

## Office of the Secretary, DOT

## §213.3

time to time be prescribed by the Department.

[ER-680, 36 FR 7306, Apr. 17, 1971, as amended at 61 FR 34725, July 3, 1996]

### §213.2 Reports of traffic data.

The Department may at any time require any foreign air carrier to file with the Department traffic data disclosing the nature and extent of such carrier's engagement in transportation between points in the United States and points outside thereof. The Department will specify the traffic data required in each such instance. Interested persons seeking reconsideration of a Department determination under this section may file a petition pursuant to Rule 14 of part 302 within 10 days after Department action.

[ER-624, 35 FR 8881, June 9, 1970, as amended at 65 FR 6456, Feb. 9, 2000]

### §213.3 Filing and approval of schedules.

(a) In the absence of provisions to the contrary in the permit and of Department action pursuant to this section, a foreign air carrier may determine the schedules (including type of equipment used) pursuant to which it engages in transportation between points in the United States and points outside thereof.

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

time of arrival and departure at each point, the frequency of each schedule, and the effective date of any proposed schedule.

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

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

(e) No petitions for reconsideration may be filed with respect to Department orders issued pursuant to paragraph (b), (c), or (d) of this section. Nevertheless, if the Department serves

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a notification under paragraph (d) of this section, the carrier may make application to the Department for approval of any or all existing or proposed schedules, pursuant to the provisions of §213.5. The Department may with or without hearing withdraw, in whole or in part, its notification at any time and may permit existing or proposed schedules to be operated for such period or periods as the Department may determine.

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

[ER-624, 35 FR 8881, June 9, 1970, as amended by ER-870, 39 FR 30843, Aug. 26, 1974; ER-1107, 47 FR 46495, Oct. 19, 1982; 61 FR 34725, July 3, 1996]

## §213.4 [Reserved]

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

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

(b) *Pleadings by interested persons.* Any interested person may file and serve upon the foreign air carrier a memorandum in opposition to, or in support of, schedules or an application for approval of schedules within 10 days

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of the filing opposed or supported. All memoranda shall set forth in detail the reasons for the position taken together with a statement of economic data and other matters which it is desired that the Department officially notice, and affidavits stating other facts relied upon. Memoranda shall contain a certificate of service as prescribed in paragraph (a) of this section. An executed original and seven (7) true copies shall be filed with the Department's Docket Facility. Unless otherwise provided by the Department, further pleadings will not be entertained.

(c) *Determination and petitions for reconsideration.* The Department may make its determination upon the application and other pleadings or, in its discretion, after hearing. Interested persons seeking reconsideration of the Department's determination on an application approval of schedules may file a petition pursuant to Rule 14 of part 302 of this chapter within 10 days of Department action. Any interested person may file an answer in opposition to, or in support of, the petition within 10 days after it is filed. An executed original and 19 copies of such petition for reconsideration or memorandum shall be filed with the Docket Facility. All petitions for reconsideration shall contain a certificate of service in the form prescribed by paragraph (a) of this section. Unless ordered by the Department upon application or upon its own motion, further pleadings will not be entertained.

[ER-624, 35 FR 8881, June 9, 1970, as amended by ER-644, 35 FR 14382, Sept. 12, 1970; 61 FR 34725, July 3, 1996; 65 FR 6456, Feb. 9, 2000]

### §213.6 Compliance.

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