine Uses:* Routine uses of this information include disclosure to TSA contractors or other agents who are providing services relating to the Security Threat Assessments; to appropriate governmental agencies for law enforcement or security purposes, or in the interests of national security; and to foreign and international governmental authorities in accordance with law and international agreement. For further information, please consult DHS/TSA 002 Transportation Security Threat Assessment System.

The information I have provided on this application is true, complete, and correct to the best of my knowledge and belief and is provided in good faith. I understand that a knowing and willful false statement, or an omission of a material fact, on this application can be punished by fine or imprisonment or both (see section 1001 of Title 18 United States Code), and may be grounds for denial of authorization or in the case of parties regulated under this section, removal of authorization to operate under this chapter, if applicable.

(3) Retain the applicant's signed Security Threat Assessment application, and any communications with TSA regarding the applicant's application, for 180 days following the end of the applicant's service to the operator.

(c) Records under this section may include electronic documents with electronic signature or other means of personal authentication, where accepted by TSA.

[72 FR 3592, Jan. 25, 2007; 72 FR 14050, Mar. 26, 2007]

§ 1540.205 Procedures for security threat assessment.

(a) *Contents of security threat assessment.* The security threat assessment TSA conducts includes an intelligence-related check and a final disposition.

(b) *Intelligence-related check.* To conduct an intelligence-related check, TSA completes the following procedures:

(1) Reviews the applicant information required in 49 CFR 1540.203(b);

(2) Searches domestic and international Government databases to determine if an applicant meets the requirements of 49 CFR 1540.201(c) or to confirm an applicant's identity; and

(3) Adjudicates the results in accordance with 49 CFR 1540.201(c).

(c) *Final disposition.* Following completion of the procedures described in paragraph (b), the following procedures apply, as appropriate:

(1) TSA serves a Determination of No Security Threat on the applicant and the operator, if TSA determines that the applicant meets the security threat assessment standards in 49 CFR 1540.201(c).

(2) TSA serves an Initial Determination of Threat Assessment on the applicant and the operator, if TSA determines that the applicant does not meet the security threat assessment standards in 49 CFR 1540.201(c). The Initial Determination of Threat Assessment includes—

(i) A statement that TSA has determined that the applicant poses a security threat;

(ii) The basis for the determination;

(iii) Information about how the applicant may appeal the determination, as described in 49 CFR 1515.9; and

(iv) A statement that if the applicant chooses not to appeal TSA's determination within 60 days of receipt of the Initial Determination, or does not request an extension of time within 60 days of the Initial Determination of Threat Assessment in order to file an appeal, the Initial Determination becomes a Final Determination of Security Threat Assessment.

(3) If the applicant does not appeal the Initial Determination of Threat Assessment, TSA serves a Final Determination of Threat Assessment on the operator and the applicant.

(d) *Withdrawal by TSA.* TSA serves a Withdrawal of the Initial Determination of Threat Assessment on the applicant and a Determination of No Security Threat on the operator, if the appeal results in a determination that the applicant does not pose a security threat.

[72 FR 3588, Jan. 25, 2007; 72 FR 5633, Feb. 7, 2007; 72 FR 14050, Mar. 26, 2007]

§ 1540.207 [Reserved]

§ 1540.209 Security threat assessment fee.

(a) *Imposition of fees.* The fee of $28 is required for TSA to conduct a security threat assessment for an applicant.

(b) *Remittance of fees.* (1) The fee required under this subpart must be remitted to TSA, in a form and manner acceptable to TSA, each time the applicant or an aircraft operator, foreign air carrier, or indirect air carrier submits the information required under § 1540.203 to TSA.

(2) Fees remitted to TSA under this subpart must be payable to the ''Transportation Security Administration'' in U.S. currency and drawn on a U.S. bank.

(3) TSA will not issue any fee refunds, unless a fee was paid in error.

EFFECTIVE DATE NOTE: At 74 FR 47700, Sept. 16, 2009, subpart C was revised, effective Nov. 16, 2009. For the convenience of the user, the revised text is set forth as follows:

Subpart C—Security Threat Assessments

§ 1540.201 Applicability and terms used in this subpart.

(a) This subpart includes the procedures that certain aircraft operators, foreign air carriers, indirect air carriers, certified cargo screening facilities, and TSA-approved validation firms must use to have security threat assessments performed on certain individuals pursuant to 49 CFR 1522.121, 1544.228, 1546.213, 1548.7, 1548.15, 1548.16, and 1549.113. This subpart applies to the following:

(1) Each aircraft operator operating under a full program or full all-cargo program described in 49 CFR 1544.101(a) or (h).

(2) Each foreign air carrier operating under a program described in 49 CFR 1546.101(a), (b), or (e).

(3) Each indirect air carrier operating under a security program described in 49 CFR part 1548.

(4) Each applicant applying for unescorted access to cargo under one of the programs described in (a)(1) through (a)(3) of this section.

(5) Each proprietor, general partner, officer, director, or owner of an indirect air carrier as described in 49 CFR 1548.16.

(6) Each certified cargo screening facility described in 49 CFR part 1549.

(7) Each individual a certified cargo screening facility authorizes to perform screening or supervise screening.

(8) Each individual the certified cargo screening facility authorizes to have unescorted access to cargo at any time from the time it is screened until the time it is tendered to an indirect air carrier under 49 CFR part 1548, an aircraft operator under part 1544, or a foreign air carrier under part 1546.

(9) The senior manager or representative of its facility in control of the operations of a certified cargo screening facility under 49 CFR part 1549.

(10) Each TSA-approved validation firm for the certified cargo screening program described in 49 CFR part 1522 subpart B.

(11) Each individual of the TSA-approved validation firm under 49 CFR part 1522 subpart B who supervises, conducts, or assists in the validation.

(12) The security coordinator and alternates of each TSA-approved validation firm under 49 CFR part 1522 subpart B and of each certified cargo screening facility.

(b) For purposes of this subpart—

Applicant means the individuals listed in paragraph (a) of this section.

Operator means an aircraft operator, foreign air carrier, and indirect air carrier listed in paragraphs (a)(1) through (a)(3) of this section, a certified cargo screening facility described in paragraph (a)(6) of this section, and a TSA-approved validator described in paragraph (a)(10) of this section.

(c) An applicant poses a security threat under this subpart when TSA determines that he or she is known to pose or is suspected of posing a threat—

(1) To national security;

(2) To transportation security; or

(3) Of terrorism.

§ 1540.203 Security threat assessment.

(a) Each operator subject to this subpart must ensure that each of the following undergoes a security threat assessment or a comparable security threat assessment described in § 1540.205:

(1) Personnel of TSA-approved validation firms, as described in § 1522.121.

(2) Cargo personnel in the United States, as described in § 1544.228.

(3) Cargo personnel in the United States, as described in § 1546.213.

(4) Individuals with unescorted access to cargo, as described in § 1548.15.

(5) Proprietors, general partners, officers, directors, and owners of an indirect air carrier, as described in § 1548.16.

(6) Personnel of certified cargo screening facilities, as described in § 1549.111.

(b) Each operator must verify the identity and work authorization of each applicant and examine the document(s) presented by the applicant to prove identity and work authorization to determine whether they appear to be genuine and relate to the applicant presenting them.

(c) Each operator must submit to TSA a security threat assessment application for each applicant that is dated and signed by the applicant and that includes the following:

(1) Legal name, including first, middle, and last; any applicable suffix; and any other names used previously.

(2) Current mailing address, including residential address if it differs from the current mailing address; all other residential addresses for the previous five years; and e-mail address if the applicant has an e-mail address.

(3) Date and place of birth.

(4) Social security number (submission is voluntary, although failure to provide it may delay or prevent completion of the threat assessment).

(5) Gender.

(6) Country of citizenship.

(7) If the applicant is a U.S. citizen born abroad or a naturalized U.S. citizen, their U.S. passport number; or the 10-digit document number from the applicant's Certificate of Birth Abroad, Form DS–1350.

(8) If the applicant is not a U.S. citizen, the applicant's Alien Registration Number.

(9) The applicant's daytime telephone number.

(10) The applicant's current employer(s), and the address and telephone number of the employer(s).

(11) A Privacy Notice as required in the security program and the following statement:

The information I have provided on this application is true, complete, and correct to the best of my knowledge and belief and is provided in good faith. I understand that a knowing and willful false statement, or an omission of a material fact, on this application can be punished by fine or imprisonment or both (*see* section 1001 of Title 18 United States Code), and may be grounds for denial of authorization or in the case of parties regulated under this section, removal of authorization to operate under this chapter, if applicable.

I acknowledge that if I do not successfully complete the security threat assessment, the Transportation Security Administration may notify my employer. If TSA or other law enforcement agency becomes aware that I may pose an imminent threat to an operator or facility, TSA may provide limited information necessary to reduce the risk of injury or damage to the operator or facility.

(d) Each operator must retain the following for 180 days following the end of the applicant's service to the operator:

(1) The applicant's signed security threat assessment application.

(2) Copies of the applicant's document(s) used to verify identity and work authorization.

(3) Any notifications or documents sent to or received from TSA relating to the applicant's application and security threat assessment.

(4) As applicable, a copy of the applicant's credential evidencing completion of a threat assessment deemed comparable under paragraph (f) of this section.

(e) Records under this section may include electronic documents with electronic signature or other means of personal authentication, where accepted by TSA.

(f) TSA may determine that a security threat assessment conducted by another governmental agency is comparable to a security threat assessment conducted under this subpart. Individuals who have successfully completed a comparable security threat assessment are not required to undergo the security threat assessments described in this subpart. If TSA makes a comparability determination under this section, TSA will so notify the public. In making a comparability determination, TSA will consider—

(i) The minimum standards used for the security threat assessment;

(ii) The frequency of the security threat assessment;

(iii) The date of the most recent threat assessment; and

(iv) Other factors TSA deems appropriate.

(g) To apply for a comparability determination, the agency seeking the determination must contact the Assistant Program Manager, Attn: Federal Agency Comparability Check, Hazmat Threat Assessment Program, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6019.

(h) TSA has determined that each of the following are comparable to the security threat assessment required in this subpart:

(1) A CHRC conducted in accordance with §§ 1542.209, 1544.229, or 1544.230 that includes a name-based check conducted by TSA.

(2) A security threat assessment conducted under 49 CFR part 1572 for the Transportation Worker Identification Credential or Hazardous Materials Endorsement programs.

(3) A security threat assessment conducted for the Free and Secure Trade (FAST) program administered by U.S. Customs and Border Protection.

(i) If asserting completion of a comparable threat assessment listed in paragraph (h) of this section, an individual must—

(1) Present the credential that corresponds to successful completion of the comparable assessment to the operator so the operator may retain a copy of it; and

(2) Notify the operator when the credential that corresponds to successful completion of the comparable assessment expires or is revoked for any reason.

(j) A security threat assessment conducted under this subpart remains valid for five

years from the date that TSA issues a Determination of No Security Threat or a Final Determination of Threat Assessment, except—

(1) If the applicant is no longer authorized to be in the United States, the security threat assessment and the privileges it conveys expire on the date lawful presence expires; or

(2) If the applicant asserts completion of a comparable threat assessment, it expires five years from the date of issuance of the credential that corresponds to the comparable assessment, or the date on which the credential is revoked for any reason.

§ 1540.205 Procedures for security threat assessment.

(a) *Contents of security threat assessment.* The security threat assessment TSA conducts under this subpart includes an intelligence-related check and a final disposition.

(b) *Intelligence-related check.* To conduct an intelligence-related check, TSA completes the following procedures:

(1) Reviews the applicant information required in 49 CFR 1540.203.

(2) Searches domestic and international government databases to determine if an applicant meets the requirements of 49 CFR 1540.201(c) or to confirm an applicant's identity.

(3) Adjudicates the results in accordance with 49 CFR 1540.201(c).

(c) *Wants, warrants, deportable aliens.* If the searches listed in paragraph (b)(2) of this section indicate that an applicant has an outstanding want or warrant, or is a deportable alien under the immigration laws of the United States, TSA sends the applicant's information to the appropriate law enforcement or immigration agency.

(d) *Final disposition.* Following completion of the procedures described in paragraph (b), the following procedures apply, as appropriate:

(1) TSA serves a Determination of No Security Threat on the applicant and operator if TSA determines that the applicant meets the security threat assessment standards in 49 CFR 1540.201(c).

(2) TSA serves an Initial Determination of Threat Assessment on the applicant, if TSA determines that the applicant does not meet the security threat assessment standards in 49 CFR 1540.201(c). The Initial Determination of Threat Assessment includes—

(i) A statement that TSA has determined that the applicant is suspected of posing or poses a security threat;

(ii) The basis for the determination;

(iii) Information about how the applicant may appeal the determination, as described in 49 CFR 1515.9; and

(iv) A statement that if the applicant chooses not to appeal TSA's determination within 60 days of receipt of the Initial Determination, or does not request an extension of time within 60 days of the Initial Determination of Threat Assessment in order to file an appeal, the Initial Determination becomes a Final Determination of Security Threat Assessment.

(3) TSA serves an Initial Determination of Threat Assessment and Immediate Revocation on the applicant and the applicant's operator or other operator as approved by TSA, where appropriate, if TSA determines that the applicant does not meet the security threat assessment standards in 49 CFR 1540.201(c) and may pose an imminent threat to transportation or national security, or of terrorism. The Initial Determination of Threat Assessment and Immediate Revocation includes—

(i) A statement that TSA has determined that the applicant is suspected of posing or poses an imminent security threat;

(ii) The basis for the determination;

(iii) Information about how the applicant may appeal the determination, as described in 49 CFR 1515.5(h) or 1515.9(h), as applicable; and

(iv) A statement that if the applicant chooses not to appeal TSA's determination within 60 days of receipt of the Initial Determination, or does not request an extension of time within 60 days of the Initial Determination of Threat Assessment in order to file an appeal, the Initial Determination becomes a Final Determination of Security Threat Assessment.

(4) If the applicant does not appeal the Initial Determination of Threat Assessment or Initial Determination of Threat Assessment and Immediate Revocation, or if TSA does not grant the appeal, TSA serves a Final Determination of Threat Assessment on the individual and the applicant.

(5) If the applicant appeals an Initial Determination of Threat Assessment, the procedures in 49 CFR 1515.5 or 1515.9 apply.

§ 1540.207 [Reserved]

§ 1540.209 Fees for security threat assessment.

This section describes the payment process for completion of the security threat assessments required under subpart.

(a) *Fees for security threat assessment.* (1) TSA routinely establishes and collects fees to conduct the security threat assessment process. These fees apply to all entities requesting a security threat assessment. TSA reviews the amount of the fee periodically, at least once every two years, to determine the current cost of conducting security threat assessments. TSA determines fee amounts and any necessary revisions to the fee amounts based on current costs, using a method of analysis consistent with widely accepted accounting principles and practices, and calculated in accordance with the

provisions of 31 U.S.C. 9701 and other applicable Federal law.

(2) TSA will publish fee amounts and any revisions to the fee amounts as a notice in the FEDERAL REGISTER.

(b) [Reserved]

(c) *Remittance of fees*. (1) The fees required under this subpart must be remitted to TSA in a form and manner acceptable to TSA each time the applicant or an aircraft operator, foreign air carrier, indirect air carrier, certified cargo screening facility, or TSA-approved validation firm submits the information required under § 1540.203 or § 1540.207 to TSA.

(2) Fees remitted to TSA under this subpart must be payable to the ''Transportation Security Administration'' in U.S. currency and drawn on a U.S. bank.

(3) TSA will not issue any fee refunds, unless a fee was paid in error.

Subpart D—Responsibilities of Holders of TSA–Approved Security Programs

SOURCE: 74 FR 47703, Sept. 16, 2009, unless otherwise noted.

EFFECTIVE DATE NOTE: At 74 FR 47703, Sept. 16, 2009, subpart D was added, effective Nov. 16, 2009.

§ 1540.301 Withdrawal of approval of a security program.

(a) *Applicability*. This section applies to holders of a security program approved or accepted by TSA under 49 CFR chapter XII, subchapter C.

(b) *Withdrawal of security program approval*. TSA may withdraw the approval of a security program, if TSA determines continued operation is contrary to security and the public interest, as follows:

(1) *Notice of proposed withdrawal of approval*. TSA will serve a Notice of Proposed Withdrawal of Approval, which notifies the holder of the security program, in writing, of the facts, charges, and applicable law, regulation, or order that form the basis of the determination.

(2) *Security program holder's reply*. The holder of the security program may respond to the Notice of Proposed Withdrawal of Approval no later than 15 calendar days after receipt of the withdrawal by providing the designated official, in writing, with any material facts, arguments, applicable law, and regulation.

(3) *TSA review*. The designated official will consider all information available, including any relevant material or information submitted by the holder of the security program, before either issuing a Withdrawal of Approval of the security program or rescinding the Notice of Proposed Withdrawal of Approval. If TSA issues a Withdrawal of Approval, it becomes effective upon receipt by the holder of the security program, or 15 calendar days after service, whichever occurs first.

(4) *Petition for reconsideration*. The holder of the security program may petition TSA to reconsider its Withdrawal of Approval by serving a petition for consideration no later than 15 calendar days after the holder of the security program receives the Withdrawal of Approval. The holder of the security program must serve the Petition for Reconsideration on the designated official. Submission of a Petition for Reconsideration will not stay the Withdrawal of Approval. The holder of the security program may request the designated official to stay the Withdrawal of Approval pending review of and decision on the Petition.

(5) *Assistant Secretary's review*. The designated official transmits the Petition together with all pertinent information to the Assistant Secretary for reconsideration. The Assistant Secretary will dispose of the Petition within 15 calendar days of receipt by either directing the designated official to rescind the Withdrawal of Approval or by affirming the Withdrawal of Approval. The decision of the Assistant Secretary constitutes a final agency order subject to judicial review in accordance with 49 U.S.C. 46110.

(6) *Emergency withdrawal*. If TSA finds that there is an emergency with respect to aviation security requiring immediate action that makes the procedures in this section contrary to the public interest, the designated official may issue an Emergency Withdrawal of Approval of a security program without first issuing a Notice of Proposed Withdrawal of Approval. The Emergency Withdrawal would be effective on the date that the holder of the security program receives the emergency withdrawal. In such a case, the designated official will send the holder of

the security program a brief statement of the facts, charges, applicable law, regulation, or order that forms the basis for the Emergency Withdrawal. The holder of the security program may submit a Petition for Reconsideration under the procedures in paragraphs (b)(4) through (b)(5) of this section; however, this petition will not stay the effective date of the Emergency Withdrawal.

(c) *Service of documents for withdrawal of approval of security program proceedings.* Service may be accomplished by personal delivery, certified mail, or express courier. Documents served on the holder of a security program will be served at its official place of business as designated in its application for approval or its security program. Documents served on TSA must be served to the address noted in the Notice of Withdrawal of Approval or Withdrawal of Approval, whichever is applicable.

(1) *Certificate of service.* An individual may attach a certificate of service to a document tendered for filing. A certificate of service must consist of a statement, dated and signed by the person filing the document, that the document was personally delivered, served by certified mail on a specific date, or served by express courier on a specific date.

(2) *Date of service.* The date of service is—

(i) The date of personal delivery;

(ii) If served by certified mail, the mailing date shown on the certificate of service, the date shown on the postmark if there is no certificate of service, or other mailing date shown by other evidence if there is no certificate of service or postmark; or

(iii) If served by express courier, the service date shown on the certificate of service, or by other evidence if there is no certificate of service.

(d) *Extension of time.* TSA may grant an extension of time to the limits set forth in this section for good cause shown. A security program holder must submit a request for an extension of time in writing, and TSA must receive it at least two days before the due date in order to be considered. TSA may grant itself an extension of time for good cause.

§ 1540.303 [Reserved]

PART 1542—AIRPORT SECURITY

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Subpart D—Contingency Measures

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1542.305 Public advisories.
1542.307 Incident management.

AUTHORITY: 49 U.S.C. 114, 5103, 40113, 44901–44905, 44907, 44913–44914, 44916–44917, 44935–44936, 44942, 46105.

SOURCE: 67 FR 8355, Feb. 22, 2002, unless otherwise noted.

Subpart A—General

§ 1542.1 Applicability of this part.

This part describes aviation security rules governing:

(a) The operation of airports regularly serving aircraft operations required to be under a security program under part 1544 of this chapter, as described in this part.

(b) The operation of airport regularly serving foreign air carrier operations required to be under a security program under part 1546 of this chapter, as described in this part.

(c) Each airport operator that receives a Security Directive or Information Circular and each person who receives information from a Security Directive or Information Circular issued by the Designated official for Civil Aviation Security.

(d) Each airport operator that does not have a security program under this part that serves an aircraft operator operating under a security program under part 1544 of this chapter, or a foreign air carrier operating under a security program under part 1546 of this chapter. Such airport operators must comply with § 1542.5(e).

[67 FR 8355, Feb. 22, 2002, as amended at 71 FR 30509, May 26, 2006]

§ 1542.3 Airport security coordinator.

(a) Each airport operator must designate one or more Airport Security Coordinator(s) (ASC) in its security program.

(b) The airport operator must ensure that one or more ASCs:

(1) Serve as the airport operator's primary and immediate contact for security-related activities and communications with TSA. Any individual designated as an ASC may perform other duties in addition to those described in this paragraph (b).

(2) Is available to TSA on a 24-hour basis.

(3) Review with sufficient frequency all security-related functions to ensure that all are effective and in compliance with this part, its security program, and applicable Security Directives.

(4) Immediately initiate corrective action for any instance of non-compliance with this part, its security program, and applicable Security Directives.

(5) Review and control the results of employment history, verification, and criminal history records checks required under § 1542.209.

(6) Serve as the contact to receive notification from individuals applying for unescorted access of their intent to seek correction of their criminal history record with the FBI.

(c) After July 17, 2003, no airport operator may use, nor may it designate any person as, an ASC unless that individual has completed subject matter training, as specified in its security program, to prepare the individual to assume the duties of the position. The airport operator must maintain ASC training documentation until at least 180 days after the withdrawal of an individual's designation as an ASC.

(d) An individual's satisfactory completion of initial ASC training required under paragraph (c) of this section satisfies that requirement for all future ASC designations for that individual, except for site specific information, unless there has been a two or more year break in service as an active and designated ASC.

§ 1542.5 Inspection authority.

(a) Each airport operator must allow TSA, at any time or place, to make any inspections or tests, including copying records, to determine compliance of an airport operator, aircraft operator, foreign air carrier, indirect air carrier, or other airport tenants with—

(1) This subchapter and any security program under this subchapter, and part 1520 of this chapter; and

(2) 49 U.S.C. Subtitle VII, as amended.

(b) At the request of TSA, each airport operator must provide evidence of compliance with this part and its airport security program, including copies of records.

(c) TSA may enter and be present within secured areas, AOA's, and SIDA's without access media or identification media issued or approved by an airport operator or aircraft operator, in order to inspect or test compliance, or perform other such duties as TSA may direct.

(d) At the request of TSA and upon the completion of SIDA training as required in a security program, each airport operator promptly must issue to TSA personnel access and identification media to provide TSA personnel with unescorted access to, and movement within, secured areas, AOA's, and SIDA's.

(e) TSA may enter and be present at an airport that does not have a security program under this part, without

access media or identification media issued or approved by an airport operator or aircraft operator, to inspect an aircraft operator operating under a security program under part 1544 of this chapter, or a foreign air carrier operating under a security program under part 1546 of this chapter.

[67 FR 8355, Feb. 22, 2002, as amended at 71 FR 30509, May 26, 2006]

Subpart B—Airport Security Program

§ 1542.101 General requirements.

(a) No person may operate an airport subject to § 1542.103 unless it adopts and carries out a security program that—

(1) Provides for the safety and security of persons and property on an aircraft operating in air transportation or intrastate air transportation against an act of criminal violence, aircraft piracy, and the introduction of an unauthorized weapon, explosive, or incendiary onto an aircraft;

(2) Is in writing and is signed by the airport operator;

(3) Includes the applicable items listed in § 1542.103;

(4) Includes an index organized in the same subject area sequence as § 1542.103; and

(5) Has been approved by TSA.

(b) Each airport operator subject to § 1542.103 must maintain one current and complete copy of its security program and provide a copy to TSA upon request.

(c) Each airport operator subject to § 1542.103 must—

(1) Restrict the distribution, disclosure, and availability of sensitive security information (SSI), as defined in part 1520 of this chapter, to persons with a need to know; and

(2) Refer all requests for SSI by other persons to TSA.

[67 FR 8355, Feb. 22, 2002, as amended at 71 FR 30509, May 26, 2006]

§ 1542.103 Content.

(a) *Complete program.* Except as otherwise approved by TSA, each airport operator regularly serving operations of an aircraft operator or foreign air carrier described in § 1544.101(a)(1) or § 1546.101(a) of this chapter, must include in its security program the following:

(1) The name, means of contact, duties, and training requirements of the ASC required under § 1542.3.

(2) [Reserved]

(3) A description of the secured areas, including—

(i) A description and map detailing boundaries and pertinent features;

(ii) Each activity or entity on, or adjacent to, a secured area that affects security;

(iii) Measures used to perform the access control functions required under § 1542.201(b)(1);

(iv) Procedures to control movement within the secured area, including identification media required under § 1542.201(b)(3); and

(v) A description of the notification signs required under § 1542.201(b)(6).

(4) A description of the AOA, including—

(i) A description and map detailing boundaries, and pertinent features;

(ii) Each activity or entity on, or adjacent to, an AOA that affects security;

(iii) Measures used to perform the access control functions required under § 1542.203(b)(1);

(iv) Measures to control movement within the AOA, including identification media as appropriate; and

(v) A description of the notification signs required under § 1542.203(b)(4).

(5) A description of the SIDA's, including—

(i) A description and map detailing boundaries and pertinent features; and

(ii) Each activity or entity on, or adjacent to, a SIDA.

(6) A description of the sterile areas, including—

(i) A diagram with dimensions detailing boundaries and pertinent features;

(ii) Access controls to be used when the passenger-screening checkpoint is non-operational and the entity responsible for that access control; and

(iii) Measures used to control access as specified in § 1542.207.

(7) Procedures used to comply with § 1542.209 regarding fingerprint-based criminal history records checks.

(8) A description of the personnel identification systems as described in § 1542.211.

(9) Escort procedures in accordance with § 1542.211(e).

(10) Challenge procedures in accordance with § 1542.211(d).

(11) Training programs required under §§ 1542.213 and 1542.217(c)(2), if applicable.

(12) A description of law enforcement support used to comply with § 1542.215(a).

(13) A system for maintaining the records described in § 1542.221.

(14) The procedures and a description of facilities and equipment used to support TSA inspection of individuals and property, and aircraft operator or foreign air carrier screening functions of parts 1544 and 1546 of this chapter.

(15) A contingency plan required under § 1542.301.

(16) Procedures for the distribution, storage, and disposal of security programs, Security Directives, Information Circulars, implementing instructions, and, as appropriate, classified information.

(17) Procedures for posting of public advisories as specified in § 1542.305.

(18) Incident management procedures used to comply with § 1542.307.

(19) Alternate security procedures, if any, that the airport operator intends to use in the event of natural disasters, and other emergency or unusual conditions.

(20) Each exclusive area agreement as specified in § 1542.111.

(21) Each airport tenant security program as specified in § 1542.113.

(b) *Supporting program.* Except as otherwise approved by TSA, each airport regularly serving operations of an aircraft operator or foreign air carrier described in § 1544.101(a)(2) or (f), or § 1546.101(b) or (c) of this chapter, must include in its security program a description of the following:

(1) Name, means of contact, duties, and training requirements of the ASC, as required under § 1542.3.

(2) A description of the law enforcement support used to comply with § 1542.215(a).

(3) Training program for law enforcement personnel required under § 1542.217(c)(2), if applicable.

(4) A system for maintaining the records described in § 1542.221.

(5) The contingency plan required under § 1542.301.

(6) Procedures for the distribution, storage, and disposal of security programs, Security Directives, Information Circulars, implementing instructions, and, as appropriate, classified information.

(7) Procedures for public advisories as specified in § 1542.305.

(8) Incident management procedures used to comply with § 1542.307.

(c) *Partial program.* Except as otherwise approved by TSA, each airport regularly serving operations of an aircraft operator or foreign air carrier described in § 1544.101(b) or § 1546.101(d) of this chapter, must include in its security program a description of the following:

(1) Name, means of contact, duties, and training requirements of the ASC as required under § 1542.3.

(2) A description of the law enforcement support used to comply with § 1542.215(b).

(3) Training program for law enforcement personnel required under § 1542.217(c)(2), if applicable.

(4) A system for maintaining the records described in § 1542.221.

(5) Procedures for the distribution, storage, and disposal of security programs, Security Directives, Information Circulars, implementing instructions, and, as appropriate, classified information.

(6) Procedures for public advisories as specified in § 1542.305.

(7) Incident management procedures used to comply with § 1542.307.

(d) *Use of appendices.* The airport operator may comply with paragraphs (a), (b), and (c) of this section by including in its security program, as an appendix, any document that contains the information required by paragraphs (a), (b), and (c) of this section. The appendix must be referenced in the corresponding section(s) of the security program.

§ 1542.105 Approval and amendments.

(a) *Initial approval of security program.* Unless otherwise authorized by the designated official, each airport operator required to have a security program under this part must submit its initial

proposed security program to the designated official for approval at least 90 days before the date any aircraft operator or foreign air carrier required to have a security program under part 1544 or part 1546 of this chapter is expected to begin operations. Such requests will be processed as follows:

(1) The designated official, within 30 days after receiving the proposed security program, will either approve the program or give the airport operator written notice to modify the program to comply with the applicable requirements of this part.

(2) The airport operator may either submit a modified security program to the designated official for approval, or petition the Administrator to reconsider the notice to modify within 30 days of receiving a notice to modify. A petition for reconsideration must be filed with the designated official.

(3) The designated official, upon receipt of a petition for reconsideration, either amends or withdraws the notice, or transmits the petition, together with any pertinent information, to the Administrator for reconsideration. The Administrator disposes of the petition within 30 days of receipt by either directing the designated official to withdraw or amend the notice to modify, or by affirming the notice to modify.

(b) *Amendment requested by an airport operator*. Except as provided in § 1542.103(c), an airport operator may submit a request to the designated official to amend its security program, as follows:

(1) The request for an amendment must be filed with the designated official at least 45 days before the date it proposes for the amendment to become effective, unless a shorter period is allowed by the designated official.

(2) Within 30 days after receiving a proposed amendment, the designated official, in writing, either approves or denies the request to amend.

(3) An amendment to a security program may be approved if the designated official determines that safety and the public interest will allow it, and the proposed amendment provides the level of security required under this part.

(4) Within 30 days after receiving a denial, the airport operator may petition the Administrator to reconsider the denial.

(5) Upon receipt of a petition for reconsideration, the designated official either approves the request to amend or transmits the petition within 30 days of receipt, together with any pertinent information, to the Administrator for reconsideration. The Administrator disposes of the petition within 30 days of receipt by either directing the designated official to approve the amendment or affirming the denial.

(c) *Amendment by TSA*. If safety and the public interest require an amendment, the designated official may amend a security program as follows:

(1) The designated official sends to the airport operator a notice, in writing, of the proposed amendment, fixing a period of not less than 30 days within which the airport operator may submit written information, views, and arguments on the amendment.

(2) After considering all relevant material, the designated official notifies the airport operator of any amendment adopted or rescinds the notice. If the amendment is adopted, it becomes effective not less than 30 days after the airport operator receives the notice of amendment, unless the airport operator petitions the Administrator to reconsider no later than 15 days before the effective date of the amendment. The airport operator must send the petition for reconsideration to the designated official. A timely petition for reconsideration stays the effective date of the amendment.

(3) Upon receipt of a petition for reconsideration, the designated official either amends or withdraws the notice, or transmits the petition, together with any pertinent information to the Administrator for reconsideration. The Administrator disposes of the petition within 30 days of receipt by either directing the designated official to withdraw or amend the amendment, or by affirming the amendment.

(d) *Emergency amendments*. Notwithstanding paragraph (c) of this section, if the designated official finds that there is an emergency requiring immediate action with respect to safety and security in air transportation or in air commerce that makes procedures in

this section contrary to the public interest, the designated official may issue an amendment, effective without stay on the date the airport operator receives the notice of it. In such a case, the designated official must incorporate in the notice a brief statement of the reasons and findings for the amendment to be adopted. The airport operator may file a petition for reconsideration under paragraph (c) of this section; however, this does not stay the effective date of the emergency amendment.

§ 1542.107 Changed conditions affecting security.

(a) After approval of the security program, each airport operator must notify TSA when changes have occurred to the—

(1) Measures, training, area descriptions, or staffing, described in the security program;

(2) Operations of an aircraft operator or foreign air carrier that would require modifications to the security program as required under § 1542.103; or

(3) Layout or physical structure of any area under the control of the airport operator, airport tenant, aircraft operator, or foreign air carrier used to support the screening process, access, presence, or movement control functions required under part 1542, 1544, or 1546 of this chapter.

(b) Each airport operator must notify TSA no more than 6 hours after the discovery of any changed condition described in paragraph (a) of this section, or within the time specified in its security program, of the discovery of any changed condition described in paragraph (a) of this section. The airport operator must inform TSA of each interim measure being taken to maintain adequate security until an appropriate amendment to the security program is approved. Each interim measure must be acceptable to TSA.

(c) For changed conditions expected to be less than 60 days duration, each airport operator must forward the information required in paragraph (b) of this section in writing to TSA within 72 hours of the original notification of the change condition(s). TSA will notify the airport operator of the disposition of the notification in writing. If approved by TSA, this written notification becomes a part of the airport security program for the duration of the changed condition(s).

(d) For changed conditions expected to be 60 days or more duration, each airport operator must forward the information required in paragraph (b) of this section in the form of a proposed amendment to the airport operator's security program, as required under § 1542.105. The request for an amendment must be made within 30 days of the discovery of the changed condition(s). TSA will respond to the request in accordance with § 1542.105.

§ 1542.109 Alternate means of compliance.

If in TSA's judgment, the overall safety and security of the airport, and aircraft operator or foreign air carrier operations are not diminished, TSA may approve a security program that provides for the use of alternate measures. Such a program may be considered only for an operator of an airport at which service by aircraft operators or foreign air carriers under part 1544 or 1546 of this chapter is determined by TSA to be seasonal or infrequent.

§ 1542.111 Exclusive area agreements.

(a) TSA may approve an amendment to an airport security program under which an aircraft operator or foreign air carrier that has a security program under part 1544 or 1546 of this chapter assumes responsibility for specified security measures for all or portions of the secured area, AOA, or SIDA, including access points, as provided in § 1542.201, § 1542.203, or § 1542.205. The assumption of responsibility must be exclusive to one aircraft operator or foreign air carrier, and shared responsibility among aircraft operators or foreign air carriers is not permitted for an exclusive area.

(b) An exclusive area agreement must be in writing, signed by the airport operator and aircraft operator or foreign air carrier, and maintained in the airport security program. This agreement must contain the following:

(1) A description, a map, and, where appropriate, a diagram of the boundaries and pertinent features of each area, including individual access

points, over which the aircraft operator or foreign air carrier will exercise exclusive security responsibility.

(2) A description of the measures used by the aircraft operator or foreign air carrier to comply with § 1542.201, § 1542.203, or § 1542.205, as appropriate.

(3) Procedures by which the aircraft operator or foreign air carrier will immediately notify the airport operator and provide for alternative security measures when there are changed conditions as described in § 1542.103(a).

(c) Any exclusive area agreements in effect on November 14, 2001, must meet the requirements of this section and § 1544.227 no later than November 14, 2002.

§ 1542.113 Airport tenant security programs.

(a) TSA may approve an airport tenant security program as follows:

(1) The tenant must assume responsibility for specified security measures of the secured area, AOA, or SIDA as provided in §§ 1542.201, 1542.203, and 1542.205.

(2) The tenant may not assume responsibility for law enforcement support under § 1542.215.

(3) The tenant must assume the responsibility within the tenant's leased areas or areas designated for the tenant's exclusive use. A tenant may not assume responsibility under a tenant security program for the airport passenger terminal.

(4) Responsibility must be exclusive to one tenant, and shared responsibility among tenants is not permitted.

(5) TSA must find that the tenant is able and willing to carry out the airport tenant security program.

(b) An airport tenant security program must be in writing, signed by the airport operator and the airport tenant, and maintained in the airport security program. The airport tenant security program must include the following:

(1) A description and a map of the boundaries and pertinent features of each area over which the airport tenant will exercise security responsibilities.

(2) A description of the measures the airport tenant has assumed.

(3) Measures by which the airport operator will monitor and audit the tenant's compliance with the security program.

(4) Monetary and other penalties to which the tenant may be subject if it fails to carry out the airport tenant security program.

(5) Circumstances under which the airport operator will terminate the airport tenant security program for cause.

(6) A provision acknowledging that the tenant is subject to inspection by TSA in accordance with § 1542.5.

(7) A provision acknowledging that individuals who carry out the tenant security program are contracted to or acting for the airport operator and are required to protect sensitive information in accordance with part 1520 of this chapter, and may be subject to civil penalties for failing to protect sensitive security information.

(8) Procedures by which the tenant will immediately notify the airport operator of and provide for alternative security measures for changed conditions as described in § 1542.103(a).

(c) If TSA has approved an airport tenant security program, the airport operator may not be found to be in violation of a requirement of this part in any case in which the airport operator demonstrates that:

(1) The tenant or an employee, permittee, or invitee of the tenant, is responsible for such violation; and

(2) The airport operator has complied with all measures in its security program to ensure the tenant has complied with the airport tenant security program.

(d) TSA may amend or terminate an airport tenant security program in accordance with § 1542.105.

Subpart C—Operations

§ 1542.201 Security of the secured area.

(a) Each airport operator required to have a security program under § 1542.103(a) must establish at least one secured area.

(b) Each airport operator required to establish a secured area must prevent and detect the unauthorized entry, presence, and movement of individuals and ground vehicles into and within

the secured area by doing the following:

(1) Establish and carry out measures for controlling entry to secured areas of the airport in accordance with § 1542.207.

(2) Provide for detection of, and response to, each unauthorized presence or movement in, or attempted entry to, the secured area by an individual whose access is not authorized in accordance with its security program.

(3) Establish and carry out a personnel identification system described under § 1542.211.

(4) Subject each individual to employment history verification as described in § 1542.209 before authorizing unescorted access to a secured area.

(5) Train each individual before granting unescorted access to the secured area, as required in § 1542.213(b).

(6) Post signs at secured area access points and on the perimeter that provide warning of the prohibition against unauthorized entry. Signs must be posted by each airport operator in accordance with its security program not later than November 14, 2003.

§ 1542.203 Security of the air operations area (AOA).

(a) Each airport operator required to have a security program under § 1542.103(a) must establish an AOA, unless the entire area is designated as a secured area.

(b) Each airport operator required to establish an AOA must prevent and detect the unauthorized entry, presence, and movement of individuals and ground vehicles into or within the AOA by doing the following:

(1) Establish and carry out measures for controlling entry to the AOA of the airport in accordance with § 1542.207.

(2) Provide for detection of, and response to, each unauthorized presence or movement in, or attempted entry to, the AOA by an individual whose access is not authorized in accordance with its security program.

(3) Provide security information as described in § 1542.213(c) to each individual with unescorted access to the AOA.

(4) Post signs on AOA access points and perimeters that provide warning of the prohibition against unauthorized entry to the AOA. Signs must be posted by each airport operator in accordance with its security program not later than November 14, 2003.

(5) If approved by TSA, the airport operator may designate all or portions of its AOA as a SIDA, or may use another personnel identification system, as part of its means of meeting the requirements of this section. If it uses another personnel identification system, the media must be clearly distinguishable from those used in the secured area and SIDA.

§ 1542.205 Security of the security identification display area (SIDA).

(a) Each airport operator required to have a complete program under § 1542.103(a) must establish at least one SIDA, as follows:

(1) Each secured area must be a SIDA.

(2) Each part of the air operations area that is regularly used to load cargo on, or unload cargo from, an aircraft that is operated under a full program or a full all-cargo program as provided in § 1544.101(a) or (h) of this chapter, or a foreign air carrier under a security program as provided in § 1546.101(a), (b), or (e), must be a SIDA.

(3) Each area on an airport where cargo is present after an aircraft operator operating under a full program or a full all-cargo program under § 1544.101(a) or (h) of this chapter, or a foreign air carrier operating under a security program under § 1546.101(a), (b), or (e) of this chapter, or an indirect air carrier, accepts it must be a SIDA. This includes areas such as: Cargo facilities; loading and unloading vehicle docks; and areas where an aircraft operator, foreign air carrier, or indirect air carrier sorts, stores, stages, consolidates, processes, screens, or transfers cargo.

(4) Other areas of the airport may be SIDAs.

(b) Each airport operator required to establish a SIDA must establish and carry out measures to prevent the unauthorized presence and movement of individuals in the SIDA and must do the following:

(1) Establish and carry out a personnel identification system described under § 1542.211.

(2) Subject each individual to a criminal history records check as described in § 1542.209 before authorizing unescorted access to the SIDA.

(3) Train each individual before granting unescorted access to the SIDA, as required in § 1542.213(b).

(c) An airport operator that is not required to have a complete program under § 1542.103(a) is not required to establish a SIDA under this section.

[67 FR 8355, Feb. 22, 2002, as amended at 71 FR 30509, May 26, 2006]

§ 1542.207 Access control systems.

(a) *Secured area.* Except as provided in paragraph (b) of this section, the measures for controlling entry to the secured area required under § 1542.201(b)(1) must—

(1) Ensure that only those individuals authorized to have unescorted access to the secured area are able to gain entry;

(2) Ensure that an individual is immediately denied entry to a secured area when that person's access authority for that area is withdrawn; and

(3) Provide a means to differentiate between individuals authorized to have access to an entire secured area and individuals authorized access to only a particular portion of a secured area.

(b) *Alternative systems.* TSA may approve an amendment to a security program that provides alternative measures that provide an overall level of security equal to that which would be provided by the measures described in paragraph (a) of this section.

(c) *Air operations area.* The measures for controlling entry to the AOA required under § 1542.203(b)(1) must incorporate accountability procedures to maintain their integrity.

(d) *Secondary access media.* An airport operator may issue a second access medium to an individual who has unescorted access to secured areas or the AOA, but is temporarily not in possession of the original access medium, if the airport operator follows measures and procedures in the security program that—

(1) Verifies the authorization of the individual to have unescorted access to secured areas or AOAs;

(2) Restricts the time period of entry with the second access medium;

(3) Retrieves the second access medium when expired;

(4) Deactivates or invalidates the original access medium until the individual returns the second access medium; and

(5) Provides that any second access media that is also used as identification media meet the criteria of § 1542.211(b).

§ 1542.209 Fingerprint-based criminal history records checks (CHRC).

(a) *Scope.* The following persons are within the scope of this section—

(1) Each airport operator and airport user.

(2) Each individual currently having unescorted access to a SIDA, and each individual with authority to authorize others to have unescorted access to a SIDA (referred to as unescorted access authority).

(3) Each individual seeking unescorted access authority.

(4) Each airport user and aircraft operator making a certification to an airport operator pursuant to paragraph (n) of this section, or 14 CFR 108.31(n) in effect prior to November 14, 2001 (see 14 CFR Parts 60 to 139 revised as of January 1, 2001). An airport user, for the purposes of this section only, is any person other than an aircraft operator subject to § 1544.229 of this chapter making a certification under this section.

(b) *Individuals seeking unescorted access authority.* Except as provided in paragraph (m) of this section, each airport operator must ensure that no individual is granted unescorted access authority unless the individual has undergone a fingerprint-based CHRC that does not disclose that he or she has a disqualifying criminal offense, as described in paragraph (d) of this section.

(c) *Individuals who have not had a CHRC.* (1) Except as provided in paragraph (m) of this section, each airport operator must ensure that after December 6, 2002, no individual retains unescorted access authority, unless the airport operator has obtained and submitted a fingerprint under this part.

(2) When a CHRC discloses a disqualifying criminal offense for which the conviction or finding of not guilty by

reason of insanity was on or after December 6, 1991, the airport operator must immediately suspend that individual's authority.

(d) *Disqualifying criminal offenses.* An individual has a disqualifying criminal offense if the individual has been convicted, or found not guilty of by reason of insanity, of any of the disqualifying crimes listed in this paragraph (d) in any jurisdiction during the 10 years before the date of the individual's application for unescorted access authority, or while the individual has unescorted access authority. The disqualifying criminal offenses are as follows—

(1) Forgery of certificates, false marking of aircraft, and other aircraft registration violation; 49 U.S.C. 46306.

(2) Interference with air navigation; 49 U.S.C. 46308.

(3) Improper transportation of a hazardous material; 49 U.S.C. 46312.

(4) Aircraft piracy; 49 U.S.C. 46502.

(5) Interference with flight crew members or flight attendants; 49 U.S.C. 46504.

(6) Commission of certain crimes aboard aircraft in flight; 49 U.S.C. 46506.

(7) Carrying a weapon or explosive aboard aircraft; 49 U.S.C. 46505.

(8) Conveying false information and threats; 49 U.S.C. 46507.

(9) Aircraft piracy outside the special aircraft jurisdiction of the United States; 49 U.S.C. 46502(b).

(10) Lighting violations involving transporting controlled substances; 49 U.S.C. 46315.

(11) Unlawful entry into an aircraft or airport area that serves air carriers or foreign air carriers contrary to established security requirements; 49 U.S.C. 46314.

(12) Destruction of an aircraft or aircraft facility; 18 U.S.C. 32.

(13) Murder.

(14) Assault with intent to murder.

(15) Espionage.

(16) Sedition.

(17) Kidnapping or hostage taking.

(18) Treason.

(19) Rape or aggravated sexual abuse.

(20) Unlawful possession, use, sale, distribution, or manufacture of an explosive or weapon.

(21) Extortion.

(22) Armed or felony unarmed robbery.

(23) Distribution of, or intent to distribute, a controlled substance.

(24) Felony arson.

(25) Felony involving a threat.

(26) Felony involving—

(i) Willful destruction of property;

(ii) Importation or manufacture of a controlled substance;

(iii) Burglary;

(iv) Theft;

(v) Dishonesty, fraud, or misrepresentation;

(vi) Possession or distribution of stolen property;

(vii) Aggravated assault;

(viii) Bribery; or

(ix) Illegal possession of a controlled substance punishable by a maximum term of imprisonment of more than 1 year.

(27) Violence at international airports; 18 U.S.C. 37.

(28) Conspiracy or attempt to commit any of the criminal acts listed in this paragraph (d).

(e) *Fingerprint application and processing.* (1) At the time of fingerprinting, the airport operator must provide the individual to be fingerprinted a fingerprint application that includes only the following—

(i) The disqualifying criminal offenses described in paragraph (d) of this section.

(ii) A statement that the individual signing the application does not have a disqualifying criminal offense.

(iii) A statement informing the individual that Federal regulations under 49 CFR 1542.209 (l) impose a continuing obligation to disclose to the airport operator within 24 hours if he or she is convicted of any disqualifying criminal offense that occurs while he or she has unescorted access authority. After February 17, 2002, the airport operator may use statements that have already been printed referring to 14 CFR 107.209 until stocks of such statements are used up.

(iv) A statement reading, ''The information I have provided on this application is true, complete, and correct to the best of my knowledge and belief and is provided in good faith. I understand that a knowing and willful false statement on this application can be punished by fine or imprisonment or

both. (See section 1001 of Title 18 United States Code.)''

(v) A line for the printed name of the individual.

(vi) A line for the individual's signature and date of signature.

(2) Each individual must complete and sign the application prior to submitting his or her fingerprints.

(3) The airport operator must verify the identity of the individual through two forms of identification prior to fingerprinting, and ensure that the printed name on the fingerprint application is legible. At least one of the two forms of identification must have been issued by a government authority, and at least one must include a photo.

(4) The airport operator must advise the individual that:

(i) A copy of the criminal record received from the FBI will be provided to the individual, if requested by the individual in writing; and

(ii) The ASC is the individual's point of contact if he or she has questions about the results of the CHRC.

(5) The airport operator must collect, control, and process one set of legible and classifiable fingerprints under direct observation of the airport operator or a law enforcement officer.

(6) Fingerprints may be obtained and processed electronically, or recorded on fingerprint cards approved by the FBI and distributed by TSA for that purpose.

(7) The fingerprint submission must be forwarded to TSA in the manner specified by TSA.

(f) *Fingerprinting fees.* Airport operators must pay for all fingerprints in a form and manner approved by TSA. The payment must be made at the designated rate (available from the local TSA security office) for each set of fingerprints submitted. Information about payment options is available though the designated TSA headquarters point of contact. Individual personal checks are not acceptable.

(g) *Determination of arrest status.* (1) When a CHRC on an individual seeking unescorted access authority discloses an arrest for any disqualifying criminal offense listed in paragraph (d) of this section without indicating a disposition, the airport operator must determine, after investigation, that the arrest did not result in a disqualifying offense before granting that authority. If there is no disposition, or if the disposition did not result in a conviction or in a finding of not guilty by reason of insanity of one of the offenses listed in paragraph (d) of this section, the individual is not disqualified under this section.

(2) When a CHRC on an individual with unescorted access authority discloses an arrest for any disqualifying criminal offense without indicating a disposition, the airport operator must suspend the individual's unescorted access authority not later than 45 days after obtaining the CHRC unless the airport operator determines, after investigation, that the arrest did not result in a disqualifying criminal offense. If there is no disposition, or if the disposition did not result in a conviction or in a finding of not guilty by reason of insanity of one of the offenses listed in paragraph (d) of this section, the individual is not disqualified under this section.

(3) The airport operator may only make the determinations required in paragraphs (g)(1) and (g)(2) of this section for individuals for whom it is issuing, or has issued, unescorted access authority, and who are not covered by a certification from an aircraft operator under paragraph (n) of this section. The airport operator may not make determinations for individuals described in § 1544.229 of this chapter.

(h) *Correction of FBI records and notification of disqualification.* (1) Before making a final decision to deny unescorted access authority to an individual described in paragraph (b) of this section, the airport operator must advise him or her that the FBI criminal record discloses information that would disqualify him or her from receiving or retaining unescorted access authority and provide the individual with a copy of the FBI record if he or she requests it.

(2) The airport operator must notify an individual that a final decision has been made to grant or deny unescorted access authority.

(3) Immediately following the suspension of unescorted access authority of an individual, the airport operator must advise him or her that the FBI

criminal record discloses information that disqualifies him or her from retaining unescorted access authority and provide the individual with a copy of the FBI record if he or she requests it.

(i) *Corrective action by the individual.* The individual may contact the local jurisdiction responsible for the information and the FBI to complete or correct the information contained in his or her record, subject to the following conditions—

(1) For an individual seeking unescorted access authority on or after December 6, 2001, the following applies:

(i) Within 30 days after being advised that the criminal record received from the FBI discloses a disqualifying criminal offense, the individual must notify the airport operator in writing of his or her intent to correct any information he or she believes to be inaccurate. The airport operator must obtain a copy, or accept a copy from the individual, of the revised FBI record, or a certified true copy of the information from the appropriate court, prior to granting unescorted access authority.

(ii) If no notification, as described in paragraph (h)(1) of this section, is received within 30 days, the airport operator may make a final determination to deny unescorted access authority.

(2) For an individual with unescorted access authority before December 6, 2001, the following applies: Within 30 days after being advised of suspension because the criminal record received from the FBI discloses a disqualifying criminal offense, the individual must notify the airport operator in writing of his or her intent to correct any information he or she believes to be inaccurate. The airport operator must obtain a copy, or accept a copy from the individual, of the revised FBI record, or a certified true copy of the information from the appropriate court, prior to reinstating unescorted access authority.

(j) *Limits on dissemination of results.* Criminal record information provided by the FBI may be used only to carry out this section and §1544.229 of this chapter. No person may disseminate the results of a CHRC to anyone other than:

(1) The individual to whom the record pertains, or that individual's authorized representative.

(2) Officials of other airport operators who are determining whether to grant unescorted access to the individual under this part.

(3) Aircraft operators who are determining whether to grant unescorted access to the individual or authorize the individual to perform screening functions under part 1544 of this chapter.

(4) Others designated by TSA.

(k) *Recordkeeping.* The airport operator must maintain the following information:

(1) *Investigations conducted before December 6, 2001.* The airport operator must maintain and control the access or employment history investigation files, including the criminal history records results portion, or the appropriate certifications, for investigations conducted before December 6, 2001.

(2) *Fingerprint application process on or after December 6, 2001.* Except when the airport operator has received a certification under paragraph (n) of this section, the airport operator must physically maintain, control, and, as appropriate, destroy the fingerprint application and the criminal record. Only direct airport operator employees may carry out the responsibility for maintaining, controlling, and destroying criminal records.

(3) *Certification on or after December 6, 2001.* The airport operator must maintain the certifications provided under paragraph (n) of this section.

(4) *Protection of records—all investigations.* The records required by this section must be maintained in a manner that is acceptable to TSA and in a manner that protects the confidentiality of the individual.

(5) *Duration—all investigations.* The records identified in this section with regard to an individual must be maintained until 180 days after the termination of the individual's unescorted access authority. When files are no longer maintained, the criminal record must be destroyed.

(l) *Continuing responsibilities.* (1) Each individual with unescorted access authority on December 6, 2001, who had a

disqualifying criminal offense in paragraph (d) of this section on or after December 6, 1991, must, by January 7, 2002, report the conviction to the airport operator and surrender the SIDA access medium to the issuer.

(2) Each individual with unescorted access authority who has a disqualifying criminal offense must report the offense to the airport operator and surrender the SIDA access medium to the issuer within 24 hours of the conviction or the finding of not guilty by reason of insanity.

(3) If information becomes available to the airport operator or the airport user indicating that an individual with unescorted access authority has a disqualifying criminal offense, the airport operator must determine the status of the conviction. If a disqualifying offense is confirmed the airport operator must immediately revoke any unescorted access authority.

(m) *Exceptions*. Notwithstanding the requirements of this section, an airport operator must authorize the following individuals to have unescorted access authority:

(1) An employee of the Federal, state, or local government (including a law enforcement officer) who, as a condition of employment, has been subjected to an employment investigation that includes a criminal records check.

(2) Notwithstanding the requirements of this section, an airport operator may authorize the following individuals to have unescorted access authority:

(i) An individual who has been continuously employed in a position requiring unescorted access authority by another airport operator, airport user, or aircraft operator, or contractor to such an entity, provided the grant for his or her unescorted access authority was based upon a fingerprint-based CHRC through TSA or FAA.

(ii) An individual who has been continuously employed by an aircraft operator or aircraft operator contractor, in a position with authority to perform screening functions, provided the grant for his or her authority to perform screening functions was based upon a fingerprint-based CHRC through TSA or FAA.

(n) *Certifications by aircraft operators*. An airport operator is in compliance with its obligation under paragraph (b) or (c) of this section when the airport operator accepts, for each individual seeking unescorted access authority, certification from an aircraft operator subject to part 1544 of this chapter indicating it has complied with § 1544.229 of this chapter for the aircraft operator's employees and contractors seeking unescorted access authority. If the airport operator accepts a certification from the aircraft operator, the airport operator may not require the aircraft operator to provide a copy of the CHRC.

(o) *Airport operator responsibility*. The airport operator must—

(1) Designate the ASC, in the security program, or a direct employee if the ASC is not a direct employee, to be responsible for maintaining, controlling, and destroying the criminal record files when their maintenance is no longer required by paragraph (k) of this section.

(2) Designate the ASC, in the security program, to serve as the contact to receive notification from individuals applying for unescorted access authority of their intent to seek correction of their FBI criminal record.

(3) Audit the employment history investigations performed by the airport operator in accordance with this section and 14 CFR 107.31 in effect prior to November 14, 2001 (see 14 CFR Parts 60 through 139 revised as of January 1, 2001), and those investigations conducted by the airport users who provided certification to the airport operator. The audit program must be set forth in the airport security program.

(p) *Airport user responsibility*. (1) The airport user must report to the airport operator information, as it becomes available, that indicates an individual with unescorted access authority may have a disqualifying criminal offense.

(2) The airport user must maintain and control, in compliance with paragraph (k) of this section, the employment history investigation files for investigations conducted before December 6, 2001, unless the airport operator decides to maintain and control the employment history investigation file.

(3) The airport user must provide the airport operator with either the name or title of the individual acting as custodian of the files described in this paragraph (p), the address of the location where the files are maintained, and the phone number of that location. The airport user must provide the airport operator and TSA with access to these files.

§ 1542.211 Identification systems.

(a) *Personnel identification system.* The personnel identification system under §§ 1542.201(b)(3) and 1542.205(b)(1) must include the following:

(1) Personnel identification media that—

(i) Convey a full-face image, full name, employer, and identification number of the individual to whom the identification medium is issued;

(ii) Indicate clearly the scope of the individual's access and movement privileges;

(iii) Indicate clearly an expiration date; and

(iv) Are of sufficient size and appearance as to be readily observable for challenge purposes.

(2) Procedures to ensure that each individual in the secured area or SIDA continuously displays the identification medium issued to that individual on the outermost garment above waist level, or is under escort.

(3) Procedures to ensure accountability through the following:

(i) Retrieving expired identification media and media of persons who no longer have unescorted access authority.

(ii) Reporting lost or stolen identification media.

(iii) Securing unissued identification media stock and supplies.

(iv) Auditing the system at a minimum of once a year or sooner, as necessary, to ensure the integrity and accountability of all identification media.

(v) As specified in the security program, revalidate the identification system or reissue identification media if a portion of all issued, unexpired identification media are lost, stolen, or otherwise unaccounted for, including identification media that are combined with access media.

(vi) Ensure that only one identification medium is issued to an individual at a time, except for personnel who are employed with more than one company and require additional identification media to carry out employment duties. A replacement identification medium may only be issued if an individual declares in writing that the medium has been lost, stolen, or destroyed.

(b) *Temporary identification media.* Each airport operator may issue personnel identification media in accordance with its security program to persons whose duties are expected to be temporary. The temporary identification media system must include procedures and methods to—

(1) Retrieve temporary identification media;

(2) Authorize the use of a temporary media for a limited time only;

(3) Ensure that temporary media are distinct from other identification media and clearly display an expiration date; and

(4) Ensure that any identification media also being used as an access media meet the criteria of § 1542.207(d).

(c) *Airport-approved identification media.* TSA may approve an amendment to the airport security program that provides for the use of identification media meeting the criteria of this section that are issued by entities other than the airport operator, as described in the security program.

(d) *Challenge program.* Each airport operator must establish and carry out a challenge program that requires each individual who has authorized unescorted access to secured areas and SIDA's to ascertain the authority of any individual who is not displaying an identification medium authorizing the individual to be present in the area. The challenge program must include procedures to challenge individuals not displaying airport approved identification media. The procedure must—

(1) Apply uniformly in secured areas, SIDAs, and exclusive areas;

(2) Describe how to challenge an individual directly or report any individual not visibly displaying an authorized identification medium, including procedures to notify the appropriate authority; and

(3) Describe support of challenge procedures, including law enforcement and any other responses to reports of individuals not displaying authorized identification media.

(e) *Escorting*. Each airport operator must establish and implement procedures for escorting individuals who do not have unescorted access authority to a secured area or SIDA that—

(1) Ensure that only individuals with unescorted access authority are permitted to escort;

(2) Ensure that the escorted individuals are continuously accompanied or monitored while within the secured area or SIDA in a manner sufficient to identify whether the escorted individual is engaged in activities other than those for which escorted access was granted, and to take action in accordance with the airport security program;

(3) Identify what action is to be taken by the escort, or other authorized individual, should individuals under escort engage in activities other than those for which access was granted;

(4) Prescribe law enforcement support for escort procedures; and

(5) Ensure that individuals escorted into a sterile area without being screened under § 1544.201 of this chapter remain under escort until they exit the sterile area, or submit to screening pursuant to § 1544.201 or § 1546.201 of this chapter.

(f) *Effective date*. The identification systems described in this section must be implemented by each airport operator not later than November 14, 2003.

§ 1542.213 Training.

(a) Each airport operator must ensure that individuals performing security-related functions for the airport operator are briefed on the provisions of this part, Security Directives, and Information Circulars, and the security program, to the extent that such individuals need to know in order to perform their duties.

(b) An airport operator may not authorize any individual unescorted access to the secured area or SIDA, except as provided in § 1542.5, unless that individual has successfully completed training in accordance with TSA-approved curriculum specified in the security program. This curriculum must detail the methods of instruction, provide attendees with an opportunity to ask questions, and include at least the following topics—

(1) The unescorted access authority of the individual to enter and be present in various areas of the airport;

(2) Control, use, and display of airport-approved access and identification media;

(3) Escort and challenge procedures and the law enforcement support for these procedures;

(4) Security responsibilities as specified in § 1540.105;

(5) Restrictions on divulging sensitive security information as described in part 1520 of this chapter; and

(6) Any other topics specified in the security program.

(c) An airport operator may not authorize any individual unescorted access to the AOA, except as provided in § 1542.5, unless that individual has been provided information in accordance with the security program, including—

(1) The unescorted access authority of the individual to enter and be present in various areas of the airport;

(2) Control, use, and display of airport-approved access and identification media, if appropriate;

(3) Escort and challenge procedures and the law enforcement support for these procedures, where applicable;

(4) Security responsibilities as specified in § 1540.105;

(5) Restrictions on divulging sensitive security information as described in part 1520 of this chapter; and

(6) Any other topics specified in the security program.

(d) Each airport operator must maintain a record of all training and information given to each individual under paragraphs (b) and (c) of this section for 180 days after the termination of that person's unescorted access authority.

(e) As to persons with unescorted access to the SIDA on November 14, 2001, training on responsibility under § 1540.105 can be provided by making relevant security information available.

(f) Training described in paragraph (c) of this section must be implemented

by each airport operator not later than November 14, 2002.

§ 1542.215 Law enforcement support.

(a) In accordance with § 1542.217, each airport operator required to have a security program under § 1542.103(a) or (b) must provide:

(1) Law enforcement personnel in the number and manner adequate to support its security program.

(2) Uniformed law enforcement personnel in the number and manner adequate to support each system for screening persons and accessible property required under part 1544 or 1546 of this chapter, except to the extent that TSA provides Federal law enforcement support for the system.

(b) Each airport required to have a security program under § 1542.103(c) must ensure that:

(1) Law enforcement personnel are available and committed to respond to an incident in support of a civil aviation security program when requested by an aircraft operator or foreign air carrier that has a security program under part 1544 or 1546 of this chapter.

(2) The procedures by which to request law enforcement support are provided to each aircraft operator or foreign air carrier that has a security program under part 1544 or 1546 of this chapter.

§ 1542.217 Law enforcement personnel.

(a) Each airport operator must ensure that law enforcement personnel used to meet the requirements of § 1542.215, meet the following qualifications while on duty at the airport—

(1) Have arrest authority described in paragraph (b) of this section;

(2) Are identifiable by appropriate indicia of authority;

(3) Are armed with a firearm and authorized to use it; and

(4) Have completed a training program that meets the requirements of paragraphs (c) and (d) of this section.

(b) Each airport operator must ensure that each individual used to meet the requirements of § 1542.215 have the authority to arrest, with or without a warrant, while on duty at the airport for the following violations of the criminal laws of the State and local jurisdictions in which the airport is located—

(1) A crime committed in the presence of the individual; and

(2) A felony, when the individual has reason to believe that the suspect has committed it.

(c) The training program required by paragraph (a)(4) of this section must—

(1) Meet the training standard for law enforcement officers prescribed by either the State or local jurisdiction in which the airport is located for law enforcement officers performing comparable functions.

(2) Specify and require training standards for private law enforcement personnel acceptable to TSA, if the State and local jurisdictions in which the airport is located do not prescribe training standards for private law enforcement personnel that meets the standards in paragraph (a) of this section.

(3) Include training in—

(i) The use of firearms;

(ii) The courteous and efficient treatment of persons subject to inspection, detention, search, arrest, and other aviation security activities;

(iii) The responsibilities of law enforcement personnel under the security program; and

(iv) Any other subject TSA determines is necessary.

(d) Each airport operator must document the training program required by paragraph (a)(4) of this section and maintain documentation of training at a location specified in the security program until 180 days after the departure or removal of each person providing law enforcement support at the airport.

§ 1542.219 Supplementing law enforcement personnel.

(a) When TSA decides, after being notified by an airport operator as prescribed in this section, that not enough qualified State, local, and private law enforcement personnel are available to carry out the requirements of § 1542.215, TSA may authorize the airport operator to use, on a reimbursable basis, personnel employed by TSA, or by another department, agency, or instrumentality of the Government with the consent of the head of the department,

agency, or instrumentality to supplement State, local, and private law enforcement personnel.

(b) Each request for the use of Federal personnel must be submitted to TSA and include the following information:

(1) The number of passengers enplaned at the airport during the preceding calendar year and the current calendar year as of the date of the request.

(2) The anticipated risk of criminal violence, sabotage, aircraft piracy, and other unlawful interference to civil aviation operations.

(3) A copy of that portion of the security program which describes the law enforcement support necessary to comply with § 1542.215.

(4) The availability of law enforcement personnel who meet the requirements of § 1542.217, including a description of the airport operator's efforts to obtain law enforcement support from State, local, and private agencies and the responses of those agencies.

(5) The airport operator's estimate of the number of Federal personnel needed to supplement available law enforcement personnel and the period of time for which they are needed.

(6) A statement acknowledging responsibility for providing reimbursement for the cost of providing Federal personnel.

(7) Any other information TSA considers necessary.

(c) In response to a request submitted in accordance with this section, TSA may authorize, on a reimbursable basis, the use of personnel employed by a Federal agency, with the consent of the head of that agency.

§ 1542.221 Records of law enforcement response.

(a) Each airport operator must ensure that—

(1) A record is made of each law enforcement action taken in furtherance of this part; and

(2) The record is maintained for a minimum of 180 days.

(b) Data developed in response to paragraph (a) of this section must include at least the following, except as authorized by TSA:

(1) The number and type of weapons, explosives, or incendiaries discovered during any passenger-screening process, and the method of detection of each.

(2) The number of acts and attempted acts of aircraft piracy.

(3) The number of bomb threats received, real and simulated bombs found, and actual detonations on the airport.

(4) The number of arrests, including—

(i) Name, address, and the immediate disposition of each individual arrested;

(ii) Type of weapon, explosive, or incendiary confiscated, as appropriate; and

(iii) Identification of the aircraft operators or foreign air carriers on which the individual arrested was, or was scheduled to be, a passenger or which screened that individual, as appropriate.

Subpart D—Contingency Measures

§ 1542.301 Contingency plan.

(a) Each airport operator required to have a security program under § 1542.103(a) and (b) must adopt a contingency plan and must:

(1) Implement its contingency plan when directed by TSA.

(2) Conduct reviews and exercises of its contingency plan as specified in the security program with all persons having responsibilities under the plan.

(3) Ensure that all parties involved know their responsibilities and that all information contained in the plan is current.

(b) TSA may approve alternative implementation measures, reviews, and exercises to the contingency plan which will provide an overall level of security equal to the contingency plan under paragraph (a) of this section.

§ 1542.303 Security Directives and Information Circulars.

(a) TSA may issue an Information Circular to notify airport operators of security concerns. When TSA determines that additional security measures are necessary to respond to a threat assessment or to a specific threat against civil aviation, TSA

issues a Security Directive setting forth mandatory measures.

(b) Each airport operator must comply with each Security Directive issued to the airport operator within the time prescribed in the Security Directive.

(c) Each airport operator that receives a Security Directive must—

(1) Within the time prescribed in the Security Directive, verbally acknowledge receipt of the Security Directive to TSA.

(2) Within the time prescribed in the Security Directive, specify the method by which the measures in the Security Directive have been implemented (or will be implemented, if the Security Directive is not yet effective).

(d) In the event that the airport operator is unable to implement the measures in the Security Directive, the airport operator must submit proposed alternative measures and the basis for submitting the alternative measures to TSA for approval. The airport operator must submit the proposed alternative measures within the time prescribed in the Security Directive. The airport operator must implement any alternative measures approved by TSA.

(e) Each airport operator that receives a Security Directive may comment on the Security Directive by submitting data, views, or arguments in writing to TSA. TSA may amend the Security Directive based on comments received. Submission of a comment does not delay the effective date of the Security Directive.

(f) Each airport operator that receives a Security Directive or an Information Circular and each person who receives information from a Security Directive or an Information Circular must:

(1) Restrict the availability of the Security Directive or Information Circular, and information contained in either document, to those persons with an operational need-to-know.

(2) Refuse to release the Security Directive or Information Circular, and information contained in either document, to persons other than those who have an operational need to know without the prior written consent of TSA.

§ 1542.305 Public advisories.

When advised by TSA, each airport operator must prominently display and maintain in public areas information concerning foreign airports that, in the judgment of the Secretary of Transportation, do not maintain and administer effective security measures. This information must be posted in the manner specified in the security program and for such a period of time determined by the Secretary of Transportation.

§ 1542.307 Incident management.

(a) Each airport operator must establish procedures to evaluate bomb threats, threats of sabotage, aircraft piracy, and other unlawful interference to civil aviation operations.

(b) Immediately upon direct or referred receipt of a threat of any of the incidents described in paragraph (a) of this section, each airport operator must—

(1) Evaluate the threat in accordance with its security program;

(2) Initiate appropriate action as specified in the Airport Emergency Plan under 14 CFR 139.325; and

(3) Immediately notify TSA of acts, or suspected acts, of unlawful interference to civil aviation operations, including specific bomb threats to aircraft and airport facilities.

(c) Airport operators required to have a security program under § 1542.103(c) but not subject to 14 CFR part 139, must develop emergency response procedures to incidents of threats identified in paragraph (a) of this section.

(d) To ensure that all parties know their responsibilities and that all procedures are current, at least once every 12 calendar months each airport operator must review the procedures required in paragraphs (a) and (b) of this section with all persons having responsibilities for such procedures.

PART 1544—AIRCRAFT OPERATOR SECURITY: AIR CARRIERS AND COMMERCIAL OPERATORS

Subpart A—General

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SOURCE: 67 FR 8364, Feb. 22, 2002, unless otherwise noted.

Subpart A—General

§ 1544.1 Applicability of this part.

(a) This part prescribes aviation security rules governing the following:

(1) The operations of aircraft operators holding operating certificates under 14 CFR part 119 for scheduled passenger operations, public charter passenger operations, private charter passenger operations; the operations of aircraft operators holding operating certificates under 14 CFR part 119 operating aircraft with a maximum certificated takeoff weight of 12,500 pounds or more; and other aircraft operators adopting and obtaining approval of an aircraft operator security program.

(2) Each law enforcement officer flying armed aboard an aircraft operated by an aircraft operator described in paragraph (a)(1) of this section.

(3) Each aircraft operator that receives a Security Directive or Information Circular and each person who receives information from a Security Directive or Information Circular issued by TSA.

(b) As used in this part, ''aircraft operator'' means an aircraft operator subject to this part as described in § 1544.101.

[67 FR 8364, Feb. 22, 2002, as amended at 67 FR 8209, Feb. 22, 2002]

§ 1544.3 TSA inspection authority.

(a) Each aircraft operator must allow TSA, at any time or place, to make any inspections or tests, including copying records, to determine compliance of an airport operator, aircraft operator, foreign air carrier, indirect air carrier, or other airport tenants with—

(1) This subchapter and any security program under this subchapter, and part 1520 of this chapter; and

(2) 49 U.S.C. Subtitle VII, as amended.

(b) At the request of TSA, each aircraft operator must provide evidence of compliance with this part and its security program, including copies of records.

(c) TSA may enter and be present within secured areas, AOAs, SIDAs, and other areas where security measures required by TSA are carried out, without access media or identification media issued or approved by an airport operator or aircraft operator, in order to inspect or test compliance, or perform other such duties as TSA may direct.

(d) At the request of TSA and the completion of SIDA training as required in a security program, each aircraft operator must promptly issue to TSA personnel access and identification media to provide TSA personnel with unescorted access to, and movement within, areas controlled by the aircraft operator under an exclusive area agreement.

[67 FR 8364, Feb. 22, 2002, as amended at 71 FR 30510, May 26, 2006]

Subpart B—Security Program

§ 1544.101 Adoption and implementation.

(a) *Full program.* Each aircraft operator must carry out subparts C, D, and E of this part and must adopt and carry out a security program that meets the requirements of § 1544.103 for each of the following operations:

(1) A scheduled passenger or public charter passenger operation with an aircraft having a passenger seating configuration of 61 or more seats.

(2) A scheduled passenger or public charter passenger operation with an aircraft having a passenger seating configuration of 60 or fewer seats when passengers are enplaned from or deplaned into a sterile area.

(b) *Partial program—adoption.* Each aircraft operator must carry out the requirements specified in paragraph (c) of this section for each of the following operations:

(1) A scheduled passenger or public charter passenger operation with an aircraft having a passenger-seating configuration of 31 or more but 60 or fewer seats that does not enplane from or deplane into a sterile area.

(2) A scheduled passenger or public charter passenger operation with an aircraft having a passenger-seating configuration of 60 or fewer seats engaged in operations to, from, or outside the United States that does not enplane from or deplane into a sterile area.

(c) *Partial program-content:* For operations described in paragraph (b) of this section, the aircraft operator must carry out the following, and must adopt and carry out a security program that meets the applicable requirements in § 1544.103 (c):

(1) The requirements of §§ 1544.215, 1544.217, 1544.219, 1544.223, 1544.230, 1544.235, 1544.237, 1544.301, 1544.303, and 1544.305.

(2) Other provisions of subparts C, D, and E of this part that TSA has approved upon request.

(3) The remaining requirements of subparts C, D, and E when TSA notifies the aircraft operator in writing that a security threat exists concerning that operation.

(d) *Twelve-five program-adoption:* Each aircraft operator must carry out the requirements of paragraph (e) of this section for each operation that meets all of the following—

(1) Is an aircraft with a maximum certificated takeoff weight of more than 12,500 pounds;

(2) Is in scheduled or charter service;

(3) Is carrying passengers or cargo or both; and

(4) Is not under a full program, partial program, or full all-cargo program under paragraph (a), (b), or (h) of this section.

(e) *Twelve-five program-contents:* For each operation described in paragraph (d) of this section, the aircraft operator must carry out the following, and must adopt and carry out a security program that meets the applicable requirements of § 1544.103 (c):

(1) The requirements of §§ 1544.215, 1544.217, 1544.219, 1544.223, 1544.230, 1544.235, 1544.237, 1544.301(a) and (b), 1544.303, and 1544.305; and in addition, for all-cargo operations of §§ 1544.202, 1544.205(a), (b), (d), and (f).

(2) Other provisions of subparts C, D, and E that TSA has approved upon request.

(3) The remaining requirements of subparts C, D, and E when TSA notifies the aircraft operator in writing that a security threat exists concerning that operation.

(f) *Private charter program.* In addition to paragraph (d) of this section, if applicable, each aircraft operator must carry out §§ 1544.201, 1544.207, 1544.209, 1544.211, 1544.215, 1544.217, 1544.219, 1544.225, 1544.229, 1544.230, 1544.233, 1544.235, 1544.303, and 1544.305, and subpart E of this part and—

(1) Must adopt and carry out a security program that meets the applicable requirements of § 1544.103 for each private charter passenger operation in which—

(i) The passengers are enplaned from or deplaned into a sterile area; or

(ii) The aircraft has a maximum certificated takeoff weight greater than 45,500 kg (100,309.3 pounds), or a passenger-seating configuration of 61 or more, and is not a government charter under paragraph (2) of the definition of private charter in § 1540.5 of this chapter.

(2) The Administrator may authorize alternate procedures under paragraph (f)(1) of this section as appropriate.

(g) *Limited program:* In addition to paragraph (d) of this section, if applicable, TSA may approve a security program after receiving a request by an aircraft operator holding a certificate under 14 CFR part 119, other than one identified in paragraph (a), (b), (d), or (f) of this section. The aircraft operator must—

(1) Carry out selected provisions of subparts C, D, and E;

(2) Carry out the provisions of § 1544.305, as specified in its security program; and

(3) Adopt and carry out a security program that meets the applicable requirements of § 1544.103 (c).

(h) *Full all-cargo program—adoption:* Each aircraft operator must carry out the requirements of paragraph (i) of this section for each operation that is—

(1) In an aircraft with a maximum certificated takeoff weight of more than 45,500 kg (100,309.3 pounds); and

(2) Carrying cargo and authorized persons and no passengers.

(i) *Full all-cargo program—contents:* For each operation described in paragraph (h) of this section, the aircraft operator must carry out the following, and must adopt and carry out a security program that meets the applicable requirements of § 1544.103(c):

(1) The requirements of §§ 1544.202, 1544.205, 1544.207, 1544.209, 1544.211, 1544.215, 1544.217, 1544.219, 1544.225, 1544.227, 1544.228, 1544.229, 1544.230, 1544.231, 1544.233, 1544.235, 1544.237, 1544.301, 1544.303, and 1544.305.

(2) Other provisions of subpart C of this part that TSA has approved upon request.

(3) The remaining requirements of subpart C of this part when TSA notifies the aircraft operator in writing that a security threat exists concerning that operation.

[67 FR 8364, Feb. 22, 2002, as amended at 67 FR 8209, Feb. 22, 2002; 67 FR 41639, June 19, 2002; 67 FR 79887, Dec. 31, 2002; 71 FR 30510, May 26, 2006]

§ 1544.103 Form, content, and availability.

(a) *General requirements.* Each security program must:

(1) Provide for the safety of persons and property traveling on flights provided by the aircraft operator against acts of criminal violence and air piracy, and the introduction of explosives, incendiaries, or weapons aboard an aircraft.

(2) Be in writing and signed by the aircraft operator or any person delegated authority in this matter.

(3) Be approved by TSA.

(b) *Availability.* Each aircraft operator having a security program must:

(1) Maintain an original copy of the security program at its corporate office.

(2) Have accessible a complete copy, or the pertinent portions of its security program, or appropriate implementing instructions, at each airport served. An electronic version of the program is adequate.

(3) Make a copy of the security program available for inspection upon request of TSA.

(4) Restrict the distribution, disclosure, and availability of information contained in the security program to

persons with a need-to-know as described in part 1520 of this chapter.

(5) Refer requests for such information by other persons to TSA.

(c) *Content.* The security program must include, as specified for that aircraft operator in § 1544.101, the following:

(1) The procedures and description of the facilities and equipment used to comply with the requirements of § 1544.201 regarding the acceptance and screening of individuals and their accessible property, including, if applicable, the carriage weapons as part of State-required emergency equipment.

(2) The procedures and description of the facilities and equipment used to comply with the requirements of § 1544.203 regarding the acceptance and screening of checked baggage.

(3) The procedures and description of the facilities and equipment used to comply with the requirements of § 1544.205 regarding the acceptance and screening of cargo.

(4) The procedures and description of the facilities and equipment used to comply with the requirements of § 1544.207 regarding the screening of individuals and property.

(5) The procedures and description of the facilities and equipment used to comply with the requirements of § 1544.209 regarding the use of metal detection devices.

(6) The procedures and description of the facilities and equipment used to comply with the requirements of § 1544.211 regarding the use of x-ray systems.

(7) The procedures and description of the facilities and equipment used to comply with the requirements of § 1544.213 regarding the use of explosives detection systems.

(8) The procedures used to comply with the requirements of § 1544.215 regarding the responsibilities of security coordinators. The names of the Aircraft Operator Security Coordinator (AOSC) and any alternate, and the means for contacting the AOSC(s) on a 24-hour basis, as provided in § 1544.215.

(9) The procedures used to comply with the requirements of § 1544.217 regarding the requirements for law enforcement personnel.

(10) The procedures used to comply with the requirements of § 1544.219 regarding carriage of accessible weapons.

(11) The procedures used to comply with the requirements of § 1544.221 regarding carriage of prisoners under the control of armed law enforcement officers.

(12) The procedures used to comply with the requirements of § 1544.223 regarding transportation of Federal Air Marshals.

(13) The procedures and description of the facilities and equipment used to perform the aircraft and facilities control function specified in § 1544.225.

(14) The specific locations where the air carrier has entered into an exclusive area agreement under § 1544.227.

(15) The procedures used to comply with the applicable requirements of §§ 1544.229 and 1544.230 regarding fingerprint-based criminal history records checks.

(16) The procedures used to comply with the requirements of § 1544.231 regarding personnel identification systems.

(17) The procedures and syllabi used to accomplish the training required under § 1544.233.

(18) The procedures and syllabi used to accomplish the training required under § 1544.235.

(19) An aviation security contingency plan as specified under § 1544.301.

(20) The procedures used to comply with the requirements of § 1544.303 regarding bomb and air piracy threats.

(21) The procedures used to comply with § 1544.237 regarding flight deck privileges.

(22) The Aircraft Operator Implementation Plan (AOIP) as required under 49 CFR 1560.109.

[67 FR 8364, Feb. 22, 2002, as amended at 67 FR 8209, Feb. 22, 2002; 73 FR 64061, Oct. 28, 2008]

§ 1544.105 Approval and amendments.

(a) *Initial approval of security program.* Unless otherwise authorized by TSA, each aircraft operator required to have a security program under this part must submit its proposed security program to the designated official for approval at least 90 days before the intended date of passenger operations. The proposed security program must

meet the requirements applicable to its operation as described in § 1544.101. Such requests will be processed as follows:

(1) The designated official, within 30 days after receiving the proposed aircraft operator security program, will either approve the program or give the aircraft operator written notice to modify the program to comply with the applicable requirements of this part.

(2) The aircraft operator may either submit a modified security program to the designated official for approval, or petition the Administrator to reconsider the notice to modify within 30 days of receiving a notice to modify. A petition for reconsideration must be filed with the designated official.

(3) The designated official, upon receipt of a petition for reconsideration, either amends or withdraws the notice, or transmits the petition, together with any pertinent information, to the Administrator for reconsideration. The Administrator disposes of the petition within 30 days of receipt by either directing the designated official to withdraw or amend the notice to modify, or by affirming the notice to modify.

(b) *Amendment requested by an aircraft operator*. An aircraft operator may submit a request to TSA to amend its security program as follows:

(1) The request for an amendment must be filed with the designated official at least 45 days before the date it proposes for the amendment to become effective, unless a shorter period is allowed by the designated official.

(2) Within 30 days after receiving a proposed amendment, the designated official, in writing, either approves or denies the request to amend.

(3) An amendment to an aircraft operator security program may be approved if the designated official determines that safety and the public interest will allow it, and the proposed amendment provides the level of security required under this part.

(4) Within 30 days after receiving a denial, the aircraft operator may petition the Administrator to reconsider the denial. A petition for reconsideration must be filed with the designated official.

(5) Upon receipt of a petition for reconsideration, the designated official either approves the request to amend or transmits the petition, together with any pertinent information, to the Administrator for reconsideration. The Administrator disposes of the petition within 30 days of receipt by either directing the designated official to approve the amendment, or affirming the denial.

(6) Any aircraft operator may submit a group proposal for an amendment that is on behalf of it and other aircraft operators that co-sign the proposal.

(c) *Amendment by TSA*. If safety and the public interest require an amendment, TSA may amend a security program as follows:

(1) The designated official notifies the aircraft operator, in writing, of the proposed amendment, fixing a period of not less than 30 days within which the aircraft operator may submit written information, views, and arguments on the amendment.

(2) After considering all relevant material, the designated official notifies the aircraft operator of any amendment adopted or rescinds the notice. If the amendment is adopted, it becomes effective not less than 30 days after the aircraft operator receives the notice of amendment, unless the aircraft operator petitions the Administrator to reconsider no later than 15 days before the effective date of the amendment. The aircraft operator must send the petition for reconsideration to the designated official. A timely petition for reconsideration stays the effective date of the amendment.

(3) Upon receipt of a petition for reconsideration, the designated official either amends or withdraws the notice or transmits the petition, together with any pertinent information, to the Administrator for reconsideration. The Administrator disposes of the petition within 30 days of receipt by either directing the designated official to withdraw or amend the amendment, or by affirming the amendment.

(d) *Emergency amendments*. If the designated official finds that there is an emergency requiring immediate action with respect to safety in air transportation or in air commerce that makes procedures in this section contrary to

the public interest, the designated official may issue an amendment, without the prior notice and comment procedures in paragraph (c) of this section, effective without stay on the date the aircraft operator receives notice of it. In such a case, the designated official will incorporate in the notice a brief statement of the reasons and findings for the amendment to be adopted. The aircraft operator may file a petition for reconsideration under paragraph (c) of this section; however, this does not stay the effective date of the emergency amendment.

Subpart C—Operations

§ 1544.201 Acceptance and screening of individuals and accessible property.

(a) *Preventing or deterring the carriage of any explosive, incendiary, or deadly or dangerous weapon.* Each aircraft operator must use the measures in its security program to prevent or deter the carriage of any weapon, explosive, or incendiary on or about each individual's person or accessible property before boarding an aircraft or entering a sterile area.

(b) *Screening of individuals and accessible property.* Except as provided in its security program, each aircraft operator must ensure that each individual entering a sterile area at each preboard screening checkpoint for which it is responsible, and all accessible property under that individual's control, are inspected for weapons, explosives, and incendiaries as provided in § 1544.207.

(c) *Refusal to transport.* Each aircraft operator must deny entry into a sterile area and must refuse to transport—

(1) Any individual who does not consent to a search or inspection of his or her person in accordance with the system prescribed in this part; and

(2) Any property of any individual or other person who does not consent to a search or inspection of that property in accordance with the system prescribed by this part.

(d) *Prohibitions on carrying a weapon, explosive, or incendiary.* Except as provided in §§ 1544.219, 1544.221, and 1544.223, no aircraft operator may permit any individual to have a weapon, explosive, or incendiary, on or about the individual's person or accessible property when onboard an aircraft.

(e) *Staffing.* Each aircraft operator must staff its security screening checkpoints with supervisory and non-supervisory personnel in accordance with the standards specified in its security program.

§ 1544.202 Persons and property onboard an all-cargo aircraft.

Each aircraft operator operating under a full all-cargo program, or a twelve-five program in an all-cargo operation, must apply the security measures in its security program for persons who board the aircraft for transportation, and for their property, to prevent or deter the carriage of any unauthorized persons, and any unauthorized weapons, explosives, incendiaries, and other destructive devices, items, or substances.

[71 FR 30510, May 26, 2006]

§ 1544.203 Acceptance and screening of checked baggage.

(a) *Preventing or deterring the carriage of any explosive or incendiary.* Each aircraft operator must use the procedures, facilities, and equipment described in its security program to prevent or deter the carriage of any unauthorized explosive or incendiary onboard aircraft in checked baggage.

(b) *Acceptance.* Each aircraft operator must ensure that checked baggage carried in the aircraft is received by its authorized aircraft operator representative.

(c) *Screening of checked baggage.* Except as provided in its security program, each aircraft operator must ensure that all checked baggage is inspected for explosives and incendiaries before loading it on its aircraft, in accordance with § 1544.207.

(d) *Control.* Each aircraft operator must use the procedures in its security program to control checked baggage that it accepts for transport on an aircraft, in a manner that:

(1) Prevents the unauthorized carriage of any explosive or incendiary aboard the aircraft.

(2) Prevents access by persons other than an aircraft operator employee or its agent.

(e) *Refusal to transport.* Each aircraft operator must refuse to transport any individual's checked baggage or property if the individual does not consent to a search or inspection of that checked baggage or property in accordance with the system prescribed by this part.

(f) *Firearms in checked baggage.* No aircraft operator may knowingly permit any person to transport in checked baggage:

(1) Any loaded firearm(s).

(2) Any unloaded firearm(s) unless—

(i) The passenger declares to the aircraft operator, either orally or in writing before checking the baggage that any firearm carried in the baggage is unloaded;

(ii) The firearm is carried in a hard-sided container;

(iii) The container in which it is carried is locked, and only the individual checking the baggage retains the key or combination; and

(iv) The checked baggage containing the firearm is carried in an area that is inaccessible to passengers, and is not carried in the flightcrew compartment,.

(3) Any unauthorized explosive or incendiary.

(g) *Ammunition.* This section does not prohibit the carriage of ammunition in checked baggage or in the same container as a firearm. Title 49 CFR part 175 provides additional requirements governing carriage of ammunition on aircraft.

§ 1544.205 Acceptance and screening of cargo.

(a) *Preventing or deterring the carriage of any explosive or incendiary.* Each aircraft operator operating under a full program, a full all-cargo program, or a twelve-five program in an all-cargo operation, must use the procedures, facilities, and equipment described in its security program to prevent or deter the carriage of any unauthorized persons, and any unauthorized explosives, incendiaries, and other destructive substances or items in cargo onboard an aircraft.

(b) *Screening and inspection of cargo.* Each aircraft operator operating under a full program or a full all-cargo program, or a twelve-five program in an all-cargo operation, must ensure that cargo is screened and inspected for any unauthorized person, and any unauthorized explosive, incendiary, and other destructive substance or item as provided in the aircraft operator's security program and § 1544.207, and as provided in § 1544.239 for operations under a full program, before loading it on its aircraft.

(c) *Control.* Each aircraft operator operating under a full program or a full all-cargo program must use the procedures in its security program to control cargo that it accepts for transport on an aircraft in a manner that:

(1) Prevents the carriage of any unauthorized person, and any unauthorized explosive, incendiary, and other destructive substance or item in cargo onboard an aircraft.

(2) Prevents unescorted access by persons other than an authorized aircraft operator employee or agent, or persons authorized by the airport operator or host government.

(d) *Refusal to transport.* Except as otherwise provided in its program, each aircraft operator operating under a full program, a full all-cargo program, or a twelve-five program in an all-cargo operation, must refuse to transport any cargo if the shipper does not consent to a search or inspection of that cargo in accordance with the system prescribed by this part.

(e) *Acceptance of cargo only from specified persons.* Each aircraft operator operating under a full program or a full all-cargo program may accept cargo for air transportation only from the shipper, or from an aircraft operator, foreign air carrier, or indirect air carrier operating under a security program under this chapter with a comparable cargo security program, as provided in its security program.

(f) *Acceptance and screening of cargo outside the United States.* For cargo to be loaded on its aircraft outside the United States, each aircraft operator must carry out the requirements of its security program.

[71 FR 30510, May 26, 2006]

EFFECTIVE DATE NOTE: At 74 FR 47703, Sept. 16, 2009, § 1544.205 was amended by revising paragraph (e) and adding a new paragraph (g), effective November 16, 2009. For

the convenience of the user, the added and revised text is set forth as follows:

§ 1544.205 Acceptance and screening of cargo.

* * * * *

(e) *Acceptance of cargo only from specified persons.* Each aircraft operator operating under a full program or a full all-cargo program may accept cargo to be loaded in the United States for air transportation only from the shipper, an aircraft operator, foreign air carrier, or indirect air carrier operating under a security program under this chapter with a comparable cargo security program, or, in the case of an operator under a full program, from a certified cargo screening facility, as provided in its security program.

* * * * *

(g) *Screening of cargo loaded inside the United States by a full program operator.* For cargo to be loaded in the United States, each operator under a full program in § 1544.101(a) must ensure that all cargo is screened in the United States as follows:

(1) *Amount screened.* (i) Not later than February 3, 2009, each operator under a full program must ensure that at least 50 percent of its cargo is screened prior to transport on a passenger aircraft.

(ii) Not later than August 3, 2010, each operator under a full program must ensure that 100 percent of its cargo is screened prior to transport on a passenger aircraft.

(2) *Methods of screening.* For the purposes of this paragraph (g), the aircraft operator must ensure that cargo is screened using a physical examination or non-intrusive method of assessing whether cargo poses a threat to transportation security, as provided in its security program. Such methods may include TSA-approved x-ray systems, explosives detection systems, explosives trace detection, explosives detection canine teams certified by TSA, or a physical search together with manifest verification, or other method approved by TSA.

(3) *Limitation on who may conduct screening.* Screening must be conducted by the aircraft operator on an airport with a complete program under 49 CFR part 1542, by another aircraft operator or foreign air carrier operating under a security program under this chapter with a comparable cargo security program on an airport, by a certified cargo screening facility in accordance with 49 CFR part 1549, or by TSA. If an aircraft operator or foreign air carrier screens cargo off an airport, it must do so as a certified cargo screening facility in accordance with part 1549.

(4) *Verification.* The aircraft operator must verify that the chain of custody measures for the screened cargo are intact prior to loading such cargo on aircraft, or must ensure that the cargo is re-screened in accordance with this chapter.

§ 1544.207 Screening of individuals and property.

(a) *Applicability of this section.* This section applies to the inspection of individuals, accessible property, checked baggage, and cargo as required under this part.

(b) *Locations within the United States at which TSA conducts screening.* Each aircraft operator must ensure that the individuals or property have been inspected by TSA before boarding or loading on its aircraft. This paragraph applies when TSA is conducting screening using TSA employees or when using companies under contract with TSA.

(c) *Aircraft operator conducting screening.* Each aircraft operator must use the measures in its security program and in subpart E of this part to inspect the individual or property. This paragraph does not apply at locations identified in paragraphs (b) and (d) of this section.

(d) *Locations outside the United States at which the foreign government conducts screening.* Each aircraft operator must ensure that all individuals and property have been inspected by the foreign government. This paragraph applies when the host government is conducting screening using government employees or when using companies under contract with the government.

§ 1544.209 Use of metal detection devices.

(a) No aircraft operator may use a metal detection device within the United States or under the aircraft operator's operational control outside the United States to inspect persons, unless specifically authorized under a security program under this part. No aircraft operator may use such a device contrary to its security program.

(b) Metal detection devices must meet the calibration standards established by TSA.

§ 1544.211 Use of X-ray systems.

(a) *TSA authorization required.* No aircraft operator may use any X-ray system within the United States or under the aircraft operator's operational control outside the United States to inspect accessible property or checked baggage, unless specifically authorized under its security program. No aircraft operator may use such a system in a manner contrary to its security program. TSA authorizes aircraft operators to use X-ray systems for inspecting accessible property or checked baggage under a security program if the aircraft operator shows that—

(1) The system meets the standards for cabinet X-ray systems primarily for the inspection of baggage issued by the Food and Drug Administration (FDA) and published in 21 CFR 1020.40;

(2) A program for initial and recurrent training of operators of the system is established, which includes training in radiation safety, the efficient use of X-ray systems, and the identification of weapons, explosives, and incendiaries; and

(3) The system meets the imaging requirements set forth in its security program using the step wedge specified in American Society for Testing Materials (ASTM) Standard F792–88 (Reapproved 1993). This standard is incorporated by reference in paragraph (g) of this section.

(b) *Annual radiation survey.* No aircraft operator may use any X-ray system unless, within the preceding 12 calendar months, a radiation survey is conducted that shows that the system meets the applicable performance standards in 21 CFR 1020.40.

(c) *Radiation survey after installation or moving.* No aircraft operator may use any X-ray system after the system has been installed at a screening point or after the system has been moved unless a radiation survey is conducted which shows that the system meets the applicable performance standards in 21 CFR 1020.40. A radiation survey is not required for an X-ray system that is designed and constructed as a mobile unit and the aircraft operator shows that it can be moved without altering its performance.

(d) *Defect notice or modification order.* No aircraft operator may use any X-ray system that is not in full compliance with any defect notice or modification order issued for that system by the FDA, unless the FDA has advised TSA that the defect or failure to comply does not create a significant risk of injury, including genetic injury, to any person.

(e) *Signs and inspection of photographic equipment and film.* (1) At locations at which an aircraft operator uses an X-ray system to inspect accessible property the aircraft operator must ensure that a sign is posted in a conspicuous place at the screening checkpoint. At locations outside the United States at which a foreign government uses an X-ray system to inspect accessible property the aircraft operator must ensure that a sign is posted in a conspicuous place at the screening checkpoint.

(2) At locations at which an aircraft operator or TSA uses an X-ray system to inspect checked baggage the aircraft operator must ensure that a sign is posted in a conspicuous place where the aircraft operator accepts checked baggage.

(3) The signs required under this paragraph (e) must notify individuals that such items are being inspected by an X-ray and advise them to remove all X-ray, scientific, and high-speed film from accessible property and checked baggage before inspection. This sign must also advise individuals that they may request that an inspection be made of their photographic equipment and film packages without exposure to an X-ray system. If the X-ray system exposes any accessible property or checked baggage to more than one milliroentgen during the inspection, the sign must advise individuals to remove film of all kinds from their articles before inspection.

(4) If requested by individuals, their photographic equipment and film packages must be inspected without exposure to an X-ray system.

(f) *Radiation survey verification after installation or moving.* Each aircraft operator must maintain at least one copy of the results of the most recent radiation survey conducted under paragraph (b) or (c) of this section and must make it available for inspection upon

request by TSA at each of the following locations—

(1) The aircraft operator's principal business office; and

(2) The place where the X-ray system is in operation.

(g) *Incorporation by reference.* The American Society for Testing and Materials (ASTM) Standard F792–88 (Reapproved 1993), ''Standard Practice for Design and Use of Ionizing Radiation Equipment for the Detection of Items Prohibited in Controlled Access Areas,'' is approved for incorporation by reference by the Director of the Federal Register pursuant to 5 U.S.C. 552(a) and 1 CFR part 51. ASTM Standard F792–88 may be examined at the Department of Transportation (DOT) Docket, 400 Seventh Street SW, Room Plaza 401, Washington, DC 20590, or on DOT's Docket Management System (DMS) web page at *http://dms.dot.gov/search* (under docket number FAA–2001–8725). Copies of the standard may be examined also at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*. In addition, ASTM Standard F792–88 (Reapproved 1993) may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.

(h) *Duty time limitations.* Each aircraft operator must comply with the X-ray operator duty time limitations specified in its security program.

[67 FR 8364, Feb. 22, 2002, as amended at 69 FR 18803, Apr. 9, 2004]

§ 1544.213 Use of explosives detection systems.

(a) *Use of explosive detection equipment.* If TSA so requires by an amendment to an aircraft operator's security program, each aircraft operator required to conduct screening under a security program must use an explosives detection system approved by TSA to screen checked baggage on international flights.

(b) *Signs and inspection of photographic equipment and film.* (1) At locations at which an aircraft operator or TSA uses an explosives detection system that uses X-ray technology to inspect checked baggage the aircraft operator must ensure that a sign is posted in a conspicuous place where the aircraft operator accepts checked baggage. The sign must notify individuals that such items are being inspected by an explosives detection system and advise them to remove all X-ray, scientific, and high-speed film from checked baggage before inspection. This sign must also advise individuals that they may request that an inspection be made of their photographic equipment and film packages without exposure to an explosives detection system.

(2) If the explosives detection system exposes any checked baggage to more than one milliroentgen during the inspection the aircraft operator must post a sign which advises individuals to remove film of all kinds from their articles before inspection. If requested by individuals, their photographic equipment and film packages must be inspected without exposure to an explosives detection system.

§ 1544.215 Security coordinators.

(a) *Aircraft Operator Security Coordinator.* Each aircraft operator must designate and use an Aircraft Operator Security Coordinator (AOSC). The AOSC and any alternates must be appointed at the corporate level and must serve as the aircraft operator's primary contact for security-related activities and communications with TSA, as set forth in the security program. Either the AOSC, or an alternate AOSC, must be available on a 24-hour basis.

(b) *Ground Security Coordinator.* Each aircraft operator must designate and use a Ground Security Coordinator for each domestic and international flight departure to carry out the Ground Security Coordinator duties specified in the aircraft operator's security program. The Ground Security Coordinator at each airport must conduct the following daily:

(1) A review of all security-related functions for which the aircraft operator is responsible, for effectiveness and compliance with this part, the aircraft operator's security program, and applicable Security Directives.

(2) Immediate initiation of corrective action for each instance of noncompliance with this part, the aircraft operator's security program, and applicable Security Directives. At foreign airports where such security measures are provided by an agency or contractor of a host government, the aircraft operator must notify TSA for assistance in resolving noncompliance issues.

(c) *In-flight Security Coordinator*. Each aircraft operator must designate and use the pilot in command as the In-flight Security Coordinator for each domestic and international flight to perform duties specified in the aircraft operator's security program.

§ 1544.217 Law enforcement personnel.

(a) The following applies to operations at airports within the United States that are not required to hold a security program under part 1542 of this chapter.

(1) For operations described in § 1544.101(a) each aircraft operator must provide for law enforcement personnel meeting the qualifications and standards specified in §§ 1542.215 and 1542.217 of this chapter.

(2) For operations under a partial program under § 1544.101(b) and (c), a twelve-five program under § 1544.101(d) and (e), a private charter program under § 1544.101(f), or a full all-cargo program under § 1544.101(h) and (i), each aircraft operator must—

(i) Arrange for law enforcement personnel meeting the qualifications and standards specified in § 1542.217 of this chapter to be available to respond to an incident; and

(ii) Provide its employees, including crewmembers, current information regarding procedures for obtaining law enforcement assistance at that airport.

(b) The following applies to operations at airports required to hold security programs under part 1542 of this chapter. For operations under a partial program under § 1544.101(b) and (c), a twelve-five program under § 1544.101(d) and (e), a private charter program under § 1544.101(f), or a full all-cargo program under § 1544.101(h) and (i), each aircraft operator must—

(1) Arrange with TSA and the airport operator, as appropriate, for law enforcement personnel meeting the qualifications and standards specified in § 1542.217 of this chapter to be available to respond to incidents, and

(2) Provide its employees, including crewmembers, current information regarding procedures for obtaining law enforcement assistance at that airport.

[67 FR 8364, Feb. 22, 2002, as amended at 71 FR 30510, May 26, 2006]

§ 1544.219 Carriage of accessible weapons.

(a) *Flights for which screening is conducted*. The provisions of § 1544.201(d), with respect to accessible weapons, do not apply to a law enforcement officer (LEO) aboard a flight for which screening is required if the requirements of this section are met. Paragraph (a) of this section does not apply to a Federal Air Marshal on duty status under § 1544.223.

(1) Unless otherwise authorized by TSA, the armed LEO must meet the following requirements:

(i) Be a Federal law enforcement officer or a full-time municipal, county, or state law enforcement officer who is a direct employee of a government agency.

(ii) Be sworn and commissioned to enforce criminal statutes or immigration statutes.

(iii) Be authorized by the employing agency to have the weapon in connection with assigned duties.

(iv) Has completed the training program ''Law Enforcement Officers Flying Armed.''

(2) In addition to the requirements of paragraph (a)(1) of this section, the armed LEO must have a need to have the weapon accessible from the time he or she would otherwise check the weapon until the time it would be claimed after deplaning. The need to have the weapon accessible must be determined by the employing agency, department, or service and be based on one of the following:

(i) The provision of protective duty, for instance, assigned to a principal or advance team, or on travel required to be prepared to engage in a protective function.

(ii) The conduct of a hazardous surveillance operation.

(iii) On official travel required to report to another location, armed and prepared for duty.

(iv) Employed as a Federal LEO, whether or not on official travel, and armed in accordance with an agency-wide policy governing that type of travel established by the employing agency by directive or policy statement.

(v) Control of a prisoner, in accordance with §1544.221, or an armed LEO on a round trip ticket returning from escorting, or traveling to pick up, a prisoner.

(vi) TSA Federal Air Marshal on duty status.

(3) The armed LEO must comply with the following notification requirements:

(i) All armed LEOs must notify the aircraft operator of the flight(s) on which he or she needs to have the weapon accessible at least 1 hour, or in an emergency as soon as practicable, before departure.

(ii) Identify himself or herself to the aircraft operator by presenting credentials that include a clear full-face picture, the signature of the armed LEO, and the signature of the authorizing official of the agency, service, or department or the official seal of the agency, service, or department. A badge, shield, or similar device may not be used, or accepted, as the sole means of identification.

(iii) If the armed LEO is a State, county, or municipal law enforcement officer, he or she must present an original letter of authority, signed by an authorizing official from his or her employing agency, service or department, confirming the need to travel armed and detailing the itinerary of the travel while armed.

(iv) If the armed LEO is an escort for a foreign official then this paragraph (a)(3) may be satisfied by a State Department notification.

(4) The aircraft operator must do the following:

(i) Obtain information or documentation required in paragraphs (a)(3)(ii), (iii), and (iv) of this section.

(ii) Advise the armed LEO, before boarding, of the aircraft operator's procedures for carrying out this section.

(iii) Have the LEO confirm he/she has completed the training program ''Law Enforcement Officers Flying Armed'' as required by TSA, unless otherwise authorized by TSA.

(iv) Ensure that the identity of the armed LEO is known to the appropriate personnel who are responsible for security during the boarding of the aircraft.

(v) Notify the pilot in command and other appropriate crewmembers, of the location of each armed LEO aboard the aircraft. Notify any other armed LEO of the location of each armed LEO, including FAM's. Under circumstances described in the security program, the aircraft operator must not close the doors until the notification is complete.

(vi) Ensure that the information required in paragraphs (a)(3)(i) and (ii) of this section is furnished to the flight crew of each additional connecting flight by the Ground Security Coordinator or other designated agent at each location.

(b) *Flights for which screening is not conducted.* The provisions of §1544.201(d), with respect to accessible weapons, do not apply to a LEO aboard a flight for which screening is not required if the requirements of paragraphs (a)(1), (3), and (4) of this section are met.

(c) *Alcohol.* (1) No aircraft operator may serve any alcoholic beverage to an armed LEO.

(2) No armed LEO may:

(i) Consume any alcoholic beverage while aboard an aircraft operated by an aircraft operator.

(ii) Board an aircraft armed if they have consumed an alcoholic beverage within the previous 8 hours.

(d) *Location of weapon.* (1) Any individual traveling aboard an aircraft while armed must at all times keep their weapon:

(i) Concealed and out of view, either on their person or in immediate reach, if the armed LEO is not in uniform.

(ii) On their person, if the armed LEO is in uniform.

(2) No individual may place a weapon in an overhead storage bin.

§ 1544.221 Carriage of prisoners under the control of armed law enforcement officers.

(a) This section applies as follows:

(1) This section applies to the transport of prisoners under the escort of an armed law enforcement officer.

(2) This section does not apply to the carriage of passengers under voluntary protective escort.

(3) This section does not apply to the escort of non-violent detainees of the Immigration and Naturalization Service. This section does not apply to individuals who may be traveling with a prisoner and armed escort, such as the family of a deportee who is under armed escort.

(b) For the purpose of this section:

(1) ''High risk prisoner'' means a prisoner who is an exceptional escape risk, as determined by the law enforcement agency, and charged with, or convicted of, a violent crime.

(2) ''Low risk prisoner'' means any prisoner who has not been designated as ''high risk.''

(c) No aircraft operator may carry a prisoner in the custody of an armed law enforcement officer aboard an aircraft for which screening is required unless, in addition to the requirements in § 1544.219, the following requirements are met:

(1) The agency responsible for control of the prisoner has determined whether the prisoner is considered a high risk or a low risk.

(2) Unless otherwise authorized by TSA, no more than one high risk prisoner may be carried on the aircraft.

(d) No aircraft operator may carry a prisoner in the custody of an armed law enforcement officer aboard an aircraft for which screening is required unless the following staffing requirements are met:

(1) A minimum of one armed law enforcement officer must control a low risk prisoner on a flight that is scheduled for 4 hours or less. One armed law enforcement officer may control no more than two low risk prisoners.

(2) A minimum of two armed law enforcement officers must control a low risk prisoner on a flight that is scheduled for more than 4 hours. Two armed law enforcement officers may control no more than two low risk prisoners.

(3) For high-risk prisoners:

(i) For one high-risk prisoner on a flight: A minimum of two armed law enforcement officers must control a high risk prisoner. No other prisoners may be under the control of those two armed law enforcement officers.

(ii) If TSA has authorized more than one high-risk prisoner to be on the flight under paragraph (c)(2) of this section, a minimum of one armed law enforcement officer for each prisoner and one additional armed law enforcement officer must control the prisoners. No other prisoners may be under the control of those armed law enforcement officers.

(e) An armed law enforcement officer who is escorting a prisoner—

(1) Must notify the aircraft operator at least 24 hours before the scheduled departure, or, if that is not possible as far in advance as possible of the following—

(i) The identity of the prisoner to be carried and the flight on which it is proposed to carry the prisoner; and

(ii) Whether or not the prisoner is considered to be a high risk or a low risk.

(2) Must arrive at the check-in counter at least 1 hour before to the scheduled departure.

(3) Must assure the aircraft operator, before departure, that each prisoner under the control of the officer(s) has been searched and does not have on or about his or her person or property anything that can be used as a weapon.

(4) Must be seated between the prisoner and any aisle.

(5) Must accompany the prisoner at all times, and keep the prisoner under control while aboard the aircraft.

(f) No aircraft operator may carry a prisoner in the custody of an armed law enforcement officer aboard an aircraft unless the following are met:

(1) When practicable, the prisoner must be boarded before any other boarding passengers and deplaned after all other deplaning passengers.

(2) The prisoner must be seated in a seat that is neither located in any passenger lounge area nor located next to or directly across from any exit and, when practicable, the aircraft operator should seat the prisoner in the rearmost seat of the passenger cabin.

(g) Each armed law enforcement officer escorting a prisoner and each aircraft operator must ensure that the prisoner is restrained from full use of his or her hands by an appropriate device that provides for minimum movement of the prisoner's hands, and must ensure that leg irons are not used.

(h) No aircraft operator may provide a prisoner under the control of a law enforcement officer—

(1) With food or beverage or metal eating utensils unless authorized to do so by the armed law enforcement officer.

(2) With any alcoholic beverage.

§ 1544.223 Transportation of Federal Air Marshals.

(a) A Federal Air Marshal on duty status may have a weapon accessible while aboard an aircraft for which screening is required.

(b) Each aircraft operator must carry Federal Air Marshals, in the number and manner specified by TSA, on each scheduled passenger operation, and public charter passenger operation designated by TSA.

(c) Each Federal Air Marshal must be carried on a first priority basis and without charge while on duty, including positioning and repositioning flights. When a Federal Air Marshal is assigned to a scheduled flight that is canceled for any reason, the aircraft operator must carry that Federal Air Marshal without charge on another flight as designated by TSA.

(d) Each aircraft operator must assign the specific seat requested by a Federal Air Marshal who is on duty status. If another LEO is assigned to that seat or requests that seat, the aircraft operator must inform the Federal Air Marshal. The Federal Air Marshal will coordinate seat assignments with the other LEO.

(e) The Federal Air Marshal identifies himself or herself to the aircraft operator by presenting credentials that include a clear, full-face picture, the signature of the Federal Air Marshal, and the signature of the FAA Administrator. A badge, shield, or similar device may not be used or accepted as the sole means of identification.

(f) The requirements of § 1544.219(a) do not apply for a Federal Air Marshal on duty status.

(g) Each aircraft operator must restrict any information concerning the presence, seating, names, and purpose of Federal Air Marshals at any station or on any flight to those persons with an operational need to know.

(h) Law enforcement officers authorized to carry a weapon during a flight will be contacted directly by a Federal Air Marshal who is on that same flight.

§ 1544.225 Security of aircraft and facilities.

Each aircraft operator must use the procedures included, and the facilities and equipment described, in its security program to perform the following control functions with respect to each aircraft operation:

(a) Prevent unauthorized access to areas controlled by the aircraft operator under an exclusive area agreement in accordance with § 1542.111 of this chapter.

(b) Prevent unauthorized access to each aircraft.

(c) Conduct a security inspection of each aircraft before placing it into passenger operations if access has not been controlled in accordance with the aircraft operator security program and as otherwise required in the security program.

(d) When operating under a full program or a full all-cargo program, prevent unauthorized access to the operational area of the aircraft while loading or unloading cargo.

[67 FR 8364, Feb. 22, 2002, as amended at 71 FR 30510, May 26, 2006]

§ 1544.227 Exclusive area agreement.

(a) An aircraft operator that has entered into an exclusive area agreement with an airport operator, under § 1542.111 of this chapter must carry out that exclusive area agreement.

(b) The aircraft operator must list in its security program the locations at which it has entered into exclusive area agreements with an airport operator.

(c) The aircraft operator must provide the exclusive area agreement to TSA upon request.

(d) Any exclusive area agreements in effect on November 14, 2001, must meet the requirements of this section and § 1542.111 of this chapter no later than November 14, 2002.

§ 1544.228 Access to cargo: Security threat assessments for cargo personnel in the United States.

This section applies in the United States to each aircraft operator operating under a full program under § 1544.101(a), or a full all-cargo program under § 1544.101(h) of this part.

(a) This section applies for each employee and agent the aircraft operator authorizes to have unescorted access to cargo from the time—

(1) The cargo reaches a location where an aircraft operator with a full all-cargo program consolidates or inspects it pursuant to security program requirements until the cargo enters an airport Security Identification Display Area or is transferred to another TSA-regulated aircraft operator, foreign air carrier, or indirect air carrier; or

(2) An aircraft operator with a full program accepts the cargo until the cargo:

(i) Enters an airport Security Identification Display Area;

(ii) Is removed from the destination airport; or

(iii) Is transferred to another TSA-regulated aircraft operator, foreign air carrier, or indirect air carrier.

(b) Before an aircraft operator authorizes, and before an employee or agent gains, unescorted access to cargo as described in paragraph (a) of this section, each employee or agent must successfully complete one of the following:

(1) A criminal history records check under §§ 1542.209, 1544.229, or 1544.230 of this chapter, if the employee or agent is otherwise required to undergo that check.

(2) A Security Threat Assessment under part 1540 subpart C of this chapter. An employee or agent who has successfully completed this Security Threat Assessment for one employer need not complete it for another employer if the employee or agent has been continuously employed in a position that requires a Security Threat Assessment.

(3) Another Security Threat Assessment approved by TSA as comparable to paragraphs (b)(1) or (2) of this section.

(c) Each aircraft operator must ensure that each individual who has access to its cargo—

(1) Has successfully completed one of the checks in paragraph (b) of this section;

(2) Is escorted by an employee or agent who has successfully completed one of the checks in paragraph (b) of this section; or

(3) Is authorized to serve as law enforcement personnel at that location.

(d) Operators must submit to TSA the names and other identifying information required by TSA of all individuals required to successfully complete an assessment under paragraph (b) not later than May 15, 2007, for direct employees and not later than July 15, 2007, for agents. After those dates, the operators may not allow an individual to perform a function for which a STA is required, unless the operator has submitted the information for that individual to TSA.

(e) Operators must comply with the requirements of paragraphs (a), (b), and (c) of this section not later than the dates to be specified by TSA in a future rule in the FEDERAL REGISTER.

[71 FR 30511, May 26, 2006; 71 FR 31964, June 2, 2006 as amended at 71 FR 62549, Oct. 25, 2006; 72 FR 13025, Mar. 20, 2007]

EFFECTIVE DATE NOTE: At 74 FR 47704, Sept. 16, 2009, § 1544.228 was revised, effective November 16, 2009. For the convenience of the user, the revised text is set forth as follows:

§ 1544.228 Access to cargo and cargo screening: Security threat assessments for cargo personnel in the United States.

This section applies in the United States to each aircraft operator operating under a full program under § 1544.101(a) or a full all-cargo program under § 1544.101(h).

(a) Before an aircraft operator authorizes and before an individual performs a function described in paragraph (b) of this section—

(1) Each individual must successfully complete a security threat assessment or comparable security threat assessment described in part 1540 subpart C of this chapter; and

(2) Each aircraft operator must complete the requirements in part 1540 subpart C.

(b) The security threat assessment required in paragraph (a) of this section applies to the following:

(1) Each individual who has unescorted access to cargo and access to information that such cargo will be transported on a passenger aircraft; or who has unescorted access to cargo that has been screened for transport on a passenger aircraft; or who performs certain functions related to the transportation, dispatch, or security of cargo for transport on a passenger aircraft or all-cargo aircraft, as specified in the aircraft operator's security program; from the time—

(i) The cargo reaches a location where an aircraft operator with a full all-cargo program consolidates or inspects it pursuant to security program requirements until the cargo enters an airport Security Identification Display Area or is transferred to another TSA-regulated aircraft operator, foreign air carrier, or indirect air carrier; or

(ii) An aircraft operator with a full program accepts the cargo until the cargo—

(A) Enters an airport Security Identification Display Area;

(B) Is removed from the destination airport; or

(C) Is transferred to another TSA-regulated aircraft operator, foreign air carrier, or indirect air carrier.

(2) Each individual the aircraft operator authorizes to screen cargo or to supervise the screening of cargo under § 1544.205.

§ 1544.229 Fingerprint-based criminal history records checks (CHRC): Unescorted access authority, authority to perform screening functions, and authority to perform checked baggage or cargo functions.

This section applies to each aircraft operator operating under a full program, a private charter program, or a full all-cargo program.

(a) *Scope.* The following individuals are within the scope of this section. Unescorted access authority, authority to perform screening functions, and authority to perform checked baggage or cargo functions, are collectively referred to as ''covered functions.''

(1) *New unescorted access authority or authority to perform screening functions.* (i) Each employee or contract employee covered under a certification made to an airport operator on or after December 6, 2001, pursuant to 14 CFR 107.209(n) in effect prior to November 14, 2001 (see 14 CFR parts 60 to 139 revised as of January 1, 2001) or § 1542.209(n) of this chapter.

(ii) Each individual issued on or after December 6, 2001, an aircraft operator identification media that one or more airports accepts as airport-approved media for unescorted access authority within a security identification display area (SIDA), as described in § 1542.205 of this chapter (referred to as ''unescorted access authority'').

(iii) Each individual granted authority to perform the following screening functions at locations within the United States (referred to as ''authority to perform screening functions''):

(A) Screening passengers or property that will be carried in a cabin of an aircraft of an aircraft operator required to screen passengers under this part.

(B) Serving as an immediate supervisor (checkpoint security supervisor (CSS)), and the next supervisory level (shift or site supervisor), to those individuals described in paragraphs (a)(1)(iii)(A) or (a)(1)(iii)(C) of this section.

(C) Screening cargo that will be carried on an aircraft of an aircraft operator with a full all-cargo program.

(2) *Current unescorted access authority or authority to perform screening functions.* (i) Each employee or contract employee covered under a certification made to an airport operator pursuant to 14 CFR 107.31(n) in effect prior to November 14, 2001 (see 14 CFR parts 60 to 139 revised as of January 1, 2001), or pursuant to 14 CFR 107.209(n) in effect prior to December 6, 2001 (see 14 CFR parts 60 to 139 revised as of January 1, 2001).

(ii) Each individual who holds on December 6, 2001, an aircraft operator identification media that one or more airports accepts as airport-approved media for unescorted access authority within a security identification display area (SIDA), as described in § 1542.205 of this chapter.

(iii) Each individual who is performing on December 6, 2001, a screening function identified in paragraph (a)(1)(iii) of this section.

(3) *New authority to perform checked baggage or cargo functions.* Each individual who, on and after February 17, 2002, is granted the authority to perform the following checked baggage and cargo functions (referred to as ''authority to perform checked baggage or cargo functions''), except for individuals described in paragraph (a)(1) of this section:

(i) Screening of checked baggage or cargo of an aircraft operator required to screen passengers under this part, or serving as an immediate supervisor of such an individual.

(ii) Accepting checked baggage for transport on behalf of an aircraft operator required to screen passengers under this part.

(4) *Current authority to perform checked baggage or cargo functions.* Each individual who holds on February 17, 2002, authority to perform checked baggage or cargo functions, except for individuals described in paragraph (a)(1) or (2) of this section.

(b) *Individuals seeking unescorted access authority, authority to perform screening functions, or authority to perform checked baggage or cargo functions.* Each aircraft operator must ensure that each individual identified in paragraph (a)(1) or (3) of this section has undergone a fingerprint-based CHRC that does not disclose that he or she has a disqualifying criminal offense, as described in paragraph (d) of this section, before—

(1) Making a certification to an airport operator regarding that individual;

(2) Issuing an aircraft operator identification medium to that individual;

(3) Authorizing that individual to perform screening functions; or

(4) Authorizing that individual to perform checked baggage or cargo functions.

(c) *Individuals who have not had a CHRC*—(1) *Deadline for conducting a CHRC.* Each aircraft operator must ensure that, on and after December 6, 2002:

(i) No individual retains unescorted access authority, whether obtained as a result of a certification to an airport operator under 14 CFR 107.31(n) in effect prior to November 14, 2001 (see 14 CFR parts 60 to 139 revised as of January 1, 2001), or under 14 CFR 107.209(n) in effect prior to December 6, 2001 (see 14 CFR parts 60 to 139 revised as of January 1, 2001), or obtained as a result of the issuance of an aircraft operator's identification media, unless the individual has been subject to a fingerprint-based CHRC for unescorted access authority under this part.

(ii) No individual continues to have authority to perform screening functions described in paragraph (a)(1)(iii) of this section, unless the individual has been subject to a fingerprint-based CHRC under this part.

(iii) No individual continues to have authority to perform checked baggage or cargo functions described in paragraph (a)(3) of this section, unless the individual has been subject to a fingerprint-based CHRC under this part.

(2) *Lookback for individuals with unescorted access authority or authority to perform screening functions.* When a CHRC discloses a disqualifying criminal offense for which the conviction or finding was on or after December 6, 1991, the aircraft operator must immediately suspend that individual's unescorted access authority or authority to perform screening functions.

(3) *Lookback for individuals with authority to perform checked baggage or cargo functions.* When a CHRC discloses a disqualifying criminal offense for which the conviction or finding was on or after February 17, 1992, the aircraft operator must immediately suspend that individual's authority to perform checked baggage or cargo functions.

(d) *Disqualifying criminal offenses.* An individual has a disqualifying criminal offense if the individual has been convicted, or found not guilty by reason of insanity, of any of the disqualifying crimes listed in this paragraph in any jurisdiction during the 10 years before the date of the individual's application for authority to perform covered functions, or while the individual has authority to perform covered functions. The disqualifying criminal offenses are as follows:

(1) Forgery of certificates, false marking of aircraft, and other aircraft registration violation; 49 U.S.C. 46306.

(2) Interference with air navigation; 49 U.S.C. 46308.

(3) Improper transportation of a hazardous material; 49 U.S.C. 46312.

(4) Aircraft piracy; 49 U.S.C. 46502.

(5) Interference with flight crew members or flight attendants; 49 U.S.C. 46504.

(6) Commission of certain crimes aboard aircraft in flight; 49 U.S.C. 46506.

(7) Carrying a weapon or explosive aboard aircraft; 49 U.S.C. 46505.

(8) Conveying false information and threats; 49 U.S.C. 46507.

(9) Aircraft piracy outside the special aircraft jurisdiction of the United States; 49 U.S.C. 46502(b).

(10) Lighting violations involving transporting controlled substances; 49 U.S.C. 46315.

(11) Unlawful entry into an aircraft or airport area that serves air carriers or foreign air carriers contrary to established security requirements; 49 U.S.C. 46314.

(12) Destruction of an aircraft or aircraft facility; 18 U.S.C. 32.

(13) Murder.

(14) Assault with intent to murder.

(15) Espionage.

(16) Sedition.

(17) Kidnapping or hostage taking.

(18) Treason.

(19) Rape or aggravated sexual abuse.

(20) Unlawful possession, use, sale, distribution, or manufacture of an explosive or weapon.

(21) Extortion.

(22) Armed or felony unarmed robbery.

(23) Distribution of, or intent to distribute, a controlled substance.

(24) Felony arson.

(25) Felony involving a threat.

(26) Felony involving—

(i) Willful destruction of property;

(ii) Importation or manufacture of a controlled substance;

(iii) Burglary;

(iv) Theft;

(v) Dishonesty, fraud, or misrepresentation;

(vi) Possession or distribution of stolen property;

(vii) Aggravated assault;

(viii) Bribery; or

(ix) Illegal possession of a controlled substance punishable by a maximum term of imprisonment of more than 1 year.

(27) Violence at international airports; 18 U.S.C. 37.

(28) Conspiracy or attempt to commit any of the criminal acts listed in this paragraph (d).

(e) *Fingerprint application and processing.* (1) At the time of fingerprinting, the aircraft operator must provide the individual to be fingerprinted a fingerprint application that includes only the following—

(i) The disqualifying criminal offenses described in paragraph (d) of this section.

(ii) A statement that the individual signing the application does not have a disqualifying criminal offense.

(iii) A statement informing the individual that Federal regulations under 49 CFR 1544.229 impose a continuing obligation to disclose to the aircraft operator within 24 hours if he or she is convicted of any disqualifying criminal offense that occurs while he or she has authority to perform a covered function.

(iv) A statement reading, ''The information I have provided on this application is true, complete, and correct to the best of my knowledge and belief and is provided in good faith. I understand that a knowing and willful false statement on this application can be punished by fine or imprisonment or both. (See section 1001 of Title 18 United States Code.)''

(v) A line for the printed name of the individual.

(vi) A line for the individual's signature and date of signature.

(2) Each individual must complete and sign the application prior to submitting his or her fingerprints.

(3) The aircraft operator must verify the identity of the individual through two forms of identification prior to fingerprinting, and ensure that the printed name on the fingerprint application is legible. At least one of the two forms of identification must have been issued by a government authority, and at least one must include a photo.

(4) The aircraft operator must:

(i) Advise the individual that a copy of the criminal record received from the FBI will be provided to the individual, if requested by the individual in writing; and

(ii) Identify a point of contact if the individual has questions about the results of the CHRC.

(5) The aircraft operator must collect, control, and process one set of legible and classifiable fingerprints under direct observation by the aircraft operator or a law enforcement officer.

(6) Fingerprints may be obtained and processed electronically, or recorded

on fingerprint cards approved by the FBI and distributed by TSA for that purpose.

(7) The fingerprint submission must be forwarded to TSA in the manner specified by TSA.

(f) *Fingerprinting fees.* Aircraft operators must pay for all fingerprints in a form and manner approved by TSA. The payment must be made at the designated rate (available from the local TSA security office) for each set of fingerprints submitted. Information about payment options is available though the designated TSA headquarters point of contact. Individual personal checks are not acceptable.

(g) *Determination of arrest status.* (1) When a CHRC on an individual described in paragraph (a)(1) or (3) of this section discloses an arrest for any disqualifying criminal offense listed in paragraph (d) of this section without indicating a disposition, the aircraft operator must determine, after investigation, that the arrest did not result in a disqualifying offense before granting authority to perform a covered function. If there is no disposition, or if the disposition did not result in a conviction or in a finding of not guilty by reason of insanity of one of the offenses listed in paragraph (d) of this section, the individual is not disqualified under this section.

(2) When a CHRC on an individual described in paragraph (a)(2) or (4) of this section discloses an arrest for any disqualifying criminal offense without indicating a disposition, the aircraft operator must suspend the individual's authority to perform a covered function not later than 45 days after obtaining the CHRC unless the aircraft operator determines, after investigation, that the arrest did not result in a disqualifying criminal offense. If there is no disposition, or if the disposition did not result in a conviction or in a finding of not guilty by reason of insanity of one of the offenses listed in paragraph (d) of this section, the individual is not disqualified under this section.

(3) The aircraft operator may only make the determinations required in paragraphs (g)(1) and (g)(2) of this section for individuals for whom it is issuing, or has issued, authority to perform a covered function; and individuals who are covered by a certification from an aircraft operator under §1542.209(n) of this chapter. The aircraft operator may not make determinations for individuals described in §1542.209(a) of this chapter.

(h) *Correction of FBI records and notification of disqualification.* (1) Before making a final decision to deny authority to an individual described in paragraph (a)(1) or (3) of this section, the aircraft operator must advise him or her that the FBI criminal record discloses information that would disqualify him or her from receiving or retaining authority to perform a covered function and provide the individual with a copy of the FBI record if he or she requests it.

(2) The aircraft operator must notify an individual that a final decision has been made to grant or deny authority to perform a covered function.

(3) Immediately following the suspension of authority to perform a covered function, the aircraft operator must advise the individual that the FBI criminal record discloses information that disqualifies him or her from retaining his or her authority, and provide the individual with a copy of the FBI record if he or she requests it.

(i) *Corrective action by the individual.* The individual may contact the local jurisdiction responsible for the information and the FBI to complete or correct the information contained in his or her record, subject to the following conditions—

(1) For an individual seeking unescorted access authority or authority to perform screening functions on or after December 6, 2001; or an individual seeking authority to perform checked baggage or cargo functions on or after February 17, 2002; the following applies:

(i) Within 30 days after being advised that the criminal record received from the FBI discloses a disqualifying criminal offense, the individual must notify the aircraft operator in writing of his or her intent to correct any information he or she believes to be inaccurate. The aircraft operator must obtain a copy, or accept a copy from the individual, of the revised FBI record or a certified true copy of the information

from the appropriate court, prior to authority to perform a covered function.

(ii) If no notification, as described in paragraph (h)(1) of this section, is received within 30 days, the aircraft operator may make a final determination to deny authority to perform a covered function.

(2) For an individual with unescorted access authority or authority to perform screening functions before December 6, 2001; or an individual with authority to perform checked baggage or cargo functions before February 17, 2002; the following applies: Within 30 days after being advised of suspension because the criminal record received from the FBI discloses a disqualifying criminal offense, the individual must notify the aircraft operator in writing of his or her intent to correct any information he or she believes to be inaccurate. The aircraft operator must obtain a copy, or accept a copy from the individual, of the revised FBI record, or a certified true copy of the information from the appropriate court, prior to reinstating authority to perform a covered function.

(j) *Limits on dissemination of results.* Criminal record information provided by the FBI may be used only to carry out this section and §1542.209 of this chapter. No person may disseminate the results of a CHRC to anyone other than:

(1) The individual to whom the record pertains, or that individual's authorized representative.

(2) Officials of airport operators who are determining whether to grant unescorted access to the individual under part 1542 of this chapter when the determination is not based on the aircraft operator's certification under §1542.209(n) of this chapter.

(3) Other aircraft operators who are determining whether to grant authority to perform a covered function under this part.

(4) Others designated by TSA.

(k) *Recordkeeping.* The aircraft operator must maintain the following information.

(1) *Investigation conducted before December 6, 2001.* The aircraft operator must maintain and control the access or employment history investigation files, including the criminal history records results portion, for investigations conducted before December 6, 2001.

(2) *Fingerprint application process on or after December 6, 2001.* The aircraft operator must physically maintain, control, and, as appropriate, destroy the fingerprint application and the criminal record. Only direct aircraft operator employees may carry out the responsibility for maintaining, controlling, and destroying criminal records.

(3) *Protection of records—all investigations.* The records required by this section must be maintained in a manner that is acceptable to TSA and in a manner that protects the confidentiality of the individual.

(4) *Duration—all investigations.* The records identified in this section with regard to an individual must be maintained until 180 days after the termination of the individual's authority to perform a covered function. When files are no longer maintained, the criminal record must be destroyed.

(l) *Continuing responsibilities.* (1) Each individual with unescorted access authority or the authority to perform screening functions on December 6, 2001, who had a disqualifying criminal offense in paragraph (d) of this section on or after December 6, 1991, must, by January 7, 2002, report the conviction to the aircraft operator and surrender the SIDA access medium to the issuer and cease performing screening functions, as applicable.

(2) Each individual with authority to perform a covered function who has a disqualifying criminal offense must report the offense to the aircraft operator and surrender the SIDA access medium to the issuer within 24 hours of the conviction or the finding of not guilty by reason of insanity.

(3) If information becomes available to the aircraft operator indicating that an individual with authority to perform a covered function has a possible conviction for any disqualifying criminal offense in paragraph (d) of this section, the aircraft operator must determine the status of the conviction. If a disqualifying criminal offense is confirmed the aircraft operator must immediately revoke any authority to perform a covered function.

(4) Each individual with authority to perform checked baggage or cargo functions on February 17, 2002, who had a disqualifying criminal offense in paragraph (d) of this section on or after February 17, 1992, must, by March 25 2002, report the conviction to the aircraft operator and cease performing check baggage or cargo functions.

(m) *Aircraft operator responsibility*. The aircraft operator must—

(1) Designate an individual(s) to be responsible for maintaining and controlling the employment history investigations for those whom the aircraft operator has made a certification to an airport operator under 14 CFR 107.209(n) in effect prior to November 14, 2001 (see 14 CFR parts 60 to 139 revised as of January 1, 2001), and for those whom the aircraft operator has issued identification media that are airport-accepted. The aircraft operator must designate a direct employee to maintain, control, and, as appropriate, destroy criminal records.

(2) Designate an individual(s) to maintain the employment history investigations of individuals with authority to perform screening functions whose files must be maintained at the location or station where the screener is performing his or her duties.

(3) Designate an individual(s) at appropriate locations to serve as the contact to receive notification from individuals seeking authority to perform covered functions of their intent to seek correction of their FBI criminal record.

(4) Audit the employment history investigations performed in accordance with this section and 14 CFR 108.33 in effect prior to November 14, 2001 (see 14 CFR parts 60 to 139 revised as of January 1, 2001). The aircraft operator must set forth the audit procedures in its security program.

[67 FR 8364, Feb. 22, 2002, as amended at 71 FR 30511, May 26, 2006]

§ 1544.230 Fingerprint-based criminal history records checks (CHRC): Flightcrew members.

(a) *Scope*. This section applies to each flightcrew member for each aircraft operator, except that this section does not apply to flightcrew members who are subject to § 1544.229.

(b) *CHRC required*. Each aircraft operator must ensure that each flightcrew member has undergone a fingerprint-based CHRC that does not disclose that he or she has a disqualifying criminal offense, as described in § 1544.229(d), before allowing that individual to serve as a flightcrew member.

(c) *Application and fees*. Each aircraft operator must ensure that each flightcrew member's fingerprints are obtained and submitted as described in § 1544.229 (e) and (f).

(d) *Determination of arrest status*. (1) When a CHRC on an individual described in paragraph (a) of this section discloses an arrest for any disqualifying criminal offense listed in § 1544.229(d) without indicating a disposition, the aircraft operator must determine, after investigation, that the arrest did not result in a disqualifying offense before the individual may serve as a flightcrew member. If there is no disposition, or if the disposition did not result in a conviction or in a finding of not guilty by reason of insanity of one of the offenses listed in § 1544.229(d), the flight crewmember is not disqualified under this section.

(2) When a CHRC on an individual described in paragraph (a) of this section discloses an arrest for any disqualifying criminal offense listed in § 1544.229(d) without indicating a disposition, the aircraft operator must suspend the individual's flightcrew member privileges not later than 45 days after obtaining a CHRC, unless the aircraft operator determines, after investigation, that the arrest did not result in a disqualifying criminal offense. If there is no disposition, or if the disposition did not result in a conviction or in a finding of not guilty by reason of insanity of one of the offenses listed in § 1544.229(d), the flight crewmember is not disqualified under this section.

(3) The aircraft operator may only make the determinations required in paragraphs (d)(1) and (d)(2) of this section for individuals whom it is using, or will use, as a flightcrew member. The aircraft operator may not make determinations for individuals described in § 1542.209(a) of this chapter.

(e) *Correction of FBI records and notification of disqualification*. (1) Before

making a final decision to deny the individual the ability to serve as a flightcrew member, the aircraft operator must advise the individual that the FBI criminal record discloses information that would disqualify the individual from serving as a flightcrew member and provide the individual with a copy of the FBI record if the individual requests it.

(2) The aircraft operator must notify the individual that a final decision has been made to allow or deny the individual flightcrew member status.

(3) Immediately following the denial of flightcrew member status, the aircraft operator must advise the individual that the FBI criminal record discloses information that disqualifies him or her from retaining his or her flightcrew member status, and provide the individual with a copy of the FBI record if he or she requests it.

(f) *Corrective action by the individual.* The individual may contact the local jurisdiction responsible for the information and the FBI to complete or correct the information contained in his or her record, subject to the following conditions—

(1) Within 30 days after being advised that the criminal record received from the FBI discloses a disqualifying criminal offense, the individual must notify the aircraft operator in writing of his or her intent to correct any information he or she believes to be inaccurate. The aircraft operator must obtain a copy, or accept a copy from the individual, of the revised FBI record or a certified true copy of the information from the appropriate court, prior to allowing the individual to serve as a flightcrew member.

(2) If no notification, as described in paragraph (f)(1) of this section, is received within 30 days, the aircraft operator may make a final determination to deny the individual flightcrew member status.

(g) *Limits on the dissemination of results.* Criminal record information provided by the FBI may be used only to carry out this section. No person may disseminate the results of a CHRC to anyone other than—

(1) The individual to whom the record pertains, or that individual's authorized representative.

(2) Others designated by TSA.

(h) *Recordkeeping*—(1) *Fingerprint application process.* The aircraft operator must physically maintain, control, and, as appropriate, destroy the fingerprint application and the criminal record. Only direct aircraft operator employees may carry out the responsibility for maintaining, controlling, and destroying criminal records.

(2) *Protection of records.* The records required by this section must be maintained by the aircraft operator in a manner that is acceptable to TSA that protects the confidentiality of the individual.

(3) *Duration.* The records identified in this section with regard to an individual must be made available upon request by TSA, and maintained by the aircraft operator until 180 days after the termination of the individual's privileges to perform flightcrew member duties with the aircraft operator. When files are no longer maintained, the aircraft operator must destroy the CHRC results.

(i) *Continuing responsibilities.* (1) Each flightcrew member identified in paragraph (a) of this section who has a disqualifying criminal offense must report the offense to the aircraft operator within 24 hours of the conviction or the finding of not guilty by reason of insanity.

(2) If information becomes available to the aircraft operator indicating that a flightcrew member identified in paragraph (a) of this section has a possible conviction for any disqualifying criminal offense in § 1544.229 (d), the aircraft operator must determine the status of the conviction. If a disqualifying criminal offense is confirmed, the aircraft operator may not assign that individual to flightcrew duties in operations identified in paragraph (a).

(j) *Aircraft operator responsibility.* The aircraft operator must—(1) Designate a direct employee to maintain, control, and, as appropriate, destroy criminal records.

(2) Designate an individual(s) to maintain the CHRC results.

(3) Designate an individual(s) at appropriate locations to receive notification from individuals of their intent to seek correction of their FBI criminal record.

(k) *Compliance date*. Each aircraft operator must comply with this section for each flightcrew member described in paragraph (a) of this section not later than December 6, 2002.

[67 FR 8209, Feb. 22, 2002]

§ 1544.231 Airport-approved and exclusive area personnel identification systems.

(a) Each aircraft operator must establish and carry out a personnel identification system for identification media that are airport-approved, or identification media that are issued for use in an exclusive area. The system must include the following:

(1) Personnel identification media that—

(i) Convey a full face image, full name, employer, and identification number of the individual to whom the identification medium is issued;

(ii) Indicate clearly the scope of the individual's access and movement privileges;

(iii) Indicate clearly an expiration date; and

(iv) Are of sufficient size and appearance as to be readily observable for challenge purposes.

(2) Procedures to ensure that each individual in the secured area or SIDA continuously displays the identification medium issued to that individual on the outermost garment above waist level, or is under escort.

(3) Procedures to ensure accountability through the following:

(i) Retrieving expired identification media.

(ii) Reporting lost or stolen identification media.

(iii) Securing unissued identification media stock and supplies.

(iv) Auditing the system at a minimum of once a year, or sooner, as necessary to ensure the integrity and accountability of all identification media.

(v) As specified in the aircraft operator security program, revalidate the identification system or reissue identification media if a portion of all issued, unexpired identification media are lost, stolen, or unretrieved, including identification media that are combined with access media.

(vi) Ensure that only one identification medium is issued to an individual at a time. A replacement identification medium may only be issued if an individual declares in writing that the medium has been lost or stolen.

(b) The aircraft operator may request approval of a temporary identification media system that meets the standards in § 1542.211(b) of this chapter, or may arrange with the airport to use temporary airport identification media in accordance with that section.

(c) Each aircraft operator must submit a plan to carry out this section to TSA no later than May 13, 2002. Each aircraft operator must fully implement its plan no later than November 14, 2003.

§ 1544.233 Security coordinators and crewmembers, training.

(a) No aircraft operator may use any individual as a Ground Security Coordinator unless, within the preceding 12-calendar months, that individual has satisfactorily completed the security training as specified in the aircraft operator's security program.

(b) No aircraft operator may use any individual as an in-flight security coordinator or crewmember on any domestic or international flight unless, within the preceding 12-calendar months or within the time period specified in an Advanced Qualifications Program approved under SFAR 58 in 14 CFR part 121, that individual has satisfactorily completed the security training required by 14 CFR 121.417(b)(3)(v) or 135.331(b)(3)(v), and as specified in the aircraft operator's security program.

(c) With respect to training conducted under this section, whenever an individual completes recurrent training within one calendar month earlier, or one calendar month after the date it was required, that individual is considered to have completed the training in the calendar month in which it was required.

§ 1544.235 Training and knowledge for individuals with security-related duties.

(a) No aircraft operator may use any direct or contractor employee to perform any security-related duties to meet the requirements of its security

program unless that individual has received training as specified in its security program including their individual responsibilities in §1540.105 of this chapter.

(b) Each aircraft operator must ensure that individuals performing security-related duties for the aircraft operator have knowledge of the provisions of this part, applicable Security Directives and Information Circulars, the approved airport security program applicable to their location, and the aircraft operator's security program to the extent that such individuals need to know in order to perform their duties.

§ 1544.237 Flight deck privileges.

(a) For each aircraft that has a door to the flight deck, each aircraft operator must restrict access to the flight deck as provided in its security program.

(b) This section does not restrict access for an FAA air carrier inspector, an authorized representative of the National Transportation Safety Board, or for an Agent of the United States Secret Service, under 14 CFR parts 121, 125, or 135. This section does not restrict access for a Federal Air Marshal under this part.

[67 FR 8210, Feb. 22, 2002]

§ 1544.239 Known shipper program.

This section applies to each aircraft operator operating under a full program under §1544.101(a) of this part and to each aircraft operator with a TSA security program approved for transfer of cargo to an aircraft operator with a full program or a foreign air carrier under paragraphs §1546.101(a) or (b) of this chapter.

(a) For cargo to be loaded on its aircraft in the United States, each aircraft operator must have and carry out a known shipper program in accordance with its security program. The program must—

(1) Determine the shipper's validity and integrity as provided in the security program;

(2) Provide that the aircraft operator will separate known shipper cargo from unknown shipper cargo; and

(3) Provide for the aircraft operator to ensure that cargo is screened or inspected as set forth in its security program.

(b) When required by TSA, each aircraft operator must submit in a form and manner acceptable to TSA—

(1) Information identified in its security program regarding a known shipper, or an applicant for that status; and

(2) Corrections and updates of this information upon learning of a change to the information specified in paragraph (b)(1) of this section.

[71 FR 30511, May 26, 2006]

Subpart D—Threat and Threat Response

§ 1544.301 Contingency plan.

Each aircraft operator must adopt a contingency plan and must:

(a) Implement its contingency plan when directed by TSA.

(b) Ensure that all information contained in the plan is updated annually and that appropriate persons are notified of any changes.

(c) Participate in an airport-sponsored exercise of the airport contingency plan or its equivalent, as provided in its security program.

§ 1544.303 Bomb or air piracy threats.

(a) *Flight: Notification.* Upon receipt of a specific and credible threat to the security of a flight, the aircraft operator must—

(1) Immediately notify the ground and in-flight security coordinators of the threat, any evaluation thereof, and any measures to be applied; and

(2) Ensure that the in-flight security coordinator notifies all crewmembers of the threat, any evaluation thereof, and any measures to be applied; and

(3) Immediately notify the appropriate airport operator.

(b) *Flight: Inspection.* Upon receipt of a specific and credible threat to the security of a flight, each aircraft operator must attempt to determine whether or not any explosive or incendiary is present by doing the following:

(1) Conduct a security inspection on the ground before the next flight or, if the aircraft is in flight, immediately after its next landing.

(2) If the aircraft is on the ground, immediately deplane all passengers

and submit that aircraft to a security search.

(3) If the aircraft is in flight, immediately advise the pilot in command of all pertinent information available so that necessary emergency action can be taken.

(c) *Ground facility*. Upon receipt of a specific and credible threat to a specific ground facility at the airport, the aircraft operator must:

(1) Immediately notify the appropriate airport operator.

(2) Inform all other aircraft operators and foreign air carriers at the threatened facility.

(3) Conduct a security inspection.

(d) *Notification*. Upon receipt of any bomb threat against the security of a flight or facility, or upon receiving information that an act or suspected act of air piracy has been committed, the aircraft operator also must notify TSA. If the aircraft is in airspace under other than U.S. jurisdiction, the aircraft operator must also notify the appropriate authorities of the State in whose territory the aircraft is located and, if the aircraft is in flight, the appropriate authorities of the State in whose territory the aircraft is to land. Notification of the appropriate air traffic controlling authority is sufficient action to meet this requirement.

§ 1544.305 Security Directives and Information Circulars.

(a) TSA may issue an Information Circular to notify aircraft operators of security concerns. When TSA determines that additional security measures are necessary to respond to a threat assessment or to a specific threat against civil aviation, TSA issues a Security Directive setting forth mandatory measures.

(b) Each aircraft operator required to have an approved aircraft operator security program must comply with each Security Directive issued to the aircraft operator by TSA, within the time prescribed in the Security Directive for compliance.

(c) Each aircraft operator that receives a Security Directive must—

(1) Within the time prescribed in the Security Directive, verbally acknowledge receipt of the Security Directive to TSA.

(2) Within the time prescribed in the Security Directive, specify the method by which the measures in the Security Directive have been implemented (or will be implemented, if the Security Directive is not yet effective).

(d) In the event that the aircraft operator is unable to implement the measures in the Security Directive, the aircraft operator must submit proposed alternative measures and the basis for submitting the alternative measures to TSA for approval. The aircraft operator must submit the proposed alternative measures within the time prescribed in the Security Directive. The aircraft operator must implement any alternative measures approved by TSA.

(e) Each aircraft operator that receives a Security Directive may comment on the Security Directive by submitting data, views, or arguments in writing to TSA. TSA may amend the Security Directive based on comments received. Submission of a comment does not delay the effective date of the Security Directive.

(f) Each aircraft operator that receives a Security Directive or Information Circular and each person who receives information from a Security Directive or Information Circular must:

(1) Restrict the availability of the Security Directive or Information Circular, and information contained in either document, to those persons with an operational need-to-know.

(2) Refuse to release the Security Directive or Information Circular, and information contained in either document, to persons other than those with an operational need-to-know without the prior written consent of TSA.

Subpart E—Screener Qualifications When the Aircraft Operator Performs Screening

§ 1544.401 Applicability of this subpart.

(a) *Aircraft operator screening*. This subpart applies when the aircraft operator is conducting inspections as provided in § 1544.207(c).

(b) *Current screeners*. As used in this subpart, ''current screener'' means each individual who first performed screening functions before the date the aircraft operator must begin use of the

new screener training program provided by TSA. Until November 19, 2002, each current screener must comply with § 1544.403. Until November 19, 2002, each aircraft operator must apply § 1544.403 for each current screener. On and after November 19, 2002, each such current screener must comply with §§ 1544.405 through 1544.411, and each aircraft operator must comply with §§ 1544.405 through 1544.411 for such individuals.

(c) *New screeners.* As used in this subpart, ''new screener'' means each individual who first performs screening functions on and after the date the aircraft operator must begin use of the new screener training program provided by TSA. Each aircraft operator must apply §§ 1544.405 through 1544.411 for individuals who first perform screening functions for new screeners.

EFFECTIVE DATE NOTE: At 74 FR 47704, September 16, 2009, § 1544.401 was revised, effective November 16, 2009. For the convenience of the user, the revised text is set forth as follows:

§ 1544.401 Applicability of this subpart.

This subpart applies when the aircraft operator is conducting inspections as provided in § 1544.207.

§ 1544.403 Current screeners.

This section applies to current screeners. This section no longer applies on and after November 19, 2002.

(a) No aircraft operator may use any person to perform any screening function, unless that person has:

(1) A high school diploma, a General Equivalency Diploma, or a combination of education and experience that the aircraft operator has determined to have equipped the person to perform the duties of the position.

(2) Basic aptitudes and physical abilities including color perception, visual and aural acuity, physical coordination, and motor skills to the following standards:

(i) Screeners operating X-ray equipment must be able to distinguish on the X-ray monitor the appropriate imaging standard specified in the aircraft operator's security program. Wherever the X-ray system displays colors, the operator must be able to perceive each color;

(ii) Screeners operating any screening equipment must be able to distinguish each color displayed on every type of screening equipment and explain what each color signifies;

(iii) Screeners must be able to hear and respond to the spoken voice and to audible alarms generated by screening equipment in an active checkpoint environment;

(iv) Screeners performing physical searches or other related operations must be able to efficiently and thoroughly manipulate and handle such baggage, containers, and other objects subject to security processing; and

(v) Screeners who perform pat-downs or hand-held metal detector searches of persons must have sufficient dexterity and capability to thoroughly conduct those procedures over a person's entire body.

(3) The ability to read, speak, and write English well enough to—

(i) Carry out written and oral instructions regarding the proper performance of screening duties;

(ii) Read English language identification media, credentials, airline tickets, and labels on items normally encountered in the screening process;

(iii) Provide direction to and understand and answer questions from English-speaking persons undergoing screening; and

(iv) Write incident reports and statements and log entries into security records in the English language.

(4) Satisfactorily completed all initial, recurrent, and appropriate specialized training required by the aircraft operator's security program, except as provided in paragraph (b) of this section.

(b) The aircraft operator may use a person who has not completed the training required by paragraph (a)(4) of this section during the on-the-job portion of training to perform security functions provided that the person:

(1) Is closely supervised, and

(2) Does not make independent judgments as to whether persons or property may enter a sterile area or aircraft without further inspection.

(c) No aircraft operator must use a person to perform a screening function after that person has failed an operational test related to that function

until that person has successfully completed the remedial training specified in the aircraft operator's security program.

(d) Each aircraft operator must ensure that a Ground Security Coordinator conducts and documents an annual evaluation of each individual assigned screening duties and may continue that individual's employment in a screening capacity only upon the determination by the Ground Security Coordinator that the individual:

(1) Has not suffered a significant diminution of any physical ability required to perform a screening function since the last evaluation of those abilities;

(2) Has a satisfactory record of performance and attention to duty based on the standards and requirements in its security program; and

(3) Demonstrates the current knowledge and skills necessary to courteously, vigilantly, and effectively perform screening functions.

(e) Paragraphs (a) through (d) of this section do not apply to those screening functions conducted outside the United States over which the aircraft operator does not have operational control. In the event the aircraft operator is unable to implement paragraphs (a) through (d) of this section for screening functions outside the United States, the aircraft operator must notify TSA of those aircraft operator stations so affected.

(f) At locations outside the United States where the aircraft operator has operational control over a screening function, the aircraft operator may use screeners who do not meet the requirements of paragraph (a)(3) of this section, provided that at least one representative of the aircraft operator who has the ability to functionally read and speak English is present while the aircraft operator's passengers are undergoing security screening.

EFFECTIVE DATE NOTE: At 74 FR 47704, Sept. 16, 2009, § 1544.403 was removed and reserved, effective November 16, 2009.

§ 1544.405 New screeners: Qualifications of screening personnel.

(a) No individual subject to this subpart may perform a screening function unless that individual has the qualifications described in §§ 1544.405 through 1544.411. No aircraft operator may use such an individual to perform a screening function unless that person complies with the requirements of §§ 1544.405 through 1544.411.

(b) A screener must have a satisfactory or better score on a screener selection test administered by TSA.

(c) A screener must be a citizen of the United States.

(d) A screener must have a high school diploma, a General Equivalency Diploma, or a combination of education and experience that the TSA has determined to be sufficient for the individual to perform the duties of the position.

(e) A screener must have basic aptitudes and physical abilities including color perception, visual and aural acuity, physical coordination, and motor skills to the following standards:

(1) Screeners operating screening equipment must be able to distinguish on the screening equipment monitor the appropriate imaging standard specified in the aircraft operator's security program.

(2) Screeners operating any screening equipment must be able to distinguish each color displayed on every type of screening equipment and explain what each color signifies.

(3) Screeners must be able to hear and respond to the spoken voice and to audible alarms generated by screening equipment at an active screening location.

(4) Screeners who perform physical searches or other related operations must be able to efficiently and thoroughly manipulate and handle such baggage, containers, cargo, and other objects subject to screening.

(5) Screeners who perform pat-downs or hand-held metal detector searches of individuals must have sufficient dexterity and capability to thoroughly conduct those procedures over an individual's entire body.

(f) A screener must have the ability to read, speak, and write English well enough to—

(1) Carry out written and oral instructions regarding the proper performance of screening duties;

(2) Read English language identification media, credentials, airline tickets, documents, air waybills, invoices, and

labels on items normally encountered in the screening process;

(3) Provide direction to and understand and answer questions from English-speaking individuals undergoing screening; and

(4) Write incident reports and statements and log entries into security records in the English language.

(g) At locations outside the United States where the aircraft operator has operational control over a screening function, the aircraft operator may use screeners who do not meet the requirements of paragraph (f) of this section, provided that at least one representative of the aircraft operator who has the ability to functionally read and speak English is present while the aircraft operator's passengers are undergoing security screening. At such locations the aircraft operator may use screeners who are not United States citizens.

EFFECTIVE DATE NOTE: At 74 FR 47704, Sept. 16, 2009, § 1544.405 was amended by revising the section heading, effective November 16, 2009. For the convenience of the user, the revised text is set forth as follows:

§ 1544.405 Qualifications of screening personnel.

§ 1544.407 New screeners: Training, testing, and knowledge of individuals who perform screening functions.

(a) *Training required.* Before performing screening functions, an individual must have completed initial, recurrent, and appropriate specialized training as specified in this section and the aircraft operator's security program. No aircraft operator may use any screener, screener in charge, or checkpoint security supervisor unless that individual has satisfactorily completed the required training. This paragraph does not prohibit the performance of screening functions during on-the-job training as provided in § 1544.409 (b).

(b) *Use of training programs.* Training for screeners must be conducted under programs provided by TSA. Training programs for screeners-in-charge and checkpoint security supervisors must be conducted in accordance with the aircraft operator's security program.

(c) *Classroom instruction.* Each screener must complete at least 40 hours of classroom instruction or successfully complete a program that TSA determines will train individuals to a level of proficiency equivalent to the level that would be achieved by such classroom instruction.

(d) *Screener readiness test.* Before beginning on-the-job training, a screener trainee must pass the screener readiness test prescribed by TSA.

(e) *On-the-job training and testing.* Each screener must complete at least 60 hours of on-the-job training and must pass an on-the-job training test prescribed by TSA. No aircraft operator may permit a screener trainee to exercise independent judgment as a screener, until the individual passes an on-the-job training test prescribed by TSA.

(f) *Knowledge requirements.* Each aircraft operator must ensure that individuals performing as screeners, screeners-in-charge, and checkpoint security supervisors for the aircraft operator have knowledge of the provisions of this part, the aircraft operator's security program, and applicable Security Directives and Information Circulars to the extent necessary to perform their duties.

(g) *Disclosure of sensitive security information during training.* The aircraft operator may not permit a trainee to have access to sensitive security information during screener training unless a criminal history records check has successfully been completed for that individual in accordance with § 1544.229, and the individual has no disqualifying criminal offense.

EFFECTIVE DATE NOTE: At 74 FR 47704, Sept. 16, 2009, § 1544.407 was amended by revising the section heading and paragraph (c), effective November 16, 2009. For the convenience of the user, the revised text is set forth as follows:

§ 1544.407 Training, testing, and knowledge of individuals who perform screening functions.

* * * * *

(c) *Citizenship.* A screener must be a citizen or national of the United States.

* * * * *

§ 1544.409 New screeners: Integrity of screener tests.

(a) *Cheating or other unauthorized conduct.* (1) Except as authorized by the TSA, no person may—

(i) Copy or intentionally remove a test under this part;

(ii) Give to another or receive from another any part or copy of that test;

(iii) Give help on that test to or receive help on that test from any person during the period that the test is being given; or

(iv) Use any material or aid during the period that the test is being given.

(2) No person may take any part of that test on behalf of another person.

(3) No person may cause, assist, or participate intentionally in any act prohibited by this paragraph (a).

(b) *Administering and monitoring screener tests.* (1) Each aircraft operator must notify TSA of the time and location at which it will administer each screener readiness test required under § 1544.405(d).

(2) Either TSA or the aircraft operator must administer and monitor the screener readiness test. Where more than one aircraft operator or foreign air carrier uses a screening location, TSA may authorize an employee of one or more of the aircraft operators or foreign air carriers to monitor the test for a trainee who will screen at that location.

(3) If TSA or a representative of TSA is not available to administer and monitor a screener readiness test, the aircraft operator must provide a direct employee to administer and monitor the screener readiness test.

(4) An aircraft operator employee who administers and monitors a screener readiness test must not be an instructor, screener, screener-in-charge, checkpoint security supervisor, or other screening supervisor. The employee must be familiar with the procedures for administering and monitoring the test and must be capable of observing whether the trainee or others are engaging in cheating or other unauthorized conduct.

EFFECTIVE DATE NOTE: At 74 FR 47704, Sept. 16, 2009, § 1544.409 was amended by revising the section heading, effective November 16, 2009. For the convenience of the user, the revised text is set forth as follows:

§ 1544.409 Integrity of screener tests.

§ 1544.411 New screeners: Continuing qualifications for screening personnel.

(a) *Impairment.* No individual may perform a screening function if he or she shows evidence of impairment, such as impairment due to illegal drugs, sleep deprivation, medication, or alcohol.

(b) *Training not complete.* An individual who has not completed the training required by § 1544.405 may be deployed during the on-the-job portion of training to perform security functions provided that the individual—

(1) Is closely supervised; and

(2) Does not make independent judgments as to whether individuals or property may enter a sterile area or aircraft without further inspection.

(c) *Failure of operational test.* No aircraft operator may use an individual to perform a screening function after that individual has failed an operational test related to that function, until that individual has successfully completed the remedial training specified in the aircraft operator's security program.

(d) *Annual proficiency review.* Each individual assigned screening duties shall receive an annual evaluation. The aircraft operator must ensure that a Ground Security Coordinator conducts and documents an annual evaluation of each individual who performs screening functions. An individual who performs screening functions may not continue to perform such functions unless the evaluation demonstrates that the individual—

(1) Continues to meet all qualifications and standards required to perform a screening function;

(2) Has a satisfactory record of performance and attention to duty based on the standards and requirements in the aircraft operator's security program; and

(3) Demonstrates the current knowledge and skills necessary to courteously, vigilantly, and effectively perform screening functions.

EFFECTIVE DATE NOTE: At 74 FR 47704, Sept. 16, 2009, § 1544.411 was amended by revising the section heading, effective November 16, 2009. For the convenience of the user, the revised text is set forth as follows:

§ 1544.411 Continuing qualifications of screening personnel.

PART 1546—FOREIGN AIR CARRIER SECURITY

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SOURCE: 67 FR 8377, Feb. 22, 2002, unless otherwise noted.

Subpart A—General

§ 1546.1 Applicability of this part.

This part prescribes aviation security rules governing the following:

(a) The operation within the United States of each foreign air carrier holding a permit issued by the Department of Transportation under 49 U.S.C. 41302 or other appropriate authority issued by the former Civil Aeronautics Board or the Department of Transportation.

(b) Each law enforcement officer flying armed aboard an aircraft operated by a foreign air carrier described in paragraph (a) of this section.

§ 1546.3 TSA inspection authority.

(a) Each foreign air carrier must allow TSA, at any time or place, to make any inspections or tests, including copying records, to determine compliance of an airport operator, aircraft operator, foreign air carrier, indirect air carrier, or other airport tenants with—

(1) This subchapter and any security program under this subchapter, and part 1520 of this chapter; and

(2) 49 U.S.C. Subtitle VII, as amended.

(b) At the request of TSA, each foreign air carrier must provide evidence of compliance with this subchapter and its security program, including copies of records.

(c) TSA may enter and be present within secured areas, AOAs, SIDAs, and other areas where security measures required by TSA are carried out, without access media or identification media issued or approved by an airport operator or aircraft operator, in order to inspect or test compliance, or perform other such duties as TSA may direct.

[67 FR 8377, Feb. 22, 2002, as amended at 71 FR 30511, May 26, 2006]

Subpart B—Security Program

§ 1546.101 Adoption and implementation.

Each foreign air carrier landing or taking off in the United States must adopt and carry out, for each scheduled and public charter passenger operation

or all-cargo operation, a security program that meets the requirements of—

(a) Section 1546.103(b) and subparts C, D, and E of this part for each operation with an aircraft having a passenger seating configuration of 61 or more seats;

(b) Section 1546.103(b) for each operation that will provide deplaned passengers access to a sterile area, or enplane passengers from a sterile area, when that access is not controlled by an aircraft operator using a security program under part 1544 of this chapter or a foreign air carrier using a security program under this part;

(c) Section 1546.103(b) for each operation with an airplane having a passenger seating configuration of 31 or more seats but 60 or fewer seats for which TSA has notified the foreign air carrier in writing that a threat exists; and

(d) Section 1546.103(c) for each operation with an airplane having a passenger seating configuration of 31 or more seats but 60 or fewer seats, when TSA has not notified the foreign air carrier in writing that a threat exists with respect to that operation.

(e) Sections 1546.103(b)(2) and (b)(4), 1546.202, 1546.205(a), (b), (c), (d), (e), and (f), 1546.207, 1546.211, 1546.213, and 1546.301 for each all-cargo operation with an aircraft having a maximum certificated take-off weight more than 45,500 kg (100,309.3 lbs.); and

(f) Sections 1546.103(b)(2) and (b)(4), 1546.202, 1546.205(a), (b), (d), and (f), 1546.211, and 1546.301 for each all-cargo operation with an aircraft having a maximum certificated take-off weight more than 12,500 pounds but not more than 45,500 kg (100,309.3 lbs.).

[67 FR 8377, Feb. 22, 2002, as amended at 71 FR 30511, May 26, 2006]

§ 1546.103 Form, content, and availability of security program.

(a) *General requirements.* The security program must be:

(1) *Acceptable to TSA.* A foreign air carrier's security program is acceptable only if TSA finds that the security program provides a level of protection similar to the level of protection provided by U.S. aircraft operators serving the same airports. Foreign air carriers must employ procedures equivalent to those required of U.S. aircraft operators serving the same airport, if TSA determines that such procedures are necessary to provide a similar level of protection.

(2) In English unless TSA requests that the program be submitted in the official language of the foreign air carrier's country.

(b) *Content of security program.* Each security program required by § 1546.101(a), (b), (c), (e), or (f) must be designed to—

(1) Prevent or deter the carriage aboard airplanes of any unauthorized explosive, incendiary, or weapon on or about each individual's person or accessible property, except as provided in § 1546.201(d), through screening by weapon-detecting procedures or facilities;

(2) Prohibit unauthorized access to airplanes;

(3) Ensure that checked baggage is accepted by a responsible agent of the foreign air carrier; and

(4) Prevent cargo and checked baggage from being loaded aboard its airplanes unless handled in accordance with the foreign air carrier's security procedures.

(c) *Law enforcement support.* Each security program required by § 1546.101(d) must include the procedures used to comply with the applicable requirements of § 1546.209 regarding law enforcement officers.

(d) *Availability.* Each foreign air carrier required to adopt and use a security program under this part must—

(1) Restrict the distribution, disclosure, and availability of sensitive security information, as defined in part 1520 of this chapter, to persons with a need to know; and

(2) Refer requests for sensitive security information by other persons to TSA.

[67 FR 8377, Feb. 22, 2002, as amended at 71 FR 30512, May 26, 2006]

§ 1546.105 Acceptance of and amendments to the security program.

(a) *Initial acceptance of security program.* Unless otherwise authorized by TSA, each foreign air carrier required to have a security program by this part must submit its proposed program to

TSA at least 90 days before the intended date of passenger operations. TSA will notify the foreign air carrier of the security program's acceptability, or the need to modify the proposed security program for it to be acceptable under this part, within 30 days after receiving the proposed security program. The foreign air carrier may petition TSA to reconsider the notice to modify the security program within 30 days after receiving a notice to modify.

(b) *Amendment requested by a foreign air carrier.* A foreign air carrier may submit a request to TSA to amend its accepted security program as follows:

(1) The proposed amendment must be filed with the designated official at least 45 calendar days before the date it proposes for the amendment to become effective, unless a shorter period is allowed by the designated official.

(2) Within 30 calendar days after receiving a proposed amendment, the designated official, in writing, either approves or denies the request to amend.

(3) An amendment to a foreign air carrier security program may be approved if the designated official determines that safety and the public interest will allow it, and the proposed amendment provides the level of security required under this part.

(4) Within 45 calendar days after receiving a denial, the foreign air carrier may petition the Administrator to reconsider the denial. A petition for reconsideration must be filed with the designated official.

(5) Upon receipt of a petition for reconsideration, the designated official either approves the request to amend or transmits the petition, together with any pertinent information, to the Administrator for reconsideration. The Administrator disposes of the petition within 30 calendar days of receipt by either directing the designated official to approve the amendment, or affirming the denial.

(6) Any foreign air carrier may submit a group proposal for an amendment that is on behalf of it and other aircraft operators that co-sign the proposal.

(c) *Amendment by TSA.* If the safety and the public interest require an amendment, the designated official may amend an accepted security program as follows:

(1) The designated official notifies the foreign air carrier, in writing, of the proposed amendment, fixing a period of not less than 45 calendar days within which the foreign air carrier may submit written information, views, and arguments on the amendment.

(2) After considering all relevant material, the designated official notifies the foreign air carrier of any amendment adopted or rescinds the notice. If the amendment is adopted, it becomes effective not less than 30 calendar days after the foreign air carrier receives the notice of amendment, unless the foreign air carrier petitions the Administrator to reconsider no later than 15 calendar days before the effective date of the amendment. The foreign air carrier must send the petition for reconsideration to the designated official. A timely petition for reconsideration stays the effective date of the amendment.

(3) Upon receipt of a petition for reconsideration, the designated official either amends or withdraws the notice or transmits the petition, together with any pertinent information, to the Administrator for reconsideration. The Administrator disposes of the petition within 30 calendar days of receipt by either directing the designated official to withdraw or amend the amendment, or by affirming the amendment.

(d) *Emergency amendments.* If the designated official finds that there is an emergency requiring immediate action with respect to safety in air transportation or in air commerce that makes procedures in this section contrary to the public interest, the designated official may issue an amendment, without the prior notice and comment procedures in paragraph (c) of this section, effective without stay on the date the foreign air carrier receives notice of it. In such a case, the designated official will incorporate in the notice a brief statement of the reasons and findings for the amendment to be adopted. The foreign air carrier may file a petition for reconsideration under paragraph (c) of this section; however, this does not

stay the effectiveness of the emergency amendment.

Subpart C—Operations

§ 1546.201 Acceptance and screening of individuals and accessible property.

(a) *Preventing or deterring the carriage of any explosive, incendiary, or weapon.* Unless otherwise authorized by TSA, each foreign air carrier must use the measures in its security program to prevent or deter the carriage of any explosive, incendiary, or weapon on or about each individual's person or accessible property before boarding an aircraft or entering a sterile area.

(b) *Screening of individuals and accessible property.* Except as provided in its security program, each foreign air carrier must ensure that each individual entering a sterile area at each preboard screening checkpoint for which it is responsible, and all accessible property under that individual's control, are inspected for weapons, explosives, and incendiaries as provided in § 1546.207.

(c) *Refusal to transport.* Each foreign air carrier conducting an operation for which a security program is required by § 1546.101(a), (b), or (c) must refuse to transport—

(1) Any individual who does not consent to a search or inspection of his or her person in accordance with the system prescribed in this part; and

(2) Any property of any individual or other person who does not consent to a search or inspection of that property in accordance with the system prescribed by this part.

(d) *Explosive, incendiary, weapon: Prohibitions and exceptions.* No individual may, while on board an aircraft being operated by a foreign air carrier in the United States, carry on or about his person a deadly or dangerous weapon, either concealed or unconcealed. This paragraph (d) does not apply to—

(1) Officials or employees of the state of registry of the aircraft who are authorized by that state to carry arms; and

(2) Crewmembers and other individuals authorized by the foreign air carrier to carry arms.

§ 1546.202 Persons and property onboard the aircraft.

Each foreign air carrier operating under § 1546.101(e) or (f) must apply the security measures in its security program for persons who board the aircraft for transportation, and for their property, to prevent or deter the carriage of any unauthorized persons, and any unauthorized weapons, explosives, incendiaries, and other destructive devices, items, or substances.

[71 FR 30512, May, 26, 2006]

§ 1546.203 Acceptance and screening of checked baggage.

(a) *Preventing or deterring the carriage of any explosive or incendiary.* Each foreign air carrier must use the procedures, facilities, and equipment described in its security program to prevent or deter the carriage of any unauthorized explosive or incendiary onboard aircraft in checked baggage.

(b) *Refusal to transport.* Each foreign air carrier must refuse to transport any individual's checked baggage or property if the individual does not consent to a search or inspection of that checked baggage or property in accordance with the system prescribed by this part.

(c) *Firearms in checked baggage.* No foreign air carrier may knowingly permit any person to transport, nor may any person transport, while aboard an aircraft being operated in the United States by that carrier, in checked baggage, a firearm, unless:

(1) The person has notified the foreign air carrier before checking the baggage that the firearm is in the baggage; and

(2) The baggage is carried in an area inaccessible to passengers.

§ 1546.205 Acceptance and screening of cargo.

(a) *Preventing or deterring the carriage of any explosive or incendiary.* Each foreign air carrier operating a program under § 1546.101(a), (b), (e), or (f) must use the procedures, facilities, and equipment described in its security program to prevent or deter the carriage of any unauthorized person, and

any unauthorized explosive, incendiary, and other destructive substance or item in cargo onboard an aircraft.

(b) *Refusal to transport.* Each foreign air carrier operating a program under §1546.101(a), (b), (e), or (f) must refuse to transport any cargo, if the shipper does not consent to a search or inspection of that cargo in accordance with the system prescribed by this part.

(c) *Control.* Each foreign air carrier operating a program under §1546.101(a), (b), or (e) must use the procedures in its security program to control cargo that it accepts for transport on an aircraft in a manner that—

(1) Prevents the carriage of any unauthorized person, and any unauthorized explosive, incendiary, and other destructive substance or item onboard the aircraft.

(2) Prevents access by unauthorized persons other than an authorized foreign air carrier employee or agent, or persons authorized by the airport operator or host government.

(d) *Screening and inspection of cargo in the United States.* Each foreign air carrier operating a program under §1546.101(a), (b), (e), or (f) must ensure that, as required in its security program, cargo is screened and inspected for any unauthorized persons, and any unauthorized explosives, incendiaries, and other destructive substances or items as provided in the foreign air carrier's security program, and §1546.207, and as provided in §1546.213 for operations under §1546.101(a) or (b) before loading it on its aircraft in the United States.

(e) *Acceptance of cargo in the United States only from specified persons.* Each foreign air carrier operating a program under §1546.101(a), (b), or (e) of this part may accept cargo in the United States only from the shipper, or from an aircraft operator, foreign air carrier, or indirect air carrier operating under a security program under this chapter with a comparable cargo security program as provided in its security program.

(f) *Acceptance of cargo to be loaded for transport to the United States.* Each foreign air carrier subject to this part that accepts cargo to be loaded on its aircraft for transport to the United States must carry out the requirements of its security program.

[71 FR 30512, May 26, 2006]

EFFECTIVE DATE NOTE: At 74 FR 47704, Sept. 16, 2009, §1546.205 was amended by revising paragraphs (d), (e) and adding a new (g), effective November 16, 2009. For the convenience of the user, the added and revised text is set forth as follows:

§1546.205 Acceptance and screening of cargo.

* * * * *

(d) *Screening and inspection of cargo in the United States.* For cargo to be loaded in the United States, each foreign air carrier operating a program under §1546.101(1)(a), (b), (e), or (f) must ensure that cargo is screened and inspected for any unauthorized person, and any unauthorized explosive, incendiary, and other destructive substances or items as provided in the foreign air carrier's security program and §1546.207, and as provided in §1546.213 for operations under §1546.101(a) or (b), before loading it on its aircraft in the United States.

(e) *Acceptance of cargo only from specified persons.* Except as otherwise provided in its program, each foreign air carrier operating a program under §1546.101(a), (b), (e) or (f) may accept cargo for air transportation to be loaded in the United States only from the shipper, or from an aircraft operator, foreign air carrier, or indirect air carrier operating under a security program under this chapter with a comparable cargo security program, or, in the case of a foreign air carrier under §1546.101(a) or (b), from a certified cargo screening facility, as provided in its security program.

* * * * *

(g) *Screening of cargo loaded inside the United States under §1546.101(a) or (b).* For cargo to be loaded in the United States, each foreign air carrier under §1546.101(a) or (b) must ensure that all cargo is screened in the United States as follows:

(1) *Amount screened.* (i) Not later than February 3, 2009, each foreign air carrier must ensure that at least 50 percent of its cargo is screened prior to transport on a passenger aircraft.

(ii) Not later than August 3, 2010, each foreign air carrier must ensure that 100 percent of its cargo is screened prior to transport on a passenger aircraft.

(2) *Methods of screening.* For the purposes of this paragraph (g), the foreign air carrier must ensure that cargo is screened using a physical examination or non-intrusive method of assessing whether cargo poses a threat to transportation security, as provided in its

security program. Such methods may include TSA-approved x-ray systems, explosives detection systems, explosives trace detection, explosives detection canine teams certified by TSA, a physical search together with manifest verification, or other method approved by TSA.

(3) *Limitation on who may conduct screening.* Screening must be conducted by the foreign air carrier on an airport, by another aircraft operator or foreign air carrier operating under a security program under this chapter with a comparable cargo security program on an airport with a complete program under 49 CFR part 1542, by a certified cargo screening facility in accordance with 49 CFR part 1549, or by TSA. If an aircraft operator or foreign air carrier screens cargo off an airport, it must do so as a certified cargo screening facility in accordance with part 1549.

(4) The foreign air carrier must verify that the chain of custody measures for the screened cargo are intact prior to loading such cargo on aircraft, or must ensure that the cargo is re-screened in accordance with this chapter.

§ 1546.207 Screening of individuals and property.

(a) *Applicability of this section.* This section applies to the inspection of individuals, accessible property, checked baggage, and cargo as required under this part.

(b) *Locations within the United States at which TSA conducts screening.* As required in its security program, each foreign air carrier must ensure that all individuals or property have been inspected by TSA before boarding or loading on its aircraft. This paragraph applies when TSA is conducting screening using TSA employees or when using companies under contract with TSA.

(c) *Foreign air carrier conducting screening.* Each foreign air carrier must use the measures in its security program to inspect the individual or property. This paragraph does not apply at locations identified in paragraphs (b) of this section.

§ 1546.209 Use of X-ray systems.

(a) *TSA authorization required.* No foreign air carrier may use any X-ray system within the United States to screen accessible property or checked baggage, unless specifically authorized under its security program. No foreign air carrier may use such a system in a manner contrary to its security program. TSA authorizes foreign air carriers to use X-ray systems for inspecting accessible property or checked baggage under a security program if the foreign air carrier shows that—

(1) The system meets the standards for cabinet X-ray systems primarily for the inspection of baggage issued by the Food and Drug Administration (FDA) and published in 21 CFR 1020.40;

(2) A program for initial and recurrent training of operators of the system is established, which includes training in radiation safety, the efficient use of X-ray systems, and the identification of weapons, explosives, and incendiaries; and

(3) The system meets the imaging requirements set forth in its security program using the step wedge specified in American Society for Testing Materials (ASTM) Standard F792–88 (Reapproved 1993). This standard is incorporated by reference in paragraph (g) of this section.

(b) *Annual radiation survey.* No foreign air carrier may use any X-ray system unless, within the preceding 12 calendar months, a radiation survey is conducted that shows that the system meets the applicable performance standards in 21 CFR 1020.40.

(c) *Radiation survey after installation or moving.* No foreign air carrier may use any X-ray system after the system has been installed at a screening point or after the system has been moved unless a radiation survey is conducted which shows that the system meets the applicable performance standards in 21 CFR 1020.40. A radiation survey is not required for an X-ray system that is designed and constructed as a mobile unit and the foreign air carrier shows that it can be moved without altering its performance.

(d) *Defect notice or modification order.* No foreign air carrier may use any X-ray system that is not in full compliance with any defect notice or modification order issued for that system by the FDA, unless the FDA has advised TSA that the defect or failure to comply does not create a significant risk of injury, including genetic injury, to any person.

(e) *Signs and inspection of photographic equipment and film.* (1) At locations at which a foreign air carrier uses an X-ray system to inspect accessible property the foreign air carrier must ensure that a sign is posted in a conspicuous place at the screening checkpoint.

(2) At locations at which a foreign air carrier or TSA uses an X-ray system to inspect checked baggage the foreign air carrier must ensure that a sign is posted in a conspicuous place where the foreign air carrier accepts checked baggage.

(3) The signs required under this paragraph must notify individuals that such items are being inspected by an X-ray and advise them to remove all X-ray, scientific, and high-speed film from accessible property and checked baggage before inspection. This sign must also advise individuals that they may request that an inspection be made of their photographic equipment and film packages without exposure to an X-ray system. If the X-ray system exposes any accessible property or checked baggage to more than one milliroentgen during the inspection, the sign must advise individuals to remove film of all kinds from their articles before inspection.

(4) If requested by individuals, their photographic equipment and film packages must be inspected without exposure to an X-ray system.

(f) *Radiation survey verification after installation or moving.* Each foreign air carrier must maintain at least one copy of the results of the most recent radiation survey conducted under paragraph (b) or (c) of this section and must make it available for inspection upon request by TSA at each of the following locations—

(1) The foreign air carrier's principal business office; and

(2) The place where the X-ray system is in operation.

(g) *Incorporation by reference.* The American Society for Testing and Materials (ASTM) Standard F792–88 (Reapproved 1993), ''Standard Practice for Design and Use of Ionizing Radiation Equipment for the Detection of Items Prohibited in Controlled Access Areas,'' is approved for incorporation by reference by the Director of the Federal Register pursuant to 5 U.S.C. 552(a) and 1 CFR part 51. ASTM Standard F792–88 may be examined at the Department of Transportation (DOT) Docket, 400 Seventh Street SW, Room Plaza 401, Washington, DC 20590, or on DOT's Docket Management System (DMS) web page at *http://dms.dot.gov/search* (under docket number FAA–2001–8725). Copies of the standard may be examined also at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* In addition, ASTM Standard F792–88 (Reapproved 1993) may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.

(h) Each foreign air carrier must comply with the X-ray operator duty time limitations specified in its security program.

[67 FR 8377, Feb. 22, 2002, as amended at 69 FR 18803, Apr. 9, 2004]

§ 1546.211 Law enforcement personnel.

(a) At airports within the United States not governed by part 1542 of this chapter, each foreign air carrier engaging in public charter passenger operations must—

(1) When using a screening system required by § 1546.101(a), (b), or (c), provide for law enforcement officers meeting the qualifications and standards, and in the number and manner, specified in part 1542; and

(2) When using an airplane having a passenger seating configuration of 31 or more but 60 or fewer seats for which a screening system is not required by § 1546.101(a), (b), or (c), arrange for law enforcement officers meeting the qualifications and standards specified in part 1542 of this chapter to be available to respond to an incident and provide to appropriate employees, including crewmembers, current information with respect to procedures for obtaining law enforcement assistance at that airport.

(b) At airports governed by part 1542 of this chapter, each foreign air carrier

engaging in scheduled passenger operations or public charter passenger operations when using an airplane with a passenger seating configuration of 31 or more and 60 or fewer seats under § 1546.101(c), must arrange for law enforcement personnel meeting the qualifications and standards specified in part 1542 of this chapter to be available to respond to an incident and provide to appropriate employees, including crewmembers, current information with respect to procedures for obtaining law enforcement assistance at that airport.

§ 1546.213 Access to cargo: Security threat assessments for cargo personnel in the United States.

This section applies in the United States to each foreign air carrier operating under § 1546.101(a), (b), or (e).

(a) This section applies to each employee or agent in the United States whom the foreign air carrier authorizes to have unescorted access to cargo from the time—

(1) The cargo reaches a location where a foreign air carrier operating under § 1546.101(e) consolidates or inspects it pursuant to security program requirements, until the cargo enters an airport Security Identification Display Area or is transferred to another TSA-regulated aircraft operator, foreign air carrier, or indirect air carrier, or

(2) A foreign air carrier under § 1546.101(a) or (b) accepts the cargo, until the cargo—

(i) Enters an airport Security Identification Display Area;

(ii) Is removed from the destination airport; or

(iii) Is transferred to another TSA-regulated aircraft operator, foreign air carrier, or indirect air carrier.

(b) Before a foreign air carrier authorizes, and before an employee or agent gains, unescorted access to cargo as described in paragraph (a) of this section, each employee or agent must successfully complete one of the following:

(1) A criminal history records check under § 1542.209, § 1544.229, or § 1544.230 of this chapter, if the employee or agent is otherwise required to undergo that check.

(2) A Security Threat Assessment under part 1540 subpart C of this chapter. An employee or agent who has successfully completed this Security Threat Assessment for one employer need not complete it for another employer, if the employee or agent has been continuously employed in a position that requires a Security Threat Assessment.

(3) Another Security Threat Assessment approved by TSA as comparable to paragraphs (b)(1) or (2) of this section.

(c) Each foreign air carrier must ensure that each individual who has access to its cargo—

(1) Has successfully completed one of the checks in paragraph (b) of this section;

(2) Is escorted by an employee or agent who has successfully completed one of the checks in paragraph (b) of this section; or

(3) Is authorized to serve as law enforcement personnel at that location.

(d) Operators must submit to TSA the names and other identifying information required by TSA of all individuals required to successfully complete an assessment under paragraph (b) not later than May 15, 2007, for direct employees and not later than July 15, 2007, for agents. After those dates, the operators may not allow an individual to perform a function for which a STA is required, unless the operator has submitted the information for that individual to TSA.

(e) Operators must comply with the requirements of paragraphs (a), (b), and (c) of this section not later than the dates to be specified by TSA in a future rule in the FEDERAL REGISTER.

[71 FR 30512, May 26, 2006; 71 FR 31964, June 2, 2006, as amended at 71 FR 62549, Oct. 25, 2006; 72 FR 13026, Mar. 20, 2007]

EFFECTIVE DATE NOTE: At 74 FR 47705, Sept. 16, 2009, § 1546.213 was revised, effective November 16, 2009. For the convenience of the user, the revised text is set forth as follows:

§ 1546.213 Access to cargo: Security threat assessments for cargo personnel in the United States.

This section applies in the United States to each foreign air carrier operating under § 1546.101(a), (b), or (e).

(a) Before a foreign air carrier authorizes and before an individual performs a function described in paragraph (b) of this section—

(1) Each individual must successfully complete a security threat assessment or comparable security threat assessment described in part 1540 subpart C of this chapter; and

(2) Each aircraft operator must complete the requirements in part 1540 subpart C.

(b) The security threat assessment required in paragraph (a) of this section applies to the following:

(1) Each individual who has unescorted access to cargo and access to information that such cargo will be transported on a passenger aircraft; or who has unescorted access to cargo that has been screened for transport on a passenger aircraft; or who performs certain functions related to the transportation, dispatch or security of cargo for transport on a passenger aircraft or all-cargo aircraft, as specified in the foreign air craft operator's or foreign air carrier's security program; from the time—

(i) The cargo reaches a location where a foreign air carrier operating under § 1546.101(e) consolidates or inspects it pursuant to security program requirements, until the cargo enters an airport Security Identification Display Area or is transferred to another TSA-regulated aircraft operator, foreign air carrier, or indirect air carrier; or

(ii) A foreign air carrier under §§ 1546.101(a) or (b) accepts the cargo, until the cargo—

(A) Enters an airport Security Identification Display Area;

(B) Is removed from the destination airport; or

(C) Is transferred to another TSA-regulated aircraft operator, foreign air carrier, or indirect air carrier.

(2) Each individual the foreign air carrier authorizes to screen cargo or to supervise the screening of cargo under § 1546.205.

§ 1546.215 Known shipper program.

This section applies to each foreign air carrier operating a program under § 1546.101(a) or (b).

(a) For cargo to be loaded on its aircraft in the United States, each foreign air carrier must have and carry out a known shipper program in accordance with its security program. The program must—

(1) Determine the shipper's validity and integrity as provided in the foreign air carrier's security program;

(2) Provide that the foreign air carrier will separate known shipper cargo from unknown shipper cargo; and

(3) Provide for the foreign air carrier to ensure that cargo is screened or inspected as set forth in its security program.

(b) When required by TSA, each foreign air carrier must submit in a form and manner acceptable to TSA—

(1) Information identified in its security program regarding an applicant to be a known shipper or a known shipper; and

(2) Corrections and updates to the information upon learning of a change to the information specified in paragraph (b)(1) of this section.

[71 FR 30512, May 26, 2006]

Subpart D—Threat and Threat Response

§ 1546.301 Bomb or air piracy threats.

No foreign air carrier may land or take off an airplane in the United States after receiving a bomb or air piracy threat against that airplane, unless the following actions are taken:

(a) If the airplane is on the ground when a bomb threat is received and the next scheduled flight of the threatened airplane is to or from a place in the United States, the foreign air carrier ensures that the pilot in command is advised to submit the airplane immediately for a security inspection and an inspection of the airplane is conducted before the next flight.

(b) If the airplane is in flight to a place in the United States when a bomb threat is received, the foreign air carrier ensures that the pilot in command is advised immediately to take the emergency action necessary under the circumstances and a security inspection of the airplane is conducted immediately after the next landing.

(c) If information is received of a bomb or air piracy threat against an airplane engaged in an operation specified in paragraph (a) or (b) of this section, the foreign air carrier ensures that notification of the threat is given to the appropriate authorities of the State in whose territory the airplane is located or, if in flight, the appropriate authorities of the State in whose territory the airplane is to land.

[67 FR 8377, Feb. 22, 2002, as amended at 71 FR 30513, May 26, 2006]

Subpart E—Screener Qualifications When the Foreign Air Carrier Conducts Screening

§ 1546.401 Applicability of this subpart.

(a) *Foreign air carrier screening.* This subpart applies when the foreign air carrier is conducting inspections as provided in § 1546.207(c).

(b) *Current screeners.* As used in this subpart, ''current screener'' means each individual who first performed screening functions before the date the foreign air carrier must begin use of the new screener training program provided by TSA. Until November 19, 2002, each current screener must comply with § 1546.403. Until November 19, 2002, each foreign air carrier must apply § 1546.403 for each current screener. On and after November 19, 2002, each current screener must comply with §§ 1546.405 through 1546.411, and each foreign air carrier must comply with §§ 1546.405 through 1546.411 for such individuals.

(c) *New screeners.* As used in this subpart, ''new screener'' means each individual who first performs screening functions on and after TSA orders the foreign air carrier to begin use of the new screener training program provided by TSA. Each foreign air carrier must apply §§ 1546.405 through 1546.411 for new screeners.

EFFECTIVE DATE NOTE: At 74 FR 47705, Sept. 16, 2009, § 1546.401 was revised, effective November 16, 2009. For the convenience of the user, the revised text is set forth as follows:

§ 1546.401 Applicability of this subpart.

This subpart applies when the aircraft operator is conducting inspections as provided in § 1546.207.

§ 1546.403 Current screeners.

The foreign air carrier must ensure that each current screener it uses to perform screening functions meet the qualifications and training standards set forth in its security program. This section is no longer effective on and after November 19, 2002.

EFFECTIVE DATE NOTE: At 74 FR 47705, Sept. 16, 2009, § 1546.403 was removed and reserved, effective November 16, 2009.

§ 1546.405 New screeners: Qualifications of screening personnel.

(a) No individual subject to this subpart may perform a screening function unless that individual has the qualifications described in §§ 1546.405 through 1546.411. No foreign air carrier may use such an individual to perform a screening function unless that person complies with the requirements of §§ 1546.405 through 1546.411.

(b) A screener must have a satisfactory or better score on a screener selection test administered by TSA.

(c) A screener must be a citizen of the United States.

(d) A screener must have a high school diploma, a General Equivalency Diploma, or a combination of education and experience that TSA has determined to be sufficient for the individual to perform the duties of the position.

(e) A screener must have basic aptitudes and physical abilities including color perception, visual and aural acuity, physical coordination, and motor skills to the following standards:

(1) Screeners operating screening equipment must be able to distinguish on the screening equipment monitor the appropriate imaging standard specified in the foreign air carrier's security program.

(2) Screeners operating any screening equipment must be able to distinguish each color displayed on every type of screening equipment and explain what each color signifies.

(3) Screeners must be able to hear and respond to the spoken voice and to audible alarms generated by screening equipment at an active screening location.

(4) Screeners who perform physical searches or other related operations must be able to efficiently and thoroughly manipulate and handle such baggage, containers, cargo, and other objects subject to screening.

(5) Screeners who perform pat-downs or hand-held metal detector searches of individuals must have sufficient dexterity and capability to thoroughly conduct those procedures over an individual's entire body.

(f) A screener must have the ability to read, speak, and write English well enough to—

(1) Carry out written and oral instructions regarding the proper performance of screening duties;

(2) Read English language identification media, credentials, airline tickets, documents, air waybills, invoices, and labels on items normally encountered in the screening process;

(3) Provide direction to and understand and answer questions from English-speaking individuals undergoing screening; and

(4) Write incident reports and statements and log entries into security records in the English language.

(g) At locations outside the United States that are the last point of departure to the United States, and where the foreign air carrier has operational control over a screening function, the foreign air carrier may use screeners who do not meet the requirements of paragraph (f) of this section. At such locations the foreign air carrier may use screeners who are not United States citizens.

EFFECTIVE DATE NOTE: At 74 FR 47705, Sept. 16, 2009, § 1546.405 was amended by revising the section heading, effective November 16, 2009. For the convenience of the user, the revised text is set forth as follows:

§ 1546.405 Qualifications of screening personnel.

§ 1546.407 New screeners: Training, testing, and knowledge of individuals who perform screening functions.

(a) *Training required.* Before performing screening functions, an individual must have completed initial, recurrent, and appropriate specialized training as specified in this section and the foreign air carrier's security program. No foreign air carrier may use any screener, screener in charge, or checkpoint security supervisor unless that individual has satisfactorily completed the required training. This paragraph does not prohibit the performance of screening functions during on-the-job training as provided in § 1544.409(b).

(b) *Use of training programs.* Training for screeners must be conducted under programs provided by TSA. Training programs for screeners-in-charge and checkpoint security supervisors must be conducted in accordance with the foreign air carrier's security program.

(c) *Classroom instruction.* Each screener must complete at least 40 hours of classroom instruction or successfully complete a program that TSA determines will train individuals to a level of proficiency equivalent to the level that would be achieved by such classroom instruction.

(d) *Screener readiness test.* Before beginning on-the-job training, a screener trainee must pass the screener readiness test prescribed by TSA.

(e) *On-the-job training and testing.* Each screener must complete at least 60 hours of on-the-job training and must pass an on-the-job training test prescribed by TSA. No foreign air carrier may permit a screener trainee to exercise independent judgment as a screener, until the individual passes an on-the-job training test prescribed by TSA.

(f) *Knowledge requirements.* Each foreign air carrier must ensure that individuals performing as screeners, screeners-in-charge, and checkpoint security supervisors for the foreign air carrier have knowledge of the provisions of this part, the foreign air carrier's security program, and applicable emergency amendments to the foreign air carrier's security program to the extent necessary to perform their duties.

EFFECTIVE DATE NOTE: At 74 FR 47705, Sept. 16, 2009, § 1546.407 was amended by revising the section heading, effective November 16, 2009. For the convenience of the user, the revised text is set forth as follows:

§ 1546.407 Training, testing, and knowledge of individuals who perform screening functions.

§ 1546.409 New screeners: Integrity of screener tests.

(a) *Cheating or other unauthorized conduct.* (1) Except as authorized by TSA, no person may—

(i) Copy or intentionally remove a test under this part;

(ii) Give to another or receive from another any part or copy of that test;

(iii) Give help on that test to or receive help on that test from any person during the period that the test is being given; or

(iv) Use any material or aid during the period that the test is being given.

(2) No person may take any part of that test on behalf of another person.

(3) No person may cause, assist, or participate intentionally in any act prohibited by this paragraph (a).

(b) *Administering and monitoring screener tests.* (1) Each foreign air carrier must notify TSA of the time and location at which it will administer each screener readiness test required under § 1544.405 (d).

(2) Either TSA or the foreign air carrier must administer and monitor the screener readiness test. Where more than one foreign air carrier or foreign air carrier uses a screening location, TSA may authorize an employee of one or more of the foreign air carriers or foreign air carriers to monitor the test for a trainee who will screen at that location.

(3) If TSA or a representative of TSA is not available to administer and monitor a screener readiness test, the foreign air carrier must provide a direct employee to administer and monitor the screener readiness test.

(4) An foreign air carrier employee who administers and monitors a screener readiness test must not be an instructor, screener, screener-in-charge, checkpoint security supervisor, or other screening supervisor. The employee must be familiar with the procedures for administering and monitoring the test and must be capable of observing whether the trainee or others are engaging in cheating or other unauthorized conduct.

EFFECTIVE DATE NOTE: At 74 FR 47705, Sept. 16, 2009, § 1546.409 was amended by revising the section heading, effective November 16, 2009. For the convenience of the user, the revised text is set forth as follows:

§ 1546.409 Integrity of screener tests.

§ 1546.411 New screeners: Continuing qualifications for screening personnel.

(a) *Impairment.* No individual may perform a screening function if he or she shows evidence of impairment, such as impairment due to illegal drugs, sleep deprivation, medication, or alcohol.

(b) *Training not complete.* An individual who has not completed the training required by § 1546.405 may be deployed during the on-the-job portion of training to perform security functions provided that the individual—

(1) Is closely supervised; and

(2) Does not make independent judgments as to whether individuals or property may enter a sterile area or aircraft without further inspection.

(c) *Failure of operational test.* No foreign air carrier may use an individual to perform a screening function after that individual has failed an operational test related to that function, until that individual has successfully completed the remedial training specified in the foreign air carrier's security program.

(d) *Annual proficiency review.* Each individual assigned screening duties shall receive an annual evaluation. The foreign air carrier must conduct and document an annual evaluation of each individual who performs screening functions. An individual who performs screening functions may not continue to perform such functions unless the evaluation demonstrates that the individual—

(1) Continues to meet all qualifications and standards required to perform a screening function;

(2) Has a satisfactory record of performance and attention to duty based on the standards and requirements in the foreign air carrier's security program; and

(3) Demonstrates the current knowledge and skills necessary to courteously, vigilantly, and effectively perform screening functions.

EFFECTIVE DATE NOTE: At 74 FR 47705, Sept. 16, 2009, § 1546.411 was amended by revising the section heading, effective November 16, 2009. For the convenience of the user, the revised text is set forth as follows:

§ 1546.411 Continuing qualifications of screening personnel.

PART 1548—INDIRECT AIR CARRIER SECURITY

Sec.

1548.1 Applicability of this part.
1548.3 TSA inspection authority.
1548.5 Adoption and implementation of the security program.

1548.7 Approval, amendment, annual renewal, and withdrawal of approval of the security program.
1548.9 Acceptance of cargo.
1548.11 Training and knowledge for individuals with security-related duties.
1548.13 Security coordinators.
1548.15 Access to Cargo: Security threat assessments for individuals having unescorted access to cargo.
1548.16 Security threat assessments for each proprietor, general partner, officer, director, and certain owners of the entity.
1548.17 Known shipper program.
1548.19 Security Directives and Information Circulars.
1548.21 Screening of cargo.

AUTHORITY: 49 U.S.C. 114, 5103, 40113, 44901–44905, 44913–44914, 44916–44917, 44932, 44935–44936, 46105.

SOURCE: 67 FR 8382, Feb. 22, 2002, unless otherwise noted.

§ 1548.1 Applicability of this part.

This part prescribes aviation security rules governing each indirect air carrier engaged indirectly in the air transportation of property on aircraft.

[67 FR 8382, Feb. 22, 2002, as amended at 71 FR 33255, June 8, 2006]

§ 1548.3 TSA inspection authority.

(a) Each indirect air carrier must allow TSA, at any time or place, to make any inspections or tests, including copying records, to determine compliance of an airport operator, aircraft operator, foreign air carrier, indirect air carrier, or airport tenant with—

(1) This subchapter, and any security program approved under this subchapter, and part 1520 of this chapter; and

(2) 49 U.S.C. Subtitle VII, as amended.

(b) At the request of TSA, each indirect air carrier must provide evidence of compliance with this subchapter and its indirect air carrier security program, including copies of records.

(c) TSA may enter and be present within areas where security measures required by TSA are carried out without access media or identification media issued or approved by the indirect air carrier, an airport operator, or aircraft operator, in order to inspect or test compliance, or perform other such duties as TSA may direct.

[67 FR 8382, Feb. 22, 2002, as amended at 71 FR 30513, May 26, 2006]

§ 1548.5 Adoption and implementation of the security program.

(a) *Security program required.* No indirect air carrier may offer cargo to an aircraft operator operating under a full program or a full all-cargo program specified in part 1544 of this subchapter, or to a foreign air carrier operating under a program under § 1546.101(a), (b), or (e) of this subchapter, unless that indirect air carrier has and carries out an approved security program under this part. Each indirect air carrier that does not currently hold a security program under part 1548, and that offers cargo to an aircraft operator operating under a full all-cargo program or a comparable operation by a foreign air carrier must comply with this section not later than December 1, 2006.

(b) *General requirements.* (1) The security program must provide for the security of the aircraft, as well as that of persons and property traveling in air transportation against acts of criminal violence and air piracy and against the introduction into the aircraft of any unauthorized person, and any unauthorized explosive, incendiary, and other destructive substance or item as provided in the indirect air carrier's security program. This requirement applies—

(i) From the time the indirect air carrier accepts the cargo to the time it transfers the cargo to an entity that is not an employee or agent of the indirect air carrier;

(ii) While the cargo is stored, en route, or otherwise being handled by an employee or agent of the indirect air carrier; and

(iii) Regardless of whether the indirect air carrier has or ever had physical possession of the cargo.

(2) The indirect air carrier must ensure that its employees and agents carry out the requirements of this chapter and the indirect air carrier's security program.

(c) *Content.* Each security program under this part must—

(1) Be designed to prevent or deter the introduction of any unauthorized person, and any unauthorized explosive, incendiary, and other destructive substance or item onto an aircraft.

(2) Include the procedures and description of the facilities and equipment used to comply with the requirements of §§ 1548.9 and 1548.17 regarding the acceptance and offering of cargo.

(3) Include the procedures and syllabi used to accomplish the training required under § 1548.11 of persons who accept, handle, transport, or deliver cargo on behalf of the indirect air carrier.

(d) *Availability*. Each indirect air carrier having a security program must:

(1) Maintain an original of the security program at its corporate office.

(2) Have accessible a complete copy, or the pertinent portions of its security program, or appropriate implementing instructions, at each office where cargo is accepted. An electronic version is adequate.

(3) Make a copy of the security program available for inspection upon the request of TSA.

(4) Restrict the distribution, disclosure, and availability of information contained in its security program to persons with a need to know, as described in part 1520 of this chapter.

(5) Refer requests for such information by other persons to TSA.

[67 FR 8382, Feb. 22, 2002, as amended at 71 FR 30513, May 26, 2006; 71 FR 31964, June 2, 2006]

§ 1548.7 Approval, amendment, annual renewal, and withdrawal of approval of the security program.

(a) *Original Application*—(1) *Application*. The applicant must apply for a security program in a form and a manner prescribed by TSA not less than 90 calendar days before the applicant intends to begin operations. The application must be in writing and include:

(i) The business name; other names, including doing business as; state of incorporation, if applicable; and tax identification number.

(ii) The applicant names, addresses, and dates of birth of each proprietor, general partner, officer, director, and owner identified under § 1548.16.

(iii) A signed statement from each person listed in paragraph (a)(1)(ii) of this section stating whether he or she has been a proprietor, general partner, officer, director, or owner of an IAC that had its security program withdrawn by TSA.

(iv) Copies of government-issued identification of persons listed in paragraph (a)(1)(ii) of this section.

(v) Addresses of all business locations in the United States.

(vi) A statement declaring whether the business is a "'small business'" pursuant to section 3 of the Small Business Act (15 U.S.C. 632).

(vii) A statement acknowledging and ensuring that each employee and agent of the indirect air carrier, who is subject to training under § 1548.11, will have successfully completed the training outlined in its security program before performing security-related duties.

(viii) Other information requested by TSA concerning Security Threat Assessments.

(ix) A statement acknowledging and ensuring that each employee and agent will successfully complete a Security Threat Assessment under § 1548.15 before authorizing the individual to have unescorted access to cargo.

(2) *Approval*. TSA will approve the security program by providing the indirect air carrier with the Indirect Air Carrier Standard Security Program and any Security Directive upon determining that—

(i) The indirect air carrier has met the requirements of this part, its security program, and any applicable Security Directive;

(ii) The approval of its security program is not contrary to the interests of security and the public interest; and

(iii) The indirect air carrier has not held a security program that was withdrawn within the previous year, unless otherwise authorized by TSA.

(3) *Commencement of operations*. The indirect air carrier may operate under a security program when it meets all requirements, including but not limited to successful completion of training and Security Threat Assessments by relevant personnel.

(4) *Duration of security program*. The security program will remain effective

until the end of the calendar month one year after the month it was approved.

(5) *Requirement to report changes in information.* Each indirect air carrier with an approved security program under this part must notify TSA, in a form and manner approved by TSA, of any changes to the information submitted during its initial application.

(i) This notification must be submitted to the designated official not later than 30 days after the date the change occurred.

(ii) Changes included in the requirement of this paragraph include, but are not limited to, changes in the indirect air carrier's contact information, owners, business addresses and locations, and form of business entity.

(b) *Renewal Application.* Upon timely submittal of an application for renewal, and unless and until TSA denies the application, the indirect air carrier's approved security program remains in effect.

(1) Unless otherwise authorized by TSA, each indirect air carrier that has a security program under this part must timely submit to TSA, at least 30 calendar days prior to the first day of the anniversary month of initial approval of its security program, an application for renewal of its security program in a form and a manner approved by TSA.

(2) The application for renewal must be in writing and include a signed statement that the indirect air carrier has reviewed and ensures the continuing accuracy of the contents of its initial application for a security program, subsequent renewal applications, or other submissions to TSA confirming a change of information and noting the date such applications and submissions were sent to TSA, including the following certification:

[Name of indirect air carrier] (hereinafter ''the IAC'') has adopted and is currently carrying out a security program in accordance with the Transportation Security Regulations as originally approved on [Insert date of TSA initial approval]. In accordance with TSA regulations, the IAC has notified TSA of any new or changed information required for the IAC's initial security program. If new or changed information is being submitted to TSA as part of this application for renewal, that information is stated in this filing.

The IAC understands that intentional falsification of certification to an air carrier or to TSA may be subject to both civil and criminal penalties under 49 CFR 1540 and 1548 and 18 U.S.C. 1001. Failure to notify TSA of any new or changed information required for initial approval of the IAC's security program in a timely fashion and in a form acceptable to TSA may result in withdrawal by TSA of approval of the IAC's security program.

(3) TSA will renew approval of the security program if TSA determines that—

(i) The indirect air carrier has met the requirements of this chapter, its security program, and any Security Directive; and

(ii) The renewal of its security program is not contrary to the interests of security and the public interest.

(4) If TSA determines that the indirect air carrier meets the requirements of paragraph (b)(3) of this section, it will renew the indirect air carrier's security program. The security program will remain effective until the end of the calendar month one year after the month it was renewed.

(c) *Amendment requested by an indirect air carrier or applicant.* An indirect air carrier or applicant may file a request for an amendment to its security program with the TSA designated official at least 45 calendar days before the date it proposes for the amendment to become effective, unless the designated official allows a shorter period. Any indirect air carrier may submit a group proposal for an amendment that is on behalf of it and other indirect air carriers that co-sign the proposal.

(1) Within 30 calendar days after receiving a proposed amendment, the designated official, in writing, either approves or denies the request to amend.

(2) An amendment to an indirect air carrier security program may be approved, if the designated official determines that safety and the public interest will allow it, and if the proposed amendment provides the level of security required under this part.

(3) Within 30 calendar days after receiving a denial of the proposed amendment, the indirect air carrier may petition TSA to reconsider the denial. A

petition for reconsideration must be filed with the designated official.

(4) Upon receipt of a petition for reconsideration, the designated official either approves the request to amend or transmits the petition, together with any pertinent information, to the TSA for reconsideration. TSA will dispose of the petition within 30 calendar days of receipt by either directing the designated official to approve the amendment or by affirming the denial.

(d) *Amendment by TSA.* TSA may amend a security program in the interest of safety and the public interest, as follows:

(1) TSA notifies the indirect air carrier, in writing, of the proposed amendment, fixing a period of not less than 30 calendar days within which the indirect air carrier may submit written information, views, and arguments on the amendment.

(2) After considering all relevant material, the designated official notifies the indirect air carrier of any amendment adopted or rescinds the notice of amendment. If the amendment is adopted, it becomes effective not less than 30 calendar days after the indirect air carrier receives the notice of amendment, unless the indirect air carrier disagrees with the proposed amendment and petitions the TSA to reconsider, no later than 15 calendar days before the effective date of the amendment. The indirect air carrier must send the petition for reconsideration to the designated official. A timely petition for reconsideration stays the effective date of the amendment.

(3) Upon receipt of a petition for reconsideration, the designated official either amends or withdraws the notice of amendment, or transmits the petition, together with any pertinent information, to TSA for reconsideration. TSA disposes of the petition within 30 calendar days of receipt, either by directing the designated official to withdraw or amend the notice of amendment, or by affirming the notice of amendment.

(e) *Emergency Amendments.* (1) If TSA finds that there is an emergency requiring immediate action, with respect to aviation security that makes procedures in this section contrary to the public interest, the designated official may issue an emergency amendment, without the prior notice and comment procedures described in paragraph (d) of this section.

(2) The emergency amendment is effective without stay on the date the indirect air carrier receives notification. TSA will incorporate in the notification a brief statement of the reasons and findings for the emergency amendment to be adopted.

(3) The indirect air carrier may file a petition for reconsideration with the TSA no later than 15 calendar days after TSA issued the emergency amendment. The indirect air carrier must send the petition for reconsideration to the designated official; however, the filing does not stay the effective date of the emergency amendment.

(f) *Withdrawal of approval of a security program.* TSA may withdraw the approval of the indirect air carrier's security program, if TSA determines continued operation is contrary to safety and the public interest, as follows:

(1) *Notice of proposed withdrawal of approval.* The designated official will serve a notice of proposed withdrawal of approval, which notifies the indirect air carrier, in writing, of the facts, charges, and applicable law, regulation, or order that form the basis for the determination.

(2) *Indirect air carrier reply.* The indirect air carrier may respond to the notice of proposed withdrawal of approval no later than 15 calendar days after receipt of the withdrawal by providing the designated official, in writing, with any material facts, arguments, applicable law, and regulation.

(3) *TSA review.* The designated official will consider all information available, including any relevant material or information submitted by the indirect air carrier, before either issuing a withdrawal of approval of the indirect air carrier's security program or rescinding the notice of proposed withdrawal of approval. If TSA issues a withdrawal of approval, it becomes effective upon receipt by the indirect air carrier, or 15 calendar days after service, whichever occurs first.

(4) *Petition for reconsideration.* The indirect air carrier may petition the TSA

to reconsider the withdrawal of approval by serving a petition for consideration no later than 15 calendar days after the indirect air carrier receives the withdrawal of approval. The indirect air carrier must serve the petition for reconsideration on the designated official. Submission of a petition for reconsideration will not automatically stay the withdrawal of approval. The indirect air carrier may request the designated official to stay the withdrawal of approval pending consideration of the petition.

(5) *Assistant Secretary's review.* The designated official transmits the petition together with all pertinent information to the Assistant Secretary for reconsideration. The Assistant Secretary will dispose of the petition within 15 calendar days of receipt by either directing the designated official to rescind the withdrawal of approval or by affirming the withdrawal of approval. The decision of the Assistant Secretary is a final order subject to judicial review in accordance with 49 U.S.C. 46110.

(6) *Emergency withdrawal.* If TSA finds that there is an emergency requiring immediate action, with respect to aviation security that makes procedures in this section contrary to the public interest, the designated official may issue an emergency withdrawal of the indirect air carrier's security program, without first issuing a notice of proposed withdrawal, effective without stay on the date that the indirect air carrier receives notice of the emergency withdrawal. In such a case, the designated official will send the indirect air carrier a brief statement of the facts, charges, and applicable law, regulation, or order that forms the basis for the emergency withdrawal. The indirect air carrier may submit a petition for reconsideration under the procedures in paragraphs (f)(2) through (f)(5) of this section; however, this petition will not stay the effective date of the emergency withdrawal.

(g) *Service of documents for withdrawal of approval of security program proceedings.* Service may be accomplished by personal delivery, certified mail, or express courier. Documents served on an indirect air carrier will be served at the indirect air carrier's official place of business as designated in its application for approval or its security program. Documents served on TSA must be served to the address noted in the notice of withdrawal of approval or withdrawal of approval, whichever is applicable.

(1) *Certificate of service.* An individual may attach a certificate of service to a document tendered for filing. A certificate of service must consist of a statement, dated and signed by the person filing the document, that the document was personally delivered, served by certified mail on a specific date, or served by express courier on a specific date.

(2) *Date of service.* The date of service will be—

(i) The date of personal delivery;

(ii) If served by certified mail, the mailing date shown on the certificate of service, the date shown on the postmark, if there is no certificate of service, or other mailing date shown by other evidence if there is no certificate of service or postmark; or

(iii) If served by express courier, the service date shown on the certificate of service, or by other evidence if there is no certificate of service.

(h) *Extension of time.* TSA may grant an extension of time of the limits set forth in this section for good cause shown. An indirect air carrier's request for an extension of time must be in writing and be received by TSA at least 2 days before the due date to be extended. TSA may grant itself an extension of time for good cause.

[71 FR 30513, May 26, 2006]

EFFECTIVE DATE NOTE: At 74 FR 47705, Sept. 16, 2009, §1548.7 was amended by revising paragraph (f), effective November 16, 2009. For the convenience of the user, the revised text is set forth as follows:

§ 1548.7 Approval, amendment, annual renewal, and withdrawal of approval of the security program.

* * * * *

(f) *Withdrawal of approval of a security program.* Section 1540.301 includes procedures for withdrawal of approval of a security program.

* * * * *

§ 1548.9 Acceptance of cargo.

(a) *Preventing or deterring the carriage of any explosive or incendiary.* Each indirect air carrier must use the facilities, equipment, and procedures described in its security program to prevent or deter the carriage onboard an aircraft of any unauthorized person, and any unauthorized explosive, incendiary, and other destructive substance or item, as provided in the indirect air carrier's security program.

(b) *Refusal to transport.* Each indirect air carrier must refuse to offer for transport on an aircraft any cargo, if the shipper does not consent to a search or inspection of that cargo in accordance with this part, or parts 1544 or 1546 of this chapter.

[71 FR 30515, May 26, 2006]

§ 1548.11 Training and knowledge for individuals with security-related duties.

(a) No indirect air carrier may use an employee or agent to perform any security-related duties to meet the requirements of its security program, unless that individual has received training, as specified in its security program, including his or her personal responsibilities in § 1540.105 of this chapter.

(b) Each indirect air carrier must ensure that each of its authorized employees or agents who accept, handle, transport, or deliver cargo have knowledge of the—

(1) Applicable provisions of this part;

(2) Applicable Security Directives and Information Circulars;

(3) The approved airport security program(s) applicable to their location(s); and

(4) The aircraft operator's or indirect air carrier's security program, to the extent necessary in order to perform their duties.

(c) Each indirect air carrier must ensure that each of its authorized employees or agents under paragraph (b) of this section successfully completes recurrent training at least annually on their individual responsibilities in—

(1) Section 1540.105 of this chapter;

(2) The applicable provisions of this part;

(3) Applicable Security Directives and Information Circulars;

(4) The approved airport security program(s) applicable to their location(s); and

(5) The aircraft operator's or indirect air carrier's security program, to the extent that such individuals need to know in order to perform their duties.

(d) Operators must comply with the requirements of this section not later than November 22, 2006, for direct employees and not later than June 15, 2007, for agents.

[71 FR 30515, May 26, 2006, as amended at 71 FR 62549, Oct. 25, 2006]

§ 1548.13 Security coordinators.

Each indirect air carrier must designate and use an Indirect Air Carrier Security Coordinator (IACSC). The IACSC and alternates must be appointed at the corporate level and must serve as the indirect air carrier's primary contact for security-related activities and communications with TSA, as set forth in the security program. Either the IACSC or an alternate IACSC must be available on a 24-hour basis.

[71 FR 30515, May 26, 2006]

§ 1548.15 Access to Cargo: Security threat assessments for individuals having unescorted access to cargo.

This section applies to each indirect air carrier operating under this part.

(a) This section applies to each employee or agent the indirect air carrier authorizes to have unescorted access to cargo from the time—

(1) Cargo to be transported on an aircraft operated by an aircraft operator with a full all-cargo program under § 1544.101(h) of this chapter, or by a foreign air carrier under § 1546.101(e) of this chapter, reaches an indirect air carrier facility where the indirect air carrier consolidates or holds the cargo until the indirect air carrier transfers the cargo to an aircraft operator or foreign air carrier, or

(2) Cargo to be transported on an aircraft operated by an aircraft operator with a full program or by a foreign air carrier under § 1546.101(a) or (b) of this chapter, is accepted by the indirect air carrier.

(b) Before an indirect air carrier authorizes, and before an employee or

agent gains, unescorted access to cargo as described in paragraph (a) of this section, each employee or agent must successfully complete one of the following:

(1) A criminal history records check under §§1542.209, 1544.229, or 1544.230 of this chapter, if the individual is otherwise required to undergo that check.

(2) A Security Threat Assessment under part 1540 subpart C of this chapter. An employee or agent who has successfully completed this Security Threat Assessment for one employer need not complete it for another employer if the employee or agent has been continuously employed in a position that requires a Security Threat Assessment.

(3) Another Security Threat Assessment approved by TSA as comparable to paragraphs (b)(1) or (b)(2) of this section.

(c) Each indirect air carrier must ensure that each individual who has access to its cargo—

(1) Has successfully completed one of the checks in paragraph (b) of this section;

(2) Is escorted by a person who has successfully completed one of the checks in paragraph (b) of this section; or

(3) Is authorized to serve as law enforcement personnel at that location.

(d) Operators must submit to TSA the names and other identifying information required by TSA of all individuals required to successfully complete an assessment under paragraph (b) not later than May 15, 2007, for direct employees and not later than July 15, 2007, for agents. After those dates, the operators may not allow an individual to perform a function for which a STA is required, unless the operator has submitted the information for that individual to TSA.

(e) Operators must comply with the requirements of paragraphs (a), (b), and (c) of this section not later than the dates to be specified by TSA in a future rule in the FEDERAL REGISTER.

[71 FR 30516, May 26, 2006; 71 FR 31965, June 2, 2006, as amended at 71 FR 62549, Oct. 25, 2006; 72 FR 13026, Mar. 20, 2007]

EFFECTIVE DATE NOTE: At 74 FR 47705, Sept. 16, 2009, §1548.15 was revised, effective November 16, 2009. For the convenience of the user, the revised text is set forth as follows:

§1548.15 Access to cargo: Security threat assessments for individuals having unescorted access to cargo.

(a) Before an aircraft operator authorizes and before an individual performs a function described in paragraph (b) of this section—

(1) Each individual must successfully complete a security threat assessment or comparable security threat assessment described in part 1540 subpart C of this chapter; and

(2) Each aircraft operator must complete the requirements in part 1540 subpart C.

(b) The security threat assessment required in paragraph (a) of this section applies to the following:

(1) Each individual who has unescorted access to cargo and access to information that such cargo will be transported on a passenger aircraft; or who has unescorted access to cargo screened for transport on a passenger aircraft; or who performs certain functions related to the transportation, dispatch or security of cargo for transport on a passenger aircraft or all-cargo aircraft, as specified in the indirect air carrier's security program; from the time—

(i) Cargo to be transported on an all-cargo aircraft operated by an aircraft operator with a full all-cargo program under §1544.101(h) of this chapter, or by a foreign air carrier under §1546.101(e) of this chapter, reaches an indirect air carrier facility where the indirect air carrier consolidates or holds the cargo, until the indirect air carrier transfers the cargo to an aircraft operator or foreign air carrier; or

(ii) Cargo to be transported on a passenger aircraft operated by an aircraft operator with a full program under §1544.101(a) or by a foreign air carrier under §1546.101(a) or (b) of this chapter, is accepted by the indirect air carrier, until the indirect air carrier transfers the cargo to an aircraft operator or foreign air carrier.

(2) Each individual the indirect air carrier authorizes to screen cargo or to supervise the screening of cargo under §1548.21.

§1548.16 Security threat assessments for each proprietor, general partner, officer, director, and certain owners of the entity.

(a) Each indirect air carrier, or applicant to be an indirect air carrier, must ensure that the names and other identifying information required by TSA of each proprietor, general partner, officer, director, and owner of the entity have been submitted to TSA for a Security Threat Assessment under part 1540, subpart C, of this chapter not later than May 15, 2007. After those

dates, the operators may not allow an individual to perform this function unless the operator has submitted the information for that individual to TSA.

(b) For purposes of this section, *owner* means—

(1) A person who directly or indirectly owns, controls, or has power to vote 25 percent or more of any class of voting securities or other voting interests of an IAC or applicant to be an IAC; or

(2) A person who directly or indirectly controls in any manner the election of a majority of the directors (or individuals exercising similar functions) of an IAC, or applicant to be an IAC.

(c) For purposes of this definition of *owner*—

(1) Members of the same family must be considered to be one person.

(i) *Same family* means parents, spouses, children, siblings, uncles, aunts, grandparents, grandchildren, first cousins, stepchildren, stepsiblings, and parents-in-law, and spouses of any of the foregoing.

(ii) Each member of the same family, who has an ownership interest in an IAC, or an applicant to be an IAC, must be identified if the family is an owner as a result of aggregating the ownership interests of the members of the family.

(iii) In determining the ownership of interests of the same family, any voting interest of any family member must be taken into account.

(2) *Voting securities or other voting interests* means securities or other interests that entitle the holder to vote for or select directors (or individuals exercising similar functions).

(d) Each indirect air carrier, or applicant to be an indirect air carrier, must ensure that each proprietor, general partner, officer, director and owner of the entity has successfully completed a Security Threat Assessment under part 1540, subpart C, of this chapter not later than a date to be specified by TSA in a future rule in the FEDERAL REGISTER.

[71 FR 30516, May 26, 2006; 71 FR 31965, June 2, 2006, as amended at 71 FR 62550, Oct. 25, 2006; 72 FR 13026, Mar. 20, 2007]

EFFECTIVE DATE NOTE: At 74 FR 47706, Sept. 16, 2009, § 1548.16 was amended by revising paragraph (a), effective November 16, 2009. For the convenience of the user, the revised text is set forth as follows:

§ 1548.16 Security threat assessments for each proprietor, general partner, officer, director, and certain owners of the entity.

(a) Before an indirect air carrier permits a proprietor, general partner, officer, director, or owner of the entity to perform those functions—

(1) The proprietor, general partner, officer, director, or owner of the entity must successfully complete a security threat assessment or comparable security threat assessment described in part 1540 subpart C of this chapter; and

(2) Each indirect air carrier must complete the requirements in 49 CFR part 1540, subpart C.

* * * * *

§ 1548.17 Known shipper program.

This section applies to cargo that an indirect air carrier offers to an aircraft operator operating under a full program under § 1544.101(a) of this chapter, or to a foreign air carrier operating under § 1546.101(a) or (b) of this chapter.

(a) For cargo to be loaded on aircraft in the United States, each indirect air carrier must have and carry out a known shipper program in accordance with its security program. The program must—

(1) Determine the shipper's validity and integrity as provided in its security program;

(2) Provide that the indirect air carrier will separate known shipper cargo from unknown shipper cargo.

(b) When required by TSA, each indirect air carrier must submit to TSA, in a form and manner acceptable to TSA—

(1) Information identified in its security program regarding an applicant to be a known shipper or a known shipper; and

(2) Corrections and updates of this information upon learning of a change to the information specified in paragraph (b)(1) of this section.

[71 FR 30516, May 26, 2006]

§ 1548.19 Security Directives and Information Circulars.

(a) TSA may issue an Information Circular to notify indirect air carriers of security concerns.

(b) When TSA determines that additional security measures are necessary to respond to a threat assessment, or to a specific threat against civil aviation, TSA issues a Security Directive setting forth mandatory measures.

(1) Each indirect air carrier that is required to have an approved indirect air carrier security program must comply with each Security Directive that TSA issues to it, within the time prescribed in the Security Directive for compliance.

(2) Each indirect air carrier that receives a Security Directive must comply with the following:

(i) Within the time prescribed in the Security Directive, acknowledge in writing receipt of the Security Directive to TSA.

(ii) Within the time prescribed in the Security Directive, specify the method by which the measures in the Security Directive have been implemented (or will be implemented, if the Security Directive is not yet effective).

(3) In the event that the indirect air carrier is unable to implement the measures in the Security Directive, the indirect air carrier must submit proposed alternative measures and the basis for submitting the alternative measures to TSA for approval.

(i) The indirect air carrier must submit the proposed alternative measures within the time prescribed in the Security Directive.

(ii) The indirect air carrier must implement any alternative measures approved by TSA.

(4) Each indirect air carrier that receives a Security Directive may comment on it by submitting data, views, or arguments in writing to TSA.

(i) TSA may amend the Security Directive based on comments received.

(ii) Submission of a comment does not delay the effective date of the Security Directive.

(5) Each indirect air carrier that receives a Security Directive or Information Circular, and each person who receives information from a Security Directive or Information Circular, must:

(i) Restrict the availability of the Security Directive or Information Circular, and information contained in either document, to those persons with a need-to-know.

(ii) Refuse to release the Security Directive or Information Circular, and information contained in either document, to persons other than those with a need-to-know without the prior written consent of TSA.

[71 FR 30516, May 26, 2006]

§ 1548.21 Screening of cargo.

An IAC may only screen cargo for transport on a passenger aircraft under §§ 1544.205 and 1546.205 if the IAC is a certified cargo screening facility as provided in part 1549.

[74 FR 47706, Sept. 16, 2009]

EFFECTIVE DATE NOTE: At 74 FR 47706, Sept. 16, 2009, § 1548.21 was added, effective November 16, 2009.

PART 1549—CERTIFIED CARGO SCREENING PROGRAM (Eff. 11-16-09)

Subpart A—General

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1549.1 Applicability.
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Subpart B—Operations

1549.101 Acceptance, screening, and transfer of cargo.
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1549.107 Security coordinators.
1549.109 Security Directives and Information Circulars.
1549.111 Security threat assessments for personnel of certified cargo screening facilities.

AUTHORITY: 49 U.S.C. 114, 5103, 40113, 44901–44905, 44913–44914, 44916–44917, 44932, 44935–44936, 46105.

SOURCE: 74 FR 47706, Sept. 16, 2009, unless otherwise noted.

EFFECTIVE DATE NOTE: At 74 FR 47706, Sept. 16, 2009, part 1549 was added, effective Nov. 16, 2009.

Subpart A—General

§ 1549.1 Applicability.

This part applies to each facility applying for or certified by TSA as a certified cargo screening facility to screen cargo that will be transported on a passenger aircraft operated under a full program under 49 CFR 1544.101(a), or a foreign air carrier operating under a program under 49 CFR 1546.101(a) or (b).

§ 1549.3 TSA inspection authority.

(a) Each certified cargo screening facility must allow TSA, at any time or place, in a reasonable manner, without advance notice, to enter the facility and make any inspections or tests, including copying records, to—

(1) Determine compliance of a certified cargo screening facility, airport operator, foreign air carrier, indirect air carrier, or airport tenant with this chapter and 49 U.S.C. 114 and Subtitle VII, as amended; or

(2) Carry out TSA's statutory or regulatory authorities, including its authority to—

(i) Assess threats to transportation;

(ii) Enforce security-related regulations, directives, and requirements:

(iii) Inspect, maintain, and test the security of facilities, equipment, and systems;

(iv) Ensure the adequacy of security measures for the transportation of passengers and cargo;

(v) Oversee the implementation, and ensure the adequacy, of security measures at airports and other transportation facilities;

(vi) Review security plans; and

(vii) Carry out such other duties, and exercise such other powers, relating to transportation security as the Assistant Secretary of Homeland Security for the TSA considers appropriate, to the extent authorized by law.

(b) At the request of TSA, each certified cargo screening facility must provide evidence of compliance with this chapter, including copying records.

(c) TSA and DHS officials working with TSA may conduct inspections under this section without access media or identification media issued or approved by a certified cargo screening facility or other person, except that the TSA and DHS officials will have identification media issued by TSA or DHS.

§ 1549.5 Adoption and implementation of the security program.

(a) *Security program required*. No person may screen cargo to be tendered to an aircraft operator operating under a full program under part 1544, a foreign air carrier operating under § 1546.101(a) or (b), or an indirect air carrier operating under § 1548.5 for carriage on a passenger aircraft, unless that person holds and carries out an approved security program under this part.

(b) *Content*. Each security program under this part must—

(1) Provide for the security of the aircraft, as well as that of persons and property traveling in air transportation against acts of criminal violence and air piracy and against the introduction into the aircraft of any unauthorized explosive, incendiary, and other destructive substance or item as provided in the certified cargo screening facility's security program;

(2) Be designed to prevent or deter the introduction of any unauthorized explosive, incendiary, and other destructive substance or item onto an aircraft; and

(3) Include the procedures and description of the facilities and equipment used to comply with the requirements of this part.

(c) *Employees and agents*. The certified cargo screening facility must ensure that its employees and agents carry out the requirements of this chapter and the certified cargo screening facility's security program.

(d) *Facility's security program*. The certified cargo screening facility standard security program together with approved alternate procedures and amendments issued to a particular facility constitutes that facility's security program.

(e) *Availability*. Each certified cargo screening facility must:

(1) Maintain an original of the security program at its corporate office.

(2) Have accessible a complete copy, or the pertinent portions of its security program, or appropriate implementing instructions, at its facility. An electronic version is adequate.

(3) Make a copy of the security program available for inspection upon the request of TSA.

(4) Restrict the distribution, disclosure, and availability of information contained in its security program to persons with a need to know, as described in part 1520 of this chapter.

(5) Refer requests for such information by other persons to TSA.

§ 1549.7 Approval, amendment, renewal of the security program and certification of a certified cargo screening facility.

(a) *Initial application and approval*—(1) *Application*. Unless otherwise authorized by TSA, each applicant must apply for a security program and for certification as a certified cargo screening facility at a particular location, in a form and a manner prescribed by TSA not less than 90 calendar days before the applicant intends to begin operations. TSA will only approve a facility to operate as a CCSF if it is located in the United States. The CCSF application must be in writing and include the following:

(i) The business name; other names, including doing business as; state of incorporation, if applicable; and tax identification number.

(ii) The name of the senior manager or representative of the applicant in control of the operations at the facility.

(iii) A signed statement from each person listed in paragraph (a)(1)(ii) of this section stating whether he or she has been a senior manager or representative of a facility that had its security program withdrawn by TSA.

(iv) Copies of government-issued identification of persons listed in paragraph (a)(1)(ii) of this section.

(v) The street address of the facility where screening will be conducted.

(vi) A statement acknowledging and ensuring that each individual and agent of the applicant, who is subject to training under § 1549.11, will have successfully completed the training outlined in its security program before performing security-related duties.

(vii) Other information requested by TSA concerning Security Threat Assessments.

(viii) A statement acknowledging and ensuring that each individual will successfully complete a Security Threat Assessment under § 1549.111 before the applicant authorizes the individual to have unescorted access to screened cargo or to screen or supervise the screening of cargo.

(2) *Standard security program and assessment*. (i) After the Security Coordinator for an applicant successfully completes a security threat assessment, TSA will provide to the applicant the certified cargo screening standard security program, any security directives, and amendments to the security program and other alternative procedures that apply to the facility. The applicant may either accept the standard security program or submit a proposed modified security program to the designated official for approval. TSA will approve the security program under paragraphs (a)(3) and (a)(4) of the section or issue a written notice to modify under paragraph (a)(4) of this section.

(ii) An applicant must successfully undergo an assessment by a TSA-approved validation firm under 49 CFR part 1522 or by TSA.

(3) *Review*. TSA will review a facility at a particular location to determine whether—

(i) The applicant has met the requirements of this part, its security program, and any applicable Security Directive;

(ii) The applicant has successfully undergone an assessment by a TSA-approved validation firm under 49 CFR part 1522 or by TSA;

(iii) The applicant is able and willing to carry out the requirements of this part, its security program, and an applicable Security Directive;

(iv) The approval of such applicant's security program is not contrary to the interests of security and the public interest;

(v) The applicant has not held a security program that was withdrawn within the previous year, unless otherwise authorized by TSA; and

(vi) TSA determines that the applicant is qualified to be a certified cargo screening facility.

(4) *Approval and certification*. If TSA determines that the requirements of paragraph (a)(4) of this section are met and the application is approved, TSA

will send the applicant a written notice of approval of its security program, and certification to operate as a certified cargo screening facility.

(5) *Commencement of operations.* The certified cargo screening facility may operate under a security program when it meets all TSA requirements, including but not limited to a validation by TSA or a TSA-approved validation firm, successful completion of training, and Security Threat Assessments by relevant personnel.

(6) *Duration of security program.* The security program will remain effective until the end of the calendar month three years after the month it was approved or until the program has been surrendered or withdrawn, whichever is earlier.

(7) *Requirement to report changes in information.* Each certified cargo screening facility under this part must notify TSA, in a form and manner approved by TSA, of any changes to the information submitted during its initial application.

(i) The CCSF must submit this notification to TSA not later than 30 days prior to the date the change is expected to occur.

(ii) Changes included in the requirement of this paragraph include, but are not limited to, changes in the certified cargo screening facility's contact information, senior manager or representative, business addresses and locations, and form of business facility.

(iii) If the certified cargo screening facility relocates, TSA will withdraw the existing certification and require the new facility to undergo a validation and certification process.

(b) *Renewal Application.* Upon timely submittal of an application for renewal, and unless and until TSA denies the application, the certified cargo screening facility's approved security program remains in effect.

(1) Unless otherwise authorized by TSA, each certified cargo screening facility must timely submit to TSA, at least 30 calendar days prior to the first day of the 36th anniversary month of initial approval of its security program, an application for renewal of its security program in a form and a manner approved by TSA.

(2) The certified cargo screening facility must demonstrate that it has successfully undergone a revalidation of its operations by a TSA or a TSA-approved validation firm prior to the first day of the 36th anniversary month of initial approval of its security program.

(3) The application for renewal must be in writing and include a signed statement that the certified cargo screening facility has reviewed and ensures the continuing accuracy of the contents of its initial application for a security program, subsequent renewal applications, or other submissions to TSA confirming a change of information and noting the date such applications and submissions were sent to TSA, including the following certification:

> [Name of certified cargo screening facility] (hereinafter ''the CCSF'') has adopted and is currently carrying out a security program in accordance with the Transportation Security Regulations as originally approved on [Insert date of TSA initial approval]. In accordance with TSA regulations, the CCSF has notified TSA of any new or changed information required for the CCSF's initial security program. If new or changed information is being submitted to TSA as part of this application for reapproval, that information is stated in this filing.
>
> The CCSF understands that intentional falsification of certification to an aircraft operator, foreign air carrier, indirect air carrier, or to TSA may be subject to both civil and criminal penalties under 49 CFR part 1540 and 18 U.S.C. 1001. Failure to notify TSA of any new or changed information required for initial approval of the CCSF's security program in a timely fashion and in a form acceptable to TSA may result in withdrawal by TSA of approval of the CCSF's security program.

(4) TSA will renew approval of the security program if TSA determines that—

(i) The CCSF has met the requirements of this chapter, its security program, and any Security Directive; and

(ii) The renewal of its security program is not contrary to the interests of security and the public interest.

(5) If TSA determines that the certified cargo screening facility meets the requirements of paragraph (b)(3) of this section, it will renew the certified cargo screening facility's security program and certification. The security

program and certification will remain effective until the end of the calendar month three years after the month it was renewed.

(c) *Amendment requested by a certified cargo screening entity or applicant.* A certified cargo screening facility or applicant may file a request for an amendment to its security program with the TSA designated official at least 45 calendar days before the date it proposes for the amendment to become effective, unless the designated official allows a shorter period. Any certified cargo screening facility may submit to TSA a group proposal for an amendment that is on behalf of it and other certified cargo screening facilities that co-sign the proposal.

(1) Within 30 calendar days after receiving a proposed amendment, the designated official, in writing, either approves or denies the request to amend.

(2) TSA may approve an amendment to a certified cargo screening facility's security program, if the TSA designated official determines that safety and the public interest will allow it, and if the proposed amendment provides the level of security required under this part.

(3) Within 30 calendar days after receiving a denial of the proposed amendment, the certified cargo screening facility may petition TSA to reconsider the denial. The CCSF must file the Petition for Reconsideration with the designated official.

(4) Upon receipt of a Petition for Reconsideration, the designated official either approves the request to amend or transmits the petition, together with any pertinent information, to TSA for reconsideration. TSA will dispose of the petition within 30 calendar days of receipt by either directing the designated official to approve the amendment or by affirming the denial.

(d) *Amendment by TSA.* TSA may amend a security program in the interest of safety and the public interest, as follows:

(1) TSA notifies the certified cargo screening facility, in writing, of the proposed amendment, fixing a period of not less than 30 calendar days within which the certified cargo screening facility may submit written information, views, and arguments on the amendment.

(2) After considering all relevant material, the designated official notifies the certified cargo screening facility of any amendment adopted or rescinds the notice of amendment. If the amendment is adopted, it becomes effective not less than 30 calendar days after the certified cargo screening facility receives the notice of amendment, unless the certified cargo screening facility disagrees with the proposed amendment and petitions the TSA to reconsider, no later than 15 calendar days before the effective date of the amendment. The certified cargo screening facility must send the petition for reconsideration to the designated official. A timely Petition for Reconsideration stays the effective date of the amendment.

(3) Upon receipt of a Petition for Reconsideration, the designated official either amends or withdraws the notice of amendment, or transmits the Petition, together with any pertinent information, to TSA for reconsideration. TSA disposes of the Petition within 30 calendar days of receipt, either by directing the designated official to withdraw or amend the notice of amendment, or by affirming the notice of amendment.

(e) *Emergency amendments.* (1) If TSA finds that there is an emergency requiring immediate action, with respect to aviation security that makes procedures in this section contrary to the public interest, the designated official may issue an emergency amendment, without the prior notice and comment procedures described in paragraph (d) of this section.

(2) The emergency amendment is effective without stay on the date the certified cargo screening facility receives notification. TSA will incorporate in the notification a brief statement of the reasons and findings for the emergency amendment to be adopted.

(3) The certified cargo screening facility may file a Petition for Reconsideration with the TSA no later than 15 calendar days after TSA issued the emergency amendment. The certified cargo screening facility must send the Petition for Reconsideration to the

designated official; however, the filing does not stay the effective date of the emergency amendment.

Subpart B—Operations

§ 1549.101 Acceptance, screening, and transfer of cargo.

(a) *Preventing or deterring the carriage of any explosive or incendiary.* Each certified cargo screening facility must use the facilities, equipment, and procedures described in its security program to prevent or deter the carriage onboard an aircraft of any unauthorized explosives, incendiaries, and other destructive substances or items in cargo onboard an aircraft, as provided in the facility's security program.

(b) *Screening and inspection of cargo.* Each certified cargo screening facility must ensure that cargo is screened and inspected for any unauthorized explosive, incendiary, and other destructive substance or item as provided in the facility's security program before it is tendered to another certified cargo screening facility, an aircraft operator with a full program under part 1544, a foreign air carrier operating under §§ 1546.101(a) or (b), or an indirect air carrier operating under § 1548.5 for transport on a passenger aircraft. Cargo that the facility represents as screened, must be screened in accordance with this part.

(c) *Refusal to transport.* Each certified cargo screening facility must refuse to offer to another certified cargo screening facility, an aircraft operator with a full program under part 1544, a foreign air carrier operating under §§ 1546.101(a) or (b), or an indirect air carrier operating under § 1548.5 for transport on a passenger aircraft any cargo, if the shipper does not consent to a search or inspection of that cargo in accordance with this part, or parts 1544, 1546, or 1548 of this chapter.

(d) *Chain of custody.* Each certified cargo screening facility must protect the cargo from unauthorized access from the time it is screened until the time it is tendered to another certified cargo screening facility as approved by TSA, an indirect air carrier under 49 CFR part 1548, an aircraft operator under part 1544, or a foreign air carrier under part 1546.

§ 1549.103 Qualifications and training of individuals with security-related duties.

(a) *Security threat assessments.* Each certified cargo screening facility must ensure that individuals listed in 49 CFR 1540.201(a)(6), (7), (8), (9), and (12) relating to a certified cargo screening facility complete a security threat assessment or comparable security threat assessment described in part 1540, subpart C of this chapter, before conducting screening or supervising screening or before having unescorted access to screened cargo, unless the individual is authorized to serve as law enforcement personnel at that location.

(b) *Training required.* Each certified cargo screening facility must ensure that individuals have received training, as specified in this section and its security program, before such individual perform any duties to meet the requirements of its security program.

(c) *Knowledge and training requirements.* Each certified cargo screening facility must ensure that each individual who performs duties to meet the requirements of its security program have knowledge of, and annual training in, the—

(1) Applicable provisions of this chapter, including this part, part 1520, and § 1540.105;

(2) The certified cargo screening facility's security program, to the extent that such individuals need to know in order to perform their duties;

(3) Applicable Security Directives and Information Circulars; and

(4) The applicable portions of approved airport security program(s) and aircraft operator security program(s).

(d) *Screener qualifications.* Each certified cargo screening facility must ensure that each individual who screens cargo or who supervises cargo screening—

(1) Is a citizen or national of the United States, or an alien lawfully admitted for permanent residence;

(2) Has a high school diploma, a General Equivalency Diploma, or a combination of education and experience that the certified cargo screening facility has determined to have equipped the person to perform the duties of the position;

(3) Has basic aptitudes and physical abilities including color perception, visual and aural acuity, physical coordination, and motor skills to the extent required to effectively operate cargo screening technologies that the facility is authorized to use. These include:

(i) The ability to operate x-ray equipment and to distinguish on the x-ray monitor the appropriate imaging standard specified in the certified cargo screening facility security program. Wherever the x-ray system displays colors, the operator must be able to perceive each color.

(ii) The ability to distinguish each color displayed on every type of screening equipment and explain what each color signifies.

(iii) The ability to hear and respond to the spoken voice and to audible alarms generated by screening equipment.

(4) Has the ability to read, write and understand English well enough to carry out written and oral instructions regarding the proper performance of screening duties or be under the direct supervision of someone who has this ability, including reading labels and shipping papers, and writing log entries into security records in English.

§ 1549.105 Recordkeeping.

(a) Each certified cargo screening facility must maintain records demonstrating compliance with all statutes, regulations, directives, orders, and security programs that apply to operation as a certified cargo screening facility, including the records listed below, at the facility location or other location as approved by TSA:

(1) Records of all training and instructions given to each individual under § 1549.103. The CCSF must retain these records for 180 days after the individual is no longer employed by the certified cargo screening facility or is no longer acting as the facility's agent.

(2) Copies of all applications for, or renewals of, TSA certification to operate under part 1549. Copies of reports by TSA-certified validators must be included in these records.

(3) Documents establishing TSA's certification and renewal of certification as required by part 1549.

(4) Records demonstrating that each individual has complied with the security threat assessment provisions of § 1549.111.

(b) Unless otherwise stated, records must be retained until the next re-certification.

§ 1549.107 Security coordinators.

Each certified cargo screening facility must have a Security Coordinator and designated alternate Security Coordinator appointed at the corporate level. In addition, each certified cargo screening facility must have a facility Security Coordinator and alternate facility Security Coordinator appointed at the facility level. The facility Security Coordinator must serve as the certified cargo screening facility's primary contact for security-related activities and communications with TSA, as set forth in the security program. The Security Coordinator and alternate appointed at the corporate level, as well as the facility Security Coordinator and alternate, must be available on a 24-hour, 7-days a week basis.

§ 1549.109 Security Directives and Information Circulars.

(a) TSA may issue an Information Circular to notify certified cargo screening facilities of security concerns.

(b) When TSA determines that additional security measures are necessary to respond to a threat assessment, or to a specific threat against civil aviation, TSA issues a Security Directive setting forth mandatory measures.

(1) Each certified cargo screening facility must comply with each Security Directive that TSA issues to it, within the time prescribed in the Security Directive for compliance.

(2) Each certified cargo screening facility that receives a Security Directive must comply with the following:

(i) Within the time prescribed in the Security Directive, acknowledge in writing receipt of the Security Directive to TSA.

(ii) Within the time prescribed in the Security Directive, specify the method by which the measures in the Security Directive have been implemented (or will be implemented, if the Security Directive is not yet effective).

(3) In the event that the certified cargo screening facility is unable to implement the measures in the Security Directive, the certified cargo screening facility must submit proposed alternative measures and the basis for submitting the alternative measures to TSA for approval.

(i) The certified cargo screening facility must submit the proposed alternative measures within the time prescribed in the Security Directive.

(ii) The certified cargo screening facility must implement any alternative measures approved by TSA.

(4) Each certified cargo screening facility that receives a Security Directive may comment on it by submitting data, views, or arguments in writing to TSA.

(i) TSA may amend the Security Directive based on comments received.

(ii) Submission of a comment does not delay the effective date of the Security Directive.

(5) Each certified cargo screening facility that receives a Security Directive or Information Circular, and each person who receives information from a Security Directive or Information Circular, must—

(i) Restrict the availability of the Security Directive or Information Circular, and information contained in either document, to those persons with a need-to-know; and

(ii) Refuse to release the Security Directive or Information Circular, and information contained in either document, to persons other than those with a need-to-know without the prior written consent of TSA.

§ 1549.111 Security threat assessments for personnel of certified cargo screening facilities.

(a) *Scope*. This section applies to the following:

(1) Each individual the certified cargo screening facility authorizes to perform cargo screening or supervise cargo screening.

(2) Each individual the certified cargo screening facility authorizes to have unescorted access to cargo at any time from the time it is screened until the time it is tendered to another certified cargo screening facility, an indirect air carrier under 49 CFR part 1548 for transport on a passenger aircraft, an aircraft operator under part 1544, or a foreign air carrier under part 1546.

(3) The senior manager or representative of its facility in control of the operations.

(4) The security coordinators and their alternates.

(b) *Security threat assessment*. Before a certified cargo screening facility authorizes an individual to perform the functions described in paragraph (a) of this section, and before the individual performs those functions—

(1) Each individual must successfully complete a security threat assessment or comparable security threat assessment described in part 1540, subpart C of this chapter; and

(2) Each certified screening facility must complete the requirements in 49 CFR part 1540, subpart C.

PART 1550—AIRCRAFT SECURITY UNDER GENERAL OPERATING AND FLIGHT RULES

Sec.

1550.1 Applicability of this part.
1550.3 TSA inspection authority.
1550.5 Operations using a sterile area.
1550.7 Operations in aircraft of 12,500 pounds or more.

AUTHORITY: 49 U.S.C. 114, 5103, 40113, 44901–44907, 44913–44914, 44916–44918, 44935–44936, 44942, 46105.

SOURCE: 67 FR 8383, Feb. 22, 2002, unless otherwise noted.

§ 1550.1 Applicability of this part.

This part applies to the operation of aircraft for which there are no security requirements in other parts of this subchapter.

§ 1550.3 TSA inspection authority.

(a) Each aircraft operator subject to this part must allow TSA, at any time or place, to make any inspections or tests, including copying records, to determine compliance with—

(1) This subchapter and any security program or security procedures under this subchapter, and part 1520 of this chapter; and

(2) 49 U.S.C. Subtitle VII, as amended.

(b) At the request of TSA, each aircraft operator must provide evidence of

compliance with this part and its security program or security procedures, including copies of records.

§ 1550.5 Operations using a sterile area.

(a) *Applicability of this section.* This section applies to all aircraft operations in which passengers, crewmembers, or other individuals are enplaned from or deplaned into a sterile area, except for scheduled passenger operations, public charter passenger operations, and private charter passenger operations, that are in accordance with a security program issued under part 1544 or 1546 of this chapter.

(b) *Procedures.* Any person conducting an operation identified in paragraph (a) of this section must conduct a search of the aircraft before departure and must screen passengers, crewmembers, and other individuals and their accessible property (carry-on items) before boarding in accordance with security procedures approved by TSA.

(c) *Sensitive security information.* The security program procedures approved by TSA for operations specified in paragraph (a) of this section are sensitive security information. The operator must restrict the distribution, disclosure, and availability of information contained in the security procedures to persons with a need to know as described in part 1520 of this chapter.

(d) *Compliance date.* Persons conducting operations identified in paragraph (a) of this section must implement security procedures on October 6, 2001.

(e) *Waivers.* TSA may permit a person conducting an operation under this section to deviate from the provisions of this section if TSA finds that the operation can be conducted safely under the terms of the waiver.

§ 1550.7 Operations in aircraft of 12,500 pounds or more.

(a) *Applicability of this section.* This section applies to each aircraft operation conducted in an aircraft with a maximum certificated takeoff weight of 12,500 pounds or more except for those operations specified in § 1550.5 and those operations conducted under a security program under part 1544 or 1546 of this chapter.

(b) *Procedures.* Any person conducting an operation identified in paragraph (a) of this section must conduct a search of the aircraft before departure and screen passengers, crewmembers, and other persons and their accessible property (carry-on items) before boarding in accordance with security procedures approved by TSA.

(c) *Compliance date.* Persons identified in paragraph (a) of this section must implement security procedures when notified by TSA. TSA will notify operators by NOTAM, letter, or other communication when they must implement security procedures.

(d) *Waivers.* TSA may permit a person conducting an operation identified in this section to deviate from the provisions of this section if TSA finds that the operation can be conducted safely under the terms of the waiver.

PART 1552—FLIGHT SCHOOLS

Subpart A—Flight Training for Aliens and Other Designated Individuals

Sec.
1552.1 Scope and definitions.
1552.3 Flight training.
1552.5 Fees.

Subpart B—Flight School Security Awareness Training

1552.21 Scope and definitions.
1552.23 Security awareness training programs.
1552.25 Documentation, recordkeeping, and inspection.

AUTHORITY: 49 U.S.C. 114, 44939.

SOURCE: 69 FR 56340, Sept. 20, 2004, unless otherwise noted.

Subpart A—Flight Training for Aliens and Other Designated Individuals

§ 1552.1 Scope and definitions.

(a) *Scope.* This subpart applies to flight schools that provide instruction under 49 U.S.C. Subtitle VII, Part A, in the operation of aircraft or aircraft simulators, and individuals who apply to obtain such instruction or who receive such instruction.

(b) *Definitions.* As used in this part:

Aircraft simulator means a flight simulator or flight training device, as those terms are defined at 14 CFR 61.1.

Alien means any person not a citizen or national of the United States.

Candidate means an alien or other individual designated by TSA who applies for flight training or recurrent training. It does not include an individual endorsed by the Department of Defense for flight training.

Day means a day from Monday through Friday, including State and local holidays but not Federal holidays, for any time period less than 11 days specified in this part. For any time period greater than 11 days, day means calendar day.

Demonstration flight for marketing purposes means a flight for the purpose of demonstrating an aircraft's or aircraft simulator's capabilities or characteristics to a potential purchaser, or to an agent of a potential purchaser, of the aircraft or simulator, including an acceptance flight after an aircraft manufacturer delivers an aircraft to a purchaser.

Flight school means any pilot school, flight training center, air carrier flight training facility, or flight instructor certificated under 14 CFR part 61, 121, 135, 141, or 142; or any other person or entity that provides instruction under 49 U.S.C. Subtitle VII, Part A, in the operation of any aircraft or aircraft simulator.

Flight training means instruction received from a flight school in an aircraft or aircraft simulator. Flight training does not include recurrent training, ground training, a demonstration flight for marketing purposes, or any military training provided by the Department of Defense, the U.S. Coast Guard, or an entity under contract with the Department of Defense or U.S. Coast Guard.

Ground training means classroom or computer-based instruction in the operation of aircraft, aircraft systems, or cockpit procedures. Ground training does not include instruction in an aircraft simulator.

National of the United States means a person who, though not a citizen of the United States, owes permanent allegiance to the United States, and includes a citizen of American Samoa or Swains Island.

Recurrent training means periodic training required under 14 CFR part 61, 121,125, 135, or Subpart K of part 91. Recurrent training does not include training that would enable a candidate who has a certificate or type rating for a particular aircraft to receive a certificate or type rating for another aircraft.

§ 1552.3 Flight training.

This section describes the procedures a flight school must follow before providing flight training.

(a) *Category 1—Regular processing for flight training on aircraft more than 12,500 pounds.* A flight school may not provide flight training in the operation of any aircraft having a maximum certificated takeoff weight of more than 12,500 pounds to a candidate, except for a candidate who receives expedited processing under paragraph (b) of this section, unless—

(1) The flight school has first notified TSA that the candidate has requested such flight training.

(2) The candidate has submitted to TSA, in a form and manner acceptable to TSA, the following:

(i) The candidate's full name, including any aliases used by the candidate or variations in the spelling of the candidate's name;

(ii) A unique candidate identification number created by TSA;

(iii) A copy of the candidate's current, unexpired passport and visa;

(iv) The candidate's passport and visa information, including all current and previous passports and visas held by the candidate and all the information necessary to obtain a passport and visa;

(v) The candidate's country of birth, current country or countries of citizenship, and each previous country of citizenship, if any;

(vi) The candidate's actual date of birth or, if the candidate does not know his or her date of birth, the approximate date of birth used consistently by the candidate for his or her passport or visa;

(vii) The candidate's requested dates of training and the location of the training;

(viii) The type of training for which the candidate is applying, including the aircraft type rating the candidate would be eligible to obtain upon completion of the training;

(ix) The candidate's current U.S. pilot certificate, certificate number, and type rating, if any;

(x) Except as provided in paragraph (k) of this section, the candidate's fingerprints, in accordance with paragraph (f) of this section;

(xi) The candidate's current address and phone number and each address for the 5 years prior to the date of the candidate's application;

(xii) The candidate's gender; and

(xiii) Any fee required under this part.

(3) The flight school has submitted to TSA, in a form and manner acceptable to TSA, a photograph of the candidate taken when the candidate arrives at the flight school for flight training.

(4) TSA has informed the flight school that the candidate does not pose a threat to aviation or national security, or more than 30 days have elapsed since TSA received all of the information specified in paragraph (a)(2) of this section.

(5) The flight school begins the candidate's flight training within 180 days of either event specified in paragraph (a)(4) of this section.

(b) *Category 2—Expedited processing for flight training on aircraft more than 12,500 pounds.* (1) A flight school may not provide flight training in the operation of any aircraft having a maximum certificated takeoff weight of more than 12,500 pounds to a candidate who meets any of the criteria of paragraph (b)(2) of this section unless—

(i) The flight school has first notified TSA that the candidate has requested such flight training.

(ii) The candidate has submitted to TSA, in a form and manner acceptable to TSA:

(A) The information and fee required under paragraph (a)(2) of this section; and

(B) The reason the candidate is eligible for expedited processing under paragraph (b)(2) of this section and information that establishes that the candidate is eligible for expedited processing.

(iii) The flight school has submitted to TSA, in a form and manner acceptable to TSA, a photograph of the candidate taken when the candidate arrives at the flight school for flight training.

(iv) TSA has informed the flight school that the candidate does not pose a threat to aviation or national security or more than 5 days have elapsed since TSA received all of the information specified in paragraph (a)(2) of this section.

(v) The flight school begins the candidate's flight training within 180 days of either event specified in paragraph (b)(1)(iv) of this section.

(2) A candidate is eligible for expedited processing if he or she—

(i) Holds an airman's certificate from a foreign country that is recognized by the Federal Aviation Administration or a military agency of the United States, and that permits the candidate to operate a multi-engine aircraft that has a certificated takeoff weight of more than 12,500 pounds;

(ii) Is employed by a foreign air carrier that operates under 14 CFR part 129 and has a security program approved under 49 CFR part 1546;

(iii) Has unescorted access authority to a secured area of an airport under 49 U.S.C. 44936(a)(1)(A)(ii), 49 CFR 1542.209, or 49 CFR 1544.229;

(iv) Is a flightcrew member who has successfully completed a criminal history records check in accordance with 49 CFR 1544.230; or

(v) Is part of a class of individuals that TSA has determined poses a minimal threat to aviation or national security because of the flight training already possessed by that class of individuals.

(c) *Category 3—Flight training on aircraft 12,500 pounds or less.* A flight school may not provide flight training in the operation of any aircraft having a maximum certificated takeoff weight of 12,500 pounds or less to a candidate unless—

(1) The flight school has first notified TSA that the candidate has requested such flight training.

(2) The candidate has submitted to TSA, in a form and manner acceptable to TSA:

(i) The information required under paragraph (a)(2) of this section; and

(ii) Any other information required by TSA.

(3) The flight school has submitted to TSA, in a form and manner acceptable to TSA, a photograph of the candidate taken when the candidate arrives at the flight school for flight training.

(4) The flight school begins the candidate's flight training within 180 days of the date the candidate submitted the information required under paragraph (a)(2) of this section to TSA.

(d) *Category 4—Recurrent training for all aircraft.* Prior to beginning recurrent training for a candidate, a flight school must—

(1) Notify TSA that the candidate has requested such recurrent training; and

(2) Submit to TSA, in a form and manner acceptable to TSA:

(i) The candidate's full name, including any aliases used by the candidate or variations in the spelling of the candidate's name;

(ii) Any unique student identification number issued to the candidate by the Department of Justice or TSA;

(iii) A copy of the candidate's current, unexpired passport and visa;

(iv) The candidate's current U.S. pilot certificate, certificate number, and type rating(s);

(v) The type of training for which the candidate is applying;

(vi) The date of the candidate's prior recurrent training, if any, and a copy of the training form documenting that recurrent training;

(vii) The candidate's requested dates of training; and

(viii) A photograph of the candidate taken when the candidate arrives at the flight school for flight training.

(e) *Interruption of flight training.* A flight school must immediately terminate or cancel a candidate's flight training if TSA notifies the flight school at any time that the candidate poses a threat to aviation or national security.

(f) *Fingerprints.* (1) Fingerprints submitted in accordance with this subpart must be collected—

(i) By United States Government personnel at a United States embassy or consulate; or

(ii) By another entity approved by TSA.

(2) A candidate must confirm his or her identity to the individual or agency collecting his or her fingerprints under paragraph (f)(1) of this section by providing the individual or agency his or her:

(i) Passport;

(ii) Resident alien card; or

(iii) U.S. driver's license.

(3) A candidate must pay any fee imposed by the agency taking his or her fingerprints.

(g) *General requirements*—(1) *False statements.* If a candidate makes a knowing and willful false statement, or omits a material fact, when submitting the information required under this part, the candidate may be—

(i) Subject to fine or imprisonment or both under 18 U.S.C. 1001;

(ii) Denied approval for flight training under this section; and

(iii) Subject to other enforcement action, as appropriate.

(2) *Preliminary approval.* For purposes of facilitating a candidate's visa process with the U.S. Department of State, TSA may inform a flight school and a candidate that the candidate has received preliminary approval for flight training based on information submitted by the flight school or the candidate under this section. A flight school may then issue an I–20 form to the candidate to present with the candidate's visa application. Preliminary approval does not initiate the waiting period under paragraph (a)(3) or (b)(1)(iii) of this section or the period in which a flight school must initiate a candidate's training after receiving TSA approval under paragraph (a)(4) or (b)(1)(iv) of this section.

(h) *U.S. citizens and nationals and Department of Defense endorsees.* A flight school must determine whether an individual is a citizen or national of the United States, or a Department of Defense endorsee, prior to providing flight training to the individual.

(1) *U.S. citizens and nationals.* To establish U.S. citizenship or nationality an individual must present to the flight school his or her:

(i) Valid, unexpired United States passport;

(ii) Original or government-issued certified birth certificate of the United States, American Samoa, or Swains Island, together with a government-issued picture identification of the individual;

(iii) Original United States naturalization certificate with raised seal, or a Certificate of Naturalization issued by the U.S. Citizenship and Immigration Services (USCIS) or the U.S. Immigration and Naturalization Service (INS) (Form N–550 or Form N–570), together with a government-issued picture identification of the individual;

(iv) Original certification of birth abroad with raised seal, U.S. Department of State Form FS–545, or U.S. Department of State Form DS–1350, together with a government-issued picture identification of the individual;

(v) Original certificate of United States citizenship with raised seal, a Certificate of United States Citizenship issued by the USCIS or INS (Form N–560 or Form N–561), or a Certificate of Repatriation issued by the USCIS or INS (Form N–581), together with a government-issued picture identification of the individual; or

(vi) In the case of flight training provided to a Federal employee (including military personnel) pursuant to a contract between a Federal agency and a flight school, the agency's written certification as to its employee's United States citizenship or nationality, together with the employee's government-issued credentials or other Federally-issued picture identification.

(2) *Department of Defense endorsees*. To establish that an individual has been endorsed by the U.S. Department of Defense for flight training, the individual must present to the flight school a written statement acceptable to TSA from the U.S. Department of Defense attaché in the individual's country of residence together with a government-issued picture identification of the individual.

(i) *Recordkeeping requirements*. A flight school must—

(1) Maintain the following information for a minimum of 5 years:

(i) For each candidate:

(A) A copy of the photograph required under paragraph (a)(3), (b)(1)(iii), (c)(3), or (d)(2)(viii) of this section; and

(B) A copy of the approval sent by TSA confirming the candidate's eligibility for flight training.

(ii) For a Category 1, Category 2, or Category 3 candidate, a copy of the information required under paragraph (a)(2) of this section, except the information in paragraph (a)(2)(x).

(iii) For a Category 4 candidate, a copy of the information required under paragraph (d)(2) of this section.

(iv) For an individual who is a United States citizen or national, a copy of the information required under paragraph (h)(1) of this section.

(v) For an individual who has been endorsed by the U.S. Department of Defense for flight training, a copy of the information required under paragraph (h)(2) of this section.

(vi) A record of all fees paid to TSA in accordance with this part.

(2) Permit TSA and the Federal Aviation Administration to inspect the records required by paragraph (i)(1) of this section during reasonable business hours.

(j) *Candidates subject to the Department of Justice rule*. A candidate who submits a completed Flight Training Candidate Checks Program form and fingerprints to the Department of Justice in accordance with 28 CFR part 105 before September 28, 2004, or a later date specified by TSA, is processed in accordance with the requirements of that part. If TSA specifies a date later than the compliance dates identified in this part, individuals and flight schools who comply with 28 CFR part 105 up to that date will be considered to be in compliance with the requirements of this part.

(k) *Additional or missed flight training*. (1) A Category 1, 2, or 3 candidate who has been approved for flight training by TSA may take additional flight training without submitting fingerprints as specified in paragraph (a)(2)(x) of this section if the candidate:

(i) Submits all other information required in paragraph (a)(2) of this section, including the fee; and

(ii) Waits for TSA approval or until the applicable waiting period expires before initiating the additional flight training.

(2) A Category 1, 2, or 3 candidate who is approved for flight training by TSA, but does not initiate that flight training within 180 days, may reapply for flight training without submitting fingerprints as specified in paragraph (a)(2)(x) of this section if the candidate submits all other information required in paragraph (a)(2) of this section, including the fee.

§ 1552.5 Fees.

(a) *Imposition of fees*. The following fee is required for TSA to conduct a security threat assessment for a candidate for flight training subject to the requirements of § 1552.3: $130.

(b) *Remittance of fees*. (1) A candidate must remit the fee required under this subpart to TSA, in a form and manner acceptable to TSA, each time the candidate or the flight school is required to submit the information required under § 1552.3 to TSA.

(2) TSA will not issue any fee refunds, unless a fee was paid in error.

Subpart B—Flight School Security Awareness Training

§ 1552.21 Scope and definitions.

(a) *Scope*. This subpart applies to flight schools that provide instruction under 49 U.S.C. Subtitle VII, Part A, in the operation of aircraft or aircraft simulators, and to employees of such flight schools.

(b) *Definitions:* As used in this subpart:

Flight school employee means a flight instructor or ground instructor certificated under 14 CFR part 61, 141, or 142; a chief instructor certificated under 14 CFR part 141; a director of training certificated under 14 CFR part 142; or any other person employed by a flight school, including an independent contractor, who has direct contact with a flight school student. This includes an independent or solo flight instructor certificated under 14 CFR part 61.

§ 1552.23 Security awareness training programs.

(a) *General*. A flight school must ensure that—

(1) Each of its flight school employees receives initial and recurrent security awareness training in accordance with this subpart; and

(2) If an instructor is conducting the initial security awareness training program, the instructor has first successfully completed the initial flight school security awareness training program offered by TSA or an alternative initial flight school security awareness training program that meets the criteria of paragraph (c) of this section.

(b) *Initial security awareness training program*. (1) A flight school must ensure that—

(i) Each flight school employee employed on January 18, 2005 receives initial security awareness training in accordance with this subpart by January 18, 2005; and

(ii) Each flight school employee hired after January 18, 2005 receives initial security awareness training within 60 days of being hired.

(2) In complying with paragraph (b)(2) of this section, a flight school may use either:

(i) The initial flight school security awareness training program offered by TSA; or

(ii) An alternative initial flight school security awareness training program that meets the criteria of paragraph (c) of this section.

(c) *Alternative initial security awareness training program*. At a minimum, an alternative initial security awareness training program must—

(1) Require active participation by the flight school employee receiving the training.

(2) Provide situational scenarios requiring the flight school employee receiving the training to assess specific situations and determine appropriate courses of action.

(3) Contain information that enables a flight school employee to identify—

(i) Uniforms and other identification, if any are required at the flight school, for flight school employees or other persons authorized to be on the flight school grounds.

(ii) Behavior by clients and customers that may be considered suspicious, including, but not limited to:

(A) Excessive or unusual interest in restricted airspace or restricted ground structures;

(B) Unusual questions or interest regarding aircraft capabilities;

(C) Aeronautical knowledge inconsistent with the client or customer's existing airman credentialing; and

(D) Sudden termination of the client or customer's instruction.

(iii) Behavior by other on-site persons that may be considered suspicious, including, but not limited to:

(A) Loitering on the flight school grounds for extended periods of time; and

(B) Entering ''authorized access only'' areas without permission.

(iv) Circumstances regarding aircraft that may be considered suspicious, including, but not limited to:

(A) Unusual modifications to aircraft, such as the strengthening of landing gear, changes to the tail number, or stripping of the aircraft of seating or equipment;

(B) Damage to propeller locks or other parts of an aircraft that is inconsistent with the pilot training or aircraft flight log; and

(C) Dangerous or hazardous cargo loaded into an aircraft.

(v) Appropriate responses for the employee to specific situations, including:

(A) Taking no action, if a situation does not warrant action;

(B) Questioning an individual, if his or her behavior may be considered suspicious;

(C) Informing a supervisor, if a situation or an individual's behavior warrants further investigation;

(D) Calling the TSA General Aviation Hotline; or

(E) Calling local law enforcement, if a situation or an individual's behavior could pose an immediate threat.

(vi) Any other information relevant to security measures or procedures at the flight school, including applicable information in the TSA Information Publication ''Security Guidelines for General Aviation Airports''.

(d) *Recurrent security awareness training program.* (1) A flight school must ensure that each flight school employee receives recurrent security awareness training each year in the same month as the month the flight school employee received initial security awareness training in accordance with this subpart.

(2) At a minimum, a recurrent security awareness training program must contain information regarding—

(i) Any new security measures or procedures implemented by the flight school;

(ii) Any security incidents at the flight school, and any lessons learned as a result of such incidents;

(iii) Any new threats posed by or incidents involving general aviation aircraft contained on the TSA Web site; and

(iv) Any new TSA guidelines or recommendations concerning the security of general aviation aircraft, airports, or flight schools.

§ 1552.25 Documentation, recordkeeping, and inspection.

(a) *Documentation.* A flight school must issue a document to each flight school employee each time the flight school employee receives initial or recurrent security awareness training in accordance with this subpart. The document must—

(1) Contain the flight school employee's name and a distinct identification number.

(2) Indicate the date on which the flight school employee received the security awareness training.

(3) Contain the name of the instructor who conducted the training, if any.

(4) Contain a statement certifying that the flight school employee received the security awareness training.

(5) Indicate the type of training received, initial or recurrent.

(6) Contain a statement certifying that the alternative training program used by the flight school meets the criteria in 49 CFR 1552.23(c), if the flight school uses an alternative training program to comply with this subpart.

(7) Be signed by the flight school employee and an authorized official of the flight school.

(b) *Recordkeeping requirements.* A flight school must establish and maintain the following records for one year after an individual no longer is a flight school employee:

(1) A copy of the document required by paragraph (a) of this section for the initial and each recurrent security awareness training conducted for each

flight school employee in accordance with this subpart; and

(2) The alternative flight school security awareness training program used by the flight school, if the flight school uses such a program.

(c) *Inspection*. A flight school must permit TSA and the Federal Aviation Administration to inspect the records required under paragraph (b) of this section during reasonable business hours.

PART 1560—SECURE FLIGHT PROGRAM

Subpart A—General

Sec.
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AUTHORITY: 49 U.S.C. 114, 40113, 44901, 44902, 44903.

SOURCE: 73 FR 64061, Oct. 28, 2008, unless otherwise noted.

Subpart A—General

§ 1560.1 Scope, purpose, and implementation.

(a) *Scope*. This part applies to the following:

(1) Aircraft operators required to adopt a full program under 49 CFR 1544.101(a).

(2) Foreign air carriers required to adopt a security program under 49 CFR 1546.101(a) or (b).

(3) Airport operators that seek to authorize individuals to enter a sterile area for purposes approved by TSA.

(4) Individuals who seek redress in accordance with subpart C of this part.

(b) *Purpose*. The purpose of this part is to enhance the security of air travel within the United States and support the Federal government's counterterrorism efforts by assisting in the detection of individuals identified on Federal government watch lists who seek to travel by air, and to facilitate the secure travel of the public. This part enables TSA to operate a watch list matching program known as Secure Flight, which involves the comparison of passenger and non-traveler information with the identifying information of individuals on Federal government watch lists.

(c) *Implementation*. Each covered aircraft operator must begin requesting the information described in §1560.101(a)(1) and have the capability to transmit SFPD to TSA in accordance with its Aircraft Operator Implementation Plan (AOIP) as approved by TSA. Each covered aircraft operator must begin transmitting information to TSA as required in §1560.101(b) on the date specified in, and in accordance with, its AOIP as approved by TSA. TSA will inform each covered aircraft operator 60 days prior to the date on which TSA will assume the watch list matching function from that aircraft operator.

§ 1560.3 Terms used in this part.

In addition to the terms in §§1500.3 and 1540.5 of this chapter, the following terms apply to this part:

Aircraft Operator Implementation Plan or *AOIP* means a written procedure describing how and when a covered aircraft operator or airport operator transmits passenger and flight information and non-traveler information to TSA, as well as other related matters.

Airport code means the official code, designated by the International Air Transport Association (IATA), for an airport.

Consolidated User Guide means a document developed by the Department of Homeland Security (DHS) to provide guidance to aircraft operators that

must transmit passenger information to one or more components of DHS on operational processing and transmission of passenger information to all required components in a unified manner. The Consolidated User Guide is part of the covered aircraft operator's security program.

Covered aircraft operator means each aircraft operator required to carry out a full program under 49 CFR 1544.101(a) or a security program under 49 CFR 1546.101(a) or (b).

Covered airport operator means each airport operator that seeks to authorize non-traveling individuals to enter a sterile area for a purpose permitted by TSA.

Covered flight means any operation of an aircraft that is subject to or operates under a full program under 49 CFR 1544.101(a). *Covered flight* also means any operation of an aircraft that is subject to or operates under a security program under 49 CFR 1546.101(a) or (b) arriving in or departing from the United States, or overflying the continental United States. *Covered flight* does not include any flight for which TSA has determined that the Federal government is conducting passenger matching comparable to the matching conducted pursuant to this part.

Date of birth means the day, month, and year of an individual's birth.

Department of Homeland Security Traveler Redress Inquiry Program or *DHS TRIP* means the voluntary program through which individuals may request redress if they believe they have been:

(1) Denied or delayed boarding transportation due to DHS screening programs;

(2) Denied or delayed entry into or departure from the United States at a port of entry; or

(3) Identified for additional (secondary) screening at U.S. transportation facilities, including airports, and seaports.

Full name means an individual's full name as it appears on a verifying identity document held by the individual.

Inhibited status means the status of a passenger or non-traveling individual to whom TSA has instructed a covered aircraft operator or a covered airport operator not to issue a boarding pass or to provide access to the sterile area.

Itinerary information means information reflecting a passenger's or non-traveling individual's itinerary specified in the covered aircraft operator's AOIP. For non-traveling individuals, itinerary information is the airport code for the sterile area to which the non-traveler seeks access. For passengers, itinerary information includes the following:

(1) Departure airport code.

(2) Aircraft operator.

(3) Scheduled departure date.

(4) Scheduled departure time.

(5) Scheduled arrival date.

(6) Scheduled arrival time.

(7) Arrival airport code.

(8) Flight number.

(9) Operating carrier (if available).

Known Traveler Number means a unique number assigned to an individual for whom the Federal government has conducted a security threat assessment and determined does not pose a security threat.

Non-traveling individual or *non-traveler* means an individual to whom a covered aircraft operator or covered airport operator seeks to issue an authorization to enter the sterile area of an airport in order to escort a minor or a passenger with disabilities or for some other purpose permitted by TSA. The term *non-traveling individual* or *non-traveler* does not include employees or agents of airport or aircraft operators or other individuals whose access to a sterile area is governed by another TSA requirement.

Overflying the continental United States means departing from an airport or location outside the United States and transiting the airspace of the continental United States en route to another airport or location outside the United States. Airspace of the continental United States includes the airspace over the lower 48 states of the United States, not including Alaska or Hawaii, and the airspace overlying the territorial waters between the U.S. coast of the lower 48 states and 12 nautical miles from the continental U.S. coast. *Overflying the continental United States* does not apply to:

(1) Flights that transit the airspace of the continental United States between two airports or locations in the

same country, where that country is Canada or Mexico; or

(2) Any other category of flights that the Assistant Secretary of Homeland Security (Transportation Security Administration) designates in a notice in the FEDERAL REGISTER.

Passenger means an individual who is traveling on a covered flight. The term *passenger* does not include:

(1) A crew member who is listed as a crew member on the flight manifest; or

(2) An individual with flight deck privileges under 49 CFR 1544.237 traveling on the flight deck.

Passenger Resolution Information or *PRI* means the information that a covered aircraft operator or covered airport operator transmits to TSA for an individual who TSA places in an inhibited status and from whom the covered aircraft operator or covered airport operator is required to request additional information and a Verifying Identity Document. *Passenger Resolution Information* includes, but is not limited to, the following:

(1) Covered aircraft operator's agent identification number or agent sine.

(2) Type of Verifying Identity Document presented by the passenger.

(3) The identification number on the Verifying Identity Document.

(4) Issue date of the Verifying Identity Document.

(5) Name of the governmental authority that issued the Verifying Identity Document.

(6) Physical attributes of the passenger such as height, eye color, or scars, if requested by TSA.

Passport information means the following information from an individual's passport:

(1) Passport number.

(2) Country of issuance.

(3) Expiration date.

(4) Gender.

(5) Full name.

Redress Number means the number assigned by DHS to an individual processed through the redress procedures described in 49 CFR part 1560, subpart C.

Secure Flight Passenger Data or (*SFPD*) means information regarding a passenger or non-traveling individual that a covered aircraft operator or covered airport operator transmits to TSA, to the extent available, pursuant to §1560.101. *SFPD* is the following information regarding a passenger or non-traveling individual:

(1) Full name.

(2) Date of birth.

(3) Gender.

(4) Redress number or Known Traveler Number (once implemented).

(5) Passport information.

(6) Reservation control number.

(7) Record sequence number.

(8) Record type.

(9) Passenger update indicator.

(10) Traveler reference number.

(11) Itinerary information.

Self-service kiosk means a kiosk operated by a covered aircraft operator that is capable of accepting a passenger reservation or a request for authorization to enter a sterile area from a non-traveling individual.

Sterile area means ''sterile area'' as defined in 49 CFR 1540.5.

Terrorist Screening Center or *TSC* means the entity established by the Attorney General to carry out Homeland Security Presidential Directive 6 (HSPD–6), dated September 16, 2003, to consolidate the Federal government's approach to terrorism screening and provide for the appropriate and lawful use of terrorist information in screening processes.

Verifying Identity Document means one of the following documents:

(1) An unexpired passport issued by a foreign government.

(2) An unexpired document issued by a U.S. Federal, State, or tribal government that includes the following information for the individual:

(i) Full name.

(ii) Date of birth.

(iii) Photograph.

(3) Such other documents that TSA may designate as valid verifying identity documents.

Watch list refers to the No Fly and Selectee List components of the Terrorist Screening Database maintained by the Terrorist Screening Center. For certain flights, the ''watch list'' may include the larger set of watch lists maintained by the Federal government as warranted by security considerations.

Subpart B—Collection and Transmission of Secure Flight Passenger Data for Watch List Matching

§ 1560.101 Request for and transmission of information to TSA.

(a) *Request for information.* (1) Each covered aircraft operator must request the full name, gender, date of birth, and Redress Number for passengers on a covered flight and non-traveling individuals seeking access to an airport sterile area. For reservations made 72 hours prior to the scheduled time of departure for each covered flight, the covered aircraft operator must collect full name, gender, and date of birth for each passenger when the reservation is made or at a time no later than 72 hours prior to the scheduled time of departure of the covered flight. For an individual that makes a reservation for a covered flight within 72 hours of the scheduled time of departure for the covered flight, the covered aircraft operator must collect the individual's full name, date of birth, and gender at the time of reservation. The covered aircraft operator must include the information provided by the individual in response to this request in the SFPD.

(i) Except as provided in paragraph (a)(1)(ii) of this section, each covered aircraft operator must begin requesting the information described in paragraph (a)(1) of this section in accordance with its AOIP as approved by TSA.

(ii) An aircraft operator that becomes a covered aircraft operator after the effective date of this part must begin requesting the information on the date it becomes a covered aircraft operator.

(2) Beginning on a date no later than 30 days after being notified in writing by TSA, each covered aircraft operator must additionally request the Known Traveler Number for passengers on a covered flight and non-traveling individuals seeking access to an airport sterile area. The covered aircraft operator must include the Known Traveler Number provided by the passenger in response to this request in the SFPD.

(3) Each covered aircraft operator may not submit SFPD for any passenger on a covered flight who does not provide a full name, date of birth and gender. Each covered aircraft operator may not accept a request for authorization to enter a sterile area from a non-traveling individual who does not provide a full name, date of birth and gender.

(4) Each covered aircraft operator must ensure that each third party that accepts a reservation, or accepts a request for authorization to enter a sterile area, on the covered aircraft operator's behalf complies with the requirements of this section.

(5) If the covered aircraft operator also has an operation of an aircraft that is subject to 49 CFR 1544.101(b) through (i), the covered aircraft operator may submit SFPD for passengers on these operations for watch list matching under this part, provided that the covered aircraft operator—

(i) Collects and transmits the SFPD for the passengers in accordance with this section;

(ii) Provides the privacy notice to the passengers in accordance with 49 CFR 1560.103; and

(iii) Complies with the requirements of 49 CFR 1560.105 and 1560.107.

(b) *Transmission of Secure Flight Passenger Data to TSA.* Beginning on the date provided in a covered aircraft operator's AOIP, the covered aircraft operator must electronically transmit SFPD to TSA, prior to the scheduled departure of each covered flight, in accordance with its AOIP as approved by TSA.

(1) To the extent available, each covered aircraft operator must electronically transmit SFPD to TSA for each passenger on a covered flight.

(2) Each covered aircraft operator must transmit SFPD to TSA prior to the scheduled flight departure time, in accordance with its AOIP as approved by TSA.

(c) *Transmission of non-traveler information to TSA.* Beginning on the date provided in a covered aircraft operator's AOIP, the covered aircraft operator must electronically transmit SFPD to TSA for each non-traveling individual, prior to authorizing access to an airport sterile area.

(d) *Retransmission of information*. Each covered aircraft operator must retransmit to TSA updates to the information listed in paragraphs (b) and (c) of this section to reflect most recent changes to that information, as specified in its AOIP as approved by TSA.

§ 1560.103 Privacy notice.

(a) *Electronic collection of information*—(1) *Current electronic collection of information*. Prior to collecting information through a Web site or self-service kiosk from a passenger or non-traveling individual in order to comply with § 1560.101(a), a covered aircraft operator must make available the complete privacy notice set forth in paragraph (b) of this section.

(2) *Other electronic collection of information*. If a covered aircraft operator collects information directly from a passenger or non-traveling individual in order to comply with § 1560.101(a) through an electronic means not described in paragraph (a)(1) of this section, the covered aircraft operator must make available the complete privacy notice set forth in paragraph (b) of this section.

(3) *Third party Web site*. Each covered aircraft operator must ensure that each third party that maintains a Web site capable of making a reservation for the covered aircraft operator's reservation system, make available on its Web site the complete privacy notice set forth in paragraph (b) of this section prior to collecting information through the Web site.

(b) *Privacy notice*. The covered aircraft operator may substitute its name for the word ''us,'' but the complete privacy notice otherwise must be identical to the following paragraph unless TSA has approved alternative language:

The Transportation Security Administration of the U.S. Department of Homeland Security requires us to collect information from you for purposes of watch list screening, under the authority of 49 U.S.C. section 114, and the Intelligence Reform and Terrorism Prevention Act of 2004. Providing this information is voluntary; however, if it is not provided, you may be subject to additional screening or denied transport or authorization to enter a sterile area. TSA may share information you provide with law enforcement or intelligence agencies or others under its published system of records notice. For more on TSA Privacy policies, or to view the system of records notice and the privacy impact assessment, please see TSA's Web site at *www.tsa.gov*.

§ 1560.105 Denial of transport or sterile area access; designation for enhanced screening.

(a) *Applicability*. (1) This section applies to each covered aircraft operator beginning on the date that TSA assumes the watch list matching function for the passengers and non-traveling individuals to whom that covered aircraft operator issues a boarding pass or other authorization to enter a sterile area. TSA will provide prior written notification to the covered aircraft operator no later than 60 days before the date on which it will assume the watch list matching function from that covered aircraft operator.

(2) Prior to the date that TSA assumes the watch list matching function from a covered aircraft operator, the covered aircraft operator must comply with existing watch list matching procedures for passengers and non-traveling individuals, including denial of transport or sterile area access or designation for enhanced screening for individuals identified by the covered aircraft operator or TSA.

(b) *Watch list matching results*. Except as provided in paragraph (b) of this section, a covered aircraft operator must not issue a boarding pass or other authorization to enter a sterile area to a passenger or a non-traveling individual, and must not allow that individual to board an aircraft or enter a sterile area, until TSA informs the covered aircraft operator of the results of watch list matching for that passenger or non-traveling individual, in response to the covered aircraft operator's most recent SFPD submission for that passenger or non-traveling individual.

(1) *Denial of boarding pass*. If TSA sends a covered aircraft operator a boarding pass printing result that says the passenger or non-traveling individual must be placed on inhibited status, the covered aircraft operator must not issue a boarding pass or other authorization to enter a sterile area to that individual and must not allow that individual to board an aircraft or enter a sterile area.

(2) *Selection for enhanced screening*. If TSA sends a covered aircraft operator a boarding pass printing result that says the passenger has been selected for enhanced screening at a security checkpoint, the covered aircraft operator may issue a boarding pass to that individual and must identify the individual for enhanced screening, in accordance with procedures approved by TSA. The covered aircraft operator must place a code on the boarding pass that meets the requirements described in the Consolidated User Guide. If TSA sends a covered aircraft operator a boarding pass printing result that says the non-traveling individual has been selected for enhanced screening at a security checkpoint, the covered aircraft operator must not issue an authorization to enter a sterile area to that individual.

(3) *Cleared for boarding or entry into a sterile area*. If TSA sends a covered aircraft operator a boarding pass printing result that instructs a covered aircraft operator that a passenger or non-traveling individual is cleared, the covered aircraft operator may issue a boarding pass or other authorization to enter a sterile area to that individual, unless required under another TSA requirement to identify the passenger or non-traveling individual for enhanced screening or to deny entry into the sterile area. The covered aircraft operator must place a code on the boarding pass or authorization to enter the sterile area that meets the requirements described in the Consolidated User Guide.

(4) *Override by a covered aircraft operator*. No covered aircraft operator may override a TSA boarding pass printing result that instructs a covered aircraft operator to place a passenger or non-traveling individual in an inhibited status or to identify a passenger or non-traveling individual for enhanced screening, unless explicitly authorized by TSA to do so.

(5) *Updated SFPD from covered aircraft operator*. When a covered aircraft operator sends updated SFPD to TSA under § 1560.101(d) for a passenger or non-traveling individual for whom TSA has already issued a boarding pass printing result, all previous TSA results concerning the passenger or non-traveling individual are voided. The covered aircraft operator may not issue a boarding pass or grant authorization to enter a sterile area until it receives an updated result from TSA authorizing the issuance of a boarding pass or authorization to enter a sterile area. Upon receiving an updated result from TSA, the covered aircraft operator must acknowledge receipt of the updated result, comply with the updated result, and disregard all previous boarding pass printing results.

(6) *Updated boarding pass printing results from TSA*. After TSA sends a covered aircraft operator a result under paragraph (b)(1), (b)(2), or (b)(3) of this section, TSA may receive additional information concerning the passenger or non-traveling individual and may send an updated boarding pass printing result concerning that passenger or non-traveling individual to the covered aircraft operator. Upon receiving an updated boarding pass printing result from TSA, the covered aircraft operator must acknowledge receipt of the updated result, comply with the updated result, and disregard all previous results.

(7) *Boarding pass issuance for covered flights to or overflying the United States*. Covered aircraft operators may permit another aircraft operator to issue a boarding pass for a covered flight departing from a foreign location to the United States or overflying the United States without regard to the requirements in paragraphs (b)(1) through (b)(6) of this section provided that—

(i) Before allowing the individual to board the aircraft for a covered flight, the covered aircraft operator confirms that it has received a boarding pass printing result from DHS for individuals who are issued boarding passes under paragraph (b)(7) of this section;

(ii) Before allowing the individual to board an aircraft for a covered flight, the covered aircraft operator applies the measures in its security program to prevent an individual for whom DHS has returned an inhibited status boarding pass printing result under paragraph (b)(1) of this section from boarding the aircraft; and

(iii) The covered aircraft operator applies the measures in its security program, as provided in 49 CFR part 1544,

subpart B or 49 CFR part 1546, subpart B, to ensure that an individual for whom DHS returns a Selectee result under paragraph (b)(2) of this section undergoes enhanced screening pursuant to the covered aircraft operator's security program prior to that individual boarding the aircraft.

(c) *Request for identification*—(1) *In general*. If TSA has not informed the covered aircraft operator of the results of watch list matching for an individual by the time the individual attempts to check in, or informs the covered aircraft operator that an individual has been placed in inhibited status, the aircraft operator must request from the individual a verifying identity document pursuant to procedures in its security program., as provided in 49 CFR part 1544, subpart B or 49 CFR part 1546, subpart B. The individual must present a verifying identity document to the covered aircraft operator at the airport.

(2) *Transmission of Updated Secure Flight Passenger Data*. Upon reviewing a passenger's verifying identity document, the covered aircraft operator must transmit the SFPD elements from the individual's verifying identity document to TSA.

(3) *Provision of Passenger Resolution Information*. If requested by TSA, the covered aircraft operator must also provide to TSA the individual's Passenger Resolution Information as specified by TSA.

(4) *Exception for minors*. If a covered aircraft operator is required to obtain information from an individual's verifying identity document under this paragraph (c), and the individual is younger than 18 years of age and does not have a verifying identity document, TSA may, on a case-by-case basis, authorize the minor or an adult accompanying the minor to state the individual's full name and date of birth in lieu of providing a verifying identity document.

(d) *Failure to obtain identification*. If a passenger or non-traveling individual does not present a verifying identity document when requested by the covered aircraft operator, in order to comply with paragraph (c) of this section, the covered aircraft operator must not issue a boarding pass or give authorization to enter a sterile area to that individual and must not allow that individual to board an aircraft or enter a sterile area, unless otherwise authorized by TSA.

§ 1560.107 Use of watch list matching results by covered aircraft operators.

A covered aircraft operator must not use any watch list matching results provided by TSA for purposes other than those provided in § 1560.105 and other security purposes.

§ 1560.109 Aircraft Operator Implementation Plan.

(a) *Content of the Aircraft Operator Implementation Plan (AOIP)*. Each covered aircraft operator must adopt and carry out an AOIP that sets forth the following:

(1) The covered aircraft operator's test plan with TSA.

(2) When the covered operator will begin to collect and transmit to TSA each data element of the SFPD for each covered flight.

(3) The specific means by which the covered aircraft operator will request and transmit information under § 1560.101, the timing and frequency of transmission, and any other related matters, in accordance with the Consolidated User Guide.

(b) *Adoption of Aircraft Operator Implementation Plan (AOIP)*. Each covered aircraft operator must adopt an AOIP pursuant to the procedures set forth in this paragraph (b).

(1) TSA notifies each covered aircraft operator in writing of a proposed AOIP, fixing a period of not less than 30 days within which the covered aircraft operator may submit written information, views, and arguments on the proposed AOIP.

(2) After considering all relevant material, TSA's designated official notifies each covered aircraft operator of its AOIP. The AOIP becomes effective not less than 30 days after the covered aircraft operator receives the notice of its AOIP, unless the covered aircraft operator petitions the Assistant Secretary or designated official to reconsider no later than 15 days before the effective date of the AOIP. The covered

aircraft operator must send the petition for reconsideration to the designated official. A timely petition for reconsideration stays the effective date of the AOIP.

(3) Upon receipt of a petition for reconsideration, the designated official either amends the AOIP or transmits the petition, together with any pertinent information, to the Assistant Secretary or designee for reconsideration. The Assistant Secretary or designee disposes of the petition within 30 days of receipt by either directing the designated official to withdraw or amend the AOIP, or by affirming the AOIP.

(4) TSA may, at its discretion, grant extensions to any schedule deadlines, on its own initiative or upon the request of a covered aircraft operator.

(c) *Incorporation into Security Program.* Once an AOIP is approved, the AOIP becomes part of the covered aircraft operator's security program as described in 49 CFR part 1544, subpart B, or 49 CFR part 1546, subpart B, as appropriate, and any amendments will be made in accordance with the procedures in those subparts.

(d) *Handling of Aircraft Operator Implementation Plan (AOIP).* An AOIP contains sensitive security information (SSI) and must be handled and protected in accordance with 49 CFR part 1520.

§ 1560.111 Covered airport operators.

(a) *Applicability.* This section applies to a covered airport operator that has a program approved by TSA through which the covered airport operator may authorize non-traveling individuals to enter a sterile area.

(b) *Requirements.* A covered airport operator must adopt and carry out an AOIP in accordance with § 1560.109. Each covered airport operator must comply with the procedures required of covered aircraft operators in §§ 1560.101(a), (c), and (d), 1560.103, and 1560.107 of this part and any other applicable TSA requirements when authorizing non-traveling individuals to enter a sterile area.

Subpart C—Passenger Redress

§ 1560.201 Applicability.

This subpart applies to individuals who believe they have been improperly or unfairly delayed or prohibited from boarding an aircraft or entering a sterile area as a result of the Secure Flight program.

§ 1560.203 Representation by counsel.

A person may be represented by counsel at his or her own expense during the redress process.

§ 1560.205 Redress process.

(a) If an individual believes he or she has been improperly or unfairly delayed or prohibited from boarding an aircraft or entering a sterile area as a result of the Secure Flight program, the individual may seek assistance through the redress process established under this section.

(b) An individual may obtain the forms and information necessary to initiate the redress process on the DHS TRIP Web site at *http://www.dhs.gov/trip* or by contacting the DHS TRIP office by mail. Individuals should send written requests for forms to the DHS TRIP office and include their name and address in the request. DHS will provide the necessary forms and information to individuals through its Web site or by mail.

(c) The individual must send to the DHS TRIP office the personal information and copies of the specified identification documents. If TSA needs additional information in order to continue the redress process, TSA will so notify the individual in writing and request that additional information. The DHS TRIP Office will assign the passenger a unique identifier, which TSA will recognize as the Redress Number, and the passenger may use that Redress Number in future correspondence with TSA and when making future travel reservations.

(d) TSA, in coordination with the TSC and other appropriate Federal law enforcement or intelligence agencies, if necessary, will review all the documentation and information requested

from the individual, correct any erroneous information, and provide the individual with a timely written response.

§ 1560.207 Oversight of process.

The redress process and its implementation are subject to review by the TSA and DHS Privacy Offices and the TSA and DHS Offices for Civil Rights and Civil Liberties.

PART 1562—OPERATIONS IN THE WASHINGTON, DC, METROPOLITAN AREA

Subpart A—Maryland Three Airports: Enhanced Security Procedures for Operations at Certain Airports in the Washington, DC, Metropolitan Area Flight Restricted Zone

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Subpart A—Maryland Three Airports: Enhanced Security Procedures for Operations at Certain Airports in the Washington, DC, Metropolitan Area Flight Restricted Zone

§ 1562.1 Scope and definitions.

(a) *Scope*. This subpart applies to the following airports, and individuals who operate an aircraft to or from those airports, that are located within the airspace designated as the Washington, DC, Metropolitan Area Flight Restricted Zone by the Federal Aviation Administration:

(1) College Park Airport (CGS);

(2) Potomac Airfield (VKX); and

(3) Washington Executive/Hyde Field (W32).

(b) *Definitions*. For purposes of this section:

Airport security coordinator means the official at a Maryland Three Airport who is responsible for ensuring that the airport's security procedures are implemented and followed.

Maryland Three Airport means any of the airports specified in paragraph (a) of this section.

§ 1562.3 Operating requirements.

(a) *Airport operator requirements*. Each operator of a Maryland Three Airport must:

(1) Appoint an airport employee as the airport security coordinator;

(2) Maintain and carry out security procedures approved by TSA;

(3) Maintain at the airport a copy of the airport's TSA-approved security procedures;

(4) Maintain at the airport a copy of each Federal Aviation Administration Notice to Airmen and rule that affects security procedures at the Maryland Three Airports; and

(5) Permit officials authorized by TSA to inspect—

(i) The airport;

(ii) The airport's TSA-approved security procedures; and

(iii) Any other documents required under this section.

(b) *Airport security coordinator requirements*. Each airport security coordinator for a Maryland Three Airport must be approved by TSA. To obtain TSA approval, an airport security coordinator must:

(1) Present to TSA, in a form and manner acceptable to TSA, his or her—

(i) Name;

(ii) Social Security Number;

(iii) Date of birth;

(iv) Address;

(v) Phone number; and

(vi) Fingerprints.

(2) Successfully complete a TSA terrorist threat assessment; and

(3) Not have been convicted or found not guilty by reason of insanity, in any jurisdiction, during the 10 years prior

to applying for authorization to operate to or from the airport, or while authorized to operate to or from the airport, of any crime specified in 49 CFR 1542.209 or 1572.103.

(c) *Security procedures.* To be approved by TSA, an airport's security procedures, at a minimum, must:

(1) Identify and provide contact information for the airport's airport security coordinator.

(2) Contain a current record of the individuals and aircraft authorized to operate to or from the airport.

(3) Contain procedures to—

(i) Monitor the security of aircraft at the airport during operational and nonoperational hours; and

(ii) Alert the aircraft owner(s) and operator(s), the airport operator, and TSA of unsecured aircraft.

(4) Contain procedures to implement and maintain security awareness procedures at the airport.

(5) Contain procedures for limited approval of pilots who violate the Washington, DC, Metropolitan Area Flight Restricted Zone and are forced to land at the airport.

(6) Contain any additional procedures required by TSA to provide for the security of aircraft operations to or from the airport.

(d) *Amendments to security procedures.* Airport security procedures approved by TSA remain in effect unless TSA determines that—

(1) Operations at the airport have not been conducted in accordance with those procedures; or

(2) The procedures must be amended to provide for the security of aircraft operations to or from the airport.

(e) *Pilot requirements for TSA approval.* Except as specified in paragraph (g) of this section, each pilot of an aircraft operating to or from any of the Maryland Three Airports must be approved by TSA. To obtain TSA approval, a pilot must:

(1) Present to TSA—

(i) The pilot's name;

(ii) The pilot's Social Security Number;

(iii) The pilot's date of birth;

(iv) The pilot's address;

(v) The pilot's phone number;

(vi) The pilot's current and valid airman certificate or current student pilot certificate;

(vii) The pilot's current medical certificate;

(viii) One form of Government-issued picture identification of the pilot;

(ix) The pilot's fingerprints, in a form and manner acceptable to TSA; and

(x) A list containing the make, model, and registration number of each aircraft that the pilot intends to operate to or from the airport.

(2) Successfully complete a TSA terrorist threat assessment.

(3) Receive a briefing acceptable to TSA and the Federal Aviation Administration that describes procedures for operating to and from the airport.

(4) Not have been convicted or found not guilty by reason of insanity, in any jurisdiction, during the 10 years prior to applying for authorization to operate to or from the airport, or while authorized to operate to or from the airport, of any crime specified in 49 CFR 1542.209 or 1572.103.

(5) Not, in TSA's discretion, have a record on file with the Federal Aviation Administration of a violation of—

(i) A prohibited area designated under 14 CFR part 73;

(ii) A flight restriction established under 14 CFR 91.141;

(iii) Special security instructions issued under 14 CFR 99.7;

(iv) A restricted area designated under 14 CFR part 73;

(v) Emergency air traffic rules issued under 14 CFR 91.139;

(vi) A temporary flight restriction designated under 14 CFR 91.137, 91.138, or 91.145; or

(vii) An area designated under 14 CFR 91.143.

(f) *Additional pilot requirements.* Except as specified in paragraph (g) of this section, each pilot of an aircraft operating to or from any of the Maryland Three Airports must:

(1) Protect from unauthorized disclosure any identification information issued by TSA or the Federal Aviation Administration for the conduct of operations to or from the airport.

(2) Secure the aircraft after returning to the airport from any flight.

(3) Comply with any other requirements for operating to or from the airport specified by TSA or the Federal Aviation Administration.

(g) *Operations to any of the Maryland Three Airports.* A pilot who is approved by TSA in accordance with paragraph (d) of this section may operate an aircraft to any of the Maryland Three Airports, provided that the pilot—

(1) Files an instrument flight rules or visual flight rules flight plan with Leesburg Automated Flight Service Station;

(2) Obtains an Air Traffic Control clearance with a discrete transponder code; and

(3) Follows any arrival/departure procedures required by the Federal Aviation Administration.

(h) *U.S. Armed forces, law enforcement, and aeromedical services aircraft.* An individual may operate a U.S. Armed Forces, law enforcement, or aeromedical services aircraft on an authorized mission to or from any of the Maryland Three Airports provided that the individual complies with any requirements for operating to or from the airport specified by TSA or the Federal Aviation Administration.

(i) *Continuing responsibilities.* (1) If an airport security coordinator, or a pilot who is approved to operate to or from any of the Maryland Three Airports, is convicted or found not guilty by reason of insanity, in any jurisdiction, of any crime specified in 49 CFR 1542.209 or 1572.103, the airport security coordinator or pilot must notify TSA within 24 hours of the conviction or finding of not guilty by reason of insanity. TSA may withdraw its approval of the airport security coordinator or pilot as a result of the conviction or finding of not guilty by reason of insanity.

(2) If a pilot who is approved to operate to or from any of the Maryland Three Airports commits any of the violations described in paragraph (e)(5) of this section, the pilot must notify TSA within 24 hours of the violation. TSA, in its discretion, may withdraw its approval of the pilot as a result of the violation.

(3) If an airport security coordinator, or a pilot who is approved to operate to or from any of the Maryland Three Airports, is determined by TSA to pose a threat to national or transportation security, or a threat of terrorism, TSA may withdraw its approval of the airport security coordinator or pilot.

(j) *Waivers.* TSA, in coordination with the Federal Aviation Administration, the United States Secret Service, and any other relevant agency, may permit an operation to or from any of the Maryland Three Airports, in deviation from the provisions of this section, if TSA finds that such action—

(1) Is in the public interest; and

(2) Provides the level of security required by this section.

Subpart B—Ronald Reagan Washington National Airport: Enhanced Security Procedures for Certain Operations

SOURCE: 70 FR 41600, July 19, 2005, unless otherwise noted.

§ 1562.21 Scope, general requirements, and definitions.

(a) *Scope.* This subpart applies to aircraft operations into or out of Ronald Reagan Washington National Airport (DCA), fixed base operators located at DCA or gateway airports; individuals designated as a security coordinator by aircraft operators or fixed base operators; and crewmembers, passengers, and armed security officers on aircraft operations subject to this subpart.

(b) *General requirements.* Each person operating an aircraft into or out of DCA must comply with this subpart, except:

(1) Military, law enforcement, and medivac aircraft operations;

(2) Federal and State government aircraft operations operating under an airspace waiver approved by TSA and the Federal Aviation Administration;

(3) All-cargo aircraft operations; and

(4) Passenger aircraft operations conducted under:

(i) A full security program approved by TSA in accordance with 49 CFR 1544.101(a); or

(ii) A foreign air carrier security program approved by TSA in accordance with 49 CFR 1546.101(a) or (b).

(c) *Other security programs.* Each aircraft operator required to comply with this subpart for an aircraft operation into or out of DCA must also comply

with any other TSA-approved security program that covers that operation. If any requirements of the DASSP conflict with the requirements of another TSA-approved security program, the aircraft operation must be conducted in accordance with the requirements of the DASSP.

(d) *Definitions.* For purposes of this subpart, the following definitions apply:

Armed Security Officer Program means the security program approved by TSA, in coordination with the Federal Air Marshal Service, for security officers authorized to carry a firearm under § 1562.29 of this part.

Crewmember means a person assigned to perform duty in an aircraft during flight time. This does not include an armed security officer.

DCA means Ronald Reagan Washington National Airport.

DASSP means the aircraft operator security program (DCA Access Standard Security Program) approved by TSA under this part for aircraft operations into and out of DCA.

FBO means a fixed base operator that has been approved by TSA under this part to serve as a last point of departure for flights into or out of DCA.

FBO Security Program means the security program approved by TSA under this part for FBOs to serve flights into or out of DCA.

Flightcrew member means a pilot, flight engineer, or flight navigator assigned to duty in an aircraft during flight time.

Gateway airport means an airport that has been approved by TSA under this part as a last point of departure for flights into DCA under this part.

Passenger means any person on an aircraft other than a flightcrew member. A ''passenger'' includes an armed security officer authorized to carry a firearm in accordance with the rule.

§ 1562.23 Aircraft operator and passenger requirements.

(a) *General.* To operate into or out of DCA, an aircraft operator must:

(1) Designate a security coordinator responsible for implementing the DASSP and other security requirements required under this section, and provide TSA with the security coordinator's contact information and availability in accordance with the DASSP.

(2) Adopt and carry out the DASSP.

(3) Ensure that each crewmember of an aircraft operating into or out of DCA meets the requirements of paragraph (c) of this section.

(4) Apply for and receive a reservation from the Federal Aviation Administration and authorization from TSA for each flight into and out of DCA in accordance with paragraph (d) of this section.

(5) Comply with the operating requirements in paragraph (e) of this section for each flight into and out of DCA.

(6) Pay any costs and fees required under this part.

(7) Restrict the distribution, disclosure, and availability of sensitive security information (SSI), as defined in part 1520 of this chapter, to persons with a need to know, and refer all requests for SSI by other persons to TSA.

(8) Comply with any additional security procedures required by TSA through order, Security Directive, or other means.

(b) *Security coordinator.* Each security coordinator designated by an aircraft operator under paragraph (a) of this section:

(1) Must undergo a fingerprint-based criminal history records check that does not disclose that he or she has a disqualifying criminal offense as described in § 1544.229(d) of this chapter. This standard is met if the security coordinator is in compliance with the fingerprint-based criminal history records check requirements of §§ 1542.209, 1544.229, or 1544.230 of this chapter with his or her current employer.

(2) Must submit to TSA his or her:

(i) Legal name, including first, middle, and last; any applicable suffix, and any other names used.

(ii) Current mailing address, including residential address if different than current mailing address.

(iii) Date and place of birth.

(iv) Social security number, (submission is voluntary, although recommended).

(v) Citizenship status and date of naturalization if the individual is a naturalized citizen of the United States.

(vi) Alien registration number, if applicable.

(3) Must successfully complete a TSA security threat assessment.

(4) May, if informed that a disqualifying offense has been disclosed, correct the record in accordance with the procedures set forth in paragraphs (h) and (i) of § 1544.229 of this chapter regarding notification and correction of records.

(c) *Flightcrew member requirements.* Each flightcrew member of an aircraft, as defined in 49 CFR 1540.5, operating into or out of DCA:

(1) Must undergo a fingerprint-based criminal history records check that does not disclose that he or she has a disqualifying criminal offense as described in § 1544.229(d) of this chapter. This standard is met if the flightcrew member is in compliance with the fingerprint-based criminal history records check requirements of §§ 1542.209, 1544.229, or 1544.230 of this chapter with his or her current employer.

(2) Must not have a record on file with the Federal Aviation Administration of a violation of—

(i) A prohibited area designated under 14 CFR part 73;

(ii) A flight restriction established under 14 CFR 91.141;

(iii) Special security instructions issued under 14 CFR 99.7;

(iv) A restricted area designated under 14 CFR part 73;

(v) Emergency air traffic rules issued under 14 CFR 91.139;

(vi) A temporary flight restriction designated under 14 CFR 91.137, 91.138, or 91.145; or

(vii) An area designated under 14 CFR 91.143.

(3) May, if informed that a disqualifying offense has been disclosed, correct the record in accordance with the procedures set forth in paragraphs (h) and (i) of § 1544.229 of this chapter regarding notification and correction of records.

(d) *Flight authorization requirements.* To receive authorization to operate an aircraft into or out of DCA, an aircraft operator must follow the procedures in this paragraph.

(1) The aircraft operator must apply to the Federal Aviation Administration for a tentative reservation, in a form and manner approved by the Federal Aviation Administration.

(2) The aircraft operator must submit to TSA, in a form and manner approved by TSA, the following information at least 24 hours prior to aircraft departure:

(i) For each passenger and crewmember on the aircraft:

(A) Legal name, including first, middle, and last; any applicable suffix, and any other names used.

(B) Current mailing address, including residential address if different than current mailing address.

(C) Date and place of birth.

(D) Social security number, (submission is voluntary, although recommended).

(E) Citizenship status and date of naturalization if the individual is a naturalized citizen of the United States.

(F) Alien registration number, if applicable.

(ii) The registration number of the aircraft.

(iii) The flight plan.

(iv) Any other information required by TSA.

(3) TSA will conduct a name-based security threat assessment for each passenger and crewmember. If TSA notifies the aircraft operator that a passenger or crewmember may pose a security threat, the aircraft operator must ensure that the passenger or crewmember does not board the aircraft before the aircraft departs out of DCA or out of a gateway airport to DCA.

(4) If TSA approves the flight, TSA will transmit such approval to the Federal Aviation Administration for assignment of a final reservation to operate into or out of DCA. Once the Federal Aviation Administration assigns the final reservation, TSA will notify the aircraft operator.

(5) TSA may, at its discretion, cancel any or all flight approvals at any time without prior notice to the aircraft operator.

(6) TSA may, at its discretion, permit a flight into or out of DCA to deviate from the requirements of this subpart, if TSA finds that such action would not

be detrimental to transportation security or the safe operation of the aircraft.

(7) TSA may, at its discretion, require any flight into or out of DCA under this subpart to comply with additional security measures.

(e) *Operating requirements.* Each aircraft operator must:

(1) Ensure that each flight into DCA departs from a gateway airport and makes no intermediate stops before arrival at DCA.

(2) Ensure that each passenger and crewmember on an aircraft operating into or out of DCA has been screened in accordance with the DASSP prior to boarding the aircraft.

(3) Ensure that all accessible property and property in inaccessible cargo holds on an aircraft operating into or out of DCA has been screened in accordance with the DASSP prior to boarding the aircraft.

(4) Ensure that each aircraft operating into or out of DCA has been searched in accordance with the DASSP.

(5) Ensure that each passenger and crewmember on an aircraft operating into or out of DCA provides TSA with a valid government-issued picture identification in accordance with the DASSP.

(6) If the aircraft operating into or out of DCA is equipped with a cockpit door, ensure that the door is closed and locked at all times during the operation of the aircraft to or from DCA, unless Federal Aviation Administration regulations require the door to remain open.

(7) Ensure that each aircraft operating into or out of DCA has onboard at least one armed security officer who meets the requirements of § 1562.29 of this chapter. This requirement does not apply if—

(i) There is a Federal Air Marshal onboard; or

(ii) The aircraft is being flown without passengers into DCA to pick up passengers, or out of DCA after deplaning all passengers.

(8) Ensure that an aircraft operating into or out of DCA has any Federal Air Marshal onboard, at no cost to the Federal Government, if TSA or the Federal Air Marshal Service so requires.

(9) Notify the National Capital Region Coordination Center prior to departure of the aircraft from DCA or a gateway airport.

(10) Ensure that each aircraft operating into or out of DCA operates under instrument flight rules.

(11) Ensure that each passenger complies with any security measures mandated by TSA.

(12) Ensure that no prohibited items are onboard the aircraft.

(f) *Compliance.* (1) Each aircraft operator must:

(i) Permit TSA to conduct any inspections or tests, including copying records, to determine compliance with this part and the DASSP.

(ii) At the request of TSA, provide evidence of compliance with this part and the DASSP, including copies of records.

(2) Noncompliance with this part or the DASSP may result in the cancellation of an aircraft operator's flight approvals and other remedial or enforcement action, as appropriate.

(g) *Passenger requirements.* Each passenger, including each armed security officer, who boards or attempts to board an aircraft under this section must:

(1) Provide information to the aircraft operator as provided in this section.

(2) Provide to TSA upon request a valid government-issued photo identification.

(3) Comply with security measures as conveyed by the aircraft operator.

(4) Comply with all applicable regulations in this chapter, including § 1540.107 regarding submission to screening and inspection, § 1540.109 regarding prohibition against interference with screening personnel, and § 1540.111 regarding carriage of weapons, explosives, and incendiaries by individuals.

§ 1562.25 Fixed base operator requirements.

(a) *Security program.* Each FBO must adopt and carry out an FBO Security Program.

(b) *Screening and other duties.* Each FBO must—

(1) Designate a security coordinator who meets the requirements in

§ 1562.23(b) of this part and is responsible for implementing the FBO Security Program and other security requirements required under this section, and provide TSA with the security coordinator's contact information and availability in accordance with the FBO Security Program.

(2) Support the screening of persons and property in accordance with the requirements of this subpart and the FBO Security Program.

(3) Support the search of aircraft in accordance with the requirements of this subpart and the FBO Security Program.

(4) Restrict the distribution, disclosure, and availability of sensitive security information (SSI), as defined in part 1520 of this chapter, to persons with a need to know, and refer all requests for SSI by other persons to TSA.

(5) Perform any other duties required under the FBO Security Program.

(c) *Compliance.* (1) Each FBO must:

(i) Permit TSA to conduct any inspections or tests, including copying records, to determine compliance with this part and the FBO Security Program.

(ii) At the request of TSA, provide evidence of compliance with this part and the FBO Security Program, including copies of records.

(2) Noncompliance with this part or the FBO Security Program may result in the cancellation of an aircraft operator's flight approvals and other remedial or enforcement action, as appropriate.

§ 1562.27 Costs.

(a) Each aircraft operator must pay a threat assessment fee of $15 for each passenger and crewmember whose information the aircraft operator submits to TSA in accordance with § 1562.23(d) of this part.

(b) Each aircraft operator must pay to TSA the costs associated with carrying out this subpart, as provided in its DASSP.

(c) All fees and reimbursement must be remitted to TSA in a form and manner approved by TSA.

(d) TSA will not issue any refunds, unless any fees or reimbursement funds were paid in error.

(e) If an aircraft operator does not remit to TSA the fees and reimbursement funds required under this section, TSA may decline to process any requests for authorization from the aircraft operator.

§ 1562.29 Armed security officer requirements.

(a) *General.* Unless otherwise authorized by TSA, each armed security officer must meet the following requirements:

(1) Be qualified to carry a firearm in accordance with paragraph (b) of this section.

(2) Successfully complete a TSA security threat assessment as described in paragraph (c) of this section.

(3) Meet such other requirements as TSA, in coordination with the Federal Air Marshal Service, may establish in the Armed Security Officer Security Program.

(4) Be authorized by TSA, in coordination with the Federal Air Marshal Service, under 49 U.S.C. 44903(d).

(b) *Qualifications.* To be qualified to carry a firearm under this subpart, an individual must meet the requirements in paragraph (1), (2), or (3) of this section, unless otherwise authorized by TSA, in coordination with the Federal Air Marshal Service.

(1) *Active law enforcement officers.* An active law enforcement officer must be an employee of a governmental agency who—

(i) Is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law;

(ii) Has statutory powers of arrest;

(iii) Is authorized by the agency to carry a firearm;

(iv) Is not the subject of any disciplinary action by the agency;

(v) Is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and

(vi) Is not prohibited by Federal law from receiving a firearm.

(2) *Retired law enforcement officers.* A retired law enforcement officer must be an individual who—

(i) Retired in good standing from service with a public agency as a law

enforcement officer, other than for reasons of mental instability;

(ii) Before such retirement, was authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and had statutory powers of arrest;

(iii) Before such retirement, was regularly employed as a law enforcement officer for an aggregate of 15 years or more, or retired from service with such agency, after completing any applicable probationary period of such service, due to a service-connected disability, as determined by such agency;

(iv) Has a non-forfeitable right to benefits under the retirement plan of the agency;

(v) Is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and

(vi) Is not prohibited by Federal law from receiving a firearm.

(3) *Other individuals.* Any other individual must—

(i) Meet qualifications established by TSA, in coordination with the Federal Air Marshal Service, in the Armed Security Officer Program;

(ii) Not be under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and

(iii) Not be prohibited by Federal law from receiving a firearm.

(c) *Threat assessments.* To be authorized under this section, each armed security officer:

(1) Must undergo a fingerprint-based criminal history records check that does not disclose that he or she has a criminal offense that would disqualify him or her from possessing a firearm under 18 U.S.C. 922(g).

(2) May, if informed that a disqualifying offense has been disclosed, correct the record in accordance with the procedures set forth in paragraphs (h) and (i) of §1544.229 of this chapter regarding notification and correction of records.

(3) Must submit to TSA his or her:

(i) Legal name, including first, middle, and last; any applicable suffix, and any other names used.

(ii) Current mailing address, including residential address if different than current mailing address.

(iii) Date and place of birth.

(iv) Social security number, (submission is voluntary, although recommended).

(v) Citizenship status and date of naturalization if the individual is a naturalized citizen of the United States.

(vi) Alien registration number, if applicable.

(4) Must undergo a threat assessment by TSA prior to receiving authorization under this section and prior to boarding an aircraft operating into or out of DCA as provided in §1562.23(d)(1) of this part.

(d) *Training.* Each armed security officer onboard an aircraft operating into or out of DCA must:

(1) Have basic law enforcement training acceptable to TSA; and

(2) Successfully complete a TSA-approved training course, developed in coordination with the Federal Air Marshal Service, at the expense of the armed security officer.

(e) *Armed security officer program.* (1) Each armed security officer onboard an aircraft operating into or out of DCA must—

(i) Comply with the Armed Security Officer Program.

(ii) Restrict the distribution, disclosure, and availability of sensitive security information (SSI), as defined in part 1520 of this chapter, to persons with a need to know, and refer all requests for SSI by other persons to TSA.

(2) TSA and the Federal Air Marshal Service may conduct random inspections of armed security officers to ensure compliance with the Armed Security Officer Program.

(f) *Authority to carry firearm.* An armed security officer approved under this section is authorized—

(1) To carry a firearm in accordance with the Armed Security Officer Program on an aircraft operating under a DASSP into or out of DCA; and

(2) To transport a firearm in accordance with the Armed Security Officer Program at any airport as needed to carry out duties under this subpart, including for travel to and from flights conducted under this subpart.

(g) *Use of force.* Each armed security officer authorized to carry a firearm under this section may use force, including deadly force, in accordance

with the Armed Security Officer Program.

(h) *Use of alcohol or intoxicating or hallucinatory drugs or substances.* An armed security officer onboard an aircraft operating into or out of DCA may not consume alcohol or use an intoxicating or hallucinatory drug or substance during the flight and within 8 hours before boarding the aircraft.

(i) *Credential*—(1) *TSA credential.* An armed security officer under this section must carry a credential issued by TSA.

(2) *Inspection of credential.* An armed security officer must present the TSA-issued credential for inspection when requested by an authorized representative of TSA, the Federal Aviation Administration, the Federal Air Marshal Service, the National Transportation Safety Board, any Federal, State, or local law enforcement officer, or any authorized aircraft operator representative.

(3) *Preflight identification to crewmembers.* When carrying a firearm, an armed security officer must identify himself or herself to all crewmembers either personally or through another member of the crew before the flight.

(j) *Suspension or withdrawal of authorization.* At the discretion of TSA, authorization under this subpart and 49 U.S.C. 44903(d) is suspended or withdrawn upon notification by TSA.

SUBCHAPTER D—MARITIME AND LAND TRANSPORTATION SECURITY

PART 1570—GENERAL RULES

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1570.1 Scope.
1570.3 Terms used in this subchapter.
1570.5 Fraud and intentional falsification of records.
1570.7 Fraudulent use or manufacture; responsibilities of persons.
1570.9 Inspection of credential.
1570.11 Compliance, inspection, and enforcement.
1570.13 False statements regarding security background checks by public transportation agency or railroad carrier.

AUTHORITY: 46 U.S.C. 70105; 49 U.S.C. 114, 5103a, 40113, and 46105; 18 U.S.C. 842, 845; 6 U.S.C. 469; Pub. L. 110–53 secs. 1414, 1522.

SOURCE: 72 FR 3593, Jan. 25, 2007, unless otherwise noted.

§ 1570.1 Scope.

This part applies to any person involved in land or maritime transportation as specified in this subchapter.

§ 1570.3 Terms used in this subchapter.

For purposes of this subchapter:

Adjudicate means to make an administrative determination of whether an applicant meets the standards in this subchapter, based on the merits of the issues raised.

Alien means any person not a citizen or national of the United States.

Alien registration number means the number issued by the U.S. Department of Homeland Security to an individual when he or she becomes a lawful permanent resident of the United States or attains other lawful, non-citizen status.

Applicant means a person who has applied for one of the security threat assessments identified in this subchapter.

Assistant Administrator for Threat Assessment and Credentialing (Assistant Administrator) means the officer designated by the Assistant Secretary to administer the appeal and waiver programs described in this part, except where the Assistant Secretary is specifically designated in this part to administer the appeal or waiver program. The Assistant Administrator may appoint a designee to assume his or her duties.

Assistant Secretary means Assistant Secretary for Homeland Security, Transportation Security Administration (Assistant Secretary), the highest ranking TSA official, or his or her designee, and who is responsible for making the final determination on the appeal of an intelligence-related check under this part.

Commercial drivers license (CDL) is used as defined in 49 CFR 383.5.

Convicted means any plea of guilty or nolo contendere, or any finding of guilt, except when the finding of guilt is subsequently overturned on appeal, pardoned, or expunged. For purposes of this subchapter, a conviction is expunged when the conviction is removed from the individual's criminal history record and there are no legal disabilities or restrictions associated with the expunged conviction, other than the fact that the conviction may be used for sentencing purposes for subsequent convictions. In addition, where an individual is allowed to withdraw an original plea of guilty or nolo contendere and enter a plea of not guilty and the case is subsequently dismissed, the individual is no longer considered to have a conviction for purposes of this subchapter.

Determination of No Security Threat means an administrative determination by TSA that an individual does not pose a security threat warranting denial of an HME or a TWIC.

Federal Maritime Security Coordinator (FMSC) has the same meaning as defined in 46 U.S.C. 70103(a)(2)(G); is the Captain of the Port (COTP) exercising authority for the COTP zones described in 33 CFR part 3, and is the Port Facility Security Officer as described in the International Ship and Port Facility Security (ISPS) Code, part A.

Final Determination of Threat Assessment means a final administrative determination by TSA, including the resolution of related appeals, that an individual poses a security threat warranting denial of an HME or a TWIC.

Hazardous materials endorsement (HME) means the authorization for an individual to transport hazardous materials in commerce, an indication of which must be on the individual's commercial driver's license, as provided in the Federal Motor Carrier Safety Administration (FMCSA) regulations in 49 CFR part 383.

Imprisoned or imprisonment means confined to a prison, jail, or institution for the criminally insane, on a full-time basis, pursuant to a sentence imposed as the result of a criminal conviction or finding of not guilty by reason of insanity. Time spent confined or restricted to a half-way house, treatment facility, or similar institution, pursuant to a sentence imposed as the result of a criminal conviction or finding of not guilty by reason of insanity, does not constitute imprisonment for purposes of this rule.

Incarceration means confined or otherwise restricted to a jail-type institution, half-way house, treatment facility, or another institution, on a full or part-time basis, pursuant to a sentence imposed as the result of a criminal conviction or finding of not guilty by reason of insanity.

Initial Determination of Threat Assessment means an initial administrative determination by TSA that an applicant poses a security threat warranting denial of an HME or a TWIC.

Initial Determination of Threat Assessment and Immediate Revocation means an initial administrative determination that an individual poses a security threat that warrants immediate revocation of an HME or invalidation of a TWIC. In the case of an HME, the State must immediately revoke the HME if TSA issues an Initial Determination of Threat Assessment and Immediate Revocation. In the case of a TWIC, TSA invalidates the TWIC when TSA issues an Initial Determination of Threat Assessment and Immediate Revocation.

Invalidate means the action TSA takes to make a credential inoperative when it is reported as lost, stolen, damaged, no longer needed, or when TSA determines an applicant does not meet the security threat assessment standards of 49 CFR part 1572.

Lawful permanent resident means an alien lawfully admitted for permanent residence, as defined in 8 U.S.C. 1101(a)(20).

Maritime facility has the same meaning as ''facility'' together with ''OCS facility'' (Outer Continental Shelf facility), as defined in 33 CFR 101.105.

Mental health facility means a mental institution, mental hospital, sanitarium, psychiatric facility, and any other facility that provides diagnoses by licensed professionals of mental retardation or mental illness, including a psychiatric ward in a general hospital.

National of the United States means a citizen of the United States, or a person who, though not a citizen, owes permanent allegiance to the United States, as defined in 8 U.S.C. 1101(a)(22), and includes American Samoa and Swains Island.

Owner/operator with respect to a maritime facility or a vessel has the same meaning as defined in 33 CFR 101.105.

Revocation means the termination, deactivation, rescission, invalidation, cancellation, or withdrawal of the privileges and duties conferred by an HME or TWIC, when TSA determines an applicant does not meet the security threat assessment standards of 49 CFR part 1572.

Secure area means the area on board a vessel or at a facility or outer continental shelf facility, over which the owner/operator has implemented security measures for access control, as defined by a Coast Guard approved security plan. It does not include passenger access areas or public access areas, as those terms are defined in 33 CFR 104.106 and 105.106 respectively. Vessels operating under the waivers provided for at 46 U.S.C. 8103(b)(3)(A) or (B) have no secure areas. Facilities subject to 33 CFR chapter I, subchapter H, part 105 may, with approval of the Coast Guard, designate only those portions of their facility that are directly connected to maritime transportation or are at risk of being involved in a transportation security incident as their secure areas.

Security threat means an individual whom TSA determines or suspects of posing a threat to national security; to transportation security; or of terrorism.

Sensitive security information (SSI) means information that is described in,

and must be managed in accordance with, 49 CFR part 1520.

State means a State of the United States and the District of Columbia.

Transportation Worker Identification Credential (TWIC) means a Federal biometric credential, issued to an individual, when TSA determines that the individual does not pose a security threat.

Withdrawal of Initial Determination of Threat Assessment is the document that TSA issues after issuing an Initial Determination of Security Threat, when TSA determines that an individual does not pose a security threat that warrants denial of an HME or TWIC.

[72 FR 3593, Jan. 25, 2007; 72 FR 14050, Mar. 26, 2007]

§ 1570.5 Fraud and intentional falsification of records.

No person may make, cause to be made, attempt, or cause to attempt any of the following:

(a) Any fraudulent or intentionally false statement in any record or report that is kept, made, or used to show compliance with the subchapter, or exercise any privileges under this subchapter.

(b) Any reproduction or alteration, for fraudulent purpose, of any record, report, security program, access medium, or identification medium issued under this subchapter or pursuant to standards in this subchapter.

§ 1570.7 Fraudulent use or manufacture; responsibilities of persons.

(a) No person may use or attempt to use a credential, security threat assessment, access control medium, or identification medium issued or conducted under this subchapter that was issued or conducted for another person.

(b) No person may make, produce, use or attempt to use a false or fraudulently created access control medium, identification medium or security threat assessment issued or conducted under this subchapter.

(c) No person may tamper or interfere with, compromise, modify, attempt to circumvent, or circumvent TWIC access control procedures.

(d) No person may cause or attempt to cause another person to violate paragraphs (a)–(c) of this section.

§ 1570.9 Inspection of credential.

(a) Each person who has been issued or possesses a TWIC must present the TWIC for inspection upon a request from TSA, the Coast Guard, or other authorized DHS representative; an authorized representative of the National Transportation Safety Board; or a Federal, State, or local law enforcement officer.

(b) Each person who has been issued or who possesses a TWIC must allow his or her TWIC to be read by a reader and must submit his or her reference biometric, such as a fingerprint, and any other required information, such as a PIN, to the reader, upon a request from TSA, the Coast Guard, other authorized DHS representative; or a Federal, State, or local law enforcement officer.

§ 1570.11 Compliance, inspection, and enforcement.

(a) Each owner/operator must allow TSA, at any time or place, to make any inspections or tests, including copying records, to determine compliance of an owner/operator with—

(1) This subchapter and part 1520 of this chapter; and

(2) 46 U.S.C. 70105 and 49 U.S.C. 114.

(b) At the request of TSA, each owner/operator must provide evidence of compliance with this subchapter and part 1520 of this chapter, including copies of records.

§ 1570.13 False statements regarding security background checks by public transportation agency or railroad carrier.

(a) *Scope.* This section implements sections 1414(e) (6 U.S.C. 1143) and 1522(e) (6 U.S.C. 1170) of the ''Implementing Recommendations of the 9/11 Commission Act of 2007,'' Pub. L. 110–53.

(b) *Definitions.*

Covered individual means an employee of a public transportation agency or a contractor or subcontractor of a public transportation agency or an employee of a railroad carrier or a contractor or subcontractor of a railroad carrier.

Public transportation agency means a publicly-owned operator of public

transportation eligible to receive Federal assistance under chapter 53 of title 49, United States Code.

Railroad has the meaning that term has in section 20102 of title 49, United States Code.

Railroad carrier has the meaning that term has in section 20102 of title 49, United States Code.

Security background check means reviewing the following for the purpose of identifying individuals who may pose a threat to transportation security, national security, or of terrorism:

(i) Relevant criminal history databases;

(ii) In the case of an alien (as defined in sec. 101 of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3)), the relevant databases to determine the status of the alien under the immigration laws of the United States; and

(iii) Other relevant information or databases, as determined by the Secretary of Homeland Security.

(c) *Prohibitions.* (1) A public transportation agency or a contractor or subcontractor of a public transportation agency may not knowingly misrepresent to an employee or other relevant person, including an arbiter involved in a labor arbitration, the scope, application, or meaning of any rules, regulations, directives, or guidance issued by the Secretary of Homeland Security related to security background check requirements for covered individuals when conducting a security background check.

(2) A railroad carrier or a contractor or subcontractor of a railroad carrier may not knowingly misrepresent to an employee or other relevant person, including an arbiter involved in a labor arbitration, the scope, application, or meaning of any rules, regulations, directives, or guidance issued by the Secretary of Homeland Security related to security background check requirements for covered individuals when conducting a security background check.

[73 FR 44669, July 31, 2008]

PART 1572—CREDENTIALING AND SECURITY THREAT ASSESSMENTS

Subpart A—Procedures and General Standards

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AUTHORITY: 46 U.S.C. 70105; 49 U.S.C. 114, 5103a, 40113, and 46105; 18 U.S.C. 842, 845; 6 U.S.C. 469.

SOURCE: 72 FR 3595, Jan. 25, 2007, unless otherwise noted.

Subpart A—Procedures and General Standards

§ 1572.1 Applicability.

This part establishes regulations for credentialing and security threat assessments for certain maritime and land transportation workers.

§ 1572.3 Scope.

This part applies to—

(a) State agencies responsible for issuing a hazardous materials endorsement (HME); and

(b) An applicant who—

(1) Is qualified to hold a commercial driver's license under 49 CFR parts 383 and 384, and is applying to obtain, renew, or transfer an HME; or

(2) Is applying to obtain or renew a TWIC in accordance with 33 CFR parts 104 through 106 or 46 CFR part 10; is a commercial driver licensed in Canada or Mexico and is applying for a TWIC to transport hazardous materials in accordance with 49 CFR 1572.201; or other individuals approved by TSA.

[72 FR 3595, Jan. 25, 2007, as amended at 72 FR 55048, Sept. 28, 2007]

§ 1572.5 Standards for security threat assessments.

(a) *Standards.* TSA determines that an applicant poses a security threat warranting denial of an HME or TWIC, if—

(1) The applicant has a disqualifying criminal offense described in 49 CFR 1572.103;

(2) The applicant does not meet the immigration status requirements described in 49 CFR 1572.105;

(3) TSA conducts the analyses described in 49 CFR 1572.107 and determines that the applicant poses a security threat; or

(4) The applicant has been adjudicated as lacking mental capacity or committed to a mental health facility, as described in 49 CFR 1572.109.

(b) *Immediate Revocation/Invalidation.* TSA may invalidate a TWIC or direct a State to revoke an HME immediately, if TSA determines during the security threat assessment that an applicant poses an immediate threat to transportation security, national security, or of terrorism.

(c) *Violation of FMCSA Standards.* The regulations of the Federal Motor Carrier Safety Administration (FMCSA) provide that an applicant is disqualified from operating a commercial motor vehicle for specified periods, if he or she has an offense that is listed in the FMCSA rules at 49 CFR 383.51. If records indicate that an applicant has committed an offense that would disqualify the applicant from operating a commercial motor vehicle under 49 CFR 383.51, TSA will not issue a Determination of No Security Threat until the State or the FMCSA determine that the applicant is not disqualified under that section.

(d) *Waiver.* In accordance with the requirements of § 1515.7, applicants may apply for a waiver of certain security threat assessment standards.

(e) *Comparability of Other Security Threat Assessment Standards.* TSA may determine that security threat assessments conducted by other governmental agencies are comparable to the threat assessment described in this part, which TSA conducts for HME and TWIC applicants.

(1) In making a comparability determination, TSA will consider—

(i) The minimum standards used for the security threat assessment;

(ii) The frequency of the threat assessment;

(iii) The date of the most recent threat assessment; and

(iv) Whether the threat assessment includes biometric identification and a biometric credential.

(2) To apply for a comparability determination, the agency seeking the determination must contact the Assistant Program Manager, Attn: Federal Agency Comparability Check, Hazmat

Threat Assessment Program, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220.

(3) TSA will notify the public when a comparability determination is made.

(4) An applicant, who has completed a security threat assessment that is determined to be comparable under this section to the threat assessment described in this part, must complete the enrollment process and provide biometric information to obtain a TWIC, if the applicant seeks unescorted access to a secure area of a vessel or facility. The applicant must pay the fee listed in 49 CFR 1572.503 for information collection/credential issuance.

(5) TSA has determined that the security threat assessment for an HME under this part is comparable to the security threat assessment for TWIC.

(6) TSA has determined that the security threat assessment for a FAST card, under the Free and Secure Trade program administered by U.S. Customs and Border Protection, is comparable to the security threat assessment described in this part.

§ 1572.7 [Reserved]

§ 1572.9 Applicant information required for HME security threat assessment.

An applicant must supply the information required in this section, in a form acceptable to TSA, when applying to obtain or renew an HME. When applying to transfer an HME from one State to another, 49 CFR 1572.13(e) applies.

(a) Except as provided in (a)(12) through (16), the applicant must provide the following identifying information:

(1) Legal name, including first, middle, and last; any applicable suffix; and any other name used previously.

(2) Current and previous mailing address, current residential address if it differs from the current mailing address, and e-mail address if available. If the applicant prefers to receive correspondence and notification via e-mail, the applicant should so state.

(3) Date of birth.

(4) Gender.

(5) Height, weight, hair color, and eye color.

(6) City, state, and country of birth.

(7) Immigration status and, if the applicant is a naturalized citizen of the United States, the date of naturalization.

(8) Alien registration number, if applicable.

(9) The State of application, CDL number, and type of HME(s) held.

(10) Name, telephone number, facsimile number, and address of the applicant's current employer(s), if the applicant's work for the employer(s) requires an HME. If the applicant's current employer is the U.S. military service, include branch of the service.

(11) Whether the applicant is applying to obtain, renew, or transfer an HME or for a waiver.

(12) Social security number. Providing the social security number is voluntary; however, failure to provide it will delay and may prevent completion of the threat assessment.

(13) Passport number. This information is voluntary and may expedite the adjudication process for applicants who are U.S. citizens born abroad.

(14) Department of State Consular Report of Birth Abroad. This information is voluntary and may expedite the adjudication process for applicants who are U.S. citizens born abroad.

(15) Whether the applicant has previously completed a TSA threat assessment, and if so the date and program for which it was completed. This information is voluntary and may expedite the adjudication process for applicants who have completed a TSA security threat assessment.

(16) Whether the applicant currently holds a federal security clearance, and if so, the date of and agency for which the clearance was performed. This information is voluntary and may expedite the adjudication process for applicants who have completed a federal security threat assessment.

(b) The applicant must provide a statement, signature, and date of signature that he or she—

(1) Was not convicted, or found not guilty by reason of insanity, of a disqualifying crime listed in 49 CFR 1572.103(b), in a civilian or military jurisdiction, during the seven years before the date of the application, or is applying for a waiver;

(2) Was not released from incarceration, in a civilian or military jurisdiction, for committing a disqualifying crime listed in 49 CFR 1572.103(b), during the five years before the date of the application, or is applying for a waiver;

(3) Is not wanted, or under indictment, in a civilian or military jurisdiction, for a disqualifying criminal offense identified in 49 CFR 1572.103, or is applying for a waiver;

(4) Was not convicted, or found not guilty by reason of insanity, of a disqualifying criminal offense identified in 49 CFR 1572.103(a), in a civilian or military jurisdiction, or is applying for a waiver;

(5) Has not been adjudicated as lacking mental capacity or committed to a mental health facility involuntarily or is applying for a waiver;

(6) Meets the immigration status requirements described in 49 CFR 1572.105;

(7) Has or has not served in the military, and if so, the branch in which he or she served, the date of discharge, and the type of discharge; and

(8) Has been informed that Federal regulations, under 49 CFR 1572.11, impose a continuing obligation on the HME holder to disclose to the State if he or she is convicted, or found not guilty by reason of insanity, of a disqualifying crime, adjudicated as lacking mental capacity, or committed to a mental health facility.

(c) The applicant must certify and date receipt the following statement:

Privacy Act Notice: Authority: The authority for collecting this information is 49 U.S.C. 114, 40113, and 5103a. Purpose: This information is needed to verify your identity and to conduct a security threat assessment to evaluate your suitability for a hazardous materials endorsement for a commercial driver's license. Furnishing this information, including your SSN or alien registration number, is voluntary; however, failure to provide it will delay and may prevent completion of your security threat assessment. Routine Uses: Routine uses of this information include disclosure to the FBI to retrieve your criminal history record; to TSA contractors or other agents who are providing services relating to the security threat assessments; to appropriate governmental agencies for licensing, law enforcement, or security purposes, or in the interests of national security; and to foreign and international governmental authorities in accordance with law and international agreement.

(d) The applicant must certify and date receipt the following statement, immediately before the signature line:

The information I have provided on this application is true, complete, and correct, to the best of my knowledge and belief, and is provided in good faith. I understand that a knowing and willful false statement, or an omission of a material fact on this application can be punished by fine or imprisonment or both (*See* section 1001 of Title 18 United States Code), and may be grounds for denial of a hazardous materials endorsement.

(e) The applicant must certify the following statement in writing:

I acknowledge that if the Transportation Security Administration determines that I pose a security threat, my employer, as listed on this application, may be notified. If TSA or other law enforcement agency becomes aware of an imminent threat to a maritime facility or vessel, TSA may provide limited information necessary to reduce the risk of injury or damage to the facility or vessel.

§ 1572.11 Applicant responsibilities for HME security threat assessment.

(a) *Surrender of HME.* If an individual is disqualified from holding an HME under 49 CFR 1572.5(c), he or she must surrender the HME to the licensing State. Failure to surrender the HME to the State may result in immediate revocation under 49 CFR 1572.13(a) and/or civil penalties.

(b) *Continuing responsibilities.* An individual who holds an HME must surrender the HME as required in paragraph (a) of this section within 24 hours, if the individual—

(1) Is convicted of, wanted, under indictment or complaint, or found not guilty by reason of insanity, in a civilian or military jurisdiction, for a disqualifying criminal offense identified in 49 CFR 1572.103; or

(2) Is adjudicated as lacking mental capacity, or committed to a mental health facility, as described in 49 CFR 1572.109; or

(3) Renounces or loses U.S. citizenship or status as a lawful permanent resident; or

(4) Violates his or her immigration status, and/or is ordered removed from the United States.

(c) *Submission of fingerprints and information*. (1) An HME applicant must submit fingerprints and the information required in 49 CFR 1572.9, in a form acceptable to TSA, when so notified by the State, or when the applicant applies to obtain or renew an HME. The procedures outlined in 49 CFR 1572.13(e) apply to HME transfers.

(2) When submitting fingerprints and the information required in 49 CFR 1572.9, the fee described in 49 CFR 1572.503 must be remitted to TSA.

§ 1572.13 State responsibilities for issuance of hazardous materials endorsement.

Each State must revoke an individual's HME immediately, if TSA informs the State that the individual does not meet the standards for security threat assessment in 49 CFR 1572.5 and issues an Initial Determination of Threat Assessment and Immediate Revocation.

(a) No State may issue or renew an HME for a CDL, unless the State receives a Determination of No Security Threat from TSA.

(b) Each State must notify each individual holding an HME issued by that State that he or she will be subject to the security threat assessment described in this part as part of an application for renewal of the HME, at least 60 days prior to the expiration date of the individual's HME. The notice must inform the individual that he or she may initiate the security threat assessment required by this section at any time after receiving the notice, but no later than 60 days before the expiration date of the individual's HME.

(c) The State that issued an HME may extend the expiration date of the HME for 90 days, if TSA has not provided a Determination of No Security Threat or a Final Determination of Threat Assessment before the expiration date. Any additional extension must be approved in advance by TSA.

(d) Within 15 days of receipt of a Determination of No Security Threat or Final Determination of Threat Assessment from TSA, the State must—

(1) Update the applicant's permanent record to reflect:

(i) The results of the security threat assessment;

(ii) The issuance or denial of an HME; and

(iii) The new expiration date of the HME.

(2) Notify the Commercial Drivers License Information System (CDLIS) operator of the results of the security threat assessment.

(3) Revoke or deny the applicant's HME if TSA serves the State with a Final Determination of Threat Assessment.

(e) For applicants who apply to transfer an existing HME from one State to another, the second State will not require the applicant to undergo a new security threat assessment until the security threat assessment renewal period established in the preceding issuing State, not to exceed five years, expires.

(f) A State that is not using TSA's agent to conduct enrollment for the security threat assessment must retain the application and information required in 49 CFR 1572.9, for at least one year, in paper or electronic form.

§ 1572.15 Procedures for HME security threat assessment.

(a) *Contents of security threat assessment*. The security threat assessment TSA completes includes a fingerprint-based criminal history records check (CHRC), an intelligence-related background check, and a final disposition.

(b) *Fingerprint-based check*. In order to conduct a fingerprint-based CHRC, the following procedures must be completed:

(1) The State notifies the applicant that he or she will be subject to the security threat assessment at least 60 days prior to the expiration of the applicant's HME, and that the applicant must begin the security threat assessment no later than 30 days before the date of the expiration of the HME.

(2) Where the State elects to collect fingerprints and applicant information, the State—

(i) Collects fingerprints and applicant information required in 49 CFR 1572.9;

(ii) Provides the applicant information to TSA electronically, unless otherwise authorized by TSA;

(iii) Transmits the fingerprints to the FBI/Criminal Justice Information Services (CJIS), in accordance with the

FBI/CJIS fingerprint submission standards; and

(iv) Retains the signed application, in paper or electronic form, for one year and provides it to TSA, if requested.

(3) Where the State elects to have a TSA agent collect fingerprints and applicant information—

(i) TSA provides a copy of the signed application to the State;

(ii) The State retains the signed application, in paper or electronic form, for one year and provides it to TSA, if requested; and

(iii) TSA transmits the fingerprints to the FBI/CJIS, in accordance with the FBI/CJIS fingerprint submission standards.

(4) TSA receives the results from the FBI/CJIS and adjudicates the results of the check, in accordance with 49 CFR 1572.103 and, if applicable, 49 CFR 1572.107.

(c) *Intelligence-related check*. To conduct an intelligence-related check, TSA completes the following procedures:

(1) Reviews the applicant information required in 49 CFR 1572.9.

(2) Searches domestic and international Government databases described in 49 CFR 1572.105, 1572.107, and 1572.109.

(3) Adjudicates the results of the check in accordance with 49 CFR 1572.103, 1572.105, 1572.107, and 1572.109.

(d) *Final disposition*. Following completion of the procedures described in paragraphs (b) and/or (c) of this section, the following procedures apply, as appropriate:

(1) TSA serves a Determination of No Security Threat on the State in which the applicant is authorized to hold an HME, if TSA determines that an applicant meets the security threat assessment standards described in 49 CFR 1572.5.

(2) TSA serves an Initial Determination of Threat Assessment on the applicant, if TSA determines that the applicant does not meet the security threat assessment standards described in 49 CFR 1572.5. The Initial Determination of Threat Assessment includes—

(i) A statement that TSA has determined that the applicant poses a security threat warranting denial of the HME;

(ii) The basis for the determination;

(iii) Information about how the applicant may appeal the determination, as described in 49 CFR 1515.5 or 1515.9, as applicable; and

(iv) A statement that if the applicant chooses not to appeal TSA's determination within 60 days of receipt of the Initial Determination, or does not request an extension of time within 60 days of receipt of the Initial Determination in order to file an appeal, the Initial Determination becomes a Final Determination of Security Threat Assessment.

(3) TSA serves an Initial Determination of Threat Assessment and Immediate Revocation on the applicant, the applicant's employer where appropriate, and the State, if TSA determines that the applicant does not meet the security threat assessment standards described in 49 CFR 1572.5 and may pose an imminent threat to transportation or national security, or of terrorism. The Initial Determination of Threat Assessment and Immediate Revocation includes—

(i) A statement that TSA has determined that the applicant poses a security threat warranting immediate revocation of an HME;

(ii) The basis for the determination;

(iii) Information about how the applicant may appeal the determination, as described in 49 CFR 1515.5(h) or 1515.9(f), as applicable; and

(iv) A statement that if the applicant chooses not to appeal TSA's determination within 60 days of receipt of the Initial Determination and Immediate Revocation, the Initial Determination and Immediate Revocation becomes a Final Determination of Threat Assessment.

(4) If the applicant does not appeal the Initial Determination of Threat Assessment or Initial Determination of Threat Assessment and Immediate Revocation, TSA serves a Final Determination of Threat Assessment on the State in which the applicant applied for the HME, the applicant's employer where appropriate, and on the applicant, if the appeal of the Initial Determination results in a finding that the applicant poses a security threat.

(5) If the applicant appeals the Initial Determination of Threat Assessment

or the Initial Determination of Threat Assessment and Immediate Revocation, the procedures in 49 CFR 1515.5 or 1515.9 apply.

(6) Applicants who do not meet certain standards in 49 CFR 1572.103, 1572.105, or 1572.109 may seek a waiver in accordance with 49 CFR 1515.7.

§ 1572.17 Applicant information required for TWIC security threat assessment.

An applicant must supply the information required in this section, in a form acceptable to TSA, when applying to obtain or renew a TWIC.

(a) Except as provided in (a)(12) through (16), the applicant must provide the following identifying information:

(1) Legal name, including first, middle, and last; any applicable suffix; and any other name used previously.

(2) Current and previous mailing address, current residential address if it differs from the current mailing address, and e-mail address if available. If the applicant wishes to receive notification that the TWIC is ready to be retrieved from the enrollment center via telephone rather than e-mail address, the applicant should state this and provide the correct telephone number.

(3) Date of birth.

(4) Gender.

(5) Height, weight, hair color, and eye color.

(6) City, state, and country of birth.

(7) Immigration status, and

(i) If the applicant is a naturalized citizen of the United States, the date of naturalization;

(ii) If the applicant is present in the United States based on a Visa, the type of Visa, the Visa number, and the date on which it expires; and

(iii) If the applicant is a commercial driver licensed in Canada and does not hold a FAST card, a Canadian passport.

(8) If not a national or citizen of the United States, the alien registration number and/or the number assigned to the applicant on the U.S. Customs and Border Protection Arrival-Departure Record, Form I–94.

(9) Except as described in paragraph (a)(9)(i) of this section, the reason that the applicant requires a TWIC, including, as applicable, the applicant's job description and the primary facility, vessel, or maritime port location(s) where the applicant will most likely require unescorted access, if known. This statement does not limit access to other facilities, vessels, or ports, but establishes eligibility for a TWIC.

(i) Applicants who are commercial drivers licensed in Canada or Mexico who are applying for a TWIC in order to transport hazardous materials in accordance with 49 CFR 1572.201 and not to access secure areas of a facility or vessel, must explain this in response to the information requested in paragraph (a)(9) of this section.

(10) The name, telephone number, and address of the applicant's current employer(s), if working for the employer requires a TWIC. If the applicant's current employer is the U.S. military service, include the branch of the service. An applicant whose current employer does not require possession of a TWIC, does not have a single employer, or is self-employed, must provide the primary vessel or port location(s) where the applicant requires unescorted access, if known. This statement does not limit access to other facilities, vessels, or ports, but establishes eligibility for a TWIC.

(11) If a credentialed mariner or applying to become a credentialed mariner, proof of citizenship as required in 46 CFR chapter I, subchapter B.

(12) Social security number. Providing the social security number is voluntary; however, failure to provide it will delay and may prevent completion of the threat assessment.

(13) Passport number, city of issuance, date of issuance, and date of expiration. This information is voluntary and may expedite the adjudication process for applicants who are U.S. citizens born abroad.

(14) Department of State Consular Report of Birth Abroad. This information is voluntary and may expedite the adjudication process for applicants who are U.S. citizens born abroad.

(15) Whether the applicant has previously completed a TSA threat assessment, and if so the date and program for which it was completed. This information is voluntary and may expedite the adjudication process for applicants

who have completed a TSA security threat assessment.

(16) Whether the applicant currently holds a federal security clearance, and if so, the date of and agency for which the clearance was performed. This information is voluntary and may expedite the adjudication process for applicants who have completed a federal security threat assessment.

(b) The applicant must provide a statement, signature, and date of signature that he or she—

(1) Was not convicted, or found not guilty by reason of insanity, of a disqualifying crime listed in 49 CFR 1572.103(b), in a civilian or military jurisdiction, during the seven years before the date of the application, or is applying for a waiver;

(2) Was not released from incarceration, in a civilian or military jurisdiction, for committing a disqualifying crime listed in 49 CFR 1572.103(b), during the five years before the date of the application, or is applying for a waiver;

(3) Is not wanted, or under indictment, in a civilian or military jurisdiction, for a disqualifying criminal offense identified in 49 CFR 1572.103, or is applying for a waiver;

(4) Was not convicted, or found not guilty by reason of insanity, of a disqualifying criminal offense identified in 49 CFR 1572.103(a), in a civilian or military jurisdiction, or is applying for a waiver;

(5) Has not been adjudicated as lacking mental capacity, or committed to a mental health facility involuntarily, or is applying for a waiver;

(6) Meets the immigration status requirements described in 49 CFR 1572.105;

(7) Has, or has not, served in the military, and if so, the branch in which he or she served, the date of discharge, and the type of discharge; and

(8) Has been informed that Federal regulations under 49 CFR 1572.19 impose a continuing obligation on the TWIC holder to disclose to TSA if he or she is convicted, or found not guilty by reason of insanity, of a disqualifying crime, adjudicated as lacking mental capacity, or committed to a mental health facility.

(c) Applicants, applying to obtain or renew a TWIC, must submit biometric information to be used for identity verification purposes. If an individual cannot provide the selected biometric, TSA will collect an alternative biometric identifier.

(d) The applicant must certify and date receipt the following statement:

Privacy Act Notice: Authority: The authority for collecting this information is 49 U.S.C. 114, 40113, and 5103a. Purpose: This information is needed to verify your identity and to conduct a security threat assessment to evaluate your suitability for a Transportation Worker Identification Credential. Furnishing this information, including your SSN or alien registration number, is voluntary; however, failure to provide it will delay and may prevent completion of your security threat assessment. Routine Uses: Routine uses of this information include disclosure to the FBI to retrieve your criminal history record; to TSA contractors or other agents who are providing services relating to the security threat assessments; to appropriate governmental agencies for licensing, law enforcement, or security purposes, or in the interests of national security; and to foreign and international governmental authorities in accordance with law and international agreement.

(e) The applicant must certify the following statement in writing:

As part of my employment duties, I am required to have unescorted access to secure areas of maritime facilities or vessels in which a Transportation Worker Identification Credential is required; I am now, or I am applying to be, a credentialed merchant mariner; or I am a commercial driver licensed in Canada or Mexico transporting hazardous materials in accordance with 49 CFR 1572.201.

(f) The applicant must certify and date receipt the following statement, immediately before the signature line:

The information I have provided on this application is true, complete, and correct, to the best of my knowledge and belief, and is provided in good faith. I understand that a knowing and willful false statement, or an omission of a material fact on this application, can be punished by fine or imprisonment or both (see section 1001 of Title 18 United States Code), and may be grounds for denial of a Transportation Worker Identification Credential.

(g) The applicant must certify the following statement in writing:

I acknowledge that if the Transportation Security Administration determines that I

pose a security threat, my employer, as listed on this application, may be notified. If TSA or other law enforcement agency becomes aware of an imminent threat to a maritime facility or vessel, TSA may provide limited information necessary to reduce the risk of injury or damage to the facility or vessel.

§ 1572.19 Applicant responsibilities for a TWIC security threat assessment.

(a) *Implementation schedule*. Except as provided in paragraph (b) of this section, applicants must provide the information required in 49 CFR 1572.17, when so directed by the owner/operator.

(b) *Implementation schedule for certain mariners*. An applicant, who holds a Merchant Mariner Document (MMD) issued after February 3, 2003, and before April 15, 2009, or a Merchant Marine License (License) issued after January 13, 2006, and before April 15, 2009, must submit the information required in this section, but is not required to undergo the security threat assessment described in this part.

(c) *Surrender of TWIC*. The TWIC is property of the Transportation Security Administration. If an individual is disqualified from holding a TWIC under 49 CFR 1572.5, he or she must surrender the TWIC to TSA. Failure to surrender the TWIC to TSA may result in immediate revocation under 49 CFR 1572.5(b) and/or civil penalties.

(d) *Continuing responsibilities*. An individual who holds a TWIC must surrender the TWIC, as required in paragraph (a) of this section, within 24 hours if the individual—

(1) Is convicted of, wanted, under indictment or complaint, or found not guilty by reason of insanity, in a civilian or military jurisdiction, for a disqualifying criminal offense identified in 49 CFR 1572.103; or

(2) Is adjudicated as lacking mental capacity or committed to a mental health facility, as described in 49 CFR 1572.109; or

(3) Renounces or loses U.S. citizenship or status as a lawful permanent resident; or

(4) Violates his or her immigration status and/or is ordered removed from the United States.

(e) *Submission of fingerprints and information*. (1) TWIC applicants must submit fingerprints and the information required in 49 CFR 1572.17, in a form acceptable to TSA, to obtain or renew a TWIC.

(2) When submitting fingerprints and the information required in 49 CFR 1572.17, the fee required in 49 CFR 1572.503 must be remitted to TSA.

(f) *Lost, damaged, or stolen credentials*. If an individual's TWIC is damaged, or if a TWIC holder loses possession of his or her credential, he or she must notify TSA immediately.

[72 FR 3595, Jan. 25, 2007, as amended at 72 FR 55048, Sept. 28, 2007; 73 FR 25566, May 7, 2008]

§ 1572.21 Procedures for TWIC security threat assessment.

(a) *Contents of security threat assessment*. The security threat assessment TSA conducts includes a fingerprint-based criminal history records check (CHRC), an intelligence-related check, and a final disposition.

(b) *Fingerprint-based check*. The following procedures must be completed to conduct a fingerprint-based CHRC:

(1) Consistent with the implementation schedule described in 49 CFR 1572.19(a) and (b), and as required in 33 CFR 104.200, 105.200, or 106.200, applicants are notified.

(2) During enrollment, TSA—

(i) Collects fingerprints, applicant information, and the fee required in 49 CFR 1572.17;

(ii) Transmits the fingerprints to the FBI/CJIS in accordance with the FBI/CJIS fingerprint submission standards.

(iii) Receives and adjudicates the results of the check from FBI/CJIS, in accordance with 49 CFR 1572.103 and, if applicable, 49 CFR 1572.107.

(c) *Intelligence-related check*. To conduct an intelligence-related check, TSA completes the following procedures:

(1) Reviews the applicant information required in 49 CFR 1572.17;

(2) Searches domestic and international Government databases required to determine if the applicant meets the requirements of 49 CFR 1572.105, 1572.107, and 1572.109;

(3) Adjudicates the results of the check in accordance with 49 CFR 1572.103, 1572.105, 1572.107, and 1572.109.

(d) *Final disposition*. Following completion of the procedures described in

paragraphs (b) and/or (c) of this section, the following procedures apply, as appropriate:

(1) TSA serves a Determination of No Security Threat on the applicant if TSA determines that the applicant meets the security threat assessment standards described in 49 CFR 1572.5. In the case of a mariner, TSA also serves a Determination of No Security Threat on the Coast Guard.

(2) TSA serves an Initial Determination of Threat Assessment on the applicant if TSA determines that the applicant does not meet the security threat assessment standards described in 49 CFR 1572.5. The Initial Determination of Threat Assessment includes—

(i) A statement that TSA has determined that the applicant poses a security threat warranting denial of the TWIC;

(ii) The basis for the determination;

(iii) Information about how the applicant may appeal the determination, as described in 49 CFR 1515.5 or 1515.9, as applicable; and

(iv) A statement that if the applicant chooses not to appeal TSA's determination within 60 days of receipt of the Initial Determination, or does not request an extension of time within 60 days of receipt of the Initial Determination in order to file an appeal, the Initial Determination becomes a Final Determination of Security Threat Assessment.

(3) TSA serves an Initial Determination of Threat Assessment and Immediate Revocation on the applicant, the applicant's employer where appropriate, the FMSC, and in the case of a mariner applying for a TWIC, on the Coast Guard, if TSA determines that the applicant does not meet the security threat assessment standards described in 49 CFR 1572.5 and may pose an imminent security threat. The Initial Determination of Threat Assessment and Immediate Revocation includes—

(i) A statement that TSA has determined that the applicant poses a security threat warranting immediate revocation of a TWIC and unescorted access to secure areas;

(ii) The basis for the determination;

(iii) Information about how the applicant may appeal the determination, as described in 49 CFR 1515.5(h) or 1515.9(f), as applicable; and

(iv) A statement that if the applicant chooses not to appeal TSA's determination within 60 days of receipt of the Initial Determination and Immediate Revocation, the Initial Determination and Immediate Revocation becomes a Final Determination of Threat Assessment.

(4) If the applicant does not appeal the Initial Determination of Threat Assessment or Initial Determination of Threat Assessment and Immediate Revocation, TSA serves a Final Determination of Threat Assessment on the FMSC and in the case of a mariner, on the Coast Guard, and the applicant's employer where appropriate.

(5) If the applicant appeals the Initial Determination of Threat Assessment or the Initial Determination of Threat Assessment and Immediate Revocation, the procedures in 49 CFR 1515.5 or 1515.9 apply.

(6) Applicants who do not meet certain standards in 49 CFR 1572.103, 1572.105, or 1572.109 may seek a waiver in accordance with 49 CFR 1515.7.

§ 1572.23 TWIC expiration.

(a) A TWIC expires five years after the date it was issued at the end of the calendar day, except as follows:

(1) The TWIC was issued based on a determination that the applicant completed a comparable threat assessment. If issued pursuant to a comparable threat assessment, the TWIC expires five years from the date on the credential associated with the comparable threat assessment.

(2) The applicant is in a lawful nonimmigrant status category listed in 1572.105(a)(7), and the status expires, the employer terminates the employment relationship with the applicant, or the applicant otherwise ceases working for the employer. Under any of these circumstances, TSA deems the TWIC to have expired regardless of the expiration date on the face of the TWIC.

(b) TSA may issue a TWIC for a term less than five years to match the expiration of a visa.

§§ 1572.24—1572.40 [Reserved]

Subpart B—Standards for Security Threat Assessments

§ 1572.101 Scope.

This subpart applies to applicants who hold or are applying to obtain or renew an HME or TWIC, or transfer an HME. Applicants for an HME also are subject to safety requirements issued by the Federal Motor Carrier Safety Administration under 49 CFR part 383 and by the State issuing the HME, including additional immigration status and criminal history standards.

§ 1572.103 Disqualifying criminal offenses.

(a) *Permanent disqualifying criminal offenses*. An applicant has a permanent disqualifying offense if convicted, or found not guilty by reason of insanity, in a civilian or military jurisdiction of any of the following felonies:

(1) Espionage or conspiracy to commit espionage.

(2) Sedition, or conspiracy to commit sedition.

(3) Treason, or conspiracy to commit treason.

(4) A federal crime of terrorism as defined in 18 U.S.C. 2332b(g), or comparable State law, or conspiracy to commit such crime.

(5) A crime involving a transportation security incident. A transportation security incident is a security incident resulting in a significant loss of life, environmental damage, transportation system disruption, or economic disruption in a particular area, as defined in 46 U.S.C. 70101. The term ''economic disruption'' does not include a work stoppage or other employee-related action not related to terrorism and resulting from an employer-employee dispute.

(6) Improper transportation of a hazardous material under 49 U.S.C. 5124, or a State law that is comparable.

(7) Unlawful possession, use, sale, distribution, manufacture, purchase, receipt, transfer, shipping, transporting, import, export, storage of, or dealing in an explosive or explosive device. An explosive or explosive device includes, but is not limited to, an explosive or explosive material as defined in 18 U.S.C. 232(5), 841(c) through 841(f), and 844(j); and a destructive device, as defined in 18 U.S.C. 921(a)(4) and 26 U.S.C. 5845(f).

(8) Murder.

(9) Making any threat, or maliciously conveying false information knowing the same to be false, concerning the deliverance, placement, or detonation of an explosive or other lethal device in or against a place of public use, a state or government facility, a public transportations system, or an infrastructure facility.

(10) Violations of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. 1961, *et seq.*, or a comparable State law, where one of the predicate acts found by a jury or admitted by the defendant, consists of one of the crimes listed in paragraph (a) of this section.

(11) Attempt to commit the crimes in paragraphs (a)(1) through (a)(4).

(12) Conspiracy or attempt to commit the crimes in paragraphs (a)(5) through (a)(10).

(b) *Interim disqualifying criminal offenses*. (1) The felonies listed in paragraphs (b)(2) of this section are disqualifying, if either:

(i) the applicant was convicted, or found not guilty by reason of insanity, of the crime in a civilian or military jurisdiction, within seven years of the date of the application; or

(ii) the applicant was incarcerated for that crime and released from incarceration within five years of the date of the TWIC application.

(2) The interim disqualifying felonies are:

(i) Unlawful possession, use, sale, manufacture, purchase, distribution, receipt, transfer, shipping, transporting, delivery, import, export of, or dealing in a firearm or other weapon. A firearm or other weapon includes, but is not limited to, firearms as defined in 18 U.S.C. 921(a)(3) or 26 U.S.C. 5 845(a), or items contained on the U.S. Munitions Import List at 27 CFR 447.21.

(ii) Extortion.

(iii) Dishonesty, fraud, or misrepresentation, including identity fraud and money laundering where the money laundering is related to a crime described in paragraphs (a) or (b) of this section. Welfare fraud and passing bad

checks do not constitute dishonesty, fraud, or misrepresentation for purposes of this paragraph.

(iv) Bribery.

(v) Smuggling.

(vi) Immigration violations.

(vii) Distribution of, possession with intent to distribute, or importation of a controlled substance.

(viii) Arson.

(ix) Kidnapping or hostage taking.

(x) Rape or aggravated sexual abuse.

(xi) Assault with intent to kill.

(xii) Robbery.

(xiii) Fraudulent entry into a seaport as described in 18 U.S.C. 1036, or a comparable State law.

(xiv) Violations of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. 1961, *et seq.*, or a comparable State law, other than the violations listed in paragraph (a)(10) of this section.

(xv) Conspiracy or attempt to commit the crimes in this paragraph (b).

(c) *Under want, warrant, or indictment.* An applicant who is wanted, or under indictment in any civilian or military jurisdiction for a felony listed in this section, is disqualified until the want or warrant is released or the indictment is dismissed.

(d) *Determination of arrest status.* (1) When a fingerprint-based check discloses an arrest for a disqualifying crime listed in this section without indicating a disposition, TSA will so notify the applicant and provide instructions on how the applicant must clear the disposition, in accordance with paragraph (d)(2) of this section.

(2) The applicant must provide TSA with written proof that the arrest did not result in conviction for the disqualifying criminal offense, within 60 days after the service date of the notification in paragraph (d)(1) of this section. If TSA does not receive proof in that time, TSA will notify the applicant that he or she is disqualified. In the case of an HME, TSA will notify the State that the applicant is disqualified, and in the case of a mariner applying for TWIC, TSA will notify the Coast Guard that the applicant is disqualified.

[72 FR 3595, Jan. 25, 2007; 72 FR 5633, Feb. 7, 2007; 72 FR 14050, Mar. 26, 2007]

§ 1572.105 Immigration status.

(a) An individual applying for a security threat assessment for a TWIC or HME must be a national of the United States or—

(1) A lawful permanent resident of the United States;

(2) A refugee admitted under 8 U.S.C. 1157;

(3) An alien granted asylum under 8 U.S.C. 1158;

(4) An alien in valid M–1 nonimmigrant status who is enrolled in the United States Merchant Marine Academy or a comparable State maritime academy. Such individuals may serve as unlicensed mariners on a documented vessel, regardless of their nationality, under 46 U.S.C. 8103.

(5) A nonimmigrant alien admitted under the Compact of Free Association between the United States and the Federated States of Micronesia, the United States and the Republic of the Marshall Islands, or the United States and Palau.

(6) An alien in lawful nonimmigrant status who has unrestricted authorization to work in the United States, except—

(i) An alien in valid S–5 (informant of criminal organization information) lawful nonimmigrant status;

(ii) An alien in valid S–6 (informant of terrorism information) lawful nonimmigrant status;

(iii) An alien in valid K–1 (Fianco(e)) lawful nonimmigrant status; or

(iv) An alien in valid K–2 (Minor child of Fianco(e)) lawful nonimmigrant status.

(7) An alien in the following lawful nonimmigrant status who has restricted authorization to work in the United States—

(i) B1/OCS Business Visitor/Outer Continental Shelf;

(ii) C–1/D Crewman Visa;

(iii) H–1B Special Occupations;

(iv) H–1B1 Free Trade Agreement;

(v) E–1 Treaty Trader;

(vi) E–3 Australian in Specialty Occupation;

(vii) L–1 Intracompany Executive Transfer;

(viii) O–1 Extraordinary Ability;

(ix) TN North American Free Trade Agreement;

(x) E–2 Treaty Investor; or

(xi) Another authorization that confers legal status, when TSA determines that the legal status is comparable to the legal status set out in paragraph (a)(7) of this section.

(8) A commercial driver licensed in Canada or Mexico who is admitted to the United States under 8 CFR 214.2(b)(4)(i)(E) to conduct business in the United States.

(b) Upon expiration of a nonimmigrant status listed in paragraph (a)(7) of this section, an employer must retrieve the TWIC from the applicant and provide it to TSA.

(c) Upon expiration of a nonimmigrant status listed in paragraph (a)(7) of this section, an employee must surrender his or her TWIC to the employer.

(d) If an employer terminates an applicant working under a nonimmigrant status listed in paragraph (a)(7) of this section, or the applicant otherwise ceases working for the employer, the employer must notify TSA within 5 business days and provide the TWIC to TSA if possible.

(e) Any individual in removal proceedings or subject to an order of removal under the immigration laws of the United States is not eligible to apply for a TWIC.

(f) To determine an applicant's immigration status, TSA will check relevant Federal databases and may perform other checks, including the validity of the applicant's alien registration number, social security number, or I–94 Arrival-Departure Form number.

[72 FR 3595, Jan. 25, 2007, as amended at 72 FR 55049, Sept. 28, 2007; 73 FR 13156, Mar. 12, 2008]

§ 1572.107 Other analyses.

(a) TSA may determine that an applicant poses a security threat based on a search of the following databases:

(1) Interpol and other international databases, as appropriate.

(2) Terrorist watchlists and related databases.

(3) Any other databases relevant to determining whether an applicant poses, or is suspected of posing, a security threat, or that confirm an applicant's identity.

(b) TSA may also determine that an applicant poses a security threat, if the search conducted under this part reveals extensive foreign or domestic criminal convictions, a conviction for a serious crime not listed in 49 CFR 1572.103, or a period of foreign or domestic imprisonment that exceeds 365 consecutive days.

§ 1572.109 Mental capacity.

(a) An applicant has mental incapacity, if he or she has been—

(1) Adjudicated as lacking mental capacity; or

(2) Committed to a mental health facility.

(b) An applicant is adjudicated as lacking mental capacity if—

(1) A court, board, commission, or other lawful authority has determined that the applicant, as a result of marked subnormal intelligence, mental illness, incompetence, condition, or disease, is a danger to himself or herself or to others, or lacks the mental capacity to conduct or manage his or her own affairs.

(2) This includes a finding of insanity by a court in a criminal case and a finding of incompetence to stand trial; or a finding of not guilty by reason of lack of mental responsibility, by any court, or pursuant to articles 50a and 76b of the Uniform Code of Military Justice (10 U.S.C. 850a and 876b).

(c) An applicant is committed to a mental health facility if he or she is formally committed to a mental health facility by a court, board, commission, or other lawful authority, including involuntary commitment and commitment for lacking mental capacity, mental illness, and drug use. This does not include commitment to a mental health facility for observation or voluntary admission to a mental health facility.

§§ 1572.111–1572.139 [Reserved]

Subpart C—Transportation of Hazardous Materials From Canada or Mexico To and Within the United States by Land Modes

§ 1572.201 Transportation of hazardous materials via commercial motor vehicle from Canada or Mexico to and within the United States.

(a) *Applicability*. This section applies to commercial motor vehicle drivers licensed by Canada and Mexico.

(b) *Terms used in this section*. The terms used in 49 CFR parts 1500, 1570, and 1572 also apply in this subpart. In addition, the following terms are used in this subpart for purposes of this section:

FAST means Free and Secure Trade program of the Bureau of Customs and Border Protection (CBP), a cooperative effort between CBP and the governments of Canada and Mexico to coordinate processes for the clearance of commercial shipments at the border.

Hazardous materials means material that has been designated as hazardous under 49 U.S.C. 5103 and is required to be placarded under subpart F of 49 CFR part 172 or any quantity of material that listed as a select agent or toxin in 42 CFR part 73.

(c) *Background check required*. A commercial motor vehicle driver who is licensed by Canada or Mexico may not transport hazardous materials into or within the United States unless the driver has undergone a background check similar to the one required of U.S.-licensed operators with a hazardous materials endorsement (HME) on a commercial driver's license, as prescribed in 49 CFR 1572.5.

(d) *FAST card*. A commercial motor vehicle driver who holds a current Free and Secure Trade (FAST) program card satisfies the requirements of this section. Commercial motor vehicle drivers who wish to apply for a FAST program card must contact the FAST Commercial Driver Program, Bureau of Customs and Border Protection (CBP), Department of Homeland Security.

(e) *TWIC*. A commercial motor vehicle driver who holds a TWIC satisfies the requirements of this section. Commercial vehicle drivers who wish to apply for a TWIC must comply with the rules in 49 CFR part 1572.

§ 1572.203 Transportation of explosives from Canada to the United States via railroad carrier.

(a) *Applicability*. This section applies to railroad carriers that carry explosives from Canada to the United States, using a train crew member who is not a U.S. citizen or lawful permanent resident alien of the United States.

(b) *Terms under this section*. For purposes of this section:

Customs and Border Protection (CBP) means the Bureau of Customs and Border Protection, an agency within the U.S. Department of Homeland Security.

Explosive means a material that has been examined by the Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration, in accordance with 49 CFR 173.56, and determined to meet the definition for a Class 1 material in 49 CFR 173.50.

Known railroad carrier means a person that has been determined by the Governments of Canada and the United States to be a legitimate business, operating in accordance with all applicable laws and regulations governing the transportation of explosives.

Known offeror means an offeror that has been determined by the Governments of Canada and the United States to be a legitimate business, operating in accordance with all applicable laws and regulations governing the transportation of explosives.

Known train crew member means an individual used to transport explosives from Canada to the United States, who has been determined by the Governments of Canada and the United States to present no known security concern.

Lawful permanent resident alien means an alien lawfully admitted for permanent residence, as defined by 8 U.S.C. 1101(a)(20).

Offeror means the person offering a shipment to the railroad carrier for transportation from Canada to the United States, and may also be known as the ''consignor'' in Canada.

Railroad carrier means ''railroad carrier'' as defined in 49 U.S.C. 20102.

(c) *Prior approval of railroad carrier, offeror, and train crew member.* (1) No railroad carrier may transport in commerce any explosive into the United States from Canada, via a train operated by a crew member who is not a U.S. national or lawful permanent resident alien, unless the railroad carrier, offeror, and train crew member are identified on a TSA list as a known railroad carrier, known offeror, and known train crew member, respectively.

(2) The railroad carrier must ensure that it, its offeror, and each of its crew members have been determined to be a known railroad carrier, known offeror, and known train crew member, respectively. If any has not been so determined, the railroad carrier must submit the following information to Transport Canada:

(i) The railroad carrier's identification, including—

(A) Official name;

(B) Business number;

(C) Any trade names; and

(D) Address.

(ii) The following information about any offeror of explosives whose shipments it will carry:

(A) Official name.

(B) Business number.

(C) Address.

(iii) The following information about any train crew member the railroad carrier may use to transport explosives into the United States from Canada, who is neither a U.S. national nor lawful permanent resident alien:

(A) Full name.

(B) Both current and most recent prior residential addresses.

(3) Transport Canada will determine whether the railroad carrier and offeror are legitimately doing business in Canada and will also determine whether the train crew members present no known problems for purposes of this section. Transport Canada will notify TSA of these determinations by forwarding to TSA lists of known railroad carriers, offerors, and train crew members and their identifying information.

(4) TSA will update and maintain the list of known railroad carriers, offerors, and train crew members and forward the list to CBP.

(5) Once included on the list, the railroad carriers, offerors, and train crew members need not obtain prior approval for future transport of explosives under this section.

(d) *TSA checks.* TSA may periodically check the data on the railroad carriers, offerors, and train crew members to confirm their continued eligibility, and may remove from the list any that TSA determines is not known or is a threat to security.

(e) *At the border.* (1) Train crew members who are not U.S. nationals or lawful permanent resident aliens. Upon arrival at a point designated by CBP for inspection of trains crossing into the United States, the train crew members of a train transporting explosives must provide sufficient identification to CBP to enable that agency to determine if each crew member is on the list of known train crew members maintained by TSA.

(2) *Train crew members who are U.S. nationals or lawful permanent resident aliens.* If CBP cannot verify that the crew member is on the list and the crew member is a U.S. national or lawful permanent resident alien, the crew member may be cleared by CBP upon providing—

(i) A valid U.S. passport; or

(ii) One or more other document(s), including a form of U.S. Federal or state Government-issued identification with photograph, acceptable to CBP.

(3) *Compliance.* If a carrier attempts to enter the U.S. without having complied with this section, CBP will deny entry of the explosives and may take other appropriate action.

Subpart D [Reserved]

Subpart E—Fees for Security Threat Assessments for Hazmat Drivers

§ 1572.400 Scope and definitions.

(a) *Scope.* This part applies to—

(1) States that issue an HME for a commercial driver's license;

(2) Individuals who apply to obtain or renew an HME for a commercial driver's license and must undergo a security threat assessment under 49 CFR part 1572; and

(3) Entities who collect fees from such individuals on behalf of TSA.

(b) *Terms.* As used in this part:

Commercial driver's license (CDL) is used as defined in 49 CFR 383.5.

Day means calendar day.

FBI Fee means the fee required for the cost of the Federal Bureau of Investigation (FBI) to process fingerprint records.

Information Collection Fee means the fee required, in this part, for the cost of collecting and transmitting fingerprints and other applicant information under 49 CFR part 1572.

Threat Assessment Fee means the fee required, in this part, for the cost of TSA adjudicating security threat assessments, appeals, and waivers under 49 CFR part 1572.

TSA agent means an entity approved by TSA to collect and transmit fingerprints and applicant information, in accordance with 49 CFR part 1572, and fees in accordance with this part.

§ 1572.401 Fee collection options.

(a) *State collection and transmission.* If a State collects fingerprints and applicant information under 49 CFR part 1572, the State must collect and transmit to TSA the Threat Assessment Fee, in accordance with the requirements of 49 CFR 1572.403. The State also must collect and remit the FBI fee, in accordance with established procedures.

(b) *TSA agent collection and transmission.* If a TSA agent collects fingerprints and applicant information under 49 CFR part 1572, the agent must—

(1) Collect the Information Collection Fee, Threat Assessment Fee, and FBI Fee, in accordance with procedures approved by TSA;

(2) Transmit to TSA the Threat Assessment Fee, in accordance with procedures approved by TSA; and

(3) Transmit to TSA the FBI Fee, in accordance with procedures approved by TSA and the FBI.

[72 FR 3595, Jan. 25, 2007; 72 FR 14050, Mar. 26, 2007]

§ 1572.403 Procedures for collection by States.

This section describes the procedures that a State, which collects fingerprints and applicant information under 49 CFR part 1572; and the procedures an individual who applies to obtain or renew an HME, for a CDL in that State, must follow for collection and transmission of the Threat Assessment Fee and the FBI Fee.

(a) *Imposition of fees.* (1) The following Threat Assessment Fee is required for TSA to conduct a security threat assessment, under 49 CFR part 1572, for an individual who applies to obtain or renew an HME: $34.

(2) The following FBI Fee is required for the FBI to process fingerprint identification records and name checks required under 49 CFR part 1572: the fee collected by the FBI under Pub. L. 101–515.

(3) An individual who applies to obtain or renew an HME, or the individual's employer, must remit to the State the Threat Assessment Fee and the FBI Fee, in a form and manner approved by TSA and the State, when the individual submits the application for the HME to the State.

(b) *Collection of fees.* (1) A State must collect the Threat Assessment Fee and FBI Fee, when an individual submits an application to the State to obtain or renew an HME.

(2) Once TSA receives an application from a State for a security threat assessment under 49 CFR part 1572, the State is liable for the Threat Assessment Fee.

(3) Nothing in this subpart prevents a State from collecting any other fees that a State may impose on an individual who applies to obtain or renew an HME.

(c) *Handling of fees.* (1) A State must safeguard all Threat Assessment Fees, from the time of collection until remittance to TSA.

(2) All Threat Assessment Fees are held in trust by a State for the beneficial interest of the United States in paying for the costs of conducting the security threat assessment, required by 49 U.S.C. 5103a and 49 CFR part 1572. A State holds neither legal nor equitable interest in the Threat Assessment Fees, except for the right to retain any accrued interest on the principal amounts collected pursuant to this section.

(3) A State must account for Threat Assessment Fees separately, but may

commingle such fees with other sources of revenue.

(d) *Remittance of fees.* (1) TSA will generate and provide an invoice to a State on a monthly basis. The invoice will indicate the total fee dollars (number of applicants times the Threat Assessment Fee) that are due for the month.

(2) A State must remit to TSA full payment for the invoice, within 30 days after TSA sends the invoice.

(3) TSA accepts Threat Assessment Fees only from a State, not from an individual applicant for an HME.

(4) A State may retain any interest that accrues on the principal amounts collected between the date of collection and the date the Threat Assessment Fee is remitted to TSA, in accordance with paragraph (d)(2) of this section.

(5) A State may not retain any portion of the Threat Assessment Fee to offset the costs of collecting, handling, or remitting Threat Assessment Fees.

(6) Threat Assessment Fees, remitted to TSA by a State, must be in U.S. currency, drawn on a U.S. bank, and made payable to the ''Transportation Security Administration.''

(7) Threat Assessment Fees must be remitted by check, money order, wire, or any other payment method acceptable to TSA.

(8) TSA will not issue any refunds of Threat Assessment Fees.

(9) If a State does not remit the Threat Assessment Fees for any month, TSA may decline to process any HME applications from that State.

§ 1572.405 Procedures for collection by TSA.

This section describes the procedures that an individual, who applies to obtain or renew an HME for a CDL, must follow if a TSA agent collects and transmits the Information Collection Fee, Threat Assessment Fee, and FBI Fee.

(a) *Imposition of fees.* (1) The following Information Collection Fee is required for a TSA agent to collect and transmit fingerprints and applicant information, in accordance with 49 CFR part 1572: $38.

(2) The following Threat Assessment Fee is required for TSA to conduct a security threat assessment, under 49 CFR part 1572, for an individual who applies to obtain or renew an HME: $34.

(3) The following FBI Fee is required for the FBI to process fingerprint identification records required under 49 CFR part 1572: The fee collected by the FBI under Pub. L. 101–515.

(4) An individual who applies to obtain or renew an HME, or the individual's employer, must remit to the TSA agent the Information Collection Fee, Threat Assessment Fee, and FBI Fee, in a form and manner approved by TSA, when the individual submits the application required under 49 CFR part 1572.

(b) *Collection of fees.* A TSA agent will collect the fees required under this section, when an individual submits an application to the TSA agent, in accordance with 49 CFR part 1572.

(c) *Remittance of fees.* (1) Fees required under this section, which are remitted to a TSA agent, must be made in U.S. currency, drawn on a U.S. bank, and made payable to the ''Transportation Security Administration.''

(2) Fees required under this section must be remitted by check, money order, wire, or any other payment method acceptable to TSA.

(3) TSA will not issue any refunds of fees required under this section.

(4) Applications, submitted in accordance with 49 CFR part 1572, will be processed only upon receipt of all applicable fees under this section.

Subpart F—Fees for Security Threat Assessments for Transportation Worker Identification Credential (TWIC)

§ 1572.500 Scope.

(a) *Scope.* This part applies to—

(1) Individuals who apply to obtain or renew a Transportation Worker Identification Credential and must undergo a security threat assessment under 49 CFR part 1572; and

(2) Entities that collect fees from such individuals on behalf of TSA.

(b) *Terms.* As used in this part:

TSA agent means the entity approved by TSA to collect and transmit fingerprints and applicant information, and collect fees in accordance with this part.

§ 1572.501 Fee collection.

(a) *When fee must be paid.* When an applicant submits the information and fingerprints required under 49 CFR part 1572 to obtain or renew a TWIC, the fee must be remitted to TSA or its agent in accordance with the requirements of this section. Applications submitted in accordance with 49 CFR part 1572 will be processed only upon receipt of all required fees under this section.

(b) *Standard TWIC Fee.* The fee to obtain or renew a TWIC, except as provided in paragraphs (c) and (d) of this section, is made up of the total of the following segments:

(1) The Enrollment Segment covers the cost for TSA or its agent to enroll applicants. The Enrollment Segment fee is $43.25.

(2) The Full Card Production/Security Threat Assessment Segment covers the costs for TSA conduct security threat assessment and card production. The Full Card Production/Security Threat Assessment Segment fee is $72.

(3) The FBI Segment covers the cost for the FBI to process fingerprint identification records. The FBI Segment fee is the amount collected by the FBI under Pub. L. 101–515. If the FBI amends this fee, TSA or its agent will collect the amended fee.

(c) *Reduced TWIC Fee.* The fee to obtain a TWIC when the applicant has undergone a comparable threat assessment in connection with an HME, FAST card, other threat assessment deemed to be comparable under 49 CFR 1572.5(e) or holds a Merchant Mariner Document or Merchant Mariner License is made up of the total of the following segments:

(1) The Enrollment Segment covers the cost for TSA or its agent to enroll applicants. The Enrollment Segment fee is $43.25.

(2) The Reduced Card Production/Security Threat Assessment Segment covers the cost for TSA to conduct a portion of the security threat assessment and card production. The Reduced Card Production/Security Threat Assessment Segment fee is $62.

(d) *Card Replacement Fee.* The fee to replace a TWIC that has been lost, stolen, or damaged is $60.00.

(e) *Form of fee.* The TSA vendor will collect the fee required to obtain or renew a TWIC and will determine the method of acceptable payment, subject to approval by TSA.

(f) *Refunds.* TSA will not issue any refunds of fees required under this section.

(g) *Inflation adjustment.* The fees prescribed in this section, except the FBI fee, may be adjusted annually on or after October 1, 2007, by publication of an inflation adjustment. A final rule in the FEDERAL REGISTER will announce the inflation adjustment. The adjustment shall be a composite of the Federal civilian pay raise assumption and non-pay inflation factor for that fiscal year issued by the Office of Management and Budget for agency use in implementing OMB Circular A–76, weighted by the pay and non-pay proportions of total funding for that fiscal year. If Congress enacts a different Federal civilian pay raise percentage than the percentage issued by OMB for Circular A–76, the Department of Homeland Security may adjust the fees to reflect the enacted level. The required fee shall be the amount prescribed in paragraphs (a)(1)(i) and (a)(1)(ii), plus the latest inflation adjustment.

[72 FR 3595, Jan. 25, 2007, as amended at 72 FR 55049, Sept. 28, 2007]

PART 1580—RAIL TRANSPORTATION SECURITY

Subpart A—General

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Subpart C—Passenger Rail Including Passenger Railroad Carriers, Rail Transit Systems, Tourist, Scenic, Historic and Excursion Operators, and Private Cars

1580.200 Applicability.
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APPENDIX A TO PART 1580—HIGH THREAT URBAN AREAS (HTUAS)
APPENDIX B TO PART 1580—SUMMARY OF THE APPLICABILITY OF PART 1580

AUTHORITY: 49 U.S.C. 114.

SOURCE: 73 FR 72173, Nov. 26, 2008, unless otherwise noted.

Subpart A—General

§ 1580.1 Scope.

(a) Except as provided in paragraph (b) of this section, this part includes requirements for the following persons. Appendix B of this part summarizes the general requirements for each person, and the specific sections in this part provide detailed requirements.

(1) Each freight railroad carrier that operates rolling equipment on track that is part of the general railroad system of transportation;

(2) Each rail hazardous materials shipper that offers, prepares, or loads for transportation in commerce by rail one or more of the categories and quantities of rail security-sensitive materials set forth in § 1580.100(b) of this part;

(3) Each rail hazardous materials receiver, located within a High Threat Urban Area (HTUA) that receives in commerce by rail or unloads one or more of the categories and quantities of rail security-sensitive materials set forth in § 1580.100(b) of this part;

(4) Each passenger railroad carrier, including each carrier operating light rail or heavy rail transit service on track that is part of the general railroad system of transportation, each carrier operating or providing intercity passenger train service or commuter or other short-haul railroad passenger service in a metropolitan or suburban area (as described by 49 U.S.C. 20102), and each public authority operating passenger train service;

(5) Each passenger or freight railroad carrier hosting an operation described in paragraph (a)(4) of this section;

(6) Each tourist, scenic, historic, and excursion rail operator, whether operating on or off the general railroad system of transportation;

(7) Each operator of private cars, including business/office cars and circus trains, on or connected to the general railroad system of transportation; and

(8) Each operator of a rail transit system that is not operating on track that is part of the general railroad system of transportation, including heavy rail transit, light rail transit, automated guideway, cable car, inclined plane, funicular, and monorail systems.

(b) This part does not apply to a freight railroad carrier that operates rolling equipment only on track inside an installation that is not part of the general railroad system of transportation.

§ 1580.3 Terms used in this part.

For purposes of this part:

Commuter passenger train service means ''train, commuter'' as defined in 49 CFR 238.5, and includes a railroad operation that ordinarily uses diesel or electric powered locomotives and railroad passenger cars to serve an urban area, its suburbs, and more distant outlying communities in the greater metropolitan area. A commuter operation is part of the general railroad system of transportation regardless of whether it is physically connected to other railroads.

General railroad system of transportation means the network of standard gage track over which goods may be transported throughout the Nation and passengers may travel between cities and within metropolitan and suburban areas. *See* 49 CFR part 209, appendix A.

Hazardous material means ''hazardous material'' as defined in 49 CFR 171.8.

Heavy rail transit means service provided by self-propelled electric railcars, typically drawing power from a third rail, operating in separate rights-of-way in multiple cars; also referred to as subways, metros, or regional rail.

High Threat Urban Area (HTUA) means an area comprising one or more cities and surrounding areas including

a 10-mile buffer zone, as listed in appendix A to this part.

Improvised explosive device means a device fabricated in an improvised manner that incorporates explosives or destructive, lethal, noxious, pyrotechnic, or incendiary chemicals in its design, and generally includes a power supply, a switch or timer, and a detonator or initiator.

Intercity passenger train service means both ''train, long-distance intercity passenger'' and ''train, short-distance intercity passenger'' as defined in 49 CFR 238.5.

Light rail transit means service provided by self-propelled electric railcars, typically drawing power from an overhead wire, operating in either exclusive or non-exclusive rights-of-way in single or multiple cars and with shorter distance trips and frequent stops; also referred to as streetcars, trolleys, and trams.

Offers or *offeror* means:

(1) Any person who does either or both of the following:

(i) Performs, or is responsible for performing, any pre-transportation function for transportation of the hazardous material in commerce.

(ii) Tenders or makes the hazardous material available to a carrier for transportation in commerce.

(2) A carrier is not an offeror when it performs a function required as a condition of acceptance of a hazardous material for transportation in commerce (such as reviewing shipping papers, examining packages to ensure that they are in conformance with the HMR, or preparing shipping documentation for its own use) or when it transfers a hazardous material to another carrier for continued transportation in commerce without performing a pre-transportation function. *See* 49 CFR 171.8.

Passenger car means rail rolling equipment intended to provide transportation for members of the general public and includes a self-propelled car designed to carry passengers, baggage, mail, or express. This term includes a passenger coach, cab car, and a Multiple Unit (MU) locomotive. In the context of articulated equipment, ''passenger car'' means that segment of the rail rolling equipment located between two trucks. This term does not include a private car. *See* 49 CFR 238.5.

Passenger train means a train that transports or is available to transport members of the general public. *See* 49 CFR 238.5.

Private car means rail rolling equipment that is used only for excursion, recreational, or private transportation purposes. A private car is not a passenger car. *See* 49 CFR 238.5.

Rail facility means a location at which rail cargo or infrastructure assets are stored, cargo is transferred between conveyances and/or modes of transportation, where transportation command and control operations are performed, or maintenance operations are performed. The term also includes, but is not limited to, passenger stations and terminals, rail yards, crew management centers, dispatching centers, transportation terminals and stations, fueling centers, and telecommunication centers.

Rail hazardous materials receiver means any operator of a fixed-site facility that has a physical connection to the general railroad system of transportation and receives or unloads from transportation in commerce by rail one or more of the categories and quantities of rail security-sensitive materials set forth in §1580.100(b) of this part, but does not include the operator of a facility owned or operated by a department, agency, or instrumentality of the Federal government.

Rail hazardous materials shipper means the operator of any fixed-site facility that has a physical connection to the general railroad system of transportation and offers, prepares, or loads for transportation by rail one or more of the categories and quantities of rail security-sensitive materials set forth in §1580.100(b) of this part, but does not include the operator of a facility owned or operated by a department, agency, or instrumentality of the Federal government.

Rail secure area means a secure location(s) identified by a rail hazardous materials shipper or rail hazardous materials receiver where security-related pre-transportation or transportation functions are performed or rail cars

containing the categories and quantities of rail security-sensitive materials are prepared, loaded, stored, and/or unloaded.

Rail security-sensitive material means one or more of the categories and quantities of hazardous materials set forth in § 1580.100(b) of this part.

Rail transit facility means rail transit stations, terminals, and locations at which rail transit infrastructure assets are stored, command and control operations are performed, or maintenance is performed. The term also includes rail yards, crew management centers, dispatching centers, transportation terminals and stations, fueling centers, and telecommunication centers.

Rail transit system or ''Rail Fixed Guideway System'' means any light, heavy, or rapid rail system, monorail, inclined plane, funicular, cable car, trolley, or automated guideway that traditionally does not operate on track that is part of the general railroad system of transportation.

Railroad means any form of non-highway ground transportation that runs on rails or electromagnetic guideways, including: Commuter or other short-haul railroad passenger service in a metropolitan or suburban area and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979; and high speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads; but does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation. The term includes rail transit service operating on track that is part of the general railroad system of transportation but does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation. *See* 49 U.S.C. 20102(1).

Railroad carrier means a person providing railroad transportation. *See* 49 U.S.C. 20102(2).

Residue means the hazardous material remaining in a packaging, including a tank car, after its contents have been unloaded to the maximum extent practicable and before the packaging is either refilled or cleaned of hazardous material and purged to remove any hazardous vapors. *See* 49 CFR 171.8.

Tourist, scenic, historic, or excursion operation means a railroad operation that carries passengers, often using antiquated equipment, with the conveyance of the passengers to a particular destination not being the principal purpose. Train movements of new passenger equipment for demonstration purposes are not tourist, scenic, historic, or excursion operations. *See* 49 CFR 238.5.

Transit means mass transportation by a conveyance that provides regular and continuing general or special transportation to the public, but does not include school bus, charter, or sightseeing transportation. *See* 49 U.S.C 5302(a). Transit may occur on or off the general railroad system of transportation. For purposes of this part, the term ''transit'' excludes buses and commuter passenger train service.

Transportation or transport means the movement of property including loading, unloading, and storage. Transportation or transport also includes the movement of people, boarding, and disembarking incident to that movement.

§ 1580.5 Inspection authority.

(a) This section applies to the following:

(1) Each freight railroad carrier that operates rolling equipment on track that is part of the general railroad system of transportation.

(2) Each rail hazardous materials shipper.

(3) Each rail hazardous materials receiver located within an HTUA.

(4) Each passenger railroad carrier, including each carrier operating light rail or heavy rail transit service on track that is part of the general railroad system of transportation, each carrier operating or providing intercity passenger train service or commuter or other short-haul railroad passenger service in a metropolitan or suburban area (as described by 49 U.S.C. 20102), and each public authority operating passenger train service.

(5) Each passenger or freight railroad carrier hosting an operation described in paragraph (a)(4) of this section.

(6) Each tourist, scenic, historic, and excursion rail operator, whether operating on or off the general railroad system of transportation.

(7) Each operator of private cars, including business/office cars and circus trains, on or connected to the general railroad system of transportation.

(8) Each operator of a rail transit system that is not operating on track that is part of the general railroad system of transportation, including heavy rail transit, light rail transit, automated guideway, cable car, inclined plane, funicular, and monorail systems.

(b) The persons described in paragraph (a) of this section must allow TSA and other authorized DHS officials, at any time and in a reasonable manner, without advance notice, to enter, inspect, and test property, facilities, equipment, and operations; and to view, inspect, and copy records, as necessary to carry out TSA's security-related statutory or regulatory authorities, including its authority to—

(1) Assess threats to transportation;

(2) Enforce security-related regulations, directives, and requirements;

(3) Inspect, maintain, and test the security of facilities, equipment, and systems;

(4) Ensure the adequacy of security measures for the transportation of passengers and freight, including hazardous materials;

(5) Oversee the implementation, and ensure the adequacy, of security measures at rail yards, stations, terminals, transportation-related areas of rail hazardous materials shipper and receiver facilities, crew management centers, dispatch centers, telecommunication centers, and other transportation facilities and infrastructure;

(6) Review security plans; and

(7) Carry out such other duties, and exercise such other powers, relating to transportation security, as the Assistant Secretary of Homeland Security for the TSA considers appropriate, to the extent authorized by law.

(c) TSA and DHS officials working with TSA, may enter, without advance notice, and be present within any area or within any conveyance without access media or identification media issued or approved by a railroad carrier, rail transit system owner or operator, rail hazardous materials shipper, or rail hazardous materials receiver in order to inspect or test compliance, or perform other such duties as TSA may direct.

(d) TSA inspectors and DHS officials working with TSA will, on request, present their credentials for examination, but the credentials may not be photocopied or otherwise reproduced.

Subpart B—Freight Rail Including Freight Railroad Carriers, Rail Hazardous Materials Shippers, Rail Hazardous Materials Receivers, and Private Cars

§ 1580.100 Applicability.

(a) *Applicability*. The requirements of this subpart apply to:

(1) Each freight railroad carrier that operates rolling equipment on track that is part of the general railroad system of transportation.

(2) Each rail hazardous materials shipper.

(3) Each rail hazardous materials receiver located with an HTUA.

(4) Each freight railroad carrier hosting a passenger operation described in § 1580.1(a)(4) of this part.

(5) Each operator of private cars, including business/office cars and circus trains, on or connected to the general railroad system of transportation.

(b) *Rail security-sensitive materials*. The requirements of this subpart apply to:

(1) A rail car containing more than 2,268 kg (5,000 lbs) of a Division 1.1, 1.2, or 1.3 (explosive) material, as defined in 49 CFR 173.50;

(2) A tank car containing a material poisonous by inhalation as defined in 49 CFR 171.8, including anhydrous ammonia, Division 2.3 gases poisonous by inhalation as set forth in 49 CFR 173.115(c), and Division 6.1 liquids meeting the defining criteria in 49 CFR 173.132(a)(1)(iii) and assigned to hazard zone A or hazard zone B in accordance with 49 CFR 173.133(a), excluding residue quantities of these materials; and

(3) A rail car containing a highway route-controlled quantity of a Class 7

(radioactive) material, as defined in 49 CFR 173.403.

[73 FR 72173, Nov. 26, 2008, as amended at 74 FR 23656, May 20, 2009]

§ 1580.101 Rail security coordinator.

(a) *Applicability*. This section applies to:

(1) Each freight railroad carrier that operates rolling equipment on track that is part of the general railroad system of transportation.

(2) Each rail hazardous materials shipper.

(3) Each rail hazardous materials receiver located with an HTUA.

(4) Each freight railroad carrier hosting the passenger operations described in § 1580.1(a)(4) of this part.

(5) Each operator of private cars, including business/office cars and circus trains, on or connected to the general railroad system of transportation, when notified by TSA in writing, that a threat exists concerning that operation.

(b) Each person described in paragraph (a) of this section must designate and use a primary and at least one alternate Rail Security Coordinator (RSC).

(c) The RSC and alternate(s) must be appointed at the corporate level.

(d) Each freight railroad carrier, rail hazardous materials shipper, and rail hazardous materials receiver required to have an RSC must provide to TSA the names, title, phone number(s), and e-mail address(es) of the RSCs and alternate RSCs, and must notify TSA within 7 calendar days when any of this information changes.

(e) Each freight railroad carrier, rail hazardous materials shipper, and rail hazardous materials receiver required to have an RSC must ensure that at least one RSC:

(1) Serves as the primary contact for intelligence information and security-related activities and communications with TSA. Any individual designated as an RSC may perform other duties in addition to those described in this section;

(2) Is available to TSA on a 24-hours a day, 7 days a week basis; and

(3) Coordinates security practices and procedures with appropriate law enforcement and emergency response agencies.

[73 FR 72173, Nov. 26, 2008, as amended at 74 FR 23656, May 20, 2009]

§ 1580.103 Location and shipping information for certain rail cars.

(a) *Applicability*. This section applies to:

(1) Each freight railroad carrier transporting one or more of the categories and quantities of rail security-sensitive materials.

(2) Each rail hazardous materials shipper.

(3) Each rail hazardous materials receiver located with an HTUA.

(b) *General requirement*. Each person described in paragraph (a) of this section must have procedures in place to determine the location and shipping information for each rail car under its physical custody and control that contains one or more of the categories and quantities of rail security-sensitive materials.

(c) *Required information*. The location and shipping information required in paragraph (b) of this section must include the following:

(1) The rail car's current location by city, county, and state, including, for freight railroad carriers, the railroad milepost, track designation, and the time that the rail car's location was determined.

(2) The rail car's routing, if a freight railroad carrier.

(3) A list of the total number of rail cars containing the materials listed in § 1580.100(b) of this part, broken down by:

(i) The shipping name prescribed for the material in column 2 of the table in 49 CFR 172.101;

(ii) The hazard class or division number prescribed for the material in column 3 of the table in 49 CFR 172.101; and

(iii) The identification number prescribed for the material in column 4 of the table in 49 CFR 172.101.

(4) Each rail car's initial and number.

(5) Whether the rail car is in a train, rail yard, siding, rail spur, or rail hazardous materials shipper or receiver facility, including the name of the rail yard or siding designation.

(d) *Timing-class I freight railroad carriers.* Upon request by TSA, each Class I freight railroad carrier described in paragraph (a) of this section must provide the location and shipping information to TSA no later than:

(1) Five minutes if the request concerns only one rail car; and

(2) Thirty minutes if the request concerns two or more rail cars.

(e) *Timing-other than class I freight railroad carriers.* Upon request by TSA, all persons described in paragraph (a) of this section, other than Class I freight railroad carriers, must provide the location and shipping information to TSA no later than 30 minutes, regardless of the number of cars covered by the request.

(f) *Method.* All persons described in paragraph (a) of this section must provide the requested location and shipping information to TSA by one of the following methods:

(1) Electronic data transmission in spreadsheet format.

(2) Electronic data transmission in Hyper Text Markup Language (HTML) format.

(3) Electronic data transmission in Extensible Markup Language (XML).

(4) Facsimile transmission of a hard copy spreadsheet in tabular format.

(5) Posting the information to a secure website address approved by TSA.

(6) Another format approved by TSA.

(g) *Telephone number.* Each person described in paragraph (a) of this section must provide a telephone number for use by TSA to request the information required in paragraph (c) of this section.

(1) The telephone number must be monitored at all times.

(2) A telephone number that requires a call back (such as an answering service, answering machine, or beeper device) does not meet the requirements of this paragraph.

(h) *Definition.* As used in this section, *Class I* has the meaning assigned by regulations of the Surface Transportation Board (STB) (49 CFR part 1201; General Instructions 1–1).

[73 FR 72173, Nov. 26, 2008, as amended at 74 FR 23657, May 20, 2009]

§ 1580.105 Reporting significant security concerns.

(a) *Applicability.* This section applies to:

(1) Each freight railroad carrier that operates rolling equipment on track that is part of the general railroad system of transportation.

(2) Each rail hazardous materials shipper.

(3) Each rail hazardous materials receiver located with an HTUA.

(4) Each freight railroad carrier hosting a passenger operation described in § 1580.1(a)(4) of this part.

(5) Each operator of private cars, including business/office cars and circus, on or connected to the general railroad system of transportation.

(b) Each person described in paragraph (a) of this section must immediately report potential threats and significant security concerns to DHS by telephoning the Freedom Center at 1–866–615–5150.

(c) Potential threats or significant security concerns encompass incidents, suspicious activities, and threat information including, but not limited to, the following:

(1) Interference with the train crew.

(2) Bomb threats, specific and nonspecific.

(3) Reports or discovery of suspicious items that result in the disruption of railroad operations.

(4) Suspicious activity occurring onboard a train or inside the facility of a freight railroad carrier, rail hazardous materials shipper, or rail hazardous materials receiver that results in a disruption of operations.

(5) Suspicious activity observed at or around rail cars, facilities, or infrastructure used in the operation of the railroad, rail hazardous materials shipper, or rail hazardous materials receiver.

(6) Discharge, discovery, or seizure of a firearm or other deadly weapon on a train, in a station, terminal, facility, or storage yard, or other location used in the operation of the railroad, rail hazardous materials shipper, or rail hazardous materials receiver.

(7) Indications of tampering with rail cars.

(8) Information relating to the possible surveillance of a train or facility,

storage yard, or other location used in the operation of the railroad, rail hazardous materials shipper, or rail hazardous materials receiver.

(9) Correspondence received by the freight railroad carrier, rail hazardous materials shipper, or rail hazardous materials receiver indicating a potential threat. Other incidents involving breaches of the security of the freight railroad carrier, rail hazardous materials shipper, or rail hazardous materials receiver's operations or facilities.

(d) Information reported should include, as available and applicable:

(1) The name of the reporting freight railroad carrier, rail hazardous materials shipper, or rail hazardous materials receiver and contact information, including a telephone number or e-mail address.

(2) The affected train, station, terminal, rail hazardous materials facility, or other rail facility or infrastructure.

(3) Identifying information on the affected train, train line, and route.

(4) Origination and termination locations for the affected train, including departure and destination city and the rail line and route, as applicable.

(5) Current location of the affected train.

(6) Description of the threat, incident, or activity.

(7) The names and other available biographical data of individuals involved in the threat, incident, or activity.

(8) The source of any threat information.

[73 FR 72173, Nov. 26, 2008, as amended at 74 FR 23657, May 20, 2009]

§ 1580.107 Chain of custody and control requirements.

(a) *Within or outside of an HTUA, rail hazardous materials shipper transferring to carrier.* Except as provided in paragraph (g) of this section, at each location within or outside of an HTUA, a rail hazardous materials shipper transferring custody of a rail car containing one or more of the categories and quantities of rail security-sensitive materials to a freight railroad carrier must:

(1) Physically inspect the rail car before loading for signs of tampering, including closures and seals; other signs that the security of the car may have been compromised; suspicious items or items that do not belong, including the presence of an improvised explosive device.

(2) Keep the rail car in a rail secure area from the time the security inspection required by paragraph (a)(1) of this section or by 49 CFR 173.31(d), whichever occurs first, until the freight railroad carrier takes physical custody of the rail car.

(3) Document the transfer of custody to the railroad carrier in writing or electronically.

(b) *Within or outside of an HTUA, carrier receiving from a rail hazardous materials shipper.* At each location within or outside of an HTUA where a freight railroad carrier receives from a rail hazardous materials shipper custody of a rail car containing one or more of the categories and quantities of rail security-sensitive materials, the freight railroad carrier must document the transfer in writing or electronically and perform the required security inspection in accordance with 49 CFR 174.9.

(c) *Within an HTUA, carrier transferring to carrier.* Within an HTUA, whenever a freight railroad carrier transfers a rail car containing one or more of the categories and quantities of rail security-sensitive materials to another freight railroad carrier, each freight railroad carrier must adopt and carry out procedures to ensure that the rail car is not left unattended at any time during the physical transfer of custody. These procedures must include the receiving freight railroad carrier performing the required security inspection in accordance with 49 CFR 174.9. Both the transferring and the receiving railroad carrier must document the transfer of custody in writing or electronically.

(d) *Outside of an HTUA, carrier transferring to carrier.* Outside an HTUA, whenever a freight railroad carrier transfers a rail car containing one or more of the categories and quantities of rail security-sensitive materials to another freight railroad carrier, and the rail car containing this hazardous material may subsequently enter an HTUA, each freight railroad carrier must adopt and carry out procedures to

ensure that the rail car is not left unattended at any time during the physical transfer of custody. These procedures must include the receiving railroad carrier performing the required security inspection in accordance with 49 CFR 174.9. Both the transferring and the receiving railroad carrier must document the transfer of custody in writing or electronically.

(e) *Within an HTUA, carrier transferring to rail hazardous materials receiver.* A freight railroad carrier delivering a rail car containing one or more of the categories and quantities of rail security-sensitive materials to a rail hazardous materials receiver located within an HTUA must not leave the rail car unattended in a non-secure area until the rail hazardous materials receiver accepts custody of the rail car. Both the railroad carrier and the rail hazardous materials receiver must document the transfer of custody in writing or electronically.

(f) *Within an HTUA, rail hazardous materials receiver receiving from carrier.* Except as provided in paragraph (j) of this section, a rail hazardous materials receiver located within an HTUA that receives a rail car containing one or more of the categories and quantities of rail security-sensitive materials from a freight railroad carrier must:

(1) Ensure that the rail hazardous materials receiver or railroad carrier maintains positive control of the rail car during the physical transfer of custody of the rail car.

(2) Keep the rail car in a rail secure area until the car is unloaded.

(3) Document the transfer of custody from the railroad carrier in writing or electronically.

(g) *Within or outside of an HTUA, rail hazardous materials receiver rejecting car.* This section does not apply to a rail hazardous materials receiver that does not routinely offer, prepare, or load for transportation by rail one or more of the categories and quantities of rail security-sensitive materials. If such a receiver rejects and returns a rail car containing one or more of the categories and quantities of rail security-sensitive materials to the originating offeror or shipper, the requirements of this section do not apply to the receiver. The requirements of this section do apply to any railroad carrier to which the receiver transfers custody of the rail car.

(h) *Document retention.* Covered entities must maintain the documents required under this section for at least 60 calendar days and make them available to TSA upon request.

(i) *Rail secure area.* The rail hazardous materials shipper and the rail hazardous materials receiver must use physical security measures to ensure that no unauthorized person gains access to the rail secure area.

(j) *Exemption for rail hazardous materials receivers.* A rail hazardous materials receiver located within an HTUA may request from TSA an exemption from some or all of the requirements of this section if the receiver demonstrates that the potential risk from its activities is insufficient to warrant compliance with this section. TSA will consider all relevant circumstances, including—

(1) The amounts and types of all hazardous materials received.

(2) The geography of the area surrounding the receiver's facility.

(3) Proximity to entities that may be attractive targets, including other businesses, housing, schools, and hospitals.

(4) Any information regarding threats to the facility.

(5) Other circumstances that indicate the potential risk of the receiver's facility does not warrant compliance with this section.

(k) *Terms used in this section.* (1) As used in this section, a rail car is *attended* if an employee or authorized representative:

(i) Is physically located on site in reasonable proximity to the rail car;

(ii) Is capable of promptly responding to unauthorized access or activity at or near the rail car, including immediately contacting law enforcement or other authorities; and

(iii) Immediately responds to any unauthorized access or activity at or near the rail car either personally or by contacting law enforcement or other authorities.

(2) As used in this section, *maintains positive control* means that the rail hazardous materials receiver and the railroad carrier communicate and cooperate with each other to provide for the security of the rail car during the physical transfer of custody. *Attending* the rail car is a component part of maintaining positive control.

(3) As used in this section, *document the transfer* means documentation uniquely identifying that the rail car was attended during the transfer of custody, including:

(i) Car initial and number.

(ii) Identification of individuals who attended the transfer (names or uniquely identifying employee number).

(iii) Location of transfer.

(iv) Date and time the transfer was completed.

[73 FR 72173, Nov. 26, 2008, as amended at 74 FR 23657, May 20, 2009]

§ 1580.109 Preemptive effect.

Under 49 U.S.C. 20106, issuance of the regulations in this part preempts any State law, regulation, or order covering the same subject matter, except an additional or more stringent law, regulation, or order that is necessary to eliminate or reduce an essentially local security hazard; that is not incompatible with a law, regulation, or order of the United States Government; and that does not unreasonably burden interstate commerce. For example, under 49 U.S.C. 20106, issuance of § 1580.107 of this subpart preempts any State or tribal law, rule, regulation, order or common law requirement covering the same subject matter.

§ 1580.111 Harmonization of federal regulation of nuclear facilities.

TSA will coordinate activities under this subpart with the Nuclear Regulatory Commission (NRC) and the Department of Energy (DOE) with respect to regulation of rail hazardous materials shippers and receivers that are also licensed or regulated by the NRC or DOE under the Atomic Energy Act of 1954, as amended, to maintain consistency with the requirements imposed by the NRC and DOE.

Subpart C—Passenger Rail Including Passenger Railroad Carriers, Rail Transit Systems, Tourist, Scenic, Historic and Excursion Operators, and Private Cars

§ 1580.200 Applicability.

This subpart includes requirements for:

(a) Each passenger railroad carrier, including each carrier operating light rail or heavy rail transit service on track that is part of the general railroad system of transportation, each carrier operating or providing intercity passenger train service or commuter or other short-haul railroad passenger service in a metropolitan or suburban area (as described by 49 U.S.C. 20102), and each public authority operating passenger train service.

(b) Each passenger railroad carrier hosting an operation described in paragraph (a) of this section.

(c) Each tourist, scenic, historic, and excursion rail operator, whether operating on or off the general railroad system of transportation.

(d) Each operator of private cars, including business/office cars and circus trains, on or connected to the general railroad system of transportation.

(e) Each operator of a rail transit system that is not operating on track that is part of the general railroad system of transportation, including heavy rail transit, light rail transit, automated guideway, cable car, inclined plane, funicular, and monorail systems.

§ 1580.201 Rail security coordinator.

(a) *Applicability*. This section applies to:

(1) Each passenger railroad carrier, including each carrier operating light rail or heavy rail transit service on track that is part of the general railroad system of transportation, each carrier operating or providing intercity passenger train service or commuter or other short-haul railroad passenger service in a metropolitan or suburban area (as described by 49 U.S.C. 20102), and each public authority operating passenger train service.

(2) Each passenger railroad carrier hosting an operation described in paragraph (a)(1) of this section.

(3) Each operator of a rail transit system that is not operating on track that is part of the general railroad system of transportation, including heavy rail transit, light rail transit, automated guideway, cable car, inclined plane, funicular, and monorail systems.

(4) Each operator of private cars, including business/office cars and circus trains, on or connected to the general railroad system of transportation, when notified by TSA, in writing, that a security threat exists concerning that operation.

(5) Each tourist, scenic, historic, or excursion operations, whether on or off the general railroad system of transportation, when notified by TSA, in writing, that a security threat exists concerning that operation.

(b) Each person described in paragraph (a) of this section must designate and use a primary and at least one alternate RSC.

(c) The RSC and alternate(s) must be appointed at the corporate level.

(d) Each passenger railroad carrier and rail transit system required to have an RSC must provide to TSA the names, titles, phone number(s), and e-mail address(es) of the RSCs, and alternate RSCs, and must notify TSA within 7 calendar days when any of this information changes.

(e) Each passenger railroad carrier and rail transit system required to have an RSC must ensure that at least one RSC:

(1) Serves as the primary contact for intelligence information and security-related activities and communications with TSA. Any individual designated as an RSC may perform other duties in addition to those described in this section.

(2) Is available to TSA on a 24-hours a day, 7 days a week basis.

(3) Coordinate security practices and procedures with appropriate law enforcement and emergency response agencies.

§ 1580.203 Reporting significant security concerns.

(a) *Applicability*. This section applies to:

(1) Each passenger railroad carrier, including each carrier operating light rail or heavy rail transit service on track that is part of the general railroad system of transportation, each carrier operating or providing intercity passenger train service or commuter or other short-haul railroad passenger service in a metropolitan or suburban area (as described by 49 U.S.C. 20102), and each public authority operating passenger train service.

(2) Each passenger railroad carrier hosting an operation described in paragraph (a)(1) of this section.

(3) Each tourist, scenic, historic, and excursion rail operator, whether operating on or off the general railroad system of transportation.

(4) Each operator of private cars, including business/office cars and circus trains, on or connected to the general railroad system of transportation.

(5) Each operator of a rail transit system that is not operating on track that is part of the general railroad system of transportation, including heavy rail transit, light rail transit, automated guideway, cable car, inclined plane, funicular, and monorail systems.

(b) Each person described in paragraph (a) of this section must immediately report potential threats and significant security concerns to DHS by telephoning the Freedom Center at 1–866–615–5150.

(c) Potential threats or significant security concerns encompass incidents, suspicious activities, and threat information including, but not limited to, the following:

(1) Interference with the train or transit vehicle crew.

(2) Bomb threats, specific and nonspecific.

(3) Reports or discovery of suspicious items that result in the disruption of rail operations.

(4) Suspicious activity occurring onboard a train or transit vehicle or inside the facility of a passenger railroad carrier or rail transit system that results in a disruption of rail operations.

(5) Suspicious activity observed at or around rail cars or transit vehicles, facilities, or infrastructure used in the operation of the passenger railroad carrier or rail transit system.

(6) Discharge, discovery, or seizure of a firearm or other deadly weapon on a train or transit vehicle or in a station, terminal, facility, or storage yard, or other location used in the operation of the passenger railroad carrier or rail transit system.

(7) Indications of tampering with passenger rail cars or rail transit vehicles.

(8) Information relating to the possible surveillance of a passenger train or rail transit vehicle or facility, storage yard, or other location used in the operation of the passenger railroad carrier or rail transit system.

(9) Correspondence received by the passenger railroad carrier or rail transit system indicating a potential threat to rail transportation.

(10) Other incidents involving breaches of the security of the passenger railroad carrier or the rail transit system operations or facilities.

(d) Information reported should include, as available and applicable:

(1) The name of the passenger railroad carrier or rail transit system and contact information, including a telephone number or e-mail address.

(2) The affected station, terminal, or other facility.

(3) Identifying information on the affected passenger train or rail transit vehicle including number, train or transit line, and route, as applicable.

(4) Origination and termination locations for the affected passenger train or rail transit vehicle, including departure and destination city and the rail or transit line and route.

(5) Current location of the affected passenger train or rail transit vehicle.

(6) Description of the threat, incident, or activity.

(7) The names and other available biographical data of individuals involved in the threat, incident, or activity.

(8) The source of any threat information.

[73 FR 72173, Nov. 26, 2008, as amended at 74 FR 23657, May 20, 2009]

Appendix A to Part 1580—High Threat Urban Areas (HTUAs)

State	Candidate urban area	Geographic area captured in the data count	Previously designated urban areas included
AZ	Phoenix Area *	Chandler, Gilbert, Glendale, Mesa, Peoria, Phoenix, Scottsdale, Tempe, and a 10-mile buffer extending from the border of the combined area.	Phoenix, AZ.
CA	Anaheim/Santa Ana Area.	Anaheim, Costa Mesa, Garden Grove, Fullerton, Huntington Beach, Irvine, Orange, Santa Ana, and a 10-mile buffer extending from the border of the combined area.	Anaheim, CA; Santa Ana, CA.
	Bay Area	Berkeley, Daly City, Fremont, Hayward, Oakland, Palo Alto, Richmond, San Francisco, San Jose, Santa Clara, Sunnyvale, Vallejo, and a 10-mile buffer extending from the border of the combined area.	San Francisco, CA; San Jose, CA; Oakland, CA.
	Los Angeles/Long Beach Area.	Burbank, Glendale, Inglewood, Long Beach, Los Angeles, Pasadena, Santa Monica, Santa Clarita, Torrance, Simi Valley, Thousand Oaks, and a 10-mile buffer extending from the border of the combined area.	Los Angeles, CA; Long Beach, CA.
	Sacramento Area *	Elk Grove, Sacramento, and a 10-mile buffer extending from the border of the combined area.	Sacramento, CA.
	San Diego Area *	Chula Vista, Escondido, and San Diego, and a 10-mile buffer extending from the border of the combined area.	San Diego, CA.
CO	Denver Area	Arvada, Aurora, Denver, Lakewood, Westminster, Thornton, and a 10-mile buffer extending from the border of the combined area.	Denver, CO.
DC	National Capital Region.	National Capital Region and a 10-mile buffer extending from the border of the combined area.	National Capital Region, DC.
FL	Fort Lauderdale Area.	Fort Lauderdale, Hollywood, Miami Gardens, Miramar, Pembroke Pines, and a 10-mile buffer extending from the border of the combined area.	N/A.
	Jacksonville Area	Jacksonville and a 10-mile buffer extending from the city border	Jacksonville, FL.
	Miami Area	Hialeah, Miami, and a 10-mile buffer extending from the border of the combined area.	Miami, FL.
	Orlando Area	Orlando and a 10-mile buffer extending from the city border	Orlando, FL.
	Tampa Area *	Clearwater, St. Petersburg, Tampa, and a 10-mile buffer extending from the border of the combined area.	Tampa, FL.
GA	Atlanta Area	Atlanta and a 10-mile buffer extending from the city border	Atlanta, GA.
HI	Honolulu Area	Honolulu and a 10-mile buffer extending from the city border	Honolulu, HI.
IL	Chicago Area	Chicago and a 10-mile buffer extending from the city border	Chicago, IL.
IN	Indianapolis Area	Indianapolis and a 10-mile buffer extending from the city border	Indianapolis, IN.
KY	Louisville Area *	Louisville and a 10-mile buffer extending from the city border	Louisville, KY.

State	Candidate urban area	Geographic area captured in the data count	Previously designated urban areas included
LA	Baton Rouge Area*.	Baton Rouge and a 10-mile buffer extending from the city border	Baton Rouge, LA.
	New Orleans Area	New Orleans and a 10-mile buffer extending from the city border	New Orleans, LA.
MA	Boston Area	Boston, Cambridge, and a 10-mile buffer extending from the border of the combined area.	Boston, MA.
MD	Baltimore Area	Baltimore and a 10-mile buffer extending from the city border	Baltimore, MD.
MI	Detroit Area	Detroit, Sterling Heights, Warren, and a 10-mile buffer extending from the border of the combined area.	Detroit, MI.
MN	Twin Cities Area	Minneapolis, St. Paul, and a 10-mile buffer extending from the border of the combined entity.	Minneapolis, MN; St. Paul, MN.
MO	Kansas City Area	Independence, Kansas City (MO), Kansas City (KS), Olathe, Overland Park, and a 10-mile buffer extending from the border of the combined area.	Kansas City, MO.
	St. Louis Area	St. Louis and a 10-mile buffer extending from the city border	St. Louis, MO.
NC	Charlotte Area	Charlotte and a 10-mile buffer extending from the city border	Charlotte, NC.
NE	Omaha Area*	Omaha and a 10-mile buffer extending from the city border	Omaha, NE.
NJ	Jersey City/Newark Area.	Elizabeth, Jersey City, Newark, and a 10-mile buffer extending from the border of the combined area.	Jersey City, NJ; Newark, NJ.
NV	Las Vegas Area*	Las Vegas, North Las Vegas, and a 10-mile buffer extending from the border of the combined entity.	Las Vegas, NV.
NY	Buffalo Area*	Buffalo and a 10-mile buffer extending from the city border	Buffalo, NY.
	New York City Area.	New York City, Yonkers, and a 10-mile buffer extending from the border of the combined area.	New York, NY.
OH	Cincinnati Area	Cincinnati and a 10-mile buffer extending from the city border	Cincinnati, OH.
	Cleveland Area	Cleveland and a 10-mile buffer extending from the city border	Cleveland, OH.
	Columbus Area	Columbus and a 10-mile buffer extending from the city border	Columbus, OH.
	Toledo Area*	Oregon, Toledo, and a 10-mile buffer extending from the border of the combined area.	Toledo, OH.
OK	Oklahoma City Area*.	Norman, Oklahoma and a 10-mile buffer extending from the border of the combined area.	Oklahoma City, OK.
OR	Portland Area	Portland, Vancouver, and a 10-mile buffer extending from the border of the combined area.	Portland, OR.
PA	Philadelphia Area	Philadelphia and a 10-mile buffer extending from the city border	Philadelphia, PA.
	Pittsburgh Area	Pittsburgh and a 10-mile buffer extending from the city border	Pittsburgh, PA.
TN	Memphis Area	Memphis and a 10-mile buffer extending from the city border	Memphis, TN.
TX	Dallas/Fort Worth/Arlington Area.	Arlington, Carrollton, Dallas, Fort Worth, Garland, Grand Prairie, Irving, Mesquite, Plano, and a 10-mile buffer extending from the border of the combined area.	Dallas, TX; Fort Worth, TX; Arlington, TX.
	Houston Area	Houston, Pasadena, and a 10-mile buffer extending from the border of the combined entity.	Houston, TX.
	San Antonio Area	San Antonio and a 10-mile buffer extending from the city border	San Antonio, TX.
WA	Seattle Area	Seattle, Bellevue, and a 10-mile buffer extending from the border of the combined area.	Seattle, WA.
WI	Milwaukee Area	Milwaukee and a 10-mile buffer extending from the city border	Milwaukee, WI.

*FY05 Urban Areas eligible for sustainment funding through the FY06 Urban Areas Security Initiative (UASI) program; any Urban Area not identified as eligible through the risk analysis process for two consecutive years will not be eligible for continued funding under the UASI program.

APPENDIX B TO PART 1580—SUMMARY OF THE APPLICABILITY OF PART 1580

[This is a summary—see body of text for complete requirements]

Security measure and rule section	Freight railroad carriers NOT transporting specified hazardous materials	Freight railroad carriers transporting specified hazardous materials (§ 1580.100(b))	Rail operations at certain facilities that ship (*i.e.*, offer, prepare, or load for transportation) hazardous materials	Rail operations at certain facilities that receive or unload hazardous materials within an HTUA	Passenger railroad carriers and rail transit systems	Certain other rail operations (private, business/office, circus, tourist, historic, excursion)
Allow TSA to inspect (§ 1580.5)	X	X	X	X	X	X
Appoint rail security coordinator (§ 1580.101 freight; § 1580.201 passenger)	X	X	X	X	X	(1)
Report significant security concerns (§ 1580.105 freight; § 1580.203 passenger)	X	X	X	X	X	X
Provide location and shipping information for rail cars containing specified hazardous materials if requested (§ 1580.103)	.....	X	X	X		
Chain of custody and control requirements for transport of specified hazardous materials that are or may be in HTUA (§ 1580.107)	.....	X	X	X		

[1] Only if notified in writing that a security threat exists.