

## §212.3

between a direct air carrier and its charterer or lessee. It does not include scheduled interstate air transportation, scheduled foreign air transportation, or nonscheduled cargo foreign air transportation, sold on an individually ticketed or individually waybilled basis.

*Charter operator* means:

(1) A “Public Charter operator” as defined in §380.2 of this chapter, or

(2) An “Overseas Military Personnel Charter operator” as defined in §372.2 of this chapter.

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

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

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

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

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

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

(1) Lasts more than 60 days, or

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

*Mixed charter* means a charter, the cost of which is borne partly by the charter participants and partly by the charterer, where all the passengers meet the eligibility requirements for “affinity (pro rata)” charters of §212.5.

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

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*Seventh-freedom charter* means a charter flight carrying traffic that originates and terminates in a country other than the foreign air carrier’s home country, where the flight does not have a prior, intermediate, or subsequent stop in the foreign air carrier’s home country.

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

*Sixth-freedom charter* means a charter flight carrying traffic that originates and terminates in a country other than the country of the foreign air carrier’s home country, provided the flight operates via the home country of the foreign air carrier.

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

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

[Docket No. OST-97-2356, 63 FR 28236, May 22, 1998, as amended at 71 FR 5784, Feb. 3, 2006]

### §212.3 General provisions.

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

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

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

(i) The name and address of either the surety whose bond secures advance

charter payments received by the carrier, or of the carrier's depository bank to which checks or money orders for the advance charter payments are to be made payable as escrow holder pending completion of the charter trip; and

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

(d) A certificated or foreign air carrier must make a reasonable effort to verify that any charterer with which it contracts, and any charter it conducts, meets the applicable requirements of this chapter.

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

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

be provided by another certificated or foreign air carrier.

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

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

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

(j) A certificated air carrier may not, except as set forth in part 121 of the Federal Aviation Regulations (14 CFR part 121), limit the availability, upon reasonable request, of air transportation and related services to a person who may require help from another person in expeditiously moving to an emergency exit for evacuation of an aircraft.

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

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

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

#### §212.4 Authorized charter types.

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

- (a) Affinity (pro rata) charters.