DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Parts 221, 250, and 293

[Docket No. OST–97–2050]

RIN 2105–AC61

Exemptions From Passenger Tariff-Filing Requirements in Certain Instances

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: Pursuant to the notice procedures in new part 293, the Department is exempting U.S. and foreign air carriers from the statutory and regulatory duty to file international passenger tariffs with DOT in certain instances, subject to the reimposition of the duty in specific cases when consistent with the public interest. In addition, the Department is reissuing a new version of part 221 that eliminates most of the traditional paper format and filing procedures set forth in the present version of 14 CFR part 221.

Following the notice specified in new part 293, certain currently effective price tariffs are canceled as a matter of law, pending tariff applications covered by the exemption are dismissed, and new tariffs will generally not be accepted for filing. In response to comments, currently effective rules related to general ''conditions of carriage'' of each passenger, set forth in general governing rules tariffs, may continue in legal effect for 180 days from the date of effectiveness of the final rule, although carriers may elect to cancel them earlier and may also deviate from such rules through express agreement. This action is taken on the Department's initiative in order to streamline government operations and eliminate unjustified regulatory burdens.

DATES: This regulation is effective on September 10, 1999. However, the cancellation of certain general tariff rules will take place 180 days later as provided in § 293.10 of new part 293.

FOR FURTHER INFORMATION CONTACT: Mr. John H. Kiser or Mr. Keith A. Shangraw, Office of the Secretary, Office of International Aviation, X–43, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Telephone: (202) 366–2435.

SUPPLEMENTARY INFORMATION:

Background

Section 41504 of Title 49 of the United States Code (the Code), formerly section 403(a) of the Federal Aviation Act of 1958, as amended, requires every U.S. and foreign air carrier to file with the Department, and to keep open for public inspection, tariffs showing all prices for ''foreign air transportation'' between points served by that carrier, as well as all the rules relating to that transportation to the extent required by the Department. This requirement includes passenger fares, related charges and governing rules. 14 CFR part 221 establishes the detailed tariff-filing rules and authority for approvals, rejections and waivers. Once allowed to become effective by the Department, these tariffs become legally binding terms in the contract of carriage for international air transportation.

In his Regulatory Reinvention Initiative Memorandum of March 4, 1995, President Clinton directed Federal agencies to conduct a page-by-page review of all of their regulations and to ''eliminate or revise those that are outdated or otherwise in need of reform.'' In response to that directive, the Department has undertaken a review of its aviation economic regulations contained in 14 CFR Chapter II to determine whether changes should be made to promote economic growth, create jobs, or eliminate unnecessary costs or other burdens on the economy. Among the regulations reviewed are those governing the filing of tariffs by airlines for their foreign air transportation, set forth in 14 CFR part 221.

In two recently completed rulemaking proceedings, the Department determined that the amount of tariff material filed by carriers exceeded our regulatory requirements in certain respects; that alternative methods existed for protecting consumers and other elements of the public interest which are more effective than filed tariffs; and that procedures should be developed to foster the electronic filing and the review of those tariffs which should continue to be filed. On November 30, 1995, the Department published a final rule exempting carriers from their regulatory duty to file tariffs for the foreign air transportation of cargo. On April 24, 1996, the Department published a final rule establishing procedures for the electronic filing of passenger rules tariffs.

In this, the third rulemaking proceeding involving the tariff system, undertaken as part of the President's directive, the Department has determined that the filing of certain tariffs with the Department for the foreign air transportation of passengers is no longer necessary or appropriate, and accordingly grants another exemption from the tariff-filing requirement set forth in part 221. Under the rule in new part 293, the Assistant Secretary will issue a notice specifying the terms of the exemptions for markets in Category A (no fare filing), Category B (normal economy fare filing only) or Category C (filing all fares), taking into account specific factors present in each market. After this first determination, the Assistant Secretary, acting on his own initiative or in response to petitions, may issue further notices transferring countries between categories. For example, the entry into force of an ''open skies'' air transport agreement would warrent moving a country into Category A where no fares will be filed. On the other hand, foreign government actions denying U.S. carrier pricing initiatives, could justify the re-institution of full tariff filing reguirements in Category C.[1]

In addition, the Department has identified a substantial number of provisions in part 221 that are redundant, contain obsolete references, or are out-dated given present regulatory practices and needs. Accordingly, the Department is issuing a general revision of part 221 to eliminate redundancies, excess verbiage and obsolete provisions; to make necessary technical changes; and to reorganize the subparts in a more logical order.

Comments

We received comments on our proposal from Air Pacific Limited (Air Pacific); the Airline Tariff Publishing Company (ATPCO); the Air Transport Association of America (ATA); British Airways PLC (BA); Federal Express Corporation (FedEx); the International Air Transport Association (IATA); Korean Air Lines Co., Ltd. (KAL); Pakistan International Airlines Corporation (PIA); Qantas Airways Limited (Qantas); and United Air Lines, Inc. (UAL). Finally, on September 30, 1997, ATA filed a motion for leave to file supplemental comments.[2]

The carriers did not comment upon the proposed revisions to part 221 itself, except where expressing general approval. However, ATA expressed concern with our tentative decision to leave intact the existing Warsaw Convention notice requirements in part 221 until future needs in this area become clearer. While initially requesting only that the Department be

[1] However, adverse foreign government actions in areas not directly involving pricing, such as route and capacity issues, would not warrant re-institution of full Category C tariff filing requirements, except in the most unusual circumstances.

[2] We grant ATA's motion.

prepared to make future changes to these requirements to reflect the new passenger liability limits agreed to by many carriers, ATA, in its supplemental comments, urges the Department to adopt herein ''a more flexible notice requirement'' that would permit carriers which have filed tariff revisions waiving the Warsaw passenger liability limits pursuant to DOT-approved agreements to devise, subject to DOT approval, a single ticket notice to replace both the detailed notice prescribed in current § 221.175 for services involving the United States and the separate, worldwide Warsaw liability notice appearing on standard ticket stock.

Comments regarding the proposed exemption from passenger tariff filing requirements were generally positive. For the most part, BA, FedEx, KAL, PIA and UAL, as well as ATA and ATPCO generally support the proposal. IATA takes no position on the proposal to exempt airlines from the requirement to file passenger fare tariffs in certain instances, but supports the proposal to exempt all airlines from the requirement to file general passenger rules tariffs. Air Pacific and Qantas oppose the proposed exemption from filing general passenger rules tariffs because they prefer to continue to rely on the presumed notice to passengers, stemming from the formal filing of these rules, as a defense against various kinds of passenger claims. ATA urges the Department to remove the word ''conflicting'', which it believes limits protection from preemption by state laws, in the proposed section 293.21(c). This section sets uniform disclosure requirements which preempt any conflicting State requirements on the incorporation of terms by reference into contracts of carriage for scheduled transportation of passengers in foreign air transportation.

Several parties express concerns or condition their support upon modifications to the proposal. ATA, BA and IATA support the exemption from the requirement to file general passenger rules provided that the cancellation of these rules tariffs is extended an additional 90 days (for a total transition period of 180 days following the Assistant Secretary's notice). ATPCO expresses concerns about the amount of time needed to adjust its electronic filing system to the new filing regime, but nevertheless states that the airlines should not be denied immediate relief from the burden of filing their tariffs. Accordingly, APTCO requests that the Department permit carriers or their agents to continue to file their tariffs electronically in the same manner as today without paying the Department's filing fees until ATPCO can reconfigure its electronic filing system (EFS). ATA requests that the Department not grant carriers of countries in Categories A or B an exemption from filing fares for travel between the United States and a third country (*i.e.*, on fifth and sixth freedom services) unless that carrier's home country has agreed bilaterally to a pricing regime which affords U.S. carriers the right to exercise price leadership in fifth and sixth freedom markets, as well as in third and fourth freedom markets. Finally, UAL takes issue with the categories in which the NPRM proposed to place certain countries and urges that the NPRM's country-category list and any future actions regarding categorization of countries be subject to the procedures for public notice and comment.

Decision

We have decided to adopt the NPRM essentially as proposed, with certain minor changes in response to the comments. First, we will grant the requests to extend the proposed transition period for cancellation of the general passenger rules tariffs in section 293.22 from 90 days to 180 days after the Assistant Secretary issues his notice containing the initial description of those general conditions of passenger carriage that must still be filed in tariffs. On the other hand, we will grant carriers the option to cancel their official general rules tariffs involving conditions of carriage before the end of the 180 day period, and to deviate from any rules on file by express agreement with the passenger, such as by ticket notation.

Second, while not adopting ATA's suggestion in its entirety, we will modify our category procedures to allow the Assistant Secretary the option to require carriers who are nationals of countries placed in Categories A and B nevertheless to continue to file their passenger tariffs for services between the U.S. and third countries if effective price leadership opportunities for U.S. carriers are not available between the foreign carrier's home country and third countries.

Finally, third, we will amend the language of section 293.21, as suggested by ATA, to avoid any confusion on the state of federal preemption law under Title 49.

Discussion of Comments and Issues

1. Transitional Period

Most of the responses concern the length of the transitional period. Consistent with our action on our final rule exempting carriers from filing their cargo tariffs, we proposed a 90-day phase-out schedule for passenger rules tariffs. ATA, BA and ATA feel that a 90-day transitional period would be too short, and that more time is needed to revise passenger travel documents and notice procedures. ATA argues that carriers need more time to assure a smooth transition to the new regime given the longstanding requirement to file passenger tariffs and the overall complexity of the foreign air transportation environment. BA asserts that continuation of that existing regime for another 180 days would cause no harm, and would benefit both passengers and carriers by reducing the possibility that the old tariff system for filing passenger rules will expire before the new section 221.177 notice system can be fully implemented.

We feel that the concerns expressed about the need for a longer period to facilitate a smooth transition to the new regime have merit; therefore, we have no problem with extending the transition period under section 293.22 to 180 days. While we did not extend the transitional period in the case of our cargo tariff filing exemption, in this case we believe that the diverse general rules involved may make the transition process more complicated, warranting a longer transition period. This 180-day transition period will begin after issuance of the Assistant Secretary's notice setting forth the initial list of exempted markets and the descriptions of those general rules relating to conditions of carriage that are being exempted from the filing requirement.

2. ATPCO EFS Reconfiguration

ATPCO is concerned not only about the time needed to reconfigure its electronic tariff filing system but also with the associated expense. Accordingly, while it will have to continue to file tariffs in the exempted markets until it completes reprogramming to segregate exempted and non-exempted markets, ATPCO suggests that the Department desist from collecting the usual filing fees on exempted fares and rules on the grounds that DOT will not have to review the exempted matter.

With regard to ATPCO's request for relief from paying our filing fees, we will continue to collect these fees for tariffs filed during the period it needs to reprogram its electronic tariff filing system to exclude exempted material. Until the Assistent Secretary's notice becomes effective, the exemption for certain markets and fares is not in force. Further, until ATPCO completes its reprogramming, the Department will continue to receive passenger tariff filings that include both required and

exempted tariff material. Department analysts will have to continue to review each tariff filing during this period to ensure that no required tariff material is overlooked. In the short term, demands on the Department's limited resources will continue at the same level.

3. Comments on Country Categories

UAL voices concerns about the classification of certain countries. It disagrees with the tentative placement of one of the listed countries into Category A, rather than Category C, for reasons related to its alleged noncompliance with the terms of its bilateral agreement with the United States.

It appears that some commenters believe that the markets listed in the NPRM will be immediately exempted from our tariff filing requirements upon issuance of a final rule on Part 221. This is not so; these markets were included in the NPRM for illustrative purposes only based on the status of bilateral agreements and relations at that time. We would like to make it clear that a further notice from the Department is necessary before any markets are exempted from our tariff filing requirements. The final rule will merely put this mechanism into place.

We do not agree with United that it is appropriate to specify in this rule whether and when the Department may request comment on its categorization of countries or adjustments to fifth/sixth freedom filing requirements. As a general matter, the characterization of bilateral agreements and their implementation for regulatory purposes is a question of the international aviation policy judgment of the Department, and certainly that would be the case under part 293. Carriers experiencing significant bilateral problems usually keep the Department well informed of the circumstances. A case in point is the determination of ''liberal'' markets for SFFL purposes. Certainly, if a situation arises in which the Department believes that public comment would be helpful, it will provide specific notice and opportunity for comment. For this reason, we will amend subsection 293.10(c) to delete the implication of advance formal procedures for public comment.

4. Filing of Tariffs for Fifth and Sixth Freedom Markets

ATA is concerned that under the rule as proposed, foreign carriers from countries in Categories A and B could be exempt from filing fares for their fifth and sixth freedom services to and from U.S. points even though their government has not agreed bilaterally to a pricing regime which affords U.S. carriers the right to exercise price leadership on their fifth and sixth freedom services to/from that country. UAL generally supports ATA's concerns.

We find that this concern has merit. Such price leadership issues are certainly relevant to our stated category criteria. However, this is an area in which we have decided to allow for a more flexible response than that suggested by ATA. We have decided to add a new subparagraph (c) to section 293.10 of our proposal. Under that subparagraph, the Assistant Secretary may require carriers of countries placed in Categories A or B nevertheless to continue to file passenger tariffs for services they offer between the U.S. one or more third countries. In making this determination, the Assistant Secretary will take into consideration the bilateral rights or extra-bilateral opportunities of U.S. carriers to comparable price leadership initiatives, as well as their implementation by the foreign carrier's government.

Consequently, if there are countries in categories A or B that, in fact, restrict fifth and/or sixth freedom fare initiatives of U.S. carriers for services between that foreign country and a third country, we may consider either placing that country into a different category or nevertheless requiring its carriers to continue to file tariffs for their fifth and/or sixth freedom services with the Department.

Our determinations whether to apply a tariff filing requirement on foreign carriers' fifth and/or sixth freedom services will be based on the actual treatment by the foreign carrier's government of comparable U.S. carrier pricing initiatives as well as on the formal bilateral arrangements involved. The purpose of our rulemaking here is to lessen the burden of filing passenger tariffs on both carriers and the Department. ATA's proposal for a general requirement that the bilateral rights be explicit would affect a significant number of countries where we do not have formal fifth and/or sixth freedom price leadership rules in place but, nevertheless, where U.S. carriers in practice may set such prices without government interference. These additional filings would simply place an additional burden on the Department that could not be justified by the small advantage gleaned from requiring carriers from countries who do not actively regulate US carriers prices to file tariffs for their fifth and sixth freedom services.

5. Preemption

ATA requests that the word ''conflicting'' be deleted from section 293.21(c) arguing that such a qualification does not appear in the statement of federal preemption regarding the incorporation by reference of contract terms for domestic travel in 14 CFR 253.1, and that it suggests a legal standard that would be inconsistent with the settled state of the law on federal preemption under section 105(b) of the Airline Deregulation Act, now section 41713(b) of Title 49.

We will make the change that ATA recommends. It was not our intention to limit or confuse in any way the scope of preemption of state law under section 41713(b), interpreted in such cases as *Morales* v. *Trans World Airlines*, 112S. Ct. 2031 (1992), and *American Airlines* v. *Wolens*, 115S. St. 817 (1995). In both cases, the Supreme Court found that any state laws broadly ''having a connection with or reference to airline rates, routes or services'' are preempted, without the need for a ''conflict of laws'' analysis.

6. Warsaw Convention

ATA's initial comments acknowledged that the recently approved intercarrier agreements waiving Warsaw Convention passenger liability limits could require some changes to part 221, but concluded that it is premature to attempt to resolve these issues in this rulemaking proceeding. In its supplementary comments, however, ATA now requests that the Department make substantive changes to the Warsaw Convention requirements embodied in part 221. ATA's desire for a more flexible notice requirement is understandable. However, for the most part, our purpose in reissuing part 221 is to align our tariff-filing requirements with present regulatory needs and policies. We will deal with any substantive policy changes to the part 221 Warsaw notice requirements in a separate proceeding.

7. Filings as Constructive Notice

Only two carriers oppose the proposal, set out in the NPRM, to exempt all carriers from the requirement to file their general passenger conditions-of-carriage rules tariffs. Air Pacific and Qantas both argue that they rely on their filed passenger rules tariffs as a defense against various kinds of passenger claims. In our final cargo exemption rule, we addressed the issue of legal notice to consumers of contract terms, including general conditions of carriage. We concluded that the elimination of cargo rules tariffs in the context of our notice provisions would

not impose significant economic or administrative burdens on carriers or shippers, and that any changes in procedure were justified by improvements in overall consumer fairness and system efficiency[3]. Air Pacific and Qantas have failed to provide any reasons as to why passenger rules tariffs should be treated differently than cargo rules tariffs or why relying on the tariff filing mechanism for passenger notice is better than relying on normal contract law.

Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

The Department has determined that this final rule is not a significant regulatory action under Executive Order 12866 or under the Department's Regulatory Policies and Procedures (44 CFR 11034–Feb. 26, 1979). The rule will reduce the paperwork and filing burden for all U.S. and foreign air carriers submitting international passenger tariffs to the Department. The Department anticipates that the final rule could save international scheduled service passenger airlines as much as $3.23 million in tariff-filing and preparation expenses, based on figures submitted to OMB under the Paperwork Reduction Act for reinstatement of the part 221 information collection. The Department does not expect there to be any additional costs associated with this rule.

Executive Order 12611

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 (''Federalism''), and the Department has determined the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

I certify that this rule a will not have a significant economic impact on a substantial number of small entities, because the tariff filing requirements apply to scheduled service air carriers. The vast majority of the air carriers filing international (''foreign'') air passenger tariffs are large operators with revenues in excess of several million dollars each year. Small air carriers operating aircraft with 60 seats or less and 18,000 pounds payload or less that offer on-demand air-taxi service are not required to file such tariffs.

[3] See 60 Fed. Reg. 61472 (November 30, 1995).

Paperwork Reduction Act

With respect to the Paperwork Reduction Act, the reissue of part 221 eliminates any residual paper tariff format and filing procedures and replaces them with more efficient electronic filing procedures. In addition, the new part 293 exempts carriers from their statutory and regulatory duty to file international passenger tariffs in certain specific markets, subject to reimposition of this duty when required by the public interest. Thus, this rule will significantly reduce the paperwork and filing burden on government and industry, even though it does not totally eliminate information collection requirements that require the approval of the Office of Management and Budget pursuant to the Act. While not estimated, we expect that costs of governmental review, filing and archiving of paper tariff rule filing will be similarly reduced.

The reporting and recordkeeping requirement associated with this rule are being submitted to OMB for approval in accordance with The Paperwork Reduction Act of 1995 (Public Law 104–113) under OMB No. 2106–0009; Administration: Department of Transportation, TITLE: Exemption from Passenger Tariff-Filing Requirements in Certain Instances, and Mandatory Electronic Filing of Residual Passenger Tariffs; NEED FOR INFORMATION: Exempts carriers from their statutory and regulatory duty to file international passenger tariffs in certain specific markets, subject to reimposition of this duty when required by the public interest, and eliminates residual paper tariff format and filing procedures, replacing them with more efficient electronic filing procedures; PROPOSED USE OF INFORMATION: Exemption is based on evolution in regulatory circumstances, while elimination of residual paper tariff filing procedures is based on the need to extend the efficiencies of electronic data transmission and processing to the filing of all passenger tariffs; FREQUENCY: An initial passenger tariff rule filing is required of each respondent; changes are voluntary, whenever an air carrier elects.

Estimated Total Annual Burden Under Proposal: 650,000 hours;

Respondents: 230; FORM(S) 13,340 electronic filings or applications per annum;

Average Burden Hours Per Respondent: 2,826 hours.

For further information on paperwork reduction contact: The Special Authorities Requirements Division, X–57, Office of the Secretary of Transportation, 400 Seventh Street, SW, Washington, DC 20590, (202) 366–4534 or DOT Desk Officer, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503.

Any comments regarding the burden estimate or any aspect of these information requirements, including suggestions for reducing the burden, may be sent to: Director, Office of International Aviation, (X–40), U.S. Department of Transportation, Office of the Secretary, 400 Seventh Street, SW., Room 6402, Washington, DC 20090–0001 as well as the above contact.

Regulation Identifier Number

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

An electronic version of the document is available on the World Wide Web at ''http://dms.dot.gov//reports/reports—aviation.asp''.

List of Subjects

14 CFR Part 221

Air rates and fares, Agents, Reporting and recordkeeping requirements.

14 CFR Part 250

Air carriers, Consumer protection, Reporting and recordkeeping requirements.

14 CFR Part 293

Air carriers, Airrates and fares, Air transportation, Reporting and recordkeeping requirements.

The final rule revisions and new parts 221 and 293 are being issued under the authority contained in 49 CFR 1.56(h)(2). For the reasons set forth herein, 14 CFR Chapter II is amended as follows:

1. Part 221 is revised to read as follows:

PART 221—TARIFFS

Subpart A—General

Sec.
221.1 Applicability of this part.
221.2 Carrier's duty.
221.3 Definitions.
221.4 English language.
221.5 Unauthorized air transportation.

Subpart B—Who Is Authorized to Issue and File Tariffs

221.10 Carrier.
221.11 Agent.

Subpart C—Specifications of Tariff Publications

221.20 Specifications applicable to tariff publications.

Subpart D—Manner of Filing Tariffs

221.30 Passenger fares and charges.
221.31 Rules and regulations governing passenger fares and services.

Subpart E—Contents of Tariff

221.40 Specific requirements.
221.41 Routing.

Subpart F—Requirements Applicable to all Statements of Fares and Charges

221.50 Currency.
221.51 Territorial application.
221.52 Airport to airport application, accessorial services.
221.53 Proportional fares.
221.54 Fares stated in percentages of other fares; other relationships prohibited.
221.55 Conflicting or duplicating fares prohibited.
221.56 Applicable fare when no through local or joint fares.

Subpart G—Governing Tariffs

221.60 When reference to governing tariffs permitted.
221.61 Rules and regulations governing foreign air transportation.
221.62 Explosives and other dangerous or restricted articles.
221.63 Other types of governing tariffs.

Subpart H—Amendment of Tariffs

221.70 Who may amend tariffs.
221.71 Requirement of clarity and specificity.
221.72 Reinstating canceled or expired tariff provisions.

Subpart I—Suspension of Tariff Provisions by Department

221.80 Effect of suspension by Department.
221.81 Suspension supplement.
221.82 Reissue of matter continued in effect by suspension to be canceled upon termination of suspension.
221.83 Tariff must be amended to make suspended matter effective.
221.84 Cancellation of suspended matter subsequent to date to which suspended.

Subpart J—Filing Tariff Publications With Department

221.90 Required notice.
221.91 Delivering tariff publications to Department.
221.92 Number of copies required.
221.93 Concurrences or powers of attorney not previously filed to accompany tariff transmittal.
221.94 Explanation and data supporting tariff changes and new matter in tariffs.

Subpart K—Availability of Tariff Publications for Public Inspection

221.100 Public notice of tariff information.
221.101 Inspection at stations, offices, or locations other than principal or general office.
221.102 Accessibility of tariffs to the public.
221.103 Notice of tariff terms.
221.105 Special notice of limited liability for death or injury under the Warsaw Convention.
221.106 Notice of limited liability for baggage; alternative consolidated notice of liability limitations.
221.107 Notice of contract terms.
221.108 Transmission of tariff filings to subscribers.

Subpart L—Rejection of Tariff Publications

221.110 Department's authority to reject.
221.111 Notification of rejection.
221.112 Rejected tariff is void and must not be used.

Subpart M—Special Tariff Permission to File on Less Than Statutory Notice

221.120 Grounds for approving or denying Special Tariff Permission applications.
221.121 How to prepare and file applications for Special Tariff Permission.
221.122 Special Tariff Permission to be used in its entirety as granted.
221.123 Re-use of Special Tariff Permission when tariff is rejected.

Subpart N—Waiver of Tariff Regulations

221.130 Applications for waiver of tariff regulations.
221.131 Form of application for waivers.

Subpart O—Giving and Revoking Concurrences to Carriers

221.140 Method of giving concurrence.
221.141 Method of revoking concurrence.
221.142 Method of withdrawing portion of authority conferred by concurrence.

Subpart P—Giving and Revoking Powers of Attorney to Agents

221.150 Method of giving power of attorney.
221.151 Method of revoking power of attorney.
221.152 Method of withdrawing portion of authority conferred by power of attorney.

Subpart Q—Adoption Publications Required to Show Change in Carrier's Name or Transfer of Operating Control

221.160 Adoption notice.
221.161 Notice of adoption to be filed in former carrier's tariffs.
221.162 Receiver shall file adoption notices.
221.163 Agents' and other carriers' tariffs shall reflect adoption.
221.164 Concurrences or powers of attorney to be reissued.
221.165 Cessation of operations without successor.

Subpart R—Electronically Filed Tariffs

221.170 Applicability of the subpart.
221.180 Requirements for electronic filing of tariffs.
221.190 Time for filing and computation of time periods.
221.195 Requirement for filing printed material.
221.200 Content and explanation of abbreviations, reference marks and symbols.
221.201 Statement of filing with foreign governments to be shown in air carrier's tariff filings.
221.202 The filing of tariffs and amendments to tariffs.
221.203 Unique rule numbers required.
221.204 Adoption of provisions of one carrier by another carrier.
221.205 Justification and explanation for certain fares.
221.206 Statement of fares.
221.210 Suspension of tariffs.
221.211 Cancellation of suspended matter.
221.212 Special tariff permission.
221.300 Discontinuation of electronic tariff system.
221.400 Filing of paper tariffs required.
221.500 Transmission of electronic tariffs to subscribers.
221.550 Copies of tariffs made from filer's printer(s) located in Department's public reference room.
221.600 Actions under assigned authority and petitions for review of staff action.

Authority: 49 U.S.C. 40101, 40109, 40113, 46101, 46102, chapter 411, chapter 413, chapter 415 and chapter 417, subchapter I.

Subpart A—General

§ 221.1 Applicability of this part.

All tariffs and amendments to tariffs of air carriers and foreign air carriers filed with the Department pursuant to chapter 415 of the statute shall be constructed, published, filed, posted and kept open for public inspection in accordance with the regulations in this part and orders of the Department.

§ 221.2 Carrier's duty.

(a) *Must file tariffs.* (1) Except as provided in paragraph (d) of this section, every air carrier and every foreign air carrier shall file with the Department, and provide and keep open to public inspection, tariffs showing all fares, and charges for foreign air transportation between points served by it, and between points served by it and points served by any other air carrier or foreign air carrier, when through service and through rates shall have been established, and showing to the extent required by regulations and orders of the Department, all classifications, rules, regulations, practices, and services in connection with such foreign air transportation.

(2) Tariffs shall be filed, and provided in such form and manner, and shall contain such information as the Department shall by regulation or order prescribe. Any tariff so filed which is not consistent with chapter 415 of the statute and such regulations and orders may be rejected. Any tariff so rejected shall be void, and may not be used.

(b) *Must observe tariffs.* No air carrier or foreign air carrier shall charge or demand or collect or receive a greater or less or different compensation for

foreign air transportation or for any service in connection therewith, than the fares and charges specified in its currently effective tariffs; and no air carrier or foreign air carrier shall, in any manner or by any device, directly or indirectly, or through any agent or broker, or otherwise, refund or remit any portion of the fares, or charges so specified, or extend to any person any privileges or facilities, with respect to matters required by the Department to be specified in such tariffs, except those specified in such tariffs.

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

(d) *Exemption authority.* Air carriers and foreign air carriers, both direct and indirect, are exempted from the requirement of section 41504 of the statute and any requirement of this chapter to file, and shall not file with the Department, tariffs for operations under the following provisions:

(1) Part 291, Domestic Cargo Transportation;

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

(3) Part 297, Foreign Air Freight Forwarders and Foreign Cooperative Shippers Association;

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

(5) Part 380, Public Charters;

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

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

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

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

(10) Part 293 International Passenger Transportation, except as provided in part 293.

§ 221.3 Definitions.

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

Add-on means an amount published for use only in combination with other fares for the construction of through fares. It is also referred to as ''proportional fare'' and ''arbitrary fare''.

Add-on tariff means a tariff which contains add-on fares.

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

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

Area No. 3 means all of Asia and the islands adjacent thereto except that portion included in Area No. 2; all of the East Indies, Australia, New Zealand, and the islands adjacent thereto; and the islands of the Pacific Ocean except those included in Area No. 1.

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

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

Capacity controlled fare means a fare for which a carrier limits the number of seats available for sale.

Carrier means an air carrier or foreign air carrier subject to section 41504 of 49 U.S.C. subtitle VII.

Charge means the amount charged for baggage, in excess of the free allowance, accompanying or checked by a passenger or for any other service ancillary to the passenger's carriage.

Conditions of carriage means those rules of general applicability that define the rights and obligations of the carrier(s) and any other party to the contract of carriage with respect to the transportation services provided.

Contract of carriage means those fares, rules, and other provisions applicable to the foreign air transportation of passengers or their baggage, as defined in the statute.

Department means the Department of Transportation.

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

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

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

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

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

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

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

Joint tariff means a tariff that contains joint fares.

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

Local tariff means a tariff that contains local fares.

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

On-line tariff database means the remotely accessible, on-line version, maintained by the filer, of:

(1) The electronically filed tariff data submitted to the Department pursuant to this part and Department orders, and

(2) The Departmental approvals, disapprovals, and other actions, as well as any Departmental notation concerning such approvals, disapprovals, or other actions, that subpart R of this part requires the filer to maintain in its database.

Original tariff refers to the tariff as it was originally filed exclusive of any supplements, revised records or additional records.

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

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

Publish means to display tariff material in either electronic or paper media.

Record means an electronic tariff data set that contains information describing one (1) tariff price or charge, or information describing one (1) related element associated with that tariff price or charge.

SFFL means the Standard Foreign Fare Level as established by the Department of Transportation under 49 U.S.C. 41509.

Statute means subtitle VII of Title 49, United States Code.

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

Tariff publication means a tariff, a supplement to a tariff, or an original or revised record of a tariff, including an index of tariffs and an adoption notice (§ 221.161).

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

Ticket office means a station, office or other location where tickets are sold or similar documents are issued, that is under the charge of a person employed exclusively by the carrier, or by it jointly with another person.

Unbundled normal economy fare means the lowest one-way fare available for on-demand service in any city-pair market which is restricted in some way, *e.g.*, by limits set and/or charges imposed for enroute stopovers or transfers, exclusive of capacity control.

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

Warsaw Convention means the Convention for the Unification of Certain Rules Relating to International Transportation by Air, 49 Stat. 3000.

§ 221.4 English language.

All tariffs and other documents and material filed with the Department pursuant to this part shall be in the English language.

§ 221.5 Unauthorized air transportation.

Tariff publications shall not contain fares or charges, or their governing provisions, applicable to foreign air transportation which the issuing or participating carriers are not authorized by the Department to perform, except where the Department expressly requests or authorizes tariff publications to be filed prior to the Department's granting authority to perform the foreign air transportation covered by such tariff publications. Any tariff publication filed pursuant to such express request or authorization which is not consistent with chapter 415 and this part may be rejected; any tariff publication so rejected shall be void.

Subpart B—Who is Authorized To Issue and File Tariffs

§ 221.10 Carrier.

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

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

(2) Joint fares which apply jointly via such issuing carrier in connection with other carriers (participating in the tariff publications under authority of their concurrences given to the issuing carrier as provided in § 221.140) and provisions governing such joint fares. Provisions for account of an individual participating carrier may be published to govern such joint fares provided § 221.40(a)(9) is complied with. A carrier shall not issue and file tariff publications containing local fares of other carriers, joint rates or fares in which the issuing carrier does not participate, or provisions governing such local or joint fares.

(3) Rules and regulations governing foreign air transportation to the extent provided by this part and/or Department order. Rules and regulations may be published in separate governing tariffs, as provided in subpart G.

(b) *Issuing officer.* An officer or designated employee of the issuing carrier shall be shown as the issuing officer of a tariff publication issued by a carrier, and such issuing officer shall file the tariff publication with the Department on behalf of the issuing carrier and all carriers participating in the tariff publication.

§ 221.11 Agent.

An agent may issue and file, in his or its own name, tariff publications naming local fares and/or joint fares, and provisions governing such fares, and rules and regulations governing foreign air transportation to the extent provided by this part and/or Department order, for account of carriers participating in such tariff publications, under authority of their powers of attorney given to such issuing agent as provided in § 221.150. The issuing agent shall file such tariff publications with the Department on behalf of all carriers participating therein. Only one issuing agent may act in issuing and filing each such tariff publication.

Subpart C—Specifications of Tariff Publications

§ 221.20 Specifications applicable to tariff publications.

(a) *Numerical order.* All items in a tariff shall be arranged in numerical or alphabetical order. Each item shall bear a separate item designation and the same designation shall not be assigned to more than one item.

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

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

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

(e) *Statement of rules.* The rules and regulations of each tariff shall be clear, explicit and definite, and except as otherwise provided in this part, shall contain:

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

(2) All of the terms, conditions, or other provisions which affect the fares or charges for air transportation named in the tariff.

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

(f) *Separate rules tariff.* If desired, rules and regulations may be published in separate governing tariffs to the extent authorized and in the manner required by subpart G.

(g) *Rules of limited application.* A rule affecting only a particular fare or other provision in the tariff shall be specifically referred to in connection

with such fare or other provision, and such rule shall indicate that it is applicable only in connection with such fare or other provision. Such rule shall not be published in a separate governing rules tariff.

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

(i) Each tariff shall include:

(1) A prominent D.O.T. or other number identifying the tariff in the sequence of tariffs published by the carrier or issuing agent;

(2) The name of the issuing carrier or agent;

(3) The cancellation of any tariffs superseded by the tariff;

(4) A description of the tariff contents, including geographic coverage;

(5) Identification by number of any governing tariffs;

(6) The date on which the tariff is issued;

(7) The date on which the tariff provisions will become effective; and

(8) the expiration date, if applicable to the entire tariff.

Subpart D—Manner of Filing Tariffs

§ 221.30 Passenger fares and charges.

(a) Fares tariffs, including associated data, shall be filed electronically in conformity with subpart R. Associated data includes arbitraries, footnotes, routing numbers and fare class explanations. See § 221.202(b)(8).

(b) Upon application by a carrier, the Department's Office of International Aviation shall have the authority to waive the electronic filing requirement in this paragraph and in Subpart R in whole or in part, for a period up to one year, and to permit, under such terms and conditions as may be necessary to carry out the purposes of this part, the applicant carrier to file fare tariffs in a paper format. Such waivers shall only be considered where electronic filing, compared to paper filing, is impractical and will produce a significant economic hardship for the carrier due to the limited nature of the carrier's operations subject to the requirements of this part, or other unusual circumstances. Paper filings pursuant to this paragraph shall normally conform to the requirements of § 221.195 and other applicable requirements of this part.

§ 221.31 Rules and regulations governing passenger fares and services.

(a) Tariff rules and regulations governing passenger fares and services other than those subject to § 221.30 may be filed electronically in conformity with subpart R. Such filings shall conform to criteria approved by the Department's Office of International Aviation as provided in § 221.180 and shall contain at a minimum the information required by § 221.202(b)(9).

(b) Applications for special tariff permission may be filed electronically, as provided in § 221.212.

(c) Tariff publications and applications for special tariff permission covered by paragraphs (a) and (b) of this section may be filed in a paper format, subject to the requirements of this part and Department orders.

Subpart E—Contents of Tariff

§ 221.40 Specific requirements.

(a) In addition to the general requirements in § 221.20, the rules and regulations of each tariff shall contain:

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

(2) *Rule numbers.* Each rule or regulation shall have a separate designation. The same designation shall not be assigned to more than one rule in the tariff.

(3) *Penalties.* Where a rule provides a charge in the nature of a penalty, the rule shall state the exact conditions under which such charge will be imposed.

(4) *Vague or indefinite provisions.* Rules and regulations shall not contain indefinite statements to the effect that traffic of any nature will be ''taken only by special arrangements'', or that services will be performed or penalties imposed ''at carrier's option'', or that the carrier ''reserves the right'' to act or to refrain from acting in a specified manner, or other provisions of like import; instead, the rules shall state definitely what the carrier will or will not do under the exact conditions stated in the rules.

(5) *Personal liability rules.* Except as provided in this part, no provision of the Department's regulations issued under this part or elsewhere shall be construed to require the filing of any tariff rules stating any limitation on, or condition relating to, the carrier's liability for personal injury or death. No subsequent regulation issued by the Department shall be construed to supersede or modify this rule of construction except to the extent that such regulation shall do so in express terms.

(6) *Notice of limitation of liability for death or injury under the Warsaw Convention.* Notwithstanding the provisions of paragraph (a)(5) of this section, each air carrier and foreign air carrier shall publish in its tariffs a provision stating whether it avails itself of the limitation on liability to passengers as provided in Article 22(1) of the Warsaw Convention or whether it has elected to agree to a higher limit of liability by a tariff provision. Unless the carrier elects to assume unlimited liability, its tariffs shall contain a statement as to the applicability and effect of the Warsaw Convention, including the amount of the liability limit in dollars. Where applicable, a statement advising passengers of the amount of any higher limit of liability assumed by the carrier shall be added.

(7) *Extension of credit.* Air carriers and foreign air carriers shall not file tariffs that set forth charges, rules, regulations, or practices relating to the extension of credit for payment of charges applicable to air transportation.

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

(9) *Passenger property which cannot lawfully be carried in the aircraft cabin.* Each air carrier shall set forth in its tariffs governing the transportation of persons, including passengers' baggage, charges, rules, and regulations providing that such air carrier receiving as baggage any property of a person traveling in air transportation, which property cannot lawfully be carried by

such person in the aircraft cabin by reason of any Federal law or regulation, shall assume liability to such person, at a reasonable charge and subject to reasonable terms and conditions, within the amount declared to the air carrier by such person, for the full actual loss or damage to such property caused by such air carrier.

(b) [Reserved]

§ 221.41 Routing.

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

(1) The carrier or carriers performing the transportation,

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

(3) The intermediate points served on the carrier's or carriers' routes applicable between the origin and destination of the fare and the order in which such intermediate points are served.

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

Subpart F—Requirements Applicable to All Statements of Fares and Charges

§ 221.50 Currency.

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

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

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

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

(3) The fares and charges stated in cents or dollars of the United States are published separately from those stated in currencies of other countries. This shall be done in a systematic manner and the fares and charges in the respective currencies shall be published in separate records.

§ 221.51 Territorial application.

(a) *Specific points of origin and destination.* Except as otherwise provided in this part, the specific points of origin and destination from and to which the fares apply shall be specifically named directly in connection with the respective fares.

(b) *Directional application.* A tariff shall specifically indicate directly in connection with the fares therein whether they apply ''from'' and ''to'' or ''between'' the points named. Where the fares apply in one direction, the terms ''From'' and ''To'' shall be shown in connection with the point of origin and point of destination, respectively, and, where the fares apply in both directions between the points, the terms ''Between'' and ''And'' shall be shown in connection with the respective points.

§ 221.52 Airport to airport application, accessorial services.

Tariffs shall specify whether or not the fares therein include services in addition to airport-to-airport transportation.

§ 221.53 Proportional fares.

(a) *Definite application.* Add-on fares shall be specifically designated as ''add-on'' fares on each page where they appear.

(b) A tariff may provide that fares from (or to) particular points shall be determined by the addition of add-ons to, or the deduction of add-ons from, fares therein which apply from (or to) a base point. Provisions for the addition or deduction of such add-ons shall be shown either directly in connection with the fare applying to or from the base point or in a separate provision which shall specifically name the base point. The tariff shall clearly and definitely state the manner in which such add-ons shall be applied.

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

§ 221.54 Fares stated in percentages of other fares; other relationships prohibited.

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

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

(c) Transportation rates for the portion of passengers' baggage in excess of the baggage allowance under the applicable fares may be stated, by rule, as percentages of fares.

(d) Children's, infants' and senior citizen's fares, may be stated, by rule, as percentages of other fares published specifically in dollars and cents (hereinafter referred to as base fares): Provided, that:

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

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

§ 221.55 Conflicting or duplicating fares prohibited.

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

§ 221.56 Applicable fare when no through local or joint fares.

Where no applicable local or joint fare is provided from point of origin to point of destination over the route of movement, whichever combination of applicable fares provided over the route of movement produces the lowest charge shall be applicable, except that a carrier may provide explicitly that a fare cannot be used in any combination or in a combination on particular traffic or

under specified conditions, provided another combination is available.

Subpart G—Governing Tariffs

§ 221.60 When reference to governing tariffs permitted.

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

(b) *Reference by fare tariff to governing tariffs.* A fare tariff may be made subject to a governing tariff or governing tariffs authorized by this subpart: Provided, that reference to such governing tariffs is published in the fare tariff in the manner required by § 221.20(h).

(c) *Participation in governing tariffs.* A fare tariff may refer to a separate governing tariff authorized by this subpart only when all carriers participating in such fare tariff are also shown as participating carriers in the governing tariff: Provided, that:

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

(2) [Reserved]

(d) *Maximum number of governing tariffs.* A single fare tariff shall not make reference to conflicting governing tariffs.

§ 221.61 Rules and regulations governing foreign air transportation.

Instead of being included in the fares tariffs, the rules and regulations governing foreign air transportation required to be filed by §§ 221.20 and 221.30 and/or Department order which do not govern the applicability of particular fares may be filed in separate governing tariffs, conforming to this subpart. Governing rules tariffs shall contain an index of rules.

§ 221.62 Explosives and other dangerous or restricted articles.

Carriers may publish rules and regulations governing the transportation of explosives and other dangerous or restricted articles in separate governing tariffs, conforming to this subpart, instead of being included in the fares tariffs or in the governing rules tariff authorized by § 221.61. This separate governing tariff shall contain no other rules or governing provisions.

§ 221.63 Other types of governing tariffs.

Subject to approval of the Department, carriers may publish other types of governing tariffs not specified in this subpart, such as routing guides.

Subpart H—Amendment of Tariffs

§ 221.70 Who may amend tariffs.

A tariff shall be amended only by the carrier or agent who issued the tariff (except as otherwise authorized in subparts P and Q).

§ 221.71 Requirement of clarity and specificity.

Amendments to tariffs shall identify with specificity and clarity the material being amended and the changes being made. Amendments to paper tariffs shall be accomplished by reissuing each page upon which a change occurs with the change made and identified by uniform amendment symbols. Each revised page shall identify and cancel the previously effective page, show the effective date of the previous page, and show the intended effective date of the revised page. Amendments in electronic format shall conform to the requirements of § 221.202 and other applicable provisions of subpart R.

§ 221.72 Reinstating canceled or expired tariff provisions.

Any fares, rules, or other tariff provisions which have been canceled or which have expired may be reinstated only by republishing such provisions and posting and filing the tariff publications (containing such republished provisions) on lawful notice in the form and manner required by this part.

Subpart I—Suspension of Tariff Provisions by Department

§ 221.80 Effect of suspension by Department.

(a) *Suspended matter not to be used.* A fare, charge, or other tariff provision which is suspended by the Department, under authority of chapter 415 of the statute, shall not be used during the period of suspension specified by the Department's order.

(b) *Suspended matter not to be changed.* A fare, charge, or other tariff provision which is suspended by the Department shall not be changed in any respect or withdrawn or the effective date thereof further deferred except by authority of an order or special tariff permission of the Department.

(c) *Suspension continues former matter in effect.* If a tariff publication containing matter suspended by the Department directs the cancellation of a tariff or any portion thereof, which contains fares, charges, or other tariff provisions sought to be amended by the suspended matter, such cancellation is automatically suspended for the same period insofar as it purports to cancel any tariff provisions sought to be amended by the suspended matter.

(d) *Matter continued in effect not to be changed.* A fare, charge, or other tariff provision which is continued in effect as a result of a suspension by the Department shall not be changed during the period of suspension unless the change is authorized by order or special tariff permission of the Department, except that such matter may be reissued without change during the period of suspension.

§ 221.81 Suspension supplement.

(a) *Suspension supplement.* Upon receipt of an order of the Department suspending any tariff publication in part or in its entirety, the carrier or agent who issued such tariff publication shall immediately issue and file with the Department a consecutively numbered supplement for the purpose of announcing such suspension.

(b) The suspension supplement shall not contain an effective date and it shall contain the suspension notice required by paragraph (c) of this section.

(c) *Suspension notice.* The suspension supplement shall contain a prominent notice of suspension which shall:

(1) Indicate what particular fares, charges, or other tariff provisions are under suspension,

(2) State the date to which such tariff matter is suspended,

(3) State the Department's docket number and order number which suspended such tariff matter, and

(4) Give specific reference to the tariffs (specifying their D.O.T. or other identifying numbers), original or revised records and paragraphs or provisions which contain the fares, charges, or other tariff provisions continued in effect.

§ 221.82 Reissue of matter continued in effect by suspension to be canceled upon termination of suspension.

When tariff provisions continued in effect by a suspension are reissued during the period of such suspension, the termination of the suspension and the coming into effect of the suspended matter will not accomplish the cancellation of such reissued matter. In such circumstances, prompt action shall be taken by the issuing agent or carrier to cancel such reissued provisions upon the termination of the suspension in order that they will not conflict with the provisions formerly under suspension.

§ 221.83 Tariff must be amended to make suspended matter effective.

(a) When the Department vacates an order which suspended certain tariff matter in full or in part, such matter will not become effective until the termination of the suspension period unless the issuing agent or carrier amends the pertinent tariffs in the manner prescribed in this subpart (except as provided in paragraph (b) of this section).

(b) If the Department vacates its suspension order prior to the original published effective date of the tariff provisions whose suspension is vacated, such provisions will become effective on their published effective date.

§ 221.84 Cancellation of suspended matter subsequent to date to which suspended.

(a) *Endeavor to cancel prior to expiration of suspension period.* When an order of the Department requires the cancellation of tariff provisions which were suspended by the Department and such cancellation is required to be made effective on or before a date which is after the date to which such tariff provisions were suspended, the issuing carrier or agent shall, if possible, make the cancellation effective prior to the date to which such tariff provisions were suspended.

(b) *When necessary to republish matter continued in effect by suspension.* If suspended tariff provisions become effective upon expiration of their suspension period and thereby accomplish the cancellation of the tariff provisions continued in effect by the suspension, the issuing agent or carrier shall republish and reestablish such canceled tariff provisions effective simultaneously with the cancellation of the suspended provisions in compliance with the Department's order. The tariff amendments which reestablish such canceled tariff provisions shall bear reference to this subpart and the Department's order.

Subpart J—Filing Tariff Publications With Department

§ 221.90 Required notice.

(a) *Statutory notice required.* Unless otherwise authorized by the Department or specified in a bilateral agreement between the United States and a foreign country, all tariff filings shall be made on the following schedule, whether or not they effect any changes:

(1) At least 30 days before they are to become effective, for tariffs stating a passenger fare within the zone created by section 41509(e) of the statute or stating a rule that affects only such a fare;

(2) At least 25 days before they are to become effective, for matching tariffs that are to become effective on the same date as the tariff to be matched and that meet competition as described in § 221.94(c)(1)(v); and

(3) At least 60 days before they are to become effective, for all other tariffs.

(b) *Computing number of days' notice.* A tariff publication shall be deemed to be filed only upon its actual receipt by the Department, and the first day of any required period of notice shall be the day of actual receipt by the Department.

(c) *Issued date.* All tariff publications must be received by the Department on or before the designated issued date.

§ 221.91 Delivering tariff publications to Department.

Tariff publications will be received for filing only by delivery thereof to the Department electronically, through normal mail channels, or by delivery thereof during established business hours directly to that office of the Department charged with the responsibility of processing tariffs. No tariff publication will be accepted by the Department unless it is delivered free from all charges, including claims for postage.

§ 221.92 Number of copies required.

Two copies of each paper tariff, tariff revision and adoption notice to be filed shall be sent to the Office of International Aviation, Department of Transportation, Washington, DC 20428. All such copies shall be included in one package and shall be accompanied by a letter of tariff transmittal.

§ 221.93 Concurrences or powers of attorney not previously filed to accompany tariff transmittal.

When a tariff is filed on behalf of a carrier participating therein under authority of its concurrence or power of attorney, such concurrence or power of attorney shall, if not previously filed with the Department, be transmitted at the same time such tariff is submitted for filing.

§ 221.94 Explanation and data supporting tariff changes and new matter in tariffs.

When a tariff is filed with the Department which contains new or changed local or joint fares or charges for foreign air transportation, or new or changed classifications, rules, regulations, or practices affecting such fares or charges, or the value of the service thereunder, the issuing air carrier, foreign air carrier, or agent shall submit with the filing of such tariff:

(a) An explanation of the new or changed matter and the reasons for the filing, including (if applicable) the basis of rate making employed. Where a tariff is filed pursuant to an intercarrier agreement approved by the Department, the explanation shall identify such agreement by DOT Docket number, DOT order of approval number, IATA resolution number, or if none is designated, then by other definite identification. Where a tariff is filed on behalf of a foreign air carrier pursuant to a Government order, a copy of such order shall be submitted with the tariff.

(b) Appropriate Economic data and/or information in support of the new or changed matter.

(c) Exceptions

(1) The requirement for data and/or information in paragraph (b) of this section will not apply to tariff publications containing new or changed matter which are filed:

(i) In response to Department orders or specific policy pronouncements of the Department directly related to such new or changed matter;

(ii) Pursuant to an intercarrier agreement approved by the Department setting forth the fares, charges (or specific formulas therefor) or other matter: Provided that the changes are submitted with the number of the DOT order of approval and fully comply with any conditions set forth in that order;

(iii) To the extent fares for scheduled passenger service are within a statutory or Department-established zone of fare flexibility; and

(iv) To meet competition: Provided, that

(A) Changed matter will be deemed to have been filed to meet competition only when it effects decreases in fares or charges and/or increases the value of service so that the level of the fares or charges and the services provided will be substantially similar to the level of fares or charges and the services of a competing carrier or carriers.

(B) New matter will be deemed to have been filed to meet competition only when it establishes or affects a fare or charge and a service which will be substantially similar to the fares or charges and the services of a competing carrier or carriers.

(C) When new or changed matter is filed to meet competition over a portion of the filing air carrier's system and is simultaneously made applicable to the balance of the system, such matter, insofar as it applies over the balance of the system, will be deemed to be within the exception in this paragraph (c)(1)(iv) of this section only if such carrier submits an explanation as to the necessity of maintaining uniformity over its entire system with respect to such new or changed matter.

(D) In any case where new or changed matter is filed to meet competition, the filing carrier or agent must supply, as part of the filing justification, the complete tariff references which will serve to identify the competing tariff matter which the tariff purports to meet. In such case the justification or attachment shall state whether the new or changed matter is identical to the competing tariff matter which it purports to meet or whether it approximates the competing tariff matter. If the new or changed matter is not identical, the transmittal letter or attachment shall contain a statement explaining, in reasonable detail, the basis for concluding that the tariff publication being filed is substantially similar to the competing tariff matter.

(2) [Reserved]

Subpart K—Availability of Tariff Publications for Public Inspection

§ 221.100 Public notice of tariff information.

Carriers must make tariff information available to the general public, and in so doing must comply with either:

(a) Sections 221.101, 221.102, 221.103, 221.104, 221.105, and 221.106, or

(b) Sections 221.105, 221.106 and 221.107 of this subpart.

§ 221.101 Inspection at stations, offices, or locations other than principal or general office.

(a) Each carrier shall make available for public inspection at each of its stations, offices, or other locations at which tickets for passenger transportation are sold and which is in charge of a person employed exclusively by the carrier, or by it jointly with another person, all tariffs applicable to passenger traffic from or to the point where such station, office, or location is situated, including tariffs covering any terminal services, charges, or practices whatsoever, which apply to passenger traffic from or to such point.

(b) A carrier will be deemed to have complied with the requirement that it ''post'' tariffs, if it maintains at each station, office, or location a file in complete form of all tariffs required to be posted; and in the case of tariffs involving passenger fares, rules, charges or practices, notice to the passenger as required in § 221.105.

(c) Tariffs shall be posted by each carrier party thereto no later than the filed date designated thereon except that in the case of carrier stations, offices or locations situated outside the United States, its territories and possessions, the time shall be not later than five days after the filed date, and except that a tariff which the Department has authorized to be filed on shorter notice shall be posted by the carrier on like notice as authorized for filing.

§ 221.102 Accessibility of tariffs to the public.

Each file of tariffs shall be kept in complete and accessible form. Employees of the carrier shall be required to give any desired information contained in such tariffs, to lend assistance to seekers of information therefrom, and to afford inquirers opportunity to examine any of such tariffs without requiring the inquirer to assign any reason for such desire.

§ 221.103 Notice of tariff terms.

Each carrier shall cause to be displayed continuously in a conspicuous public place at each station, office, or location at which tariffs are required to be posted, a notice printed in large type reading as follows:

Public Inspection of Tariffs

All the currently effective passenger tariffs to which this company is a party and all passenger tariff publications which have been issued but are not yet effective are on file in this office, so far as they apply to traffic from or to. (Here name the point.) These tariffs may be inspected by any person upon request and without the assignment of any reason for such inspection. The employees of this company on duty in this office will lend assistance in securing information from the tariffs.

In addition, a complete file of all tariffs of this company, with indexes thereof, is maintained and kept available for public inspection at. (Here indicate the place or places where complete tariff files are maintained, including the street address, and where appropriate, the room number.)

§ 221.105 Special notice of limited liability for death or injury under the Warsaw Convention.

(a)(1) In addition to the other requirements of this subpart, each air carrier and foreign air carrier which, to any extent, avails itself of the limitation on liability to passengers provided by the Warsaw Convention, shall, at the time of delivery of the ticket, furnish to each passenger whose transportation is governed by the Convention and whose place of departure or place of destination is in the United States, the following statement in writing:

Advice to International Passengers on Limitations of Liability

Passengers embarking upon a journey involving an ultimate destination or a stop in a country other than the country of departure are advised that the provisions of a treaty known as the Warsaw Convention may be applicable to their entire journey including the portion entirely within the countries of departure and destination. The Convention governs and in most cases limits the liability of carriers to passengers for death or personal injury to approximately $10,000.

Additional protection can usually be obtained by purchasing insurance from a private company. Such insurance is not affected by any limitation of the carrier's liability under the Warsaw Convention. For further information please consult your airline or insurance company representative.

(2) Provided, however, That when the carrier elects to agree to a higher limit of liability to passengers than that provided in Article 22(1) of the Warsaw Convention, such statement shall be modified to reflect the higher limit. The statement prescribed herein shall be printed in type at least as large as 10-point modern type and in ink contrasting with the stock on:

(i) Each ticket;

(ii) A piece of paper either placed in the ticket envelope with the ticket or attached to the ticket; or

(iii) The ticket envelope.

(b) Each air carrier and foreign air carrier which, to any extent, avails itself of the limitation on liability to passengers provided by the Warsaw Convention, shall also cause to be displayed continuously in a conspicuous public place at each desk, station, and position in the United States which is in the charge of a person employed exclusively by it or by it jointly with another person, or by any agent employed by such air carrier or foreign air carrier to sell tickets to passengers whose transportation may be governed by the Warsaw Convention and whose place of departure or destination may be in the United States, a sign which shall have printed thereon the statement prescribed in paragraph (a) of this section: Provided, however, That an air carrier, except an air taxi operator subject to part 298 of this subchapter, or foreign air carrier which provides a higher limitation of liability than that set forth in the Warsaw Convention and has signed a counterpart of the agreement among carriers providing for such higher limit, which agreement was approved by the Civil Aeronautics Board by Order E–23680, dated May 13, 1966 (31 FR 7302, May 19, 1966), may use the alternate form of notice set forth in the proviso to § 221.106(a) of this chapter in full compliance with the posting requirements of this paragraph. And provided further, That an air taxi operator subject to part 298 of this subchapter, which provides a higher limitation of liability than that set forth in the Warsaw Convention and has signed a counterpart of the agreement among carriers providing for such higher limit, which agreement was

approved by the Civil Aeronautics Board by Order E–23680, dated May 13, 1966 (31 FR 7302, May 19, 1966), may use the following notice in the manner prescribed by this paragraph in full compliance with the posting requirements of this paragraph. Such statements shall be printed in bold faced type at least one-fourth of an inch high.

Advice to International Passengers on Limitation of Liability

Passengers traveling to or from a foreign country are advised that airline liability for death or personal injury and loss or damage to baggage may be limited by the Warsaw Convention and tariff provisions. See the notice with your ticket or contact your airline ticket office or travel agent for further information.

§ 221.106 Notice of limited liability for baggage; alternative consolidated notice of liability limitations.

(a)(1) Each air carrier and foreign air carrier which, to any extent, avails itself of limitations on liability for loss of, damage to, or delay in delivery of baggage shall cause to be displayed continuously in a conspicuous public place at each desk, station, and position in the United States which is in the charge of a person employed exclusively by it or by it jointly with another person, or by any agent employed by such air carrier or foreign air carrier to sell tickets to persons or accept baggage for checking, a sign which shall have printed thereon the following statement:

Notice of Limited Liability for Baggage

For most international travel (including domestic portions of international journeys) liability for loss, delay, or damage to baggage is limited to approximately $9.07 per pound for checked baggage and $400 per passenger for unchecked baggage unless a higher value is declared and an extra charge is paid. Special rules may apply for valuables. Consult your carrier for details.

(2) Provided, however, That an air carrier or foreign air carrier which provides a higher limitation of liability for death or personal injury than that set forth in the Warsaw Convention and has signed a counterpart of the agreement approved by the Civil Aeronautics Board by Order E–23680, dated May 13, 1966 (31 FR 7302, May 19, 1966), may use the following notice in full compliance with the posting requirements of this paragraph and of § 221.105(b):

Advice to Passengers on Limitations of Liability

Airline liability for death or personal injury may be limited by the Warsaw Convention and tariff provisions in the case of travel to or from a foreign country.

For most international travel (including domestic portions of international journeys) liability for loss, delay or damage to baggage is limited to approximately $9.07 per pound for checked baggage and $400 per passenger for unchecked baggage unless a higher value is declared and an extra charge is paid. Special rules may apply to valuable articles.

See the notice with your tickets or consult your airline or travel agent for further information.

(3) Provided, however, That carriers may include in the notice the parenthetical phrase ''($20.00 per kilo)'' after the phrase ''$9.07 per pound'' in referring to the baggage liability limitation for most international travel. Such statements shall be printed in bold-face type at least one-fourth of an inch high and shall be so located as to be clearly visible and clearly readable to the traveling public.

(b)(1) Each air carrier and foreign air carrier which, to any extent, avails itself of limitations of liability for loss of, damage to, or delay in delivery of, baggage shall include on or with each ticket issued in the United States or in a foreign country by it or its authorized agent, the following notice printed in at least 10 point type:

Notice of Baggage Liability Limitations

For most international travel (including domestic portions of international journeys) liability for loss, delay, or damage to baggage is limited to approximately $9.07 per pound for checked baggage and $400 per passenger for unchecked baggage unless a higher value is declared in advance and additional charges are paid. Excess valuation may not be declared on certain types of valuable articles. Carriers assume no liability for fragile or perishable articles. Further information may be obtained from the carrier.

(2) Provided, however, That carriers may include in their ticket notice the parenthetical phrase ''($20.00 per kilo)'' after the phrase ''$9.07 per pound'' in referring to the baggage liability limitation for most international travel.

(c) It shall be the responsibility of each carrier to insure that travel agents authorized to sell air transportation for such carrier comply with the notice provisions of paragraphs (a) and (b) of this section.

(d) Any air carrier or foreign air carrier subject to the provisions of this section which wishes to use a notice of limited liability for baggage of its own wording, but containing the substance of the language prescribed in paragraphs (a) and (b) of this section may substitute a notice of its own wording upon approval by the Department.

(e) The requirements as to time and method of delivery of the notice (including the size of type) specified in paragraphs (a) and (b) of this section and the requirement with respect to travel agents specified in paragraph (c) of this section may be waived by the Department upon application and showing by the carrier that special and unusual circumstances render the enforcement of the regulations impractical and unduly burdensome and that adequate alternative means of giving notice are employed.

(f) Applications for relief under paragraphs (d) and (e) of this section shall be filed with the Department's Office of International Aviation not later than 15 days before the date on which such relief is requested to become effective.

(g) Notwithstanding any other provisions of this section, no air taxi operator subject to part 298 of this subchapter shall be required to give the notices prescribed in this section, either in its capacity as an air carrier or in its capacity as an agent for an air carrier or foreign air carrier.

§ 221.107 Notice of contract terms.

(a) *Terms incorporated in the contract of carriage.* (1) A ticket, or other written instrument that embodies the contract of carriage for foreign air transportation shall contain or be accompanied by notice to the passenger as required in paragraphs (b) and (d) of this section.

(2) Each carrier shall make the full text of all terms that are incorporated in a contract of carriage readily available for public inspection at each airport or other ticket sales office of the carrier: Provided, That the medium, *i.e.*, printed or electronic, in which the incorporated terms and conditions are made available to the consumer shall be at the discretion of the carrier.

(3) Each carrier shall display continuously in a conspicuous public place at each airport or other ticket sales office of the carrier a notice printed in large type reading as follows:

Explanation of Contract Terms

All passenger (and/or cargo as applicable) contract terms incorporated into the contract of carriage to which this company is a party are available in this office. These provisions may be inspected by any person upon request and for any reason. The employees of this office will lend assistance in securing information, and explaining any terms.

In addition, a file of all tariffs of this company, with indexes thereof, from which incorporated contract terms may be obtained is maintained and kept available for public inspection at. (Here indicate the place or places where tariff files are maintained, including the street address and, where appropriate, the room number.)

(4) Each carrier shall provide to the passenger a complete copy of the text of any/all terms and conditions applicable to the contract of carriage, free of charge, immediately, if feasible, or otherwise promptly by mail or other delivery service, upon request at any airport or

other ticket sales office of the carrier. In addition, all other locations where the carrier's tickets may be issued shall have available at all times, free of charge, information sufficient to enable the passenger to request a copy of such term(s).

(b) *Notice of incorporated terms.* Each carrier and ticket agent shall include on or with a ticket or other written instrument given to the passenger, that embodies the contract of carriage, a conspicuous notice that:

(1) The contract of carriage may incorporate terms and conditions by reference; passengers may inspect the full text of each applicable incorporated term at any of the carrier's airport locations or other ticket sales offices of the carrier; and passengers, shippers and consignees have the right to receive, upon request at any airport or other ticket sales office of the carrier, a free copy of the full text of any/all such terms by mail or other delivery service;

(2) The incorporated terms may include, among others, the terms shown in paragraphs (b)(2) (i) through (iv) of this section. Passengers may obtain a concise and immediate explanation of the terms shown in paragraphs (b)(2) (i) through (iv) of this section from any location where the carrier's tickets are sold.

(i) Limits on the carrier's liability for personal injury or death of passengers (subject to § 221.105), and for loss, damage, or delay of goods and baggage, including fragile or perishable goods.

(ii) Claim restrictions, including time periods within which passengers must file a claim or bring an action against the carrier for its acts or omissions or those of its agents.

(iii) Rules about re-confirmations or reservations, check-in times, and refusal to carry.

(iv) Rights of the carrier and limitations concerning delay or failure to perform service, including schedule changes, substitution of alternate carrier or aircraft, and rerouting.

(c) *Explanation of incorporated terms.* Each carrier shall ensure that any passenger can obtain from any location where its tickets are sold or any similar documents are issued, a concise and immediate explanation of any term incorporated concerning the subjects listed in paragraph (b)(2) or identified in paragraph (d) of this section.

(d) *Direct notice of certain terms.* A passenger must receive conspicuous written notice, on or with the ticket, or other similar document, of the salient features of any terms that restrict refunds of the price of the transportation, impose monetary penalties on customers, or permit a carrier to raise the price or impose more restrictive conditions of contract after issuance of the ticket.

§ 221.108 Transmission of tariff filings to subscribers.

(a) Each carrier required to file tariffs in accordance with this part shall make available to any person so requesting a subscription service as described in paragraph (b) of this section for its passenger tariffs issued by it or by a publishing agent on its behalf.

(b) Under the required subscription service one copy of each new tariff publication, including the justification required by § 221.94, must be transmitted to each subscriber thereto by first-class mail (or other equivalent means agreed upon by the subscriber) not later than one day following the time the copies for official filing are transmitted to the Department. The subscription service described in this section shall not preclude the offering of additional types of subscription services by carriers or their agents.

(c) The carriers or their publishing agents at their option may establish a charge for providing the required subscription service to subscribers: Provided, That the charge may not exceed a reasonable estimate of the added cost of providing the service.

Subpart L—Rejection of Tariff Publications

§ 221.110 Department's authority to reject.

The Department may reject any tariff which is not consistent with section 41504 of the statute, with the regulations in this part, or with Department orders.

§ 221.111 Notification of rejection.

When a tariff is rejected, the issuing carrier or agent thereof will be notified electronically or in writing that the tariff is rejected and of the reason for such rejection.

§ 221.112 Rejected tariff is void and must not be used.

A tariff rejected by the Department is void and is without any force or effect whatsoever. Such rejected tariff must not be used.

Subpart M—Special Tariff Permission To File on Less Than Statutory Notice

§ 221.120 Grounds for approving or denying Special Tariff Permission applications.

(a) *General authority.* The Department may permit changes in fares, charges or other tariff provisions on less than the statutory notice required by section 41505 of the statute.

(b) *Grounds for approval.* The following facts and circumstances constitute some of the grounds for approving applications for Special Tariff Permission in the absence of other facts and circumstances warranting denial:

(1) *Clerical or typographical errors.* Clerical or typographical errors in tariffs constitute grounds for approving applications for Special Tariff Permission to file on less than statutory notice the tariff changes necessary to correct such errors. Each application for Special Tariff Permission based on such grounds shall plainly specify the errors and contain a complete statement of all the attending facts and circumstances, and such application shall be presented to the Department with reasonable promptness after issuance of the defective tariff.

(2) *Rejection caused by clerical or typographical errors or unintelligibility.* Rejection of a tariff caused by clerical or typographical errors constitute grounds for approving applications for Special Tariff Permission to file on less than statutory notice, effective not earlier than the original effective dates in the rejected tariff, all changes contained in the rejected tariff but with the errors corrected. Each application for the grant of Special Tariff Permission based on such grounds shall plainly specify the errors and contain a complete statement of all the attending facts and circumstances, and such application shall be filed with the Department within five days after receipt of the Department's notice of rejection.

(3) *Newly authorized transportation.* The fact that the Department has newly authorized a carrier to perform foreign air transportation constitutes grounds for approving applications for Special Tariff Permission to file on less than statutory notice the fares, rates, and other tariff provisions covering such newly authorized transportation.

(4) The fact that a passenger fare is within a statutory or Department-established zone of fare flexibility constitutes grounds for approving an application for Special Tariff Permission to file a tariff stating that fare and any rules affecting them exclusively, on less than statutory notice. The Department's policy on approving such applications is set forth in § 399.35 of this chapter.

(5) *Lowered fares and charges.* The prospective lowering of fares or charges to the traveling public constitutes grounds for approving an application for Special Tariff Permission to file on less than statutory notice a tariff stating the lowered fares or charges and any rules affecting them exclusively. However, the Department will not approve the application if the proposed tariff raises

significant questions of lawfulness, as set forth in § 399.35 of this chapter.

(c) *Filing notice required by formal order.* When a formal order of the Department requires the filing of tariff matter on a stated number of days' notice, an application for Special Tariff Permission to file on less notice will not be approved. In any such instance a petition for modification of the order should be filed in the formal docket.

§ 221.121 How to prepare and file applications for Special Tariff Permission.

(a) *Form.* Each application for Special Tariff Permission to file a tariff on less than statutory notice shall conform to the requirements of § 221.212 if filed electronically.

(b) *Number of paper copies and place of filing.* For paper format applications, the original and one copy of each such application for Special Tariff Permission, including all exhibits thereto and amendments thereof, shall be sent to the Office of International Aviation, Department of Transportation, Washington, DC 20590.

(c) *Who may make application.* Applications for Special Tariff Permission to file fares, or other tariff provisions on less than statutory notice shall be made only by the issuing carrier or agent authorized to issue and file the proposed tariff. Such application by the issuing carrier or agent will constitute application on behalf of all carriers participating in the proposed fares, or other tariff provisions.

(d) *When notice is required.* Notice in the manner set forth in paragraph (e) of this section is required when a carrier files an application for Special Tariff Permission:

(1) To offer passenger fares that would be outside a Department-established zone of price flexibility or, in markets for which the Department has not established such a zone, outside the statutory zone of price flexibility; or

(2) To file any price increase or rule change that the carrier believes is likely to be controversial.

(e) *Form of notice.* When notice of filing of a Special Tariff Permission application affecting passenger fares is required by paragraph (d) of this section, the carrier shall, when it files the application, give immediate telegraphic notice or other notice approved by the Office of International Aviation, to all certificated and foreign route carriers authorized to provide nonstop or one-stop service in the markets involved, and to civic parties that would be substantially affected. The application shall include a list of the parties notified.

§ 221.122 Special Tariff Permission to be used in its entirety as granted.

Each Special Tariff Permission to file fares, or other tariff provisions on less than statutory notice shall be used in its entirety as granted. If it is not desired to use the permission as granted, and lesser or more extensive or different permission is desired, a new application for Special Tariff Permission conforming with § 221.121 in all respects and referring to the previous permission shall be filed.

§ 221.123 Re-use of Special Tariff Permission when tariff is rejected.

If a tariff containing matter issued under Special Tariff Permission is rejected, the same Special Tariff Permission may be used in a tariff issued in lieu of such rejected tariff provided that such re-use is not precluded by the terms of the Special Tariff Permission, and is made within the time limit thereof or within seven days after the date of the Department's notice of rejection, whichever is later, but in no event later than fifteen days after the expiration of the time limit specified in the Special Tariff Permission.

Subpart N—Waiver of Tariff Regulations

§ 221.130 Applications for waiver of tariff regulations.

Applications for waiver or modification of any of the requirements of this part 221 or for modification of chapter 415 of the statute with respect to the filing and posting of tariffs shall be made by the issuing carrier or issuing agent.

§ 221.131 Form of application for waivers.

Applications for waivers shall be in the form of a letter addressed to the Office of International Aviation, Department of Transportation Washington, DC 20590, and shall:

(a) Specify (by section and paragraph) the particular regulation which the applicant desires the Department to waive.

(b) Show in detail how the proposed provisions will be shown in the tariff under authority of such waiver if granted (submitting exhibits of the proposed provision where necessary to clearly show this information).

(c) Set forth all facts and circumstances on which the applicant relies as warranting the Department's granting the authority requested. No tariff or other documents shall be filed pursuant to such application prior to the Department's granting the authority requested.

Subpart O—Giving and Revoking Concurrences to Carriers

§ 221.140 Method of giving concurrence.

(a) A concurrence prepared in a manner acceptable to the Office of International Aviation shall be used by a carrier to give authority to another carrier to issue and file with the Department tariffs which contain joint fares or charges, including provisions governing such fares or charges, applying to, from, or via points served by the carrier giving the concurrence. A concurrence shall not be used as authority to file joint fares or charges in which the carrier to whom the concurrence is given does not participate, and it shall not be used as authority to file local fares or charges.

(b) *Number of copies.* Each concurrence shall be prepared in triplicate. The original of each concurrence shall be filed with the Department, the duplicate thereof shall be given to the carrier in whose favor the concurrence is issued, and the third copy shall be retained by the carrier who issued the concurrence.

(c) *Conflicting authority to be avoided.* Care should be taken to avoid giving authority to two or more carriers which, if used, would result in conflicting or duplicate tariff provisions.

§ 221.141 Method of revoking concurrence.

(a) A concurrence may be revoked by filing with the Department a Notice of Revocation of Concurrence prepared in a form acceptable to the Office of International Aviation.

(b) *Sixty days' notice required.* Such Notice of Revocation of Concurrence shall be filed on not less than sixty days' notice to the Department. A Notice of Revocation of Concurrence will be deemed to be filed only upon its actual receipt by the Department, and the period of notice shall commence to run only from such actual receipt.

(c) *Number of copies.* Each Notice of Revocation of Concurrence shall be prepared in triplicate. The original thereof shall be filed with the Department and, at the same time that the original is transmitted to the Department, the duplicate thereof shall be sent to the carrier to whom the concurrence was given. The third copy shall be retained by the carrier issuing such notice.

(d) Amendment of tariffs when concurrence revoked. When a concurrence is revoked, a corresponding amendment of the tariff or tariffs affected shall be made by the issuing carrier of such tariffs, on not less than statutory notice, to become effective not

later than the effective date stated in the Notice of Revocation of Concurrence. In the event of failure to so amend the tariff or tariffs, the provisions therein shall remain applicable until lawfully canceled.

§ 221.142 Method of withdrawing portion of authority conferred by concurrence.

If a carrier desires to issue a concurrence conferring less authority than a previous concurrence given to the same carrier, the new concurrence shall not direct the cancellation of such previous concurrence. In such circumstances, such previous concurrence shall be revoked by issuing and filing a Notice of Revocation of Concurrence in a form acceptable to the Office of International Aviation. Such revocation notice shall include reference to the new concurrence.

Subpart P—Giving and Revoking Powers of Attorney to Agents

§ 221.150 Method of giving power of attorney.

(a) *Prescribed form of power of attorney.* A power of attorney prepared in accordance with a form acceptable to the Office of International Aviation shall be used by a carrier to give authority to an agent and (in the case of the agent being an individual) such agent's alternate to issue and file with the Department tariffs which contain local or joint fares or charges, including provisions governing such fares or charges, applicable via and for account of such carrier. Agents may be only natural persons or corporations (other than incorporated associations of air carriers). The authority conferred in a power of attorney may not be delegated to any other person.

(b) *Designation of tariff issuing person by corporate agent.* When a corporation has been appointed as agent it shall forward to the Department a certified excerpt of the minutes of the meeting of its Board of Directors designating by name and title the person responsible for issuing tariffs and filing them with the Department. Only one such person may be designated by a corporate agent, and the title of such designee shall not contain the word ''Agent''. When such a designee is replaced the Department shall be immediately notified in like manner of his successor. An officer or employee of an incorporated tariff-publishing agent may not be authorized to act as tariff agent in his/her individual capacity. Every tariff issued by a corporate agent shall be issued in its name as agent.

(c) *Number of copies.* Each power of attorney shall be prepared in triplicate. The original of each power of attorney shall be filed with the Department, the duplicate thereof shall be given to the agent in whose favor the power of attorney is issued, and the third copy shall be retained by the carrier who issued the power of attorney.

(d) *Conflicting authority prohibited.* In giving powers of attorney, carriers shall not give authority to two or more agents which, if used, would result in conflicting or duplicate tariff provisions.

§ 221.151 Method of revoking power of attorney.

(a) A power of attorney may be revoked only by filing with the Department in the manner specified in this section a Notice of Revocation of Power of Attorney in a form acceptable to the Office of International Aviation.

(b) *Sixty days' notice required.* Such Notice of Revocation of Power of Attorney shall be filed on not less than sixty days' notice to the Department. A Notice of Revocation of Power of Attorney will be deemed to be filed only upon its actual receipt by the Department, and the period of notice shall commence to run only from such actual receipt.

(c) *Number of copies.* Each Notice of Revocation of Power of Attorney shall be prepared in triplicate. The original thereof shall be filed with the Department and, at the same time that the original is transmitted to the Department, the duplicate thereof shall be sent to the agent in whose favor the power of attorney was issued (except, if the alternate agent has taken over the tariffs, the duplicate of the Notice of Revocation of Power of Attorney shall be sent to the alternate agent). The third copy of the notice shall be retained by the carrier.

(d) *Amendment of tariffs when power of attorney is revoked.* When a power of attorney is revoked, a corresponding amendment of the tariff or tariffs affected shall be made by the issuing agent of such tariffs, on not less than statutory notice, to become effective not later than the effective date stated in the Notice of Revocation of Power of Attorney. In the event of failure to so amend the tariff or tariffs, the provisions therein shall remain applicable until lawfully canceled.

§ 221.152 Method of withdrawing portion of authority conferred by power of attorney.

If a carrier desires to issue a power of attorney conferring less authority than a previous power of attorney issued in favor of the same agent, the new power of attorney shall not direct the cancellation of such previous power of attorney. In such circumstances, such previous power of attorney shall be revoked by issuing and filing a Notice of Revocation of Power of Attorney in a form acceptable to the Office of International Aviation. Such revocation notice shall include reference to the new power of attorney.

Subpart Q—Adoption Publications Required To Show Change in Carrier's Name or Transfer of Operating Control

§ 221.160 Adoption notice.

(a) When the name of a carrier is changed or when its operating control is transferred to another carrier (including another company which has not previously been a carrier), the carrier which will thereafter operate the properties shall immediately issue, file with the Department, and post for public inspection, an adoption notice in a form and containing such information as is approved by the Office of International Aviation. (The carrier under its former name or the carrier from whom the operating control is transferred shall be referred to in this subpart as the ''former carrier'', and the carrier under its new name or the carrier, company, or fiduciary to whom the operating control is transferred shall be referred to in this subpart as the ''adopting carrier''.)

(b) The adoption notice shall be prepared, filed, and posted as a tariff. The adoption notice shall be issued and filed by the adopting carrier and not by an agent.

(c) *Copies to be sent to agents and other carriers.* At the same time that the adoption notice is transmitted to the Department for filing, the adopting carrier shall send copies of such adoption notice to each agent and carrier to whom the former carrier has given a power of attorney or concurrence. (See § 221.163.)

§ 221.161 Notice of adoption to be filed in former carrier's tariffs.

At the same time that the adoption notice is issued, posted, and filed pursuant to § 221.160, the adopting carrier shall issue, post and file with the Department a notice in each effective tariff issued by the former carrier providing specific notice of the adoption in a manner authorized by the Office of International Aviation and which shall contain no matter other than that authorized.

§ 221.162 Receiver shall file adoption notices.

A receiver shall, immediately upon assuming control of a carrier, issue and file with the Department an adoption notices as prescribed by §§ 221.160 and

221.161 and shall comply with the requirements of this subpart.

§ 221.163 Agents' and other carriers' tariffs shall reflect adoption.

If the former carrier is shown as a participating carrier under concurrence in tariffs issued by other carriers or is shown as a participating carrier under power of attorney in tariffs issued by agents, the issuing carriers and agents of such tariffs shall, upon receipt of the adoption notice, promptly file on statutory notice the following amendments to their respective tariffs:

(a) Cancel the name of the former carrier from the list of participating carriers.

(b) Add the adopting carrier (in alphabetical order) to the list of participating carriers. If the adopting carrier already participates in such tariff, reference to the substitution notice shall be added in connection with such carrier's name in the list of participating carriers.

§ 221.164 Concurrences or powers of attorney to be reissued.

(a) Adopting carrier shall reissue adopted concurrences and powers of attorney. Within a period of 120 days after the date on which the change in name or transfer of operating control occurs, the adopting carrier shall reissue all effective powers of attorney and concurrences of the former carrier by issuing and filing new powers of attorney and concurrences, in the adopting carrier's name, which shall direct the cancellation of the respective powers of attorney and concurrences of the former carrier. The adopting carrier shall consecutively number its powers of attorney and concurrences in its own series of power of attorney numbers and concurrence numbers (commencing with No. 1 in each series if it had not previously filed any such instruments with the Department), except that a receiver or other fiduciary shall consecutively number its powers of attorney or concurrences in the series of the former carrier. The cancellation reference shall show that the canceled power of attorney or concurrence was issued by the former carrier.

(b) If such new powers of attorney or concurrences confer less authority than the powers of attorney or concurrences which they are to supersede, the new issues shall not direct the cancellation of the former issues; in such instances, the provisions of §§ 221.142 and 221.152 shall be observed. Concurrences and powers of attorney which will not be replaced by new issues shall be revoked in the form and manner and upon the notice required by §§ 221.141 and 221.151.

(c) *Reissue of other carriers' concurrences issued in favor of former carrier.* Each carrier which has given a concurrence to a carrier whose tariffs are subsequently adopted shall reissue the concurrence in favor of the adopting carrier. If the carrier which issued the concurrence to the former carrier desires to revoke it or desires to replace it with a concurrence conferring less authority, the provisions of §§ 221.141 and 221.142 shall be observed.

§ 221.165 Cessation of operations without successor.

If a carrier ceases operations without having a successor, it shall:

(a) File a notice in each tariff of its own issue and cancel such tariff in its entirety.

(b) Revoke all powers of attorney and concurrences which it has issued.

Subpart R—Electronically Filed Tariffs

§ 221.170 Applicability of the subpart.

(a) Every air carrier and foreign air carrier shall file its international passenger fares tariffs consistent with the provisions of this subpart, and part 221 generally. Additionally, any air carrier and any foreign air carrier may file its international passenger rules tariffs electronically in machine-readable form as an alternative to the filing of printed paper tariffs as provided for elsewhere in part 221. This subpart applies to all carriers and tariff publishing agents and may be used by either if the carrier or agent complies with the provisions of subpart R. Any carrier or agent that files electronically under this subpart must transmit to the Department the remainder of the tariff in a form consistent with part 221, Subparts A through Q, on the same day that the electronic tariff would be deemed received under § 221.190(b).

(b) To the extent that subpart R is inconsistent with the remainder of part 221, subpart R shall govern the filing of electronic tariffs. In all other respects, part 221 remains in full force and effect.

§ 221.180 Requirements for electronic filing of tariffs.

(a) No carrier or filing agent shall file an electronic tariff unless, prior to filing, it has signed a maintenance agreement or agreements, furnished by the Department of Transportation, for the maintenance and security of the on-line tariff database.

(b) No carrier or agent shall file an electronic tariff unless, prior to filing, it has submitted to the Department's Office of International Aviation, Pricing and Multilateral Affairs Division, and received approval of, an application containing the following commitments:

(1) The filer shall file tariffs electronically only in such format as shall be agreed to by the filer and the Department. (The filer shall include with its application a proposed format of tariff. The filer shall also submit to the Department all information necessary for the Department to determine that the proposed format will accommodate the data elements set forth in § 221.202.)

(2) The filer shall provide, maintain and install in the Public Reference Room at the Department (as may be required from time to time) one or more CRT devices and printers connected to its on-line tariff database. The filer shall be responsible for the transportation, installation, and maintenance of this equipment and shall agree to indemnify and hold harmless the Department and the U.S. Government from any claims or liabilities resulting from defects in the equipment, its installation or maintenance.

(3) The filer shall provide public access to its on-line tariff database, at Departmental headquarters, during normal business hours.

(4) The access required at Departmental headquarters by this subpart shall be provided at no cost to the public or the Department.

(5) The filer shall provide the Department access to its on-line tariff database 24 hours a day, 7 days a week, except, that the filer may bring its computer down between 6:00 a.m. and 6:00 p.m. Eastern Standard Time or Eastern Daylight Saving Time, as the case may be, on Sundays, when necessary, for maintenance or for operational reasons.

(6) The filer shall ensure that the Department shall have the sole ability to approve or disapprove electronically any tariff filed with the Department and the ability to note, record and retain electronically the reasons for approval or disapproval. The carrier or agent shall not make any changes in data or delete data after it has been transmitted electronically, regardless of whether it is approved, disapproved, or withdrawn. The filer shall be required to make data fields available to the Department in any record which is part of the on-line tariff database.

(7) The filer shall maintain all fares and rules filed with the Department and all Departmental approvals, disapprovals and other actions, as well as all Departmental notations concerning such approvals, disapprovals or other actions, in the on-line tariff database for a period of two (2) years after the fare or rule becomes

inactive. After this period of time, the carrier or agent shall provide the Department, free of charge, with a copy of the inactive data on a machine-readable tape or other mutually acceptable electronic medium.

(8) The filer shall ensure that its on-line tariff database is secure against destruction or alteration (except as authorized by the Department), and against tampering.

(9) Should the filer terminate its business or cease filing tariffs, it shall provide to the Department on a machine-readable tape or any other mutually acceptable electronic medium, contemporaneously with the cessation of such business, a complete copy of its on-line tariff database.

(10) The filer shall furnish to the Department, on a daily basis, on a machine-readable tape or any other mutually acceptable electronic medium, all transactions made to its on-line tariff database.

(11) The filer shall afford any authorized Departmental official full, free, and uninhibited access to its facilities, databases, documentation, records, and application programs, including support functions, environmental security, and accounting data, for the purpose of ensuring continued effectiveness of safeguards against threats and hazards to the security or integrity of its electronic tariffs, as defined in this subpart.

(12) The filer must provide a field in the Government Filing File for the signature of the approving U.S. Government Official through the use of a Personal Identification Number (PIN).

(13) The filer shall provide a leased dedicated data conditioned circuit with sufficient capacity (not less than 28.8K baud rate) to handle electronic data transmissions to the Department. Further, the filer must provide for a secondary or a redundancy circuit in the event of the failure of the dedicated circuit. The secondary or redundancy circuit must be equal to or greater than 14.4K baud rate. In the event of a failure of the primary circuit the filer must notify the Chief of the Pricing and Multilateral Affairs Division of the Department's Office of International Aviation, as soon as possible, after the failure of the primary circuit, but not later than two hours after failure, and must provide the name of the contact person at the telephone company who has the responsibility for dealing with the problem.

(c) Each time a filer's on-line tariff database is accessed by any user during the sign-on function the following statement shall appear:

The information contained in this system is for informational purposes only, and is a representation of tariff data that has been formally submitted to the Department of Transportation in accordance with applicable law or a bilateral treaty to which the U.S. Government is a party.

§ 221.190 Time for filing and computation of time periods.

(a) A tariff, or revision thereto, or a special tariff permission application may be electronically filed with the Department immediately upon compliance with § 221.180, and anytime thereafter, subject to § 221.400. The actual date and time of filing shall be noted with each filing.

(b) For the purpose of determining the date that a tariff, or revision thereto, filed pursuant to this subpart, shall be deemed received by the Department:

(1) For all electronic tariffs, or revisions thereto, filed before 5:30 p.m. local time in Washington, DC, on Federal business days, such date shall be the actual date of filing.

(2) For all electronic tariffs, or revisions thereto, filed after 5:30 p.m. local time in Washington, DC, on Federal business days, and for all electronic tariffs, or revisions thereto, filed on days that are not Federal business days, such date shall be the next Federal business day.

§ 221.195 Requirement for filing printed material.

(a) Any tariff, or revision thereto, filed in paper format which accompanies, governs, or otherwise affects, a tariff filed electronically, must be received by the Department on the same date that a tariff or revision thereto, is filed electronically with the Department under § 221.190(b). Further, such paper tariff, or revision thereto, shall be filed in accordance with the requirements of subparts A through Q of part 221. No tariff or revision thereto, filed electronically under this subpart, shall contain an effective date which is at variance with the effective date of the supporting paper tariff, except as authorized by the Department.

(b) Any printed justifications, or other information accompanying a tariff, or revision thereto, filed electronically under this subpart, must be received by the Department on the same date as any tariff, or revision thereto, filed electronically.

(c) If a filer submits a filing which fails to comply with paragraph (a) of this section, or if the filer fails to submit the information in conformity with paragraph (b) of this section, the filing will be subject to rejection, denial, or disapproval, as applicable.

§ 221.200 Content and explanation of abbreviations, reference marks and symbols.

(a) *Content.* The format to be used for any electronic tariff must be that agreed to in advance as provided for in § 221.180, and must include those data elements set forth in § 221.202. Those portions that are filed in paper form shall comply in all respects with part 221, subparts A through Q.

(b) *Explanation of abbreviations, reference marks and symbols.* Abbreviations, reference marks and symbols which are used in the tariff shall be explained in each tariff.

(1) The following symbols shall be used:

R—Reduction
I—Increase
N—New Matter
X—Canceled Matter
C—Change in Footnotes, Routings, Rules or Zones
E—Denotes change in Effective Date only.

(2) Other symbols may be used only when an explanation is provided in each tariff and such symbols are consistent throughout all the electronically filed tariffs from that time forward.

§ 221.201 Statement of filing with foreign governments to be shown in air carrier's tariff filings.

(a) Every electronic tariff filed by or on behalf of an air carrier that contains fares which, by international convention or agreement entered into between any other country and the United States, are required to be filed with that country, shall include the following statement:

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

(b) The statement referenced in § 221.201(a) may be included with each filing advice by the inclusion of a symbol which is properly explained.

(c) The required symbol may be omitted from an electronic tariff or portion thereof if the tariff publication that has been filed with any other country pursuant to its tariff regulations bears a tariff filing designation of that country in addition to the D.O.T. number appearing on the tariff.

§ 221.202 The filing of tariffs and amendments to tariffs.

All electronic tariffs and amendments filed under this subpart, including those for which authority is sought to effect changes on less than bilateral/statutory

notice under § 221.212, shall contain the following data elements:

(a) A Filing Advice Status File—which shall include:

(1) Filing date and time;

(2) Filing advice number;

(3) Reference to carrier;

(4) Reference to geographic area;

(5) Effective date of amendment or tariff;

(6) A place for government action to be recorded; and

(7) Reference to the Special Tariff Permission when applicable.

(b) A Government Filing File—which shall include:

(1) Filing advice number;

(2) Carrier reference;

(3) Filing date and time;

(4) Proposed effective date;

(5) Justification text; reference to geographic area and affected tariff number;

(6) Reference to the Special Tariff Permission when applicable;

(7) Government control data, including places for:

(i) Name of the government analyst, except that this data shall not be made public, notwithstanding any other provision in this or any other subpart;

(ii) Action taken and reasons therefor.

(iii) Remarks, except that internal Departmental data shall not be made public, notwithstanding any other provision in this or any other subpart;

(iv) Date action is taken; and

(v) Personal Identification Number; and

(8) Fares tariff, or proposed changes to the fares tariffs, including:

(i) Market;

(ii) Fare code;

(iii) One-way/roundtrip (O/R);

(iv) Fare Amount;

(v) Currency;

(vi) Footnote (FN);

(vii) Rule Number, provided that, if the rule number is in a tariff, reference shall be made to that tariff containing the rule;

(viii) Routing (RG) Number(s), provided that the abbreviation MPM (Maximum Permissible Routing) shall be considered a number for the purpose of this file;

(ix) Effective date and discontinue date if the record has been superseded;

(x) Percent of change from previous fares; and

(xi) Expiration date.

(9) Rules tariff, or proposed changes to the rules tariffs.

(i) Rules tariffs shall include:

(A) Title: General description of fare rule type and geographic area under the rule;

(B) Application: Specific description of fare class, geographic area, type of transportation (one way, round-trip, etc.);

(C) Period of Validity: Specific description of permissible travel dates and any restrictions on when travel is not permitted;

(D) Reservations/ticketing: Specific description of reservation and ticketing provisions, including any advance reservation/ticketing requirements, provisions for payment (including prepaid tickets), and charges for any changes;

(E) Capacity Control: Specific description of any limitation on the number of passengers, available seats, or tickets;

(F) Combinations: Specific description of permitted/restricted fare combinations;

(G) Length of Stay: Specific description of minimum/maximum number of days before the passenger may/must begin return travel;

(H) Stopovers: Specific description of permissible conditions, restrictions, or charges on stopovers;

(I) Routing: Specific description of routing provisions, including transfer provisions, whether on-line or inter-line;

(J) Discounts: Specific description of any limitations, special conditions, and discounts on status fares, e.g. children or infants, senior citizens, tour conductors, or travel agents, and any other discounts;

(K) Cancellation and Refunds: Specific description of any special conditions, charges, or credits due for cancellation or changes to reservations, or for request for refund of purchased tickets;

(L) Group Requirements: Specific description of group size, travel conditions, group eligibility, and documentation;

(M) Tour Requirements: Specific description of tour requirements, including minimum price, and any stay or accommodation provisions;

(N) Sales Restrictions: Specific description of any restrictions on the sale of tickets;

(O) Rerouting: Specific description of rerouting provisions, whether on-line or inter-line, including any applicable charges; and

(P) Miscellaneous provisions: Any other applicable conditions.

(ii) Rules tariffs shall not contain the phrase ''intentionally left blank''.

(10) Any material accepted by the Department for informational purposes only shall be clearly identified as ''for informational purposes only, not part of official tariff'', in a manner acceptable to the Department.

(c) A Historical File—which shall include:

(1) Market;

(2) Fare code;

(3) One-way/roundtrip (O/R);

(4) Fare amount;

(5) Currency;

(6) Footnote (FN);

(7) Rule Number, provided that, if the rule number is in a tariff other than the fare tariff, reference shall be made to that tariff containing the rule;

(8) Rule text applicable to each fare at the time that the fare was in effect.

(9) Routing (RG) Number(s), provided that the abbreviation MPM (Maximum Permissible Routing) shall be considered a number for the purpose of this file;

(10) Effective Date;

(11) Discontinue Date;

(12) Government Action;

(13) Carrier;

(14) All inactive fares (two years);

(15) Any other fare data which is essential; and

(16) Any necessary cross reference to the Government Filing File for research or other purposes.

§ 221.203 Unique rule numbers required.

(a) Each ''bundled'' and ''unbundled'' normal economy fare applicable to foreign air transportation shall bear a unique rule number.

(b) The unique rule numbers for the fares specified in this section shall be set by mutual agreement between the filer and the Department prior to the implementation of any electronic filing system.

§ 221.204 Adoption of provisions of one carrier by another carrier.

When one carrier adopts the tariffs of another carrier, the effective and prospective fares of the adopted carrier shall be changed to reflect the name of the adopting carrier and the effective date of the adoption. Further, each adopted fare shall bear a notation which shall reflect the name of the adopted carrier and the effective date of the adoption, provided that any subsequent revision of an adopted fare may omit the notation.

§ 221.205 Justification and explanation for certain fares.

Any carrier or its agent must provide, as to any new or increased bundled or unbundled (whichever is lower) on-demand economy fare in a direct-service market, a comparison between, on the one hand, that proposed fare and, on the other hand, the ceiling fare allowed in that market based on the SFFL.

§ 221.206 Statement of fares.

All fares filed electronically in direct-service markets shall be filed as single factor fares.

§ 221.210 Suspension of tariffs.

(a) A fare, charge, rule or other tariff provision that is suspended by the Department pursuant to section 41509 of the statute shall be noted by the Department in the Government Filing File and the Historical File.

(b) When the Department vacates a tariff suspension, in full or in part, and after notification of the carrier by the Department, such event shall be noted by the carrier in the Government Filing File and the Historical File.

(c) When a tariff suspension is vacated or when the tariff becomes effective upon termination of the suspension period, the carrier or its agent shall refile the tariff showing the effective date.

§ 221.211 Cancellation of suspended matter.

When, pursuant to an order of the Department, the cancellation of rules, fares, charges, or other tariff provision is required, such action shall be made by the carrier by appropriate revisions to the tariff.

§ 221.212 Special tariff permission.

(a) When a filer submits an electronic tariff or an amendment to an electronic tariff for which authority is sought to effect changes on less than bilateral/statutory notice, and no related tariff material is involved, the submission shall bear a sequential filing advice number. The submission shall appear in the Government Filing File and the Filing Advice Status File, and shall be referenced in such a manner to clearly indicate that such changes are sought to be made on less than bilateral/statutory notice.

(b) When a filer submits an electronic tariff or an amendment to the electronic tariff for which authority is sought to effect changes on less than bilateral/statutory notice, and it contains related paper under § 221.195, the paper submission must bear the same filing advice number as that used for the electronic submission. Such paper submission shall be in the form of a revised tariff page rather than as a separate request for Special Tariff Permission. All material being submitted on a paper tariff page as part of an electronic submission will clearly indicate the portion(s) of such tariff page that is being filed pursuant to, and in conjunction with, the electronic submission on less than bilateral/statutory notice.

(c) Departmental action on the Special Tariff Permission request shall be noted by the Department in the Government Filing File and the Filing Advice Status File.

(d) When the paper portion of a Special Tariff Permission that has been filed with the Department pursuant to paragraph (b) of this section is disapproved or other action is taken by the Department, such disapproval or other action will be reflected on the next consecutive revision of the affected tariff page(s) in the following manner:

(1) Example of disapproval statement:

The portion(s) of ____ Revised Page ____ filed under EFA No. ____ was/were disapproved by DOT.

(2) Example of other action:

The portion(s) ____ Revised Page ____ filed under EFA No. ____ was/were required to be amended by DOT.

(e) When the Department disapproves in whole or in part or otherwise takes an action against any submission filed under this part, the filer must take corrective action within two business days following the disapproval or notice of other action.

(f) All submissions under this section shall comply with the requirements of § 221.202.

§ 221.300 Discontinuation of electronic tariff system.

In the event that the electronic tariff system is discontinued, or the source of the data is changed, or a filer discontinues its business, all electronic data records prior to such date shall be provided immediately to the Department, free of charge, on a machine-readable tape or other mutually acceptable electronic medium.

§ 221.400 Filing of paper tariffs required.

(a) After approval of any application filed under § 221.180 of this subpart to allow a filer to file tariffs electronically, the filer in addition to filing electronically must continue to file printed tariffs as required by subparts A through Q of part 221 for a period of 90 days, or until such time as the Department shall deem such filing no longer to be necessary: Provided that during the period specified by this section the filed printed tariff shall continue to be the official tariff.

(b) Upon notification to the filer that it may commence to file its tariffs solely in an electronic mode, concurrently with the implementation of filing electronically the filer shall:

(1) Furnish the Department with a copy of all the existing effective and prospective records on a machine-readable tape or other mutually acceptable electronic medium accompanied by an affidavit attesting to the accuracy of such records; and

(2) Simultaneously cancel such records from the paper tariff in the manner prescribed by subparts A through Q of part 221.

§ 221.500 Transmission of electronic tariffs to subscribers.

(a) Each filer that files an electronic tariff under this subpart shall make available to any person so requesting, a subscription service meeting the terms of paragraph (b) of this section.

(b) Under the required subscription service, remote access shall be allowed to any subscriber to the on-line tariff database, including access to the justification required by § 221.205. The subscription service shall not preclude the offering of additional services by the filer or its agent.

(c) The filer at its option may establish a charge for providing the required subscription service to subscribers: Provided that the charge may not exceed a reasonable estimate of the added cost of providing the service.

(d) Each filer shall provide to any person upon request, a copy of the machine-readable data (raw tariff data) of all daily transactions made to its on-line tariff database. The terms and prices for such value-added service may be set by the filer: Provided that such terms and prices shall be non-discriminatory, *i.e.*, that they shall be substantially equivalent for all similarly-situated persons.

§ 221.550 Copies of tariffs made from filer's printer(s) located in Department's public reference room.

Copies of information contained in a filer's on-line tariff database may be obtained by any user at Departmental Headquarters from the printer or printers placed in Tariff Public Reference Room by the filer. The filer may assess a fee for copying, provided it is reasonable and that no administrative burden is placed on the Department to require the collection of the fee or to provide any service in connection therewith.

§ 221.600 Actions under assigned authority and petitions for review of staff action.

(a) When an electronically filed record which has been submitted to the Department under this subpart, is disapproved (rejected), or a special tariff permission is approved or denied, under authority assigned by the Department of Transportation's Regulations, 14 CFR 385.13, such actions shall be understood to include the following provisions:

(1) *Applicable to a record or records which is/are disapproved (rejected).* The record(s) disapproved (rejected) is/are void, without force or effect, and must not be used.

(2) *Applicable to a record or records which is/are disapproved (rejected), and to special tariff permissions which are approved or denied.* This action is taken under authority assigned by the Department of Transportation in its Organization Regulations, 14 CFR 385.13. Persons entitled to petition for review of this action pursuant to the Department's Regulations, 14 CFR 385.50, may file such petitions within seven days after the date of this action. This action shall become effective immediately, and the filing of a petition for review shall not preclude its effectiveness.

(b) [Reserved]

PART 250—OVERSALES

2. The authority citation for part 250 continues to read as follows:

Authority: 49 U.S.C. chapters 401, 411, 413, 417.

§ 250.4 [Removed]

3. Section 250.4—Denied boarding compensation tariffs for foreign air transportation is removed.

4. A new part 293 is added as follows:

PART 293—INTERNATIONAL PASSENGER TRANSPORTATION

Subpart A—General

Sec.
293.1 Applicability.
293.2 Definitions.

Subpart B—Exemption From Filing of Tariffs

293.10 Exemption.
293.11 Required statement.
293.12 Revocation of exemption.

Subpart C—Effect of Exemption

293.20 Rule of construction.
293.21 Incorporation of contract terms by reference.
293.22 Effectiveness of tariffs on file.

Authority: 49 U.S.C. 40101, 40105, 40109, 40113, 40114, 41504, 41701, 41707, 41708, 41709, 41712, 46101; 14 CFR 1.56(j)(2)(ii).

Subpart A—General

293.1 Applicability.

This part applies to air carriers and foreign air carriers providing scheduled transportation of passengers and their baggage in foreign air transportation.

293.2 Definitions.

For purposes of this part the definitions in § 221.3 of this chapter apply.

Subpart B—Exemption From Filing Tariffs

293.10 Exemption.

(a) Air carriers and foreign air carriers are exempted from the duty to file passenger tariffs with the Department of Transportation, as required by 49 U.S.C. 41504 and 14 CFR part 221, as follows:

(1) The Assistant Secretary for Aviation and International Affairs will, by notice, issue and periodically update a list establishing the following categories of markets:

(i) In Category A markets, carriers are exempted from the duty to file all passenger tariffs unless they are nationals of countries listed in Category C, or are subject to the provisions of paragraph (c) of this section.

(ii) In Category B markets, carriers are exempted from the duty to file all passenger tariffs except those setting forth one-way economy-class fares and governing provisions thereto, unless they are nationals of countries listed in Category C, or are subject to the provisions of paragraph (c) of this section.

(iii) In Category C markets, carriers shall continue to file all passenger tariffs, except as provided in § 293.10(b);

(2) The Assistant Secretary will list country-pair markets falling in Categories A and C, taking into consideration the factors in paragraphs (a)(2) (i) through (iv) of this section. All country-pair markets not listed in Categories A or C shall be considered to be in Category B and need not be specifically listed.

(i) Whether the U.S. has an aviation agreement in force with that country providing double-disapproval treatment of prices filed by the carriers of the Parties;

(ii) Whether the country's Government has disapproved or deterred U.S. carrier price leadership or matching tariff filings in any market;

(iii) Whether the country's Government has placed significant restrictions on carrier entry or capacity in any market; and

(iv) Whether the country's government is honoring the provisions of the bilateral aviation agreement and there are no significant bilateral problems.

(b) By notice of the Assistant Secretary, new country-pair markets will be listed in the appropriate category, and existing country-pair markets may be transferred between categories.

(c) Notwithstanding a determination that a country is in Category A or B, if the Assistant Secretary finds that effective price leadership opportunities for U.S. carriers are not available between that country and any third country, carriers that are nationals of such country may be required to file tariffs, as provided under part 221 or as otherwise directed in the notice, for some or all of their services between the U.S. and third countries.

(d) Air carriers and foreign air carriers are exempted from the duty to file governing rules tariffs containing general conditions of carriage with the Department of Transportation, as required by 49 U.S.C. 41504 and 14 CFR part 221. A description of the general conditions of carriage will be included in the Assistant Secretary's initial notice.

(e) Notwithstanding paragraph (d) of this section, air carriers and foreign air carriers shall file and maintain a tariff with the Department to the extent required by 14 CFR 203.4 and other implementing regulations.

(f) Authority for determining what rules are covered by paragraph (d) of this section and for determining the filing format for the tariffs required by paragraph (e) of this section is delegated to the Director of the Office of International Aviation.

293.11 Required statement.

Each governing rules tariff shall include the following statements:

(a) ''Rules herein containing general conditions of carriage are not part of the official U.S. D.O.T. tariff.''

(b) ''The rules and provisions contained herein apply only to the passenger fares and charges that the U.S. Department of Transportation requires to be filed as tariffs.''

293.12 Revocation of exemption.

(a) The Department, upon complaint or upon its own initiative, may, immediately and without hearing, revoke, in whole or in part, the exemption granted by this part with respect to a carrier or carriers, when such action is in the public interest.

(b) Any such action will be taken in a notice issued by the Assistant Secretary for Aviation and International Affairs, and will identify the tariff matter to be filed, and the deadline for carrier compliance.

(c) Revocations under this section will have the effect of reinstating all applicable tariff requirements and procedures specified in the Department's Regulations for the tariff material to be filed, unless otherwise specified by the Department.

Subpart C—Effect of Exemption

293.20 Rule of construction.

To the extent that a carrier holds an effective exemption from the duty to file tariffs under this part, it shall not, unless otherwise directed by order of the Department, be subject to tariff posting, notification or subscription

requirements set forth in 49 U.S.C. 41504 or 14 CFR part 221, except as provided in § 293.21.

293.21 Incorporation of contract terms by reference.

Carriers holding an effective exemption from the duty to file tariffs under this part may incorporate contract terms by reference (*i.e.*, without stating their full text) into the passenger ticket or other document embodying the contract of carriage for the scheduled transportation of passengers in foreign air transportation, provided that:

(a) The notice, inspection, explanation and other requirements set forth in 14 CFR 221.107, paragraphs (a), (b), (c) and (d) are complied with, to the extent applicable;

(b) In addition to other remedies at law, a carrier may not claim the benefit under this section as against a passenger, and a passenger shall not be bound by incorporation of any contract term by reference under this part, unless the requirements of paragraph (a), of this section are complied with, to the extent applicable; and

(c) The purpose of this section is to set uniform disclosure requirements, which preempt any State requirements on the same subject, for incorporation of terms by reference into contracts of carriage for the scheduled transportation of passengers in foreign air transportation.

293.22 Effectiveness of tariffs on file.

(a) One hundred and eighty days after the date of effectiveness of the Assistant Secretary's notice, passenger tariffs on file with the Department covered by the scope of the exemption will cease to be effective as tariffs under 49 U.S.C. 41504 and 41510, and the provisions of 14 CFR part 221, and will be canceled by operation of law.

(b) One hundred and eighty days after the date of effectiveness of the Assistant Secretary's notice, pending applications for filing and/or effectiveness of any passenger tariffs covered by the scope of the exemption, will be dismissed by operation of law. No new filings or applications will be permitted after the date of effectiveness of the Assistant Secretary's notice except as provided under § 293.12.

Issued in Washington, D.C. on July 16, 1999.

A. Bradley Mims,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 99–18700 Filed 7–21–99; 9:52 am]

BILLING CODE 4910–01–P