

in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Shelbyville, IN, to accommodate aircraft executing the proposed GPS Rwy 01 SIAP, and the GPS Rwy 19 SIAP, at Shelbyville Municipal Airport by modifying the existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approaches. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated

impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL IN E5 Shelbyville, IN [Revised]

Shelbyville Municipal Airport, IN,
(Lat. 39°34'41" N., long. 85°48'12" W.)
Shelbyville VORTAC,
(Lat. 39°37'57" N., long. 85°49'28" W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the Shelbyville Municipal Airport and within 1.8 miles each side of the Shelbyville VORTAC 340° radial extending from the 6.7-mile radius to 9.6 miles north of the VORTAC, excluding the airspace within the Mount Comfort, IN, Class E airspace area.

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Issued in Des Plaines, Illinois on December 31, 1998.

Michelle M. Behm,

Acting Manager, Air Traffic Division.

[FR Doc. 99-1100 Filed 1-20-99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 389

[Docket No. OST-99-5003; Notice No. 99-1]

RIN 2105-AC47

Fees and Charges for Special Services

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department is proposing to revise 14 CFR Part 389 to bring the fees we charge to beneficiaries of certain economic, aviation-related licensing services in line with the costs incurred to provide those services. We also are proposing to remove or update obsolete provisions and organizational references included in the existing regulations.

DATES: Comments should be received no later than March 22, 1999.

ADDRESSES: Five (5) copies of any comments should be sent to Department of Transportation Dockets, Room PL-401, 400 7th Street, SW., Washington, DC 20590-0002, and should refer to this docket. Acknowledgment of comments requires you to include a stamped, self-addressed postcard that the Docket clerk will time and date-stamp, and return.

FOR FURTHER INFORMATION CONTACT: Mr. James H. New or Mr. John D. Miller, Office of Planning and Special Projects, X-60, Department of Transportation, at the address above. Telephone (202) 366-4868.

SUPPLEMENTARY INFORMATION: Part 389 of Title 14 of the Code of Federal Regulations—Fees and Charges for Special Services—describes certain special services related to aviation economic proceedings that the Department provides to the public, and sets forth the fees and charges applicable to those services. This regulation has not been comprehensively updated since January 1983, when economic regulation of interstate and foreign air transportation was overseen by the Civil Aeronautics Board. Congress "sunset" the Board in January 1985, at which time the Board's residual functions were transferred to the Office of the Secretary, DOT. Today, some of the services identified in Part 389 are no longer provided, while several other services are provided but are not included. Further, most of the service processing fees prescribed in section 389.25(a) are not sufficient to recover our processing costs, while the prescribed fee in a few instances is too high. Because of these conditions, the General Accounting Office has

recommended that the Department update the rule to reflect the services that we currently provide and to ensure that our fees are commensurate with the actual costs of providing those services. (GAO/RCED-96-8.)

Consequently, we have undertaken an analysis of the special services the Department provides in aviation economic proceedings, the fees currently in force for those services, and revisions that are needed for us to continue to provide services to the extent commensurate with our actual costs. A revised schedule of fees based on the results of our analysis is set forth in this proposed rule. Additionally, the rule would remove or update obsolete provisions and organizational references sprinkled throughout Part 389 and replace references to the Federal Aviation Act with references to Subtitle VII of Title 49 of the United States Code (Transportation).

Major Changes

The Department is proposing a major reorganization of the processing fee schedule contained in existing section 389.25(a). Of the 50 fee items listed in the schedule, we are proposing to eliminate 10 and to retain or revise the remaining 40. We also are proposing various new items, resulting in a net change from 50 to 76 schedule items. All items considered, there are 55 fee increases, 6 fee decreases, 9 instances in which the fee is unchanged and 6 instances in which an item is reserved for future use.

Under the proposed fee schedule, prospective or incumbent U.S. air carriers that apply for new or modified interstate certificate authority involving the use of "small" aircraft, defined as aircraft with 60 seats or less or with a maximum payload capacity of 18,000 pounds or less, are grouped with U.S. commuter air carriers with regard to the processing of initial applications for economic operating authority, amendments to initial applications, and/or applications for various exemptions or waivers from our regulations. Under the current schedule, the fees levied for these special services to U.S. certificated air carriers operating small aircraft are the same as the fees for U.S. certificated air carriers operating aircraft with more than 60 seats. Our analysis has determined that the costs to process applications involving the former are substantially lower than the costs for the latter, yet are similar to the processing costs for U.S. commuter air carrier authorizations.

We are also proposing a new, incremental fee in the case of applications for various international air

service rights when the Department must conduct a comparative proceeding to distribute those rights among multiple applicants. This comparative process entails significantly higher costs to the Department than those incurred when a comparative proceeding is not necessary.

Additionally, except in the case of a treaty or an agreement, we are proposing to eliminate existing section 389.24, which authorizes the waiver of processing fees for foreign air carriers under certain circumstances. Currently, 235 foreign air carriers that have been granted U.S. economic operating authority qualify for this waiver, and the annual costs we incur to process service applications from such carriers amount to \$248,000. We have concluded that it is neither necessary nor appropriate for the U.S. government to continue to absorb these costs.

User Fee Authority and Implementation

Our revised user charges are proposed under the authority of Title V of the Independent Offices Appropriations Act of 1952 ("IOAA"; 31 U.S.C. 9701). The IOAA provides that the head of a government agency may prescribe regulations, subject to policies prescribed by the President, establishing the charge for a service or "thing of value" provided by the agency. The statute states that each service or thing of value provided by an agency should be self-sustaining to the extent possible, and that each charge imposed to that end shall be fair and shall be based on (1) the costs to the government, (2) the value of the service or thing to the recipient, (3) public policy or interest served, and (4) and other relevant factors.

During the 1970's and early 1980's the IOAA was subjected to a series of judicial rulings to resolve issues of interpretation. Consequently, the principles of user charge implementation under the statute are well settled, and are embodied in the current version of Office of Management and Budget Circular A-25 ("User Charges," July 8, 1993). This Circular prescribes federal policy and guidelines for executive-branch and independent agencies to assess fees for government services and sets forth the procedures by which those agencies are to implement user fees. The principles and procedures enunciated in OMB Circular A-25 and relevant to this proposed rule are as follows (emphasis supplied by DOT):

1. It is the policy of the federal government to assess a user charge against each *identifiable recipient* for *special benefits* derived from federal activities *beyond those received by the*

general public. When a service (or privilege) provides special benefits to an identifiable recipient beyond those that accrue to the general public, a charge will be imposed to recover the *full cost* to the federal government for providing the special benefit.

2. A *special benefit* will be considered to accrue and a user charge will be imposed when, for example, a government service (a) enables the beneficiary to obtain more immediate or substantial gains or values (which may or may not be measurable in monetary terms) than those that accrue to the general public (e.g., receiving a patent, insurance, or guarantee provision, or a license to carry on a specific activity or business or various kinds of public land use); (b) provides business stability or contributes to public confidence in the business activity of the beneficiary (e.g., insuring deposits in commercial banks); or (c) is performed at the request of or for the convenience of the recipient, and is beyond the services regularly received by other members of the same industry or group or by the general public (e.g., receiving a passport, visa, airman's certificate, or a Custom's inspection after regular duty hours).

3. User charges will be sufficient to recover the *full cost* to the federal government of providing the service, resource, or good when the government is acting in its capacity as sovereign. Full cost includes all *direct and indirect costs* to any part of the federal government of providing a good, resource, or service. These costs include, but are not limited to, an appropriate share of direct and indirect personnel costs, including salaries and fringe benefits such as medical insurance and retirement; physical overhead, consulting, and other indirect costs including material and supply costs, utilities, insurance, travel, and rents or imputed rents on land, buildings, and equipment; management and supervisory costs; and the costs of enforcement, collection, research, establishment of standards, and regulation.

4. *No charge* should be made for a service when the identification of the specific beneficiary is *obscure*, and the service can be considered *primarily* as benefiting broadly the general public. However, when the public obtains benefits *as a necessary consequence* of an agency's provision of special benefits to an identifiable recipient (*i.e., the public benefits are not independent of, but merely incidental to, the special benefits*), an agency *need not allocate any costs to the public* and should seek to recover from the identifiable recipient

the full cost to the federal government of providing the special benefit.

5. Each agency will identify the services and activities covered by this Circular, determine the extent of the special benefits provided, and apply the principles specified [herein] in determining cost. Full cost shall be determined or estimated from the best available records of the agency, and new cost accounting systems need not be established solely for this purpose.

Special Services Provided

The Secretary of Transportation is responsible, under Title 49 of the United States Code ("Transportation"), Subtitle VII ("Aviation Programs"), for the economic regulation of interstate and foreign air transportation. The Department's rules and regulations implementing the requirements of Subtitle VII are contained in Title 14 of the Code of Federal Regulations, Parts 200-399. In general, nearly all of the special services provided by the Department in the course of economic regulation involve the authority of a U.S. or a foreign air carrier to conduct revenue-producing interstate or foreign air transportation under the requirements of Subtitle VII and our implementing regulations.

Within the Office of the Secretary, the provision of special services is carried out under delegated authority by the Office of the Assistant Secretary for Aviation and International Affairs and the Office of the General Counsel. Both offices in turn are organized by sub-office and/or division, where the day-to-day processing of applications for special services takes place. The touchstone of the user charges set forth in this proposed rule is the direct labor time expended by these offices to process applications for aviation services on behalf of specific, identifiable recipients accorded a special benefit as a consequence of those services. Staff of both offices also spend time on policy development, analyses and other aspects of economic regulation that are not directly related to the provision of special benefits to identifiable recipients. That labor time is excluded from the scope of this rulemaking.

With respect to processing of applications for special services, the principal offices under the Assistant Secretary are the Office of International Aviation and the Office of Aviation Analysis. A third office, the Office of Aviation and International Economics, although primarily engaged in policy analysis, occasionally provides direct analytical support for applications requesting special services.

The Office of International Aviation receives, processes, and acts on or recommends the disposition of U.S. and foreign air carrier applications for economic authority to operate between the United States and foreign points. It also determines the disposition of all tariff filings by U.S. and foreign airlines. Within this office, the Pricing and Multilateral Affairs division reviews international fares and rates filed by U.S. and foreign air carriers to determine whether the proposed prices are consistent with public interest standards, Department rules and policy, and applicable international agreements. This division also reviews inter-carrier agreements, primarily fare and rate agreements filed by the International Air Transport Association, to determine whether they should be approved and given antitrust immunity. Division analysts also support licensing services provided by the U.S. Air Carrier Licensing division and the Foreign Air Carrier Licensing division. The former processes requests by U.S. airlines for authority to serve specific foreign markets and applications for transfer of international authority among U.S. air carriers. The latter handles all foreign air carrier applications (excepting Canadian air taxi registrations) for the authority to operate to the United States, including applications for foreign air carrier permits, exemptions, statements of authorization for charter, code-share and wet-lease operations, and related matters. In addition to these divisions, geographic aviation specialists for Europe, Asia-Pacific-Africa, and Western Hemisphere occasionally provide direct labor support for applications requesting special services.

Within the Office of Aviation Analysis, the provision of special services primarily involves the Air Carrier Fitness division and the Special Authorities division. Air Carrier Fitness evaluates the fitness of applicants for U.S. certificated and U.S. commuter air carrier operating authority, monitors the continuing fitness of certificated and commuter air carriers, evaluates requests for transfer of certificate or commuter authority, and processes applications for name changes or trade names, as well as applications for various exemptions and waivers from the Department's regulations. The Special Authorities division reviews charter prospectuses filed by tour operators, requests for waivers from charter regulations, and applications for operating authority from Canadian air taxi operators, foreign air freight forwarders, and overseas military personnel charter operators. On

occasion, the Essential Air Service and Domestic Analysis division or the Economic and Financial Analysis division also expend direct labor time on processing applications for certain special services, such as requests for a change in mail rates or an exemption from the airport slot restrictions imposed by the High Density Rule.

Four offices of the Department's General Counsel are involved in the provision of special aviation services: Environmental, Civil Rights and General Law; International Law; Litigation; and Aviation Enforcement and Proceedings. Their chief responsibility is to ensure that proposed decisions on applications for special services are in compliance with applicable laws, regulations and international agreements. These offices also expend direct labor time when issues such as citizenship, bankruptcy, confidentiality or potential litigation arise in the course of processing applications.

Development of Fees

The following procedures were used to develop the user fees proposed in revised section 389.24(a) of the rule:

In accordance with the principles and procedures of OMB Circular A-25, we first examined the activities conducted by the Department to carry out economic regulation of interstate and foreign air transportation in order to identify those services that provide a special benefit to a specific, identifiable recipient. Where the beneficiary is obscure, or the nature of the benefit is indeterminate, or the beneficiary is primarily the public generally, the activity was excluded from further consideration. An example is an action by the Department to suspend or revoke an air carrier's economic authority to conduct interstate or foreign air transportation. Such action is taken primarily for the benefit of the public generally.

For those services identified as providing a special benefit to a specific identifiable recipient, the smallest practical unit for assigning a fee was determined in nearly all cases to be the application document submitted to the Department requesting a special service (a license, an exemption, a waiver, etc.). There are two exceptions: for certain substantive changes to an initial application for economic operating authority, the smallest practical unit is an "amendment," and for certain requests involving antitrust immunity, the smallest practical unit is a "resolution."

We then analyzed the work flows and direct labor hours to process applications for special services. This

analysis was based on (1) the knowledge and expertise of office and division supervisors, all of whom have many years of experience overseeing the processing of aviation service requests, and (2) data on the actual direct labor hours incurred to process a sample of 611 service applications completed during the period March 1997 through July 1998.

The results of the work-flow cost analysis were then applied to calculate direct labor costs, which are based on pay rates in effect as of February 1998 and include a standard allowance for fringe benefits (personal and sick leave, medical insurance, etc.) that is based on a government-wide average published by OMB (Circular A-76, Handbook, March 1996).

In addition to direct labor, indirect (overhead) costs of the Office of the Assistant Secretary were distributed to service applications based on rates applied at three levels: office-level supervision, office-level general and administrative, and general management and support. The overhead rates are based on actual costs for the fiscal year ending September 30, 1997, and exclude overhead items unrelated to the delivery of special services. In making overhead distributions, the rates were applied to actual direct labor costs. For certain overhead costs, such as office space, it was necessary to make a per capita allocation in order to derive a distribution rate. For the Office of the General Counsel, a single overhead rate was applied to the direct labor hours incurred.

Finally, fee amounts were assigned to individual special service items in accordance with these criteria:

If direct labor time data were available for a particular service, the fee was determined by dividing total direct and indirect costs by the number of applications completed. For administrative convenience and ease of payment, values below \$100 are rounded to the nearest dollar and those above \$100 are rounded to the nearest ten dollars.

If direct labor data were not available (i.e., no applications for the special service were completed during the cost-collection period), the fee was assigned based on the staff's analysis of the work flow to process an application for the special service.

If no direct labor data were available and the work-flow analysis identified no reason to assume costs have changed, the existing fee was retained.

If no cost data were available, the work-flow analysis identified no other basis to assign a fee, and no extant fee pertained, the service item was reserved

in expectation of a future fee determination.

Appendix A of this Notice contains a summary of our fee calculations and an item-by-item justification of our proposed fee amounts, including the legal basis for the services provided to specific identifiable recipients, the nature of the special benefits accorded to those recipients, and the basis for the fee amounts proposed. In addition, we are placing in the docket a Supplement ("Service Job Costs") to this Notice that (1) illustrates in detail how direct labor time was reported, how job costs were calculated, and how overhead rates were derived; and (2) lists the 611 applications for special services and their costs included in our work-flow cost analysis. The Department would like to have comment on whether any fee items have been overlooked or whether others should be deleted, in view of the methods used to calculate fees, as explained in this Notice and its Supplement.

U.S. Air Carriers Operating Small Aircraft

As noted earlier, our proposed fee schedule makes a distinction between the processing fees applicable to U.S. certificated air carriers (or applicants for certificate authority) that operate small as compared to large aircraft in interstate air transportation, and groups the former with the processing fees applicable to authorizations involving commuter air carrier operations. Our basis for making this distinction is the significantly lower processing costs associated with applications involving small aircraft, as explained in detail in Appendix A, items 9 through 12 and items 24 through 34. The Department would like to receive comments on the reasonableness and fairness of grouping small-aircraft certificated air carriers with commuter air carriers for purposes of processing fees.

Additional Fee for Comparative Proceedings

We also invite comments on the reasonableness and fairness of our proposed incremental user charge for applications for international air service rights when a comparative proceeding is required to distribute those rights among multiple applicants. Again, the basis for this proposed fee is the additional cost incurred to conduct a comparative proceeding, as explained in detail in Appendix A, items 52 through 57.

Elimination of Waiver of Foreign Air Carrier Processing Fees

Current section 389.24 provides that a foreign air carrier, or such carriers, if from the same country, acting jointly, may apply for a waiver of the requirements to pay processing fees, based on reciprocity for U.S. air carriers contained in the requirement of their home governments, or as provided in a treaty or agreement with the United States. Further, once a waiver has been granted for a specific country, no further waiver applications need be filed for that country.

To date, 76 countries and the 12-nation Air Afrique Consortium have been granted interim or final waivers from the requirement to pay all or some of the processing fees contained in current section 389.25. These waivers in all cases are based on reciprocity: a foreign carrier is relieved from the Department's processing fees only if the aviation authority of its home country does likewise for U.S. carriers. However, none of the waivers we have granted are required by treaty or other formal agreement with the U.S. government and all are revocable at the Department's discretion. Eliminating the waiver provision and revoking existing waivers means that once this proposed rule takes effect, all foreign air carriers would be required to pay the applicable fee contained in revised section 389.24. We recognize that this action could spur the governments of foreign nations whose carriers have benefitted from U.S. fee waivers to reciprocate by revoking the fee relief they have granted to U.S. carriers and requiring U.S. carriers to pay processing fees in the future. The Department would like to receive comments on its proposed elimination of the foreign air carrier waiver provision.

Our reason for proposing to eliminate the foreign air carrier waiver provision is its cost to the Department. In fiscal year 1997, the Foreign Air Carrier Licensing Division received 1,163 applications from foreign carriers requesting various forms of operating authority. Of the total received, 710 applications, or 61 percent, were covered by fee waivers. We estimate that the processing of these applications entails approximately 2,300 labor hours at a total cost to the Department of \$248,000.

Regulatory Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review)

The Department has analyzed the economic and other effects of the proposed revisions and has determined

that they are not "significant" within the meaning of Executive Order 12866. The revisions will not have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The revisions will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency, and will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. Nor do they raise any novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

DOT Regulatory Policies and Procedures

The proposed revisions are not significant under the Department's Regulatory Policies and Procedures, dated February 26, 1979, because they do not involve important Departmental policies; rather, they are being made solely for the purposes of updating the fees charged to the beneficiaries of special aviation-related services provided by the Department to help offset the costs of providing the services, and of eliminating obsolete requirements and correcting out-of-date references in the rule.

Executive Order 12612 (Federalism)

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

Regulatory Flexibility Analysis

I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities. The proposed changes would result in a net increase in the processing fees applicable to small entities. The new fee schedule, however, would not have a significant economic impact on small entities and would not affect a substantial number of small entities.

The Small Business Administration suggests that, for aircraft services, "small" represents impacted businesses with 1,500 or fewer employees. For purposes of this rulemaking, small entities are defined as certificated air carriers, commuter air carriers, air taxis, and air charter operators that (1) have 1,500 or fewer employees and/or (2)

operate aircraft with 60 seats or less or 18,000 pounds maximum payload or less. Departmental records show that 106 certificated air carriers, 49 commuter air carriers, approximately 2,800 active air taxis operators, and approximately 250 charter operators meet this definition of a small entity.

Many of these small entities would be unaffected by the changes to the fee schedule. The actual economic impact on any individual small entity, however, would depend on the number and type of filings submitted to implement particular operational decisions. The survey of applications from March 1997 to July 1998 used to calculate the new fees indicated that only a small portion of small entities filed applications for aviation economic proceedings. Moreover, air taxis, the single largest class of small entities, are exempt from certain regulatory requirements, including the requirement to obtain certificated authority. Several of the fees that we propose to increase are related to certificated authority. Thus, unless they choose to obtain certificates, the largest class of small entities would not be affected by most of the proposed fee increases.

Of those small entities that would be affected, most would experience only modest fee increases because most items for which the survey of applications suggest that relatively large numbers of applications are filed would have only modest fee increases. For instance, the fee for Schedule Item 34, Application for approval of amendment to commuter air carrier registration under 14 CFR Part 298, would increase from \$0 to \$5.

National Environmental Policy Act

The Department has also assessed the proposed revisions for the purpose of the National Environmental Policy Act. The revisions will not have any significant impact on the quality of the human environment.

Paperwork Reduction Act

This rule does not impose any collection of information requirements requiring review under the Paperwork Reduction Act of 1995. The proposed rule contains no new reporting, recordkeeping, or compliance requirements, but only sets forth the processing fees applicable to existing regulatory requirements.

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 contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

Lists of Subjects in 14 CFR Part 389

Administrative practice and procedure, Reporting and recordkeeping requirements.

Proposed Rule

For the reasons set forth above, it is proposed that Title 14, Chapter II of the Code of Federal Regulations be amended as follows:

PART 389—[REVISED]

1. Part 389 is revised to read as follows:

PART 389—FEES AND CHARGES FOR SPECIAL SERVICES

Subpart A—General Provisions

Sec.

389.1 Policy and scope.

Subpart B—Fees Related to the Availability of Public Records and Documents

389.10 Public disclosure of information.

Subpart C—Filing and Processing License Fees

389.20 Applicability of subpart.

389.21 Payment of fees.

389.22 Failure to make proper payment.

389.23 Application for waiver or modification of fees.

389.24 Schedule of processing fees.

389.25 Special rules for tariff page filings.

389.26 Refund of fees.

Authority: 31 U.S.C. 9701, 49 U.S.C. Chapters 401, 461.

Subpart A—General Provisions

§ 389.1 Policy and scope.

Pursuant to the provisions of 31 U.S.C. 9701 as implemented by Office of Management and Budget Circular A-25, revised July 8, 1993, the Department sets forth in this part the special aviation-related services made available by the Department and prescribes the fees to be paid for these and various other services.

Subpart B—Fees Related to the Availability of Public Records and Documents

§ 389.10 Public disclosure of information.

Part 7 of the Office of Secretary regulations, Public Availability of Information, governs the availability of records and documents of the Department to the public. (49 CFR part 7)

Subpart C—Filing and Processing License Fees

§ 389.20 Applicability of subpart.

(a) This subpart applies to the filing of certain documents and records with the Department by non-government parties, and prescribes fees for their processing.

(b) For the purpose of this subpart, record means those electronic tariff records submitted to the Department under subpart W of part 221 of this chapter, and contains that set of information which describes one (1) tariff fare, or that set of information which describes one (1) related element associated with such tariff fare. For purposes of this subpart, the term document and record also includes those filings made electronically under process set at the DOT Dockets website.

(c) For the purpose of this subpart, small aircraft means aircraft with 60 seats or less or with a maximum payload capacity of 18,000 pounds or less.

§ 389.21 Payment of fees.

(a) Any paper document or record for which a filing fee is required by § 389.24 shall be accompanied by either:

(1) A check, draft, or postal money order, payable to the Department of Transportation, in the amount prescribed in this part, or

(2) A request for waiver or modification of the filing fee.

(b) The filing fee required by § 389.24, Item 57, concerning carrier/gateway selection from among multiple applicants, shall be payable upon submission of an applicant's first filing subsequent to the Department's notice that a comparative proceeding is necessary.

(c) Except for tariff records filed under § 221.500 of this title, documents and records filed electronically under process set at the DOT Dockets website shall be accompanied by a certification that the filing fee for that document has been or will be paid in accordance with procedures set at the DOT Dockets website.

(d) Where a document relating to a single transaction or matter seeks multiple authorities or relief and therefore would otherwise be subject to more than one filing fee, only the highest fee shall be required. Where a

document relating to more than one transaction or matter seeks multiple authorities or relief, the required filing fee shall be determined by combining the highest fees for each transaction or matter. For purposes of this paragraph, a specific number of charters or inclusive tours described in one application will be regarded as a single transaction or matter.

(e) No fee shall be returned after the document has been filed with the Department, except as provided in §§ 389.23 and 389.26.

§ 389.22 Failure to make proper payment.

(a)(1) Except as provided in § 389.23, documents (except tariff publications) which are not accompanied by filing fees shall be returned to the filing party, and such documents shall not be considered as filed by the Department.

(2) Except as provided in § 389.23, records which are not accompanied by the appropriate filing fees shall be retained and considered filed with the Department. The Department will notify the filer concerning the nonpayment or underpayment of the filing fees, and will also notify the filer that the records will not be processed until the fees are paid.

(3) Except as provided in § 389.23, documents and records filed electronically not accompanied by the required certification in § 389.21(b) shall not be processed. In addition, electronic filers not making payment in accordance with the procedures set at the DOT Dockets website shall be notified that unless payment is made within 10 days from such notification, the document or record shall be deemed to have been dismissed or withdrawn.

(b) The filing fee tendered by a filing party shall be accepted by the Department office to which payment is made, subject to post audit by the Chief, Accounting Division, Office of Budget and Policy, Federal Transit Administration, and notification to the filing party within 30 days of any additional amount due. Not more than 5 days after receipt of the notification, the determination of the Chief, Accounting Division, may be appealed to the Chief Financial Officer, who has been delegated authority by the Department to decide such appeals. The filing party may submit to the Department a petition for review of the

Chief Financial Officer's decision pursuant to § 385.30 of this chapter, and proceedings thereon will be governed by subpart C of part 385 of this chapter.

(c)(1) The amount found due by the Chief, Accounting Division, shall be paid within 10 days of notification except that:

(i) If that decision is appealed to the Chief Financial Officer, the amount due shall be paid within 10 days after the Chief Financial Officer notifies the filing party that he has affirmed or modified the decision of the Chief, Accounting Division; and

(ii) If the decision of the Chief Financial Officer is appealed to the Department, the amount due shall be paid within 10 days after the Department notifies the filing party that it has affirmed or modified the staff decision.

(2) If the amount due is not paid, the document (except a tariff publication) shall be returned to the filing party along with the fee tendered, and such document shall be deemed to have been dismissed or withdrawn.

§ 389.23 Application for waiver or modification of fees.

(a) Applications may be filed asking for waiver or modification of any fee paid under this subpart. Each applicant shall set forth the reasons why a waiver or modification should be granted, and by what legal authority.

(b) Applications asking for a waiver or modification of fees shall be sent to the Director, Office of International Aviation, or Director, Office of Aviation Analysis, as appropriate, and shall accompany the document filed. Applicants may appeal the decision of the appropriate Director to the Assistant Secretary for Aviation and International Affairs under § 385.30 of this chapter. When no petition for review is filed with the Assistant Secretary, or when the Assistant Secretary reviews the appropriate Director's decision, if the amount found due is not paid within 10 days after receipt of notification of the final determination, the document shall be returned to the filing party.

(Approved by the Office of Management and Budget under control number 3024-0071)

§ 389.24 Schedule of processing fees.

(a) Application—filing fees.

Code and application document

§Fee¹

Initial Authority—U.S. Certificated Air Carriers (large aircraft):

1 Interstate scheduled only	7,030
2 Interstate charter only	7,030
3 All-cargo only	7,030
4 Foreign scheduled only	7,200

Code and application document	\$Fee ¹
5 Foreign charter only	7,100
6 Interstate and foreign scheduled	7,360
7 Interstate and foreign charter	7,270
8 Amendment to initial application, items 1-7 inclusive	² 1,760
Initial Authority—U.S. Commuter Air Carriers and U.S. Certificated Air Carriers (small aircraft):	
9 Interstate scheduled only	3,050
10 Foreign scheduled only	3,150
11 Interstate and foreign scheduled	3,310
12 Amendment to initial application, items 9-11 inclusive	² 760
Exemptions, Waivers, Transfers—U.S. Certificated Air Carriers (large aircraft):	
13 Pendente Lite Exemption	1,900
14 Waiver to advertise, take reservations, issue tickets or receive payments before effective authority is issued	1,900
15 Waiver of revocation-for-dormancy rule	1,370
16 Notice of intent to resume service when resumption is 30 days or more after cessation of service	4,750
17 Notice of intent to resume service when resumption is less than 30 days after cessation of service	1,370
18 Removal of restriction on authority not involving a change from small to large aircraft	1,650
19 Removal of restriction on authority when a change from small to large aircraft is involved	4,750
20 Change name/trade name with reissuance of certificate	500
21 Trade name registration	240
22 Transfer of certificate: New ownership and/or management	7,730
23 Certificate transfer: Intra-corporate reorganization	650
Exemptions, Waivers, Transfers, Amendments—U.S. Commuter Air Carriers and U.S. Certificated Carriers (small aircraft):	
24 Pendente Lite Exemption	280
25 Waiver to advertise, take reservations, issue tickets or receive payments before effective authority is issued	280
26 Waiver of revocation-for-dormancy rule	280
27 [RESERVED.]	
28 Notice of intent to resume service	280
29 [RESERVED.]	
30 Change name/trade name with reissuance of certificate	250
31 Trade name registration	65
32 Transfer of certificate or commuter authority: New ownership and/or management	4,070
33 [RESERVED.]	
34 Amendment to commuter registration	5
Authority for Charter, Air Taxis, Foreign Tour and Foreign Freight Forwarder Operations:	
35 Public charter prospectus	15
36 Waiver of public charter regulations	15
37 Foreign tour operator registration	16
38 U.S. air taxi registration	15
39 Canadian charter air taxi registration	15
40 Foreign air freight forwarder authority	19
41 Amendment to authorization, items 35-40 inclusive	5
Authorizations, Amendments, Exemptions, Waivers—Foreign Air Carriers:	
42 Foreign air carrier permit, initial or renewal	1,550
43 Exemption—More than 10 flights	400
44 Amendment to application, item 42 or 43	215
45 Exemption—10 or fewer flights	120
46 Special authorization, part 375	110
47 Foreign aircraft permit, part 375	180
48 Charter statement of authorization	350
49 Special authority, part 216	410
50 Emergency cabotage	330
51 Approval of foreign carrier schedule change per bilateral agreement	90
International Route Authority, Exemptions, Frequencies, Charter Allocations:	
52 New, renewal or amendment of certificate authority, carrier selection not required	650
53 New, renewal or amendment of exemption authority, carrier selection not required	480
54 New allocation of frequencies in limited-entry markets, carrier selection not required	630
55 Renewal or frequency allocation in limited-entry markets, carrier selection not required	230
56 Charter allocations for aviation operations into foreign countries, carrier selection not required	180
57 Additional charge if carrier/gateway selection is required, items 52-56 inclusive	³ 3,490
58 Route or frequency transfer	4,990
Code-Share, Wet-Lease, Transborder and Intermodal Authorizations:	
59 Statement of code-share authorization	1,100
60 Statement of wet-lease authorization	300
61 [RESERVED.]	
62 Approval under Part 222 for foreign carriers to transport international cargo from a U.S. gateway point to an interior U.S. point via trucking, per bilateral agreement	290
Regulation of Tariffs and Rates:	
63 IATA Resolutions, To and/or from U.S.	484
64 IATA Resolutions, Foreign-to-foreign	45
65 IATA Resolutions, Technical change	15
66 Exemption to carry traffic not otherwise authorized under tariff in effect	53
67 Permission to file tariffs on less than statutory notice	40
68 Approval of waiver/modification of tariff regulations	12
69 Provide certified copies of tariffs upon request	240

Code and application document

\$Fee¹

Other Exemptions and Authorizations:

70 Slot exemption at slot-controlled airport	4,340
71 Confidential treatment of documents	380
72 Approval of agreements/antitrust immunity	1,080
73 [RESERVED.]	
74 [RESERVED.]	
75 Service mail rate petition	420
76 Overseas military personnel charter authority	665

¹ Fee is per application except as noted. If application involves multiple items, highest fee applies.

² Per amendment.

³ Payable upon submission of first filing subsequent to DOT notice that a comparative proceeding is necessary.

⁴ Per resolution.

(b) Electronic tariff filing fees. The filing fee for one (1) or more transactions proposed in any existing record, or for any new or canceled records, shall be 5 cents per record; *Provided:* That no fee shall be assessed for those records submitted to the Department pursuant to § 221.500(b)(1) of this chapter.

§ 389.25 Special rules for tariff page filings.

(a) Tariffs issued by carriers. The filing fee for tariff pages filed by U.S. air carriers will be charged even if the tariff includes matters involving participating foreign air carriers. It will also be charged if the tariff is issued by a foreign air carrier and includes matters involving participating U.S. air carriers. The fee will not be charged for a blank loose-leaf page unless it cancels matters in the preceding issue of the page.

(b) Tariffs issued by publishing agents. (1) If the tariff is issued for one or more air carriers exclusively, the fee will be charged for each page.

(2) If the tariff is issued for one or more air carriers and one or more foreign air carriers, the fee will be charged for each page, except for those pages that the issuing agent states contain only:

(i) Matters pertaining exclusively to foreign air carriers that have been granted a waiver, or

(ii) Changes in matters pertaining to foreign air carriers that have been granted a waiver and that are included on the same page with other matters that are reissued without change.

(3) The fee will not be charged for a blank loose-leaf page unless it cancels matters in the preceding page.

(4) No fee will be charged when two pages are published back-to-back, one page is not subject to the fee under paragraph (b)(2) of this section, and the page on the reverse is issued without substantive change.

(5) The fee will be charged for two loose-leaf pages containing a correction number check sheet unless all other pages of the tariff are exempt from the fee.

§ 389.26 Refund of fee.

(a) Any fee charged under this part may be refunded in full or in part upon request if the document for which it is charged is withdrawn before final action is taken. Such requests shall be filed in accordance with § 389.23.

(b) Any person may file an application for refund of a fee paid since April 28, 1977, on the grounds that such fee exceeded the Department's cost in providing the service. The application shall be filed with the Chief, Accounting Division, Office of Budget and Policy, Federal Transit Administration, and shall contain: the amount paid, the date paid, and the category of service.

(Approved by the Office of Management and Budget under control number 3024-0071) Issued in Washington DC, on January 13, 1999.

Charles A. Hunnicutt,

Assistant Secretary for Aviation and International Affairs.

Note: The following appendix will not appear in the Code of Federal Regulations.

BILLING CODE 4910-62-P

Appendix A

FEE COMPUTATION SUMMARY														
Item	Current Fee	APPLICATION (JOB) PROCESSING COSTS										COST PER JOB	PROPOSED FEE ²	
		DIRECT LABOR				OVERHEAD				TOTAL COSTS				
		Apps ¹	Hours	Wages	Fringes	Total	Office Operating	Office G & A	General Mngmt.		Total			
1	850													7,030
2	850	5	398.4	15,342	7,264	22,606	2,445	5,812	4,273	12,530	35,136	7,027		7,030
3	670													7,030
4	900	Item 5 + 1.06 hrs. additional processing time @ \$90.28 per hr.										7,197		7,200
5	600	4	325.7	12,403	5,873	18,275	1,976	4,698	3,454	10,128	28,404	7,101		7,100
6	1,750	Item 4 + 2.0 hrs. additional processing time @ \$83.25 per hr.										7,363		7,360
7	1,450	Item 5 + 2.0 hrs. additional processing time @ \$83.25 per hr.										7,267		7,270
8	425/200 ³	25% of "basic" fee (see Items 1-3).										1,757		1,760 ⁴
9	670/850	8	301.0	10,679	5,057	15,736	1,690	4,033	2,953	8,676	24,412	3,051		3,050
10	900	Items 9 + 1.06 hrs. additional processing time @ \$90.28 per hr.										3,147		3,150
11	1,750	Item 10 + 2.0 hrs. additional processing time @ \$83.25 per hr.										3,314		3,310
12	425	25% of "basic" fee (see Item 9).										763		760 ⁴
13	280/360 ⁵	4	96.8	3,343	1,583	4,927	521	1,255	910	2,686	7,613	1,903		1,900
14	280/360 ⁵													1,900
15	280/360 ⁵	4	68.0	2,410	1,141	3,551	375	90548	65567	1,935	5,4862	1,371		1,370
16	280 ⁶	3	172.9	6,258	2,963	9,221	977	3,347	1,707	5,031	14,252	4,751		4,750
17	280 ⁶	Same as Item 15.												1,370
18	None	2	41.5	1,450	686	2,136	227	545	398	1,170	3,306	1,653		1,650
19	None	Same as Item 16.												4,750
20	56	2	13.0	446	211	657	67	165	118	350	1,007	503		500
21	56	3	9.4	322	152	474	48	120	85	253	727	242		240
22	290/255 ⁵	2	195.3	6,769	3,205	9,973	1,070	2,550	1,862	5,483	15,456	7,728		7,730
23	290/255 ⁵	3	24.3	857	406	1,262	130	320	227	676	1,939	646		650
24	280	Current fee retained.												280
25	280	Current fee retained.												280
26	280	Current fee retained.												280
27	280 ⁶													Reserved.
28	280 ⁶	Same as Item 26.												280
29	None													Reserved.
30	56	2	6.4	228	108	336	32	82	56	169	505	253		250
31	56	4	3.2	117	55	172	17	42	30	89	261	65		65
32	None	3	157.3	5,372	2,544	7,916	830	2,006	1,451	4,288	12,204	4,068		4,070
33	None													Reserved.
34	None	25	2.5	59	28	87	9	22	17	48	135	5		5
35	39	52	16.9	334	158	492	73	133	97	304	796	15		15
36	39	Same as Item 35.												15
37	10	3	1.5	21	10	31	3	8	60	17	48	16		16
38	8	Same as Item 39.												15
39	30	14	6.7	93	44	137	15	35	26	77	214	15		15
40	11	1	0.6	8	4	12	1	3	2	7	19	19		19
41	None	30	4.8	67	32	99	11	26	19	55	155	5		5
42	760	1	14.0	584	277	861	232	267	190	689	1,549	1,549		1,550
43	360	3	11.5	448	212	661	178	205	146	529	1,190	397		400

FEE COMPUTATION SUMMARY													
Item	Current Fee	APPLICATION (JOB) PROCESSING COSTS											PROPOSED FEE ²
		DIRECT LABOR					OVERHEAD				TOTAL COSTS	COST PER JOB	
		Apps ¹	Hours	Wages	Fringes	Total	Office Operating	Office G & A	General Mngmt.	Total			
44	215	Current fee retained.											215
45	77	1	1.2	47	22	69	19	21	15	55	124	124	120
46	12	1	1.0	42	20	62	17	19	14	50	112	112	110
47	25	6	9.5	414	196	610	165	189	135	488	1,098	183	180
48	8	19	63.8	2,535	1,200	3,735	979	1,139	800	2,918	5,653	350	350
49	37	2	8.7	324	153	477	116	140	95	350	827	414	410
50	360	4	13.8	509	241	749	196	228	160	584	1,333	333	330
51	None	24	19.0	850	403	1,253	338	389	276	1,003	2,256	942	94
52	900	17	122.6	4,280	2,026	6,306	1,575	1,876	1,294	4,745	11,051	650	650
53	360	87	416.3	16,034	7,592	23,626	6,011	7,095	4,930	18,036	41,663	479	480
54	None	6	38.1	1,479	700	2,79	527	639	435	1,600	3,779	630	630
55	None	8	20.4	711	337	1,048	255	307	208	770	1,818	227	230
56	None	6	10.8	405	192	596	152	180	126	458	1,055	176	180
57	None	24	924.0	36,429	17,249	53,678	13,743	16,313	11,532	41,588	95,266	3,490	3,490
Marginal Cost: Select (item 57, \$3,969 Avg.) - (No Select, items 52-56, \$479 Avg.) =													
58	None	1	52.4	1,991	943	2,933	676	833	552	2,061	4,995	4,994	4,990
59	8	25	248.1	10,737	5,084	15,821	3,846	4,615	3,134	11,594	27,415	1,097	1,100
60	8	16	53.9	1,818	861	2,679	699	815	571	2,084	4,763	298	300
61	None	Reserved.											
62	10	3	10.3	331	157	488	132	151	108	391	879	293	290
63	61	20	174.3	7,128	3,375	10,502	2,557	3,075	2,090	7,722	18,225	Adjustment to per resolution basis: \$18,225 total cost / 216 total resolutions =	
64	61	33	21.3	733	347	1,080	291	335	238	864	1,944	59	5 ⁷
Adjustment to per resolution basis: \$1,944 total cost / 417 total resolutions =													
65	None	23	4.8	133	63	195	53	61	43	156	352	15	15
66	53	Current fee retained.											53
67	12	95	65.3	1,442	682	2,124	573	659	468	1,700	3,824	40	40
68	12	Current fee retained.											12
69	2+0.15/pg	6	20.8	548	260	808	218	250	178	646	1,454	242	240
70	None	4	207.3	7,571	3,585	11,156	1,251	2,868	2,093	6,212	17,368	4,342	4,340
71	None	2	9.5	339	161	500	48	121	846	253	753	376	380
72	1,080	Current fee retained.											1,080
73	None	Reserved.											
74	None	Reserved.											
75	420	Current fee retained.											420
76	665	Current fee retained.											665

¹ Apps = Applications (jobs) completed.

² Proposed fee is per application unless noted otherwise. For administrative convenience, computed fees below \$100 are rounded to the nearest \$1 and those above \$100 are rounded to the nearest \$10 in setting proposed amounts.

³ If foreign scheduled or charter, respectively.

⁴ Proposed fee is per amendment.

⁵ If foreign air transportation, latter figure applies.

⁶ Assumes request for waiver of 45-day advance notice requirement (14 CFR 204.7).

⁷ Proposed fee is per resolution.

Justifications of Proposed User Fees

The following sections set forth the legal authority for the special services included in our proposed fee schedule, the nature of the special benefits those services provide to identifiable private recipients, and our rationale for the fee amounts we propose. As described earlier, proposed amounts are based on our analysis of the work processes and costs required to deliver special services to specific identifiable recipients, direct-labor time and cost data on special services for a sample of more than 600 applications that we completed during the period March 1997–July 1998, and the related indirect (overhead) costs distributable to the processing of those applications. When available, applications cost data are applied to compute the proposed fee, defined as the total cost incurred for a specific service divided by the total number of applications completed. If no cost data are available for a particular service (i.e., no applications for that service were completed during the cost-collection period), and we have no other analytic basis to justify a change, the current fee is retained. If a particular type of service has neither current cost data nor an extant fee, no fee is proposed and a schedule item is reserved. In accordance with federal user-charge policy (OMB Circular A–25, par. 8), we intend to continue cost collection and analysis as needed to revisit the fee schedule at least biennially and to revise or update fee items as warranted by changes in our costs or the special services we provide.

Initial Authority—U.S. Certificated Air Carriers (Large Aircraft): Schedule Items 1–8

Our analysis of the processes involved to perform certification services determined that there is a significant difference in processing costs between those prospective air carriers whose applications entail the operation of “large” aircraft (more than 60 seats or more than 18,000 pounds maximum payload) and those whose applications involve “small” aircraft (60 seats or less or 18,000 pounds maximum payload or less). Accordingly, although the statutory basis and nature of special benefits are identical in both instances, we are proposing separate certification categories and fees based on aircraft size, with schedule items 1–8 applied to applications involving large aircraft.

Schedule Item 1. Initial application for certificate authorizing interstate scheduled air transportation under 49 U.S.C. 41102(a)(1). Section 41101(a)(1) of Title 49 of the United States Code (“the Statute”) provides that an air

carrier may engage in interstate scheduled air transportation of persons, property, or mail only if it has been issued a certificate by the Department of Transportation. Section 41102(b)(1) of the Statute requires the Department to find such an air carrier “fit, willing, and able” to provide the air transportation to be authorized by the certificate, and to find that the carrier is a U.S. citizen as defined in section 40102(a)(15) of the Statute. A fee for processing an application for this authority is warranted because the applicant is seeking the special benefit of the Department’s authorization to conduct revenue-producing interstate scheduled air transportation.

Schedule Item 2. Initial application for certificate authorizing interstate charter air transportation under 49 U.S.C. 41102(a)(3). Section 41101(a)(2) of the Statute provides that an air carrier may engage in interstate charter air transportation of persons, property, or mail only if it has been issued a certificate by the Department. Section 41102(b)(2) requires the Department to find the carrier fit, willing, and able to provide the air transportation to be authorized by the certificate, and to find that the carrier is a U.S. citizen as defined in section 40102(a)(15). A fee for processing an application for this authority is justified since the applicant is seeking the special benefit of the Department’s authorization to conduct revenue-producing interstate charter air transportation.

Schedule Item 3. Initial application for certificate authorizing interstate all-cargo transportation under 49 U.S.C. 41103. Section 41103 of the Statute provides that the Department may issue to a U.S. citizen an all-cargo air transportation certificate authorizing it to engage in [interstate] all-cargo air transportation. This section requires the Department to find the carrier fit, willing, and able to provide the air transportation to be authorized. A fee for processing an application for all-cargo authority is warranted since the applicant is seeking the special benefit of the Department’s authorization to conduct revenue-producing all-cargo air transportation.

Our analysis of the work flow and time required to process the foregoing applications determined that the resources expended are essentially the same for each type of initial application. For this reason, we are proposing the identical fee for each type, based on the following cost data:

Direct Labor	\$22,650.80
Overhead	15,530.44

Total Cost	35,136.24
Applications processed	5
Cost per application	7,027.25
Proposed fee, Items 1–3: per application	\$7,030.00

Our analysis also found that there are measurable differences in processing costs depending on whether an applicant requests initial authority to provide (1) Foreign scheduled compared with interstate scheduled service; (2) foreign charter compared with interstate charter service; (3) both interstate and foreign scheduled service; and (4) both interstate and foreign charter service. Accordingly, we are proposing a different fee for each type as explained below.

Schedule Item 4. Initial application for certificate authorizing foreign scheduled air transportation under 49 U.S.C. 41102(a)(1). Section 41101(a)(1) of the Statute provides that an air carrier may engage in foreign scheduled air transportation of persons, property, or mail only if it has been issued a certificate by the Department. Section 41102(b)(1) of the Statute requires the Department to find the carrier fit, willing, and able to provide the air transportation to be authorized by the certificate, and to find that the carrier is a U.S. citizen as defined in section 40102(a)(15) of the Statute. Further, under section 41102(b)(2), the Department is required to find that the proposed foreign air transportation is consistent with the public convenience and necessity and, under section 41102(d), to submit each decision authorizing an application to engage in foreign air transportation to the President for approval in accordance with section 41307. A fee for processing an application under these provisions of the Statute is warranted since the applicant is seeking the special benefit of the Department’s authorization to conduct revenue-producing foreign scheduled air transportation.

We did not process any applications under this schedule item during the cost-collection period. However, our analysis determined that foreign scheduled requires greater processing time than foreign charter (see cost data below) because of the need to evaluate compliance with extant bilateral agreements and to prepare the requisite implementing language for the Department’s final order authorizing the requested operations. The proposed fee is therefore derived as follows:

Cost per application, Foreign Charter, Item 5 (see below) ..	\$7,100.89
Additional processing cost (1.06 hrs. at \$90.28 per hr.)	95.70

Cost per application	7,196.59
Proposed fee, Item 4: per application	7,200.00

Schedule Item 5. Initial application for certificate authorizing foreign charter air transportation under 49 U.S.C. 41102. Section 41101(a)(2) of the Statute provides that an air carrier may engage in foreign charter air transportation only if it has been issued a certificate by the Department, while section 41102(b)(2) requires the Department to find such an air carrier fit, willing, and able to provide the air transportation to be authorized by the certificate, and to find that the carrier is a U.S. citizen as defined in section 40102(a)(15). Further, under section 41102(b)(2), the Department is required to find that the proposed foreign air transportation is consistent with the public convenience and necessity and, under section 41102(d), to submit each decision authorizing an application to engage in foreign air transportation to the President for approval in accordance with section 41307. A fee for processing an application under these provisions of the Statute is warranted since the applicant is seeking the special benefit of the Department's authorization to conduct revenue-producing foreign charter air transportation.

The proposed fee for this service is determined as follows:

Direct Labor	\$18,275.10
Overhead	10,128.44
Total Cost	28,403.54
Applications processed	4
Cost per application	7,100.89
Proposed fee, Item 5: per application	7,100.00

Schedule Item 6. Initial application for certificate authorizing interstate scheduled air transportation under 49 U.S.C. 41102(a)(1) AND foreign scheduled air transportation under 49 U.S.C. 41102(a)(1). Although the basic evaluation process is the same for dual and single-authority applications, the former entails a marginally greater amount of time (2 hours) to analyze the additional service proposal and to process a second authorization. Thus, the proposed fee for this schedule item is derived as follows:

Cost per application, Foreign Scheduled only, Item 4	\$7,196.59
Additional processing cost (2 hrs. at \$83.25 per hr.)	166.50
Cost per application	7,363.09
Proposed fee, Item 6: per application	7,360.00

Schedule Item 7. Initial application for certificate authorizing interstate charter air transportation under 49 U.S.C. 41102(a)(3) AND foreign charter air transportation under 49 U.S.C. 41102. As with item 6, item 7 involves marginally greater time for processing a second authority. The proposed fee is derived in a similar fashion thusly:

Cost per application, Foreign Charter only, Item 5	\$7,100.89
Additional processing cost (2 hrs. at \$83.25 per hr.)	166.50
Cost per application	7,267.39
Proposed fee, Item 7: per application	7,270.00

Schedule Item 8. Amendment to initial application, schedule items 1-7 inclusive. Under section 302.5 of its procedural regulations, the Department requires that if an applicant for certificate authority or for all-cargo authority modifies its application substantially, it must file an amendment to the application. An amendment may involve a substantial change to one of the four major elements—ownership/citizenship, management, finances, or compliance disposition—examined by the Department as predicates to approval of the requested authorization, and necessitates significant additional processing effort. A fee for processing such amendments is warranted since the applicant is seeking the special benefit of the Department's consideration of a major change to one or more of the basic elements affecting the applicant's qualifications to conduct revenue-producing air transportation.

Our work-flow analysis determined that each of the four basic elements of a fitness evaluation entails a comparable amount of processing time. Accordingly, the proposed fee for an amendment¹ to an initial application is set at 25 percent of the basic application fee, as follows:

Initial application cost, Items 1-3	\$7,027.25
× 25% additional cost =	1,756.81
Proposed fee, Item 8: per amendment	1,760.00

¹ We traditionally have made a distinction between amendments and "supplements." As noted above, an amendment involves a substantive change by the applicant to one of the four basic elements of its initial application—ownership/citizenship, management, finances, or compliance disposition. A supplement, by contrast, involves additional details or elaborative material on the basic elements rather than a substantive change, and is normally submitted at the Department's request rather than the applicant's initiative. We have never imposed a fee for supplements and do not propose to begin doing so now.

Initial Authority—U.S. Commuter Air Carriers and U.S. Certificated Air Carriers (Small Aircraft): Schedule Items 9-13

As discussed earlier, we are proposing a separate certification category for applications involving aircraft of 60 seats or less or a maximum payload of 18,000 pounds or less because those applications entail significantly lower processing costs. We also have determined that the time to process applications for commuter authority is essentially the same as that for interstate scheduled service involving small aircraft, and therefore are proposing to combine the two authorities under a single schedule item. The statutory basis and nature of special benefit for commuter authority are presented below. Those for certificated authority involving small aircraft are the same as presented earlier for authorizations involving large aircraft.

Schedule Item 9. Initial application for (1) scheduled passenger air service ("commuter") authority under 49 U.S.C. 41738, or (2) certificate authorizing interstate scheduled air transportation under 49 U.S.C. 41102(a)(1), small aircraft.

Commuter authority. Section 40109(c) authorizes the Department to exempt any person or class of persons from certain provisions of the Statute, such as the requirement to obtain a certificate under section 41101(a). In addition, section 40109(f) provides that an air carrier is exempt from the requirement to obtain a certificate under section 41101(a) if it operates small aircraft and complies with the Department's liability insurance regulations and other requirements. Further, section 41738 of the Statute provides that before an air carrier may provide scheduled air transportation to an eligible place (as defined in section 41736), it must be found to be a U.S. citizen and to be fit, willing, and able to perform the service. A fee for processing an application for this commuter air carrier authority is warranted since the applicant is seeking the special benefit of the Department's authorization to conduct revenue-producing scheduled air transportation to an eligible place.

Certificate authorizing interstate scheduled air transportation under 49 U.S.C. 41102(a)(1), small aircraft. See justification of schedule item 1, supra. Our proposed fee for schedule item 9 is based on the following cost data:

Direct Labor	\$15,735.90
Overhead	8,675.60
Total Cost	24,411.50
Applications processed	8

Cost per application	3,051.44
Proposed fee, Items 9, 10: per application	3,050.00

Schedule Item 10. Initial application for certificate authorizing foreign scheduled air transportation under 49 U.S.C. 41102(a)(1), small aircraft. See justification of schedule item 4, supra.

As in the case of foreign scheduled certificated authority involving large aircraft, there is an incremental cost arising from the need to evaluate compliance with bilateral agreements and to prepare implementing language. Our proposed fee is calculated as follows:

Cost per application, Interstate Scheduled only, Item 9	\$3,051.44
Additional processing cost (1.06 hrs. at \$90.28 per hr.)	95.70
Cost per application	<u>3,147.14</u>
Proposed fee, Item 10: per application	3,150.00

Schedule Item 11. Initial application for certificate authorizing interstate scheduled air transportation under 49 U.S.C. 41102(a)(1) AND foreign scheduled air transportation under 49 U.S.C. 41102(a)(1), small aircraft. An application seeking both interstate and foreign scheduled authority likewise requires marginally greater cost to process dual authorizations. Our proposed fee:

Cost per application, Foreign Scheduled only, Item 10	\$3,147.14
Additional processing cost (2 hrs. at \$83.25 per hr.)	166.50
Cost per application	<u>3,313.64</u>
Proposed fee, Item 11: per application	3,310.00

Schedule Item 12. Amendment to initial application, schedule items 9-12 inclusive. Finally, as with applications involving large aircraft, an amendment to an initial application for commuter authority or certificated authority involving small aircraft typically entails a substantial change in one of the basic elements evaluated by the Department (ownership/citizenship, management, finances or compliance disposition), and requires approximately one-fourth as much time to process as the initial submission. Our proposed fee is therefore:

Initial application cost, Item 9	\$3,051.44
× 25% additional cost =	<u>762.86</u>
Proposed fee, Item 12: per amendment	760.00

Exemptions, Waivers, Transfers—U.S. Certificated Air Carriers, Large Aircraft: Schedule Items 13-23

Schedule Item 13. Application for an exemption from the provisions of 49 U.S.C. 41102 or 41103 in order to conduct air transportation operations before the authority for such operations has been granted (pendente lite exemption). Section 40109(c) of the Statute provides that the Department may grant an air carrier applicant an exemption to engage in air transportation operations without first having obtained a certificate in accordance with section 41102 or section 41103. The Department must determine that a grant of such authority is in the public interest, analyze the qualifications of the applicant, and assess certain consumer protection actions the applicant is required to take in order to be granted a pendente lite exemption. A processing fee for this exemption is justified since the applicant is seeking the special benefit of the Department's authorization to conduct revenue-producing air transportation before it has obtained the required certificate authority.

Schedule Item 14. Application for a waiver of the provisions of 14 CFR 201.5 in order to advertise, take reservations, issue tickets, or receive payments before the underlying operating authority is granted. Section 201.5 of Title 14 of the Code of Federal Regulations ("the regulations") provides that an applicant for air carrier certificate authority may not advertise or take reservations for its proposed air service until its application has been approved by the Department, and that the applicant may not issue tickets or receive payments for its proposed air service until its authority has become effective. Section 40109(c) of the Statute, however, authorizes the Department to grant exemptions or waivers from the regulations. Before granting a waiver, the Department must determine that a grant of such authority is in the public interest, analyze the applicant's qualifications, and assess certain consumer protection actions the applicant is required to take. A fee for processing this application for a waiver is justified since the applicant is seeking the special benefit of the Department's authorization to conduct revenue-producing air transportation before it has obtained the underlying authority for those operations.

Our analysis of the services of schedule items 13 and 14 determined that both entail essentially the same amount of processing time. Our proposed fee is therefore the same for

each item and is based on the following cost data:

Direct Labor	\$4,926.53
Overhead	<u>2,686.07</u>
Total Cost	<u>7,612.60</u>
Applications processed	4
Cost per application	1,903.15
Proposed fee, Items 13, 14: per application	1,900.00

Schedule Item 15. Application by a certificated air carrier for a waiver of the revocation-for-dormancy provisions of 14 CFR 204.7. Section 204.7 of the Department's regulations provides that if a carrier has been awarded a certificate under section 41102 or 41103 of the Statute, but does not institute the air transportation operations for which it was found fit within one year of the date of its fitness determination, the carrier's authority may be revoked for reasons of dormancy. Similarly, if the carrier institutes air transportation operations but subsequently ceases conducting all of the operations for which it was found fit, its authority is automatically suspended and subject to revocation if the carrier does not recommence operations within one year. If the carrier requires additional time beyond the one-year period, it must file an application for a waiver of the revocation-for-dormancy provisions of section 204.7, together with updated fitness information. A fee for processing an application for a waiver of the revocation for dormancy rule is warranted because the Department must assess the carrier's progress in becoming operational and because the carrier is seeking the special benefit of Departmental action to avert revocation of its authority to conduct revenue-producing air transportation operations.

Our proposed fee for this item is determined as follows:

Direct Labor	\$3,550.50
Overhead	<u>1,935.46</u>
Total Cost	<u>5,485.90</u>
Applications processed	4
Cost per application	1,371.48
Proposed fee, Item 15: per application	1,370.00

Schedule Item 16. Notice by a certificated air carrier pursuant to 14 CFR 204.7 of its intent to resume air transportation operations following a cessation of those operations *more than 30 days* after the cessation. Section 204.7 of the regulations provides that if a carrier holding a certificate under section 41102 or 41103 of the Statute ceases conducting all of the air transportation operations for which it was found fit, willing, and able, it may

not resume those operations until its fitness is redetermined by the Department. Under our rules, if the carrier desires to re-institute air transportation operations, it must file a notice of intent to do so along with updated fitness information. A fee for processing a notice of intent to resume service is justified because the Department must re-evaluate the carrier's fitness, including any changes (which often are substantial) that have been made by the carrier since it ceased operations, and because the carrier is seeking the special benefit of the Department's authorization to re-engage in revenue-producing air transportation operations.

Our proposed fee for this item is based on the following:

Direct Labor	\$9,220.69
Overhead	5,030.99
Total Cost	14,251.58
Applications processed	3
Cost per application	4,750.56
Proposed fee, Item 16: per application	4,750.00

Schedule Item 17. Application of notice by a certificated air carrier pursuant to 14 CFR 204.7 of its intent to resume air transportation operations following a cessation of those operations less than 30 days after the cessation. The regulatory basis and nature of special benefit warranting a user charge for this item are the same as those for item 16 above. However, the fitness issues associated with an applicant that has only recently ceased operations normally are less complex and require less analysis and processing effort because fewer changes are likely to have been made in the areas requiring a fitness review. Our work-flow analysis determined that the time required to process a notice to resume service in less than 30 days is essentially the same as that for a waiver-of-dormancy application, item 15 above. We therefore are proposing the same fee for this item, \$1,370 per application.

Schedule Item 18. Application by an air carrier holding a certificate under 49 U.S.C. 41102 or 41103 for the removal of a restriction on its certificate authority when the removal does not involve a change from small to large aircraft. An air carrier may apply to have the Department lift a restriction contained in the Terms, Conditions, and Limitations attached to its certificate. Such an application requires the Department to conduct a continuing fitness review under section 41110(e) of the Statute to determine that the carrier will remain fit, willing, and able if the restriction is removed. Since the

applicant is seeking the special benefit of being granted broader revenue-producing authority by the Department, a processing fee is warranted. Our proposed fee is determined as follows:

Direct Labor	\$2,136.26
Overhead	1,169.68
Total Cost	3,305.94
Applications processed	2
Cost per application	1,652.97
Proposed fee, Item 18: per application	1,650.00

Schedule Item 19. Application by an air carrier holding a certificate under 49 U.S.C. 41102 or 41103 for the removal of a restriction on its certificate authority when the removal does involve a change from small to large aircraft. The statutory basis and nature of special benefit warranting a user charge for this schedule item are the same as for item 18 above. Application processing costs, however, are substantially higher because a change from small to large aircraft has a major impact on the air carrier's management and financial fitness. Although we did not complete any applications for this schedule item during the cost-collection period, our work-flow analysis determined that the process for evaluating a removal of a restriction involving a change from small to large aircraft is essentially the same as the evaluation process for a notice to resume service more than 30 days after cessation (item 16, *supra*). As in the latter case, the applicant under this schedule item typically undergoes substantial changes in its management team and financial structure that necessitate the Department's scrutiny. Thus, the proposed fee for item 19 is the same as for item 16, \$4,750 per application.

Schedule Item 20. Application by a certificated air carrier under 14 CFR Part 215 to register a name or trade name involving the reissuance of its certificate. Part 215 of the Department's regulations provides that a carrier holding a certificate under section 41102 or 41103 of the Statute may not hold itself out as a provider of air transportation service in any name that has not been registered with the Department. A name-change application requires the Department to (1) search its records for any other air carriers with the same or a similar name, (2) advise the applicant accordingly so that it may, in turn, notify any such similarly named carriers of its intent to register the name, and (3) reissue the carrier's certificate in the new name. A fee for this service is warranted since the carrier is seeking the special benefit of being authorized

to engage in revenue-producing air transportation operations under a different name or trade name than previously authorized.

Our proposed fee for this schedule item is as follows:

Direct Labor	\$656.52
Overhead	350.23
Total Cost	1,006.75
Applications processed	2
Cost per application	503.38
Proposed fee, Item 20: per application	500.00

Schedule Item 21. Application for trade name registration (certificate reissuance not required). While the legal basis and nature of special benefit for this item are the same as for item 20 above, the proposed fee is substantially lower because only a notice of the registration must be issued, resulting in materially lower processing costs:

Direct Labor	\$473.95
Overhead	252.98
Total Cost	726.93
Applications processed	3
Cost per application	242.31
Proposed fee, Item 21: per application	240.00

Schedule Item 22. Joint application under 49 U.S.C. 41105 for the transfer of interstate certificate authority. Section 41105 of the Statute provides that a certificate issued under section 41102 or 41103 of the Statute may be transferred only upon the Department's finding that the transfer is in the public interest.² Moreover, the Department must certify to the Congressional committees having jurisdiction over matters of commerce that the transfer will not have an adverse effect on the viability of the carriers involved, competition in the domestic airline industry, or the U.S. trade position in international air transportation. A fee is warranted for approval of a certificate transfer because, in addition to these findings, the Department must determine that the transferee is fit to conduct the operations authorized by the certificate to be transferred and, further, because the applicants are seeking the special benefit of the Department's approval of an action needed by (1) the certificate transferee to engage in the revenue-producing air transportation authorized by the certificate and (2) the transferor so that it may realize any compensation provided for in the transfer agreement.

²This transfer of interstate certificate authority is distinct from the transfer of foreign route/frequency authority. See item 58, below, for the latter.

Our proposed fee for this item is based on the following:

Direct Labor	\$9,973.37
Overhead	5,482.51
Total Cost	15,455.88
Applications processed	2
Cost per application	7,727.94
Proposed fee, Item 22: per application	7,730.00

Schedule Item 23. Application to 49 U.S.C. 41105 involving an intra-corporate reorganization only (e.g., reincorporation in a different state with no changes of ownership or management). In contrast to item 22 above, an air carrier in this instance is seeking the special benefit of the Department's approval of a comparatively minor change to the certificated authority that enables revenue-producing air transportation, and the certificate transfer triggered by the carrier's intra-corporate reorganization entails a less extensive fitness review. The proposed fee for item 23 is therefore substantially lower than for item 22, and is based on the following cost data:

Direct Labor	\$1,262.38
Overhead	676.29
Total Cost	1,938.67
Applications processed	3
Cost per application	646.22
Proposed fee, Item 23: per application	650.00

Exemptions, Waivers, Transfers—U.S. Commuter Air Carriers and U.S. Certificated Air Carriers (Small Aircraft): Schedule Items 24–34

As in the case of initial applications, we are proposing to group commuter air carriers and certificated air carriers using small aircraft into a separate category for exemptions, waivers and transfers. The structure of this category is similar to that of items 13–23 above regarding authorizations involving large aircraft.

Schedule Item 24. Application for an exemption from the provisions of 49 U.S.C. 41738 or 41102 to conduct scheduled air transportation operations before the authority for such operations has been granted (pendente lite exemption). Section 40109(c) of the Statute authorizes the Department to grant an air carrier applicant an exemption to engage in air transportation operations without first having obtained a certificate or commuter authorization. The Department must determine that a grant of such authority is in the public interest, analyze the qualifications of the applicant, and assess certain consumer protection actions the applicant is required to take in order to be granted a pendente lite exemption. A processing fee for this exemption is justified since

the applicant is seeking the special benefit of the Department's authorization to conduct revenue-producing air transportation before it has obtained the required certificate or commuter authority.

Schedule Item 25. Application for a waiver of the provisions of 14 CFR 201.5 in order to advertise, take reservations, issue tickets, or receive payments before the underlying operating authority is granted. Section 201.5 of the Department's regulations provides that an applicant for commuter air carrier or certificate authority may not advertise or take reservations for its proposed air service until its application has been approved by the Department, and that the applicant may not issue tickets or receive payments for its proposed air service until its authority has become effective. Section 40109(c) of the Statute, however, authorizes the Department to grant exemptions or waivers from the regulations. Before granting a waiver, the Department must determine that a grant of such authority is in the public interest, analyze the applicant's qualifications, and assess certain consumer protection actions the applicant is required to take. A fee for processing this application for waiver is justified since the applicant is seeking the special benefit of the Department's authorization to conduct revenue-producing air transportation before it has obtained the underlying authority for those operations.

Schedule Item 26. Application for a waiver of the revocation-for-dormancy provisions of 14 CFR 204.7 Section 204.7 of the Department's regulations provides that if a carrier has been awarded commuter authority under section 41738 of the Statute, or certificate authority under section 41102, but does not institute the air transportation operations for which it was found fit within one year of the date of its fitness determination, the carrier's authority may be revoked for reasons of dormancy. Similarly, if the carrier institutes air transportation operations but subsequently ceases conducting all of the operations for which it was found fit, its authority is automatically suspended and subject to revocation if the carrier does not recommence operations within one year. If the carrier requires additional time beyond the one-year period, it must file an application for a waiver of the revocation-for-dormancy provisions of section 204.7, together with updated fitness information. A fee for processing an application for a waiver of the revocation-for-dormancy rule is warranted because the Department must assess the carrier's progress in becoming

operational and because the carrier is seeking the special benefit of Departmental action to avert revocation of its authority to conduct revenue-producing air transportation operations.

No applications under schedule items 25, 26 or 27 were processed during our cost-collection period, and we have no other basis on which to propose a change to the fees currently in force or to assume that fee costs have changed. Accordingly, the current fee of \$280 per Application is retained for each item.

Schedule Item 27. [Reserved.]

Schedule Item 28. Application of notice pursuant to 14 CFR 204.7 of the intent to resume air transportation operations following a cessation of those operations. Section 204.7 of the regulations provides that if a carrier holding commuter authority under section 41738 of the Statute, or a carrier holding certificate authority under section 41102, ceases conducting all of the air transportation operations for which it was found fit, willing, and able, it may not resume those operations until its fitness is redetermined by the Department. Under our rules, if the carrier desires to re-institute air transportation operations, it must file a notice of intent to do so along with updated fitness information. A fee for processing a notice of intent to resume service is justified because the Department must re-evaluate the carrier's fitness, including any changes (which often are substantial) that have been made by the carrier since it ceased operations, and because the carrier is seeking the special benefit of the Department's authorization to re-engage in revenue-producing air transportation operations.

No applications from commuter air carriers or certificated air carriers operating small aircraft were processed under this item during our cost-collection period. However, our analysis determined that the time required to process a notice to resume service is essentially the same as that for a waiver-of-dormancy application, item 26 above. We therefore are proposing the same fee for item 28, \$280 per Application.

Schedule Item 29. [Reserved.]

Schedule Item 30. Application under 14 CFR Part 215 to register a name or trade name involving the reissuance of a certificate or commuter authorization. Part 215 of the Department's regulations provides that a carrier holding commuter authority under section 41738 of the Statute, or certificate authority under section 41102, may not hold itself out to the public as a provider of air transportation service in any name that has not been registered with the Department. A processing fee

for a name or trade name registration application requires the Department to (1) search its records for any other air carriers with the same or a similar name, (2) advise the applicant accordingly so that it may, in turn, notify any such similarly named carriers of its intent to register the name, and (3) reissue the carrier's authority in the new name. A fee for this service is warranted since the carrier is seeking the special benefit of being authorized to engage in revenue-producing commuter or certificated air carrier operations under a different name or trade name than previously authorized.

Our proposed fee for this item is based on the following:

Direct Labor	\$335.72
Overhead	169.31
Total Cost	505.03
Applications processed	2
Cost per application	252.52
Proposed fee, Item 30: per application	250.00

Schedule Item 31. Application under 14 CFR Part 215 and section 298.36 requesting the Department to accept a registration of a name. This schedule item is akin to item 30 above in terms of its regulatory basis and nature of special benefit, but is significantly less costly to process because only a notice of the registration must be issued. Our proposed fee therefore is lower, and is based on:

Direct Labor	\$171.86
Overhead	88.65
Total Cost	260.51
Applications processed	4
Cost per application	65.13
Proposed fee, Item 31: per application	65.00

Schedule Item 32. Joint application under 49 U.S.C. 41105 for the transfer of certificate or commuter air carrier authority. Section 41105 of the Statute provides that a certificate authority issued under section 41102 of the Statute or a commuter authority issued under section 41738 may be transferred only upon the Department's approval that the transfer is in the public interest.³ Moreover, the Department must certify to the Congressional committees having jurisdiction over matters of commerce that the transfer will not have an adverse effect on the viability of the carriers involved, competition in the domestic airline industry, or the U.S. trade position in

³This transfer of interstate certificate or commuter authority is distinct from the transfer of foreign route/frequency authority. See item 58, below, for the latter.

international air transportation. A fee is warranted for approval of a certificate or commuter authorization transfer because, in addition to these findings, the Department must determine that the transferee is fit to conduct the operations authorized by the certificate or commuter authority to be transferred and the applicants are seeking the special benefit of the Department's approval of an action needed by (1) the transferee to engage in the revenue-producing air transportation authorized and (2) the transferor so that it may realize any compensation provided for in the transfer agreement.

Our proposed fee for this item is based on the following:

Direct Labor	\$7,916.28
Overhead	4,287.70
Total Cost	12,203.98
Applications processed	3
Cost per application	4,067.99
Proposed fee, Item 32: per application	4,070.00

Schedule Item 33. [Reserved.]

Schedule Item 34. Application for approval of amendment to commuter air carrier registration under 14 CFR Part 298. Section 298.23 of the Department's regulations requires a commuter air carrier to submit an amendment to its registration form (OST Form 4507) within 30 days of undergoing any change (e.g., in location, operations conducted, or aircraft fleet) that would make obsolete the information currently on file with the Department. A processing fee for the filing of an amended OST Form 4507 is warranted since the carrier is seeking the special benefit of the Department's approval of changes it has undergone to continue to engage in revenue-producing commuter operations.

Our proposed fee for this schedule item is based on:

Direct Labor	\$87.25
Overhead	48.75
Total Cost	136.00
Applications processed	25
Cost per application	5.44
Proposed fee, Item 34: per application	5.00

Authority for Charter, Air Taxi, Foreign Tour and Foreign Freight Forwarder Operations: Schedule Items 35-41

Schedule Item 35. Application for acceptance of a public charter prospectus. Section 41104 of the Statute provides that the Department may prescribe a regulation restricting the marketability, flexibility, accessibility or variety of charter air transportation provided under a certificate or order

issued under section 41102 of the Statute, but only to the extent required by the public interest. Parts 380, 207, 208 and 212 of the Department's regulations require the filing of a prospectus describing the economic and consumer protections that the applicant must provide to members of the public purchasing its charter transportation. A processing fee for a public charter prospectus is warranted since the applicant, a direct air carrier or indirect air carrier, is seeking the special benefit of the Department's authorization to conduct revenue-producing air charter service.

The proposed fee for this item is as follows:

Direct Labor	\$491.81
Overhead	304.17
Total Cost	795.98
Applications processed	52
Cost per application	15.31
Proposed fee, Item 35: per application	15.00

Schedule Item 36. Application for waiver of charter regulations. Under section 380.3(e) of the public charter regulations, the Department can approve an application submitted by a public charter operator or a direct air carrier for a waiver of the provisions of the charter regulations, provided that a waiver is found to be in the public interest. A fee for processing an application for this waiver is justified since the applicant is seeking the special benefit of the Department's consent to be relieved of certain filing or other requirements in the conduct of revenue-producing charter operations.

No applications under this schedule item were processed during the cost-collection period. However, we have concluded that the current fee of \$39 is too high in light of our proposed fees for charter-type authorizations generally (items 35, 37-40). For this reason, we are proposing to reduce the fee from \$39 to \$15 per application.

Schedule Item 37. Application for approval of foreign charter operator registration. Under section 380.60 of the public charter regulations, foreign charter operators desiring to organize public charter group transportation originating in the United States must register with, and obtain approval of, the Department, including a determination by the Department whether effective reciprocity exists with the homeland of the applicant. The registration application, which must describe the ownership of the company, is held for 28 days, during which time any person may file an objection. A processing fee is warranted since the

applicant is seeking the special benefit of the Department's approval to advertise, organize, provide, sell and/or offer U.S.-originating public charters.

The proposed fee for this item is as follows:

Direct Labor	\$30.90
Overhead	17.25
Total Cost	48.15
Applications processed	3
Cost per application	16.05
Proposed fee, Item 37: per application	16.00

Schedule Item 38. Application for U.S. air taxi registration. Under part 298 of the Department's regulations, any company proposing to operate small aircraft (60 seats or less than or 18,000-pounds payload or less) in on-demand air service must first register with the Department and file evidence of effective liability insurance coverage meeting the requirements of Part 205. Acceptance of the registration relieves these operators from certain provisions and requirements of Subtitle VII of the Statute, including the requirement to obtain a certificate under section 41102. Since the applicant seeks the special benefit of the Department's approval to conduct revenue-producing air taxi operations, a processing fee is warranted.

In October 1997, the responsibility for processing applications for air taxi registrations was transferred from the Office of the Secretary to the Federal Aviation Administration. As a consequence, no data on the cost to process applications under this schedule item were collected. Nevertheless, we are proposing that the same fee established below for Canadian charter air taxi registrations—\$15 per Application—also apply to applications for U.S. air taxi registration. The registration requirements and process involved in both types of applications are quite similar, with the exception that applications for U.S. air taxi registration, unlike those for Canadian charter air taxis, are not required to be held by the Department for a public-comment period of 28 days. The cost to the Department of this "holding" requirement is not material, however, since few, if any, objections are filed.

Schedule Item 39. Application for Canadian charter air taxi registration. Under Part 294 of the Department's regulations, a Canadian charter air taxi operator seeking authority to operate between Canada and the United States must file a registration request with the Department accompanied by evidence of effective liability insurance coverage. The regulation exempts these operators

from certain provisions of Subtitle VII of the Statute and establishes rules applicable to their operations in the United States. Because the applicant seeks the special benefit of the Department's authorization to operate small aircraft across the Canadian border into the United States for revenue-generating purposes, a processing fee is justified.

Our proposed fee for this item:

Direct Labor	\$137.20
Overhead	76.59
Total Cost	213.79
Applications processed	14
Cost per application	15.27
Proposed fee, Item 39: per application	15.00

Schedule Item 40. Application for approval of foreign air freight forwarder registration. Under Part 297 of the Department's regulations, a foreign air freight forwarder must file and receive approval to engage indirectly in interstate or foreign air transportation of property. Acceptance of the application also relieves carriers from certain provisions of Subtitle VII of the Statute. If the registration is approved, the applicant is permitted to arrange for the transportation of property from the point of origin to the point of destination using the services of direct air carriers. The processing fee is warranted since the applicant is seeking the special benefit of the Department's approval of its registration to engage in revenue-producing activity.

Our proposed fee for this schedule item is as follows:

Direct Labor	\$11.95
Overhead	6.67
Total Cost	28.62
Applications processed	1
Cost per application	18.62
Proposed fee, Item 40: per application	19.00

Schedule Item 41. Application for amendment to registration, items 36–40 inclusive. Under section 380.25 (c) and (d) of the Department's regulations, a public charter operator may request that an amendment be made to its original prospectus to add or cancel flights, or to change flight dates, origin or destination points, or the direct air carrier, securer or depository bank. Further, under section 380.65, a foreign charter operator must notify the Department of any change in its operations or ownership and amend its registration accordingly. Likewise, under sections 294.22 and 298.23, a Canadian charter air taxi and U.S. air tax operator, respectively, must notify the

Department of changes in the information contained in its registration and, under section 297.94, a foreign air freight forwarder must file and have approved changes to its registration. A processing fee for these various types of amendments is warranted since, in each instance, the operator is seeking the special benefit of the Department's approval of changes to the authority enabling the operator to continue to engage in revenue-producing operations.

Our analysis of these various types of amendment applications determined that they entail essentially the same processes. Accordingly, we are proposing that the same fee be applied to each type based on the following cost data:

Direct Labor	\$99.21
Overhead	55.37
Total Cost	154.58
Applications processed	30
Cost per amendment	5.15
Proposed fee, Item 41: per application	5.00

Authorizations, Amendments, Exemptions—Foreign Air Carriers: Schedule Items 42–51

Schedule Item 42. Application for an initial, or for renewal of a previously authorized, foreign air carrier permit under 49 U.S.C. 41301. Section 41301 of the Statute requires a foreign air carrier to have a permit from the Department to engage in air transportation operations to a point or points in the United States or its possessions. Section 41302 of the Statute requires the Department to find such a foreign air carrier fit, willing, and able to provide the foreign air transportation to be authorized by the permit, and to find that it has been designated by the government of its country to provide the foreign air transportation under an agreement with the United States Government, or that the foreign air transportation to be provided under the permit will be in the public interest. A fee for processing an application permit is warranted since the foreign air carrier is seeking the special benefit of the Department's authorization to conduct revenue-producing air transportation service to a U.S. point.

A foreign air carrier permit may be issued for a specified term that will require renewal, which normally involves a re-determination of carrier fitness and a processing effort comparable to that for an initial authorization. Because an applicant for renewal seeks the special benefit of continuing its authority to conduct

revenue operations in foreign air transportation, a processing fee is warranted.

Our proposed fee for an initial permit or for renewal of a previously authorized permit is based on the following:

Direct Labor	\$860.56
Overhead	688.71
Total Cost	1,549.27
Applications processed	1
Cost per application	1,549.27
Proposed fee, Item 42: per application	1,550.00

Schedule Item 43. Application by foreign air carrier for exemption from the provisions of 49 U.S.C. 41301. Section 40109(c) of the Statute provides that the Department may grant a foreign air carrier applicant an exemption to conduct (more than 10) flights to a U.S. point or points without its first having obtained a foreign air carrier permit as required by section 41301. A processing fee for an application for this exemption is justified because the foreign air carrier is seeking the special benefit of the Department's temporary authorization to conduct revenue-producing air transportation to a U.S. point in circumstances where obtaining a foreign air carrier permit would take too long or otherwise be inappropriate.

Our proposed fee for this item is based on the following:

Direct Labor	\$660.85
Overhead	528.86
Total Cost	1,189.71
Applications processed	3
Cost per application	396.57
Proposed fee, Item 43: per Application	400.00

Schedule Item 44. Amendment by a foreign air carrier of either its application for a permit or its application for an exemption to conduct more than 10 flights. If an applicant for a foreign air carrier permit under section 41301 or for an exemption under section 40109(c) of the Statute modifies its application substantially, it must file an amendment to such application. Such amendments trigger significant additional processing time, and a fee to cover processing costs is warranted since the applicant receives the special benefit of additional or different authority for revenue-producing operations, while saving the time and expense that a new application would entail.

No applications under this schedule item were processed during the cost-collection period, and we have no other basis to propose a change in the current

fee or to assume that fee costs have changed. Accordingly, the current fee of \$215 per Application is retained.

Schedule Item 45. Application by foreign air carrier for an exemption from the provisions of 49 U.S.C. 41301 to conduct ten or fewer flights. Section 40109(c) of the Statute provides that the Department may grant a foreign air carrier an exemption from the need to obtain a foreign air carrier permit as required by section 41301 of the Statute in order to conduct flights to a U.S. point or points. Department rules (14 CFR 302.401 *et seq.*) provide for simplified application procedures for certain exemptions of 10 or fewer flights. A fee for processing such an exemption application is justified because the foreign air carrier is seeking the special benefit of the Department's authorization to temporarily conduct revenue-producing air transportation to a U.S. point and to defer the time and financial expenditures required to obtain a foreign air carrier permit.

Our proposed fee for this item is based on the following:

Direct Labor	\$69.09
Overhead	55.29
Total Cost	124.38
Applications processed	1
Cost per application	124.38
Proposed fee, Item 45: per Application	120.00

Schedule Item 46. Application for a special authorization under 14 CFR Part 375. Section 41703 of the Statute and section 375.70 of the regulations provide that the Department may authorize particular flights that are not within an applicant's other authority and not appropriately the subject of an exemption under 49 U.S.C. 40109. The Department must determine that the proposed operations are fully consistent with the applicable law, that the applicant's homeland grants a similar privilege with respect to U.S. operators, and that the proposed operation is in the U.S. public interest. A fee in connection with an application for such a special authorization is warranted because the applicant is seeking the special benefit of permission to engage in an air operation of value that is not otherwise authorized.

Our proposed fee for this item is based on the following:

Direct Labor	\$62.34
Overhead	48.89
Total Cost	112.23
Applications processed	1
Cost per application	112.23
Proposed fee, Item 46: per Application	110.00

Schedule Item 47. Application for a foreign aircraft permit under 14 CFR Part 375. Section 41703 of the Statute and section 375.40 of the Department's regulations state that commercial air operations utilizing foreign civil aircraft may be undertaken in the U.S. only if a permit issued by the Department is carried aboard the aircraft. A fee to offset the costs of processing a permit application is warranted since the applicant is seeking the special benefit of the Department's authorization to operate a foreign aircraft in air commerce in the United States.

Our proposed fee for this item is based on the following:

Direct Labor	\$609.84
Overhead	488.06
Total Cost	1,097.90
Applications processed	6
Cost per application	182.98
Proposed fee, Item 47: per Application	180.00

Schedule Item 48. Application for foreign carrier charter statement of authorization under 14 CFR Part 212. Foreign air carrier permits issued under 49 U.S.C. 41302 require that charter flights must be conducted in accordance with 14 C.F.R. Part 212. Part 212 provides that certain charters require prior approval in the form of a Statement of Authorization, which the Department grants if it finds that the charters will be in the public interest. A fee to defray processing costs is warranted since the applicant is seeking the special benefit of authority to conduct revenue-producing operations in foreign air transportation.

Our proposed fee for this item is based on the following:

Direct Labor	\$3,735.21
Overhead	1,917.79
Total Cost	6,653.00
Applications processed	19
Cost per application	350.16
Proposed fee, Item 48: per Application	350.00

Schedule Item 49. Application for special authorization under 14 CFR Part 216. Unless specifically authorized by its section 41302 permit, a foreign air carrier may not commingle traffic moving in foreign air transportation with traffic not moving in foreign air transportation unless it has a Special Authorization under Part 216. This situation arises when a foreign carrier serves between a U.S. point and a homeland point via an intermediate point. The intermediate-homeland leg of the flight is called a "blind sector" with respect to U.S. air transportation,

because local traffic on that segment is not carried to or from the United States and is not in air transportation as defined in the Statute. Without the ability to commingle traffic on all flight segments, a carrier would lose valuable revenue. Thus the applicant for a Special Authorization to commingle blind-sector traffic seeks a special benefit, justifying a processing fee.

Our proposed fee for this item is based on the following:

Direct Labor	\$477.27
Overhead	350.05
Total Cost	827.32
Applications processed	2
Cost per application	413.66
Proposed fee, Item 49: per application	410.00

Schedule Item 50. Application for emergency cabotage exemption under 49 U.S.C. 40109(g). Section 41701 of the Statute prohibits foreign civil aircraft from carrying revenue traffic between two U.S. points ("cabotage" traffic) unless an exemption is granted under section 40109(g), which deals specifically with emergency cabotage. These applications are addressed separately from other exemptions, because on the one hand, the authority at issue in a given application usually is narrower, but on the other hand, the statutory criteria for a grant are more detailed and specialized, and the compressed timeframe for consideration requires more intense application of staff resources than do most exemptions in foreign air transportation. A processing fee is warranted since applicants for this authority are seeking the special benefit of performing otherwise prohibited air transportation.

Our proposed fee for this item is based on the following:

Direct Labor	\$749.35
Overhead	583.50
Total Cost	1,332.85
Applications processed	4
Cost per application	333.21
Proposed fee, Item 50: per application	330.00

Schedule Item 51. Filing by a foreign air carrier of its proposed schedule for which approval is required under an international agreement. Section 40105(b) of the Statute provides that the Department shall, in carrying out Part A of the Statute, act consistently with applicable international agreements. Some bilateral aviation agreements provide that the air carriers of each country file their proposed schedules for the approval of the other country's aviation authorities. Air carriers

required to file schedules in this way may not perform air transportation without submitting their schedules for review. A processing fee for schedule filings is warranted since the air carrier is seeking the special benefit of the Department's approval of its proposed schedule for engaging in revenue-producing air transportation.

Our proposed fee for this item is calculated as follows:

Direct Labor	\$1,253.03
Overhead	1,002.61
Total Cost	2,255.64

Filings processed	24
Cost per filing	93.99
Proposed fee, Item 51: per filing application	94.00

U.S. Air Carrier International Route Authority, Exemptions, Frequencies, and Charter Allocations: Schedule Items 52-58

The various items in this schedule category involve the authorization of international air service rights. Under the United States' pro-competitive international aviation policy (60 FR 21841), the Department routinely grants such rights to all qualified applicants, except in circumstances when the availability of rights is artificially constrained. In the absence of constraints, the Department requires only a simple application and acts to confer authority expeditiously. When limits apply, however, as in the case of restrictive bilateral agreements, and when applicants seek more authority than can be granted, we must conduct a comparative proceeding to select carriers (and in some cases gateways) for distribution of the limited rights available. Compared with a non-contested proceeding, a comparative proceeding typically entails substantially higher processing costs because each applicant submits a detailed service proposal with supporting data, which in turn are analyzed by the Department and by competing applicants. Thereafter, the Department issues a tentative decision; applicants respond to that decision and to one another's arguments; and following consideration and analysis of all pleadings, the Department issues its final decision.

In the interest of cost recovery, we are proposing that each applicant initially pay the processing fee in effect for the relevant non-contested air service rights (see items 52-56 below) and, if a comparative proceeding proves necessary, remit an additional fee to cover the additional cost (see item 57).

Schedule Item 52. Application for new, amended or renewed certificate

authority, comparative proceeding not required. Section 41101 of the Statute provides that an air carrier may perform air transportation only if it holds a certificate of public convenience and necessity authorizing the transportation. A processing fee for applications under this item is warranted because in each instance of new certificate authority, amendment to an extant authority, or certificate renewal, the applicant is seeking the special benefit of the Department's authorization to commence, change or continue revenue-producing air transportation service.

The processing cost data collected under this schedule item do not indicate a need for distinct processing fees among applications for new, amended or renewed certificate authority. Therefore, we are proposing a single fee as follows:

Direct Labor	\$6,306.10
Overhead	4,774.50
Total Cost	11,050.60

Applications processed	17
Cost per application	650.04
Proposed fee, Item 52: per application	650.00

Schedule Item 53. Application for new, renewal or amendment of exemption authority, comparative proceeding not required. Section 40109(c) of the Statute provides that an air carrier may obtain an exemption from section 41101 authorizing it to perform air transportation without a certificate of public convenience and necessity. A processing fee for this exemption authority is warranted since, in each instance of new exemption authority, amended authority, or exemption renewal, the applicant is seeking the special benefit of the Department's authorization to commence, change or continue revenue-producing air transportation without having a certificate of public convenience and necessity.

As with applications for certificate authority (item 52, *supra*), our processing cost data do not indicate a need for distinct fees among new, amended and renewed exemption authority, and we are proposing the following single fee:

Direct Labor	\$23,626.46
Overhead	18,036.22
Total Cost	41,662.68

Applications processed	87
Cost per application	478.88
Proposed fee, Item 52: per application	480.00

Schedule Item 54. Application for initial allocation of scheduled-service

frequencies in limited-entry market, comparative proceeding not required. Section 40105(b) of the Statute provides that the Department shall, in carrying out Part A of the Statute, act consistently with applicable international agreements. Some bilateral aviation agreements limit the capacity of service, usually expressed in terms of number of weekly flights or "frequencies" of various-sized aircraft that U.S. air carriers may fly on the authorized routes. The Department must allocate the available frequencies among applicant U.S. carriers and establish the extent and duration of those allocations, taking public interest considerations into account. Because the applicant for scheduled-service frequencies is seeking the special benefit of the Department's authorization to conduct revenue-producing air transportation, a processing fee is warranted.

Our proposed fee for this schedule item is a follows:

Direct Labor	\$2,178.93
Overhead	1,600.09
Total Cost	3,779.02
Applications processed	6
Cost per application	629.84
Proposed fee, Item 54: per application	630.00

Schedule Item 55. Application for renewal of allocation of scheduled-service frequencies in limited-entry market, comparative proceeding not required. Initial allocations of limited scheduled-service frequencies (item 54, *supra*) are made for finite terms, typically one or two years, because of the need to weigh the effects of any changes in market conditions. When the need for allocation persists, limited-

term allocations are renewed. Since the applicant for frequency renewal seeks the special benefit of the Department's approval to continue revenue-producing air transportation, a processing fee is warranted. In contrast to the case of certificate or exemption authority (items 52 and 53, *supra*), the cost of processing an application for renewal of a frequency allocation is materially lower than that for the initial frequency award. Accordingly, the proposed fee for a renewal application is substantially lower:

Direct Labor	\$1,047.80
Overhead	769.95
Total Cost	1,817.75
Applications processed	8
Cost per application	227.22
Proposed fee, Item 55: per application	230.00

Schedule Item 56. Application for allocation of limited charter flights, comparative proceeding not required. Section 40105(b) provides that the Department shall, in carrying out Part A of the Statute, act consistently with applicable international agreements. Some bilateral aviation agreements limit, usually on a seasonal or annual basis, the number of charter flights that may be operated. The Department must allocate the available charters among applicant U.S. carriers before each charter allocation period, balancing the applicants' expectations against their historical performance and the need to reserve a portion of the periodic allocation for emergencies or other unforeseen demand. During the charter period, carriers must relinquish unused allocations, and others may apply for additional flights. Since the applicant

seeks the special benefit of the Department's authorization to conduct revenue-producing charter air transportation, a processing fee is justified.

Our proposed fee for this schedule item is a follows:

Direct Labor	\$596.41
Overhead	458.14
Total Cost	1,054.55
Applications processed	6
Cost per application	175.76
Proposed fee, Item 56: per application	180.00

Schedule Item 57. Additional charge for an application for limited authorities (Items 52-56 inclusive) when a comparative proceeding is required. Schedule items 52-56 above apply to various forms of U.S. carrier authority to serve foreign markets. As we describe earlier, when applications exceed available rights, it falls to the Department to conduct a comparative proceeding to determine the distribution of those rights among applicants, resulting in significant additional processing costs. It often is not known at the time of initial application whether selection procedures will be required, because even when rights are limited, the applications in aggregate may not exceed the available rights. Therefore, we are proposing that each applicant initially pay the fee applicable per items 52-56 above, and then remit an additional fee with its first filing subsequent to the Department's notice that a comparative proceeding is necessary.

Our proposed additional fee in the event of a comparative proceeding is established as follows:

	Applications	Total cost	Cost per application
Carrier/gateway selection required	24	\$95,266.01	\$3,969.42
Selection not required (items 52-56)	124	59,364.60	478.75
Incremental cost			\$3,490.67
Proposed fee, Item 57: \$3,490 per application			

Schedule Item 58. Application to transfer foreign route/frequency authority. Foreign route authority granted to a U.S. air carrier under 49 U.S.C. 41102 or 40109, along with any frequency allocation required for its exercise, may not be transferred to another air carrier without the Department's approval. A fee for processing an application for transfer is warranted since the applicant is seeking the special benefit of the Department's

approval of an action needed by (1) the transferee to engage in the revenue-producing air transportation under the authority and (2) the transferor so that it may receive any compensation provided for in the transfer agreement.

Our proposed fee for this item is calculated as follows:

Direct Labor	\$2,993.01
Overhead	2,061.49

Total Cost	4,994.50
Applications processed	1
Cost per application	4,994.50
Proposed fee, Item 58: per application	4,990.00

Code-Share, Wet-Lease, Transborder and Intermodal Authorizations: Schedule Items 59-62

Schedule Item 59. Application for code-share Statement of Authorization.

Schedule Item 60. Application for wet-lease Statement of Authorization. U.S. air carrier certificates issued under 49 U.S.C. 41102 and foreign air carrier permits issued under 49 U.S.C. 41302 require that code-share/wet-lease flights must be conducted in accordance with Part 212 of our rules. Part 212 provides that certain such arrangements require specific prior approval in the form of a Statement of Authorization, which the Department grants if it finds that approval will be in the public interest. A processing fee is warranted because the applicant is seeking the special benefit of the Department's authorization to conduct an additional type of revenue-producing operations in foreign air transportation.

While code shares and wet leases require the same form of authorization and involve a similar special benefit, their application processing costs differ materially. We therefore are proposing different fees for schedule items 59 and 60, as follows:

<i>Code Share</i>	
Direct Labor	\$15,820.70
Overhead	11,594.31
Total Cost	<u>27,415.01</u>
Applications processed	25
Cost per resolution	1,096.60
Proposed fee, Item 59: per application	1,100.00
<i>Wet Lease</i>	
Direct Labor	2,679.05
Overhead	2,084.40
Total Cost	<u>4,763.45</u>
Applications processed	16
Cost per application	297.72
Proposed fee, Item 60: per application	300.00

Schedule Item 61. [Reserved.]
 Schedule Item 62. Application for Statement of Authorization to conduct intermodal services provided for in bilateral agreement. Part 222 of the Department's regulations provides that a foreign air carrier, whose homeland government has executed an agreement with the United States exchanging air freight intermodal rights, may obtain authorization to perform such services in the United States by applying to the Office of International Aviation. (Part 222 also provides that a foreign air carrier seeking such authority *not* covered by a bilateral agreement must apply for an exemption under 49 U.S.C. 40109, in which instance the application is processed under schedule item 53, exemption authority, above.) The Department grants an intermodal statement of authorization if it will be in the public interest. An application processing fee is warranted because the

applicant is seeking the special benefit of the Department's authorization to conduct revenue-producing operations in foreign air transportation.

Our proposed fee for this item is calculated as follows:

Direct Labor	\$488.35
Overhead	390.82
Total Cost	<u>879.17</u>
Applications processed	3
Cost per application	293.06
Proposed fee, Item 62: per application	290.00

Regulation of Tariffs and Rates: Schedule Items 63-69

Schedule Item 63. Approval of inter-carrier agreement(s), agreement type To and/or from the U.S.

Schedule Item 64. Approval of inter-carrier agreement(s), agreement type Foreign-to-foreign.

Schedule Item 65. Approval of inter-carrier agreement(s), Technical correction. Section 41309 of the Statute provides for the filing of inter-carrier agreements with the Department for approval and consequent grant of antitrust immunity. The Department's implementing regulations (14 CFR Part 303) require carriers seeking approval of an inter-carrier agreement to submit and have approved by the Department an application in the manner prescribed by the regulation. A processing fee for such applications is justified since the applicant is seeking the special benefit of the Department's approval of immunity from the antitrust laws of the United States.

Our proposed fees for schedule items 63, 64 and 65, shown below, reflect differences in their respective processing costs. The fee for item 63 and 64 is per resolution while that for item 65 is per application.

<i>To/from U.S.</i>	
Direct Labor	\$10,502.46
Overhead	7,722.49
Total Cost	<u>18,224.95</u>
Resolutions processed	216
Cost per resolution	84.37
Proposed fee, Item 63: per resolution	84.00
<i>Foreign-to-foreign</i>	
Direct Labor	1,080.05
Overhead	864.35
Total Cost	<u>1,944.40</u>
Resolutions processed	417
Cost per resolution	4.66
Proposed fee, Item 64: per resolution	5.00
<i>Technical correction</i>	
Direct Labor	195.36
Overhead	156.34

Total Cost	<u>\$351.70</u>
Applications processed	23
Cost per application	15.29
Proposed fee, Item 65: per application	15.00

Schedule Item 66. Application for an exemption under 49 U.S.C. 40109 to carry traffic not otherwise authorized under tariffs in effect. Under section 41504 of the Statute and section 221.3 of the Department's regulations, air carriers and foreign air carriers are required to file tariffs for scheduled foreign air transportation of persons, and may carry such traffic only for the prices stated in those tariffs. When a carrier wishes to carry revenue traffic for which it does not have an effective tariff on file, or wishes to carry such traffic at a price other than that in its applicable tariff, it must obtain an exemption from the Department under section 40109 of the Statute. A processing fee is warranted since the applicant for this exemption seeks the special benefit of the Department's authorization to conduct revenue-producing foreign air transportation not otherwise authorized by a tariff in effect.

No applications under this schedule item were processed during the cost-collection period, and we have no other basis to propose a modification of the current fee or to assume that fee costs have changed. Accordingly, the current fee of \$53 per Application is retained.

Schedule Item 67. Application for permission to file tariffs on less than statutory notice. Section 41504 of the Statute and section 221.160 of the regulations provide that required tariffs are to be filed a certain number of days before those tariffs can take effect. Under Subpart P of the regulations, however, carriers may request permission to have their tariffs take effect in less than the statutorily required notice period. A processing fee is warranted since the applicant for this Special Tariff Permission seeks the special benefit of the Department's authorization to implement tariffs on shorter notice than statutorily required.

The basis of our proposed fee for this item is as follows:

Direct Labor	\$2,124.07
Overhead	1,700.04
Total Cost	<u>3,824.11</u>
Applications processed	95
Cost per application	40.25
Proposed fee, Item 67: per application	40.00

Schedule Item 68. Application for approval of waiver/modification of tariff regulations. Section 221.200 of the regulations provides that air carriers and

foreign air carriers may apply to the Department for a waiver or modification of the requirements contained in part 221 (Tariffs). An application processing fee for such waiver or modification is warranted since the applicant seeks the special benefit of the Department's approval for relief from provisions of the requirements regulating tariffs.

No applications under this schedule item were processed during the cost-collection period, and we have no other basis to propose a change in the current fee or to assume that fee costs have changed. Accordingly, the current fee of \$12 per Application is retained.

Schedule Item 69. Application for provision of certified copies of tariff material upon request (with DOT seal). Section 389.15 of the regulations provides that certified copies of tariffs filed with the Department will be provided upon request. Certification of these data are required in civil cases in order for parties to formally submit air carrier tariff provisions involving charges and conditions of carriage in international air transportation officially filed with the Department. A fee for providing this service is warranted because of the special benefit to the applicant of having certified copies of officially filed tariff material for use in legal proceedings.

The basis of our proposed fee is as follows:

Direct Labor	\$807.58
Overhead	646.30
Total Cost	1,453.88
Applications processed	6
Cost per application	242.31
Proposed fee, Item 69: per application	240.00

Other Exemptions and Authorizations: Schedule Items 70-76

Schedule Item 70. Application for an exemption for slots at a slot-controlled airport. Under section 41714 of the Statute, an air carrier may apply to the Department for an exemption from 14 CFR Part 93, Subparts K and S (the High Density Rule), in order for the carrier to increase its number of operations (takeoff or landing "slots") at JFK, La Guardia, and/or O'Hare airports (Reagan National also is slot controlled, but is excluded from the exemption). Recognizing that air carriers may be restrained from entering markets as consequence of slot restrictions, the Congress provided the exemption mechanism as a way to increase air carrier access at three of the four slot-controlled airports. A processing fee for a slot exemption application is justified since the applicant is seeking the special benefit of the Department's

authorization enabling access to takeoff and landing rights that otherwise would not be available.

Our proposed fee for this item is based on the following:

Direct Labor	\$11,155.93
Overhead	6,211.62
Total Cost	17,367.55
Applications processed	4
Cost per application	4,341.89
Proposed fee, Item 70: per application	4,340.00

Schedule Item 71. Motion for confidential treatment of documents. Section 302.39 of the Department's Procedural Regulations sets forth the procedures that an applicant or other party must follow in seeking the Department's concurrence to withhold certain information from public disclosure in the context of a Departmental proceeding. A processing fee for this item is justified since the applicant is seeking the special benefit of the Department's approval to withhold sensitive information.

Our proposed fee for this item is determined as follows:

Direct Labor	\$499.57
Overhead	253.37
Total Cost	752.94
Applications processed	2
Cost per application	376.47
Proposed fee, Item 71: per application	380.00

Schedule Item 72. Application for approval of and antitrust immunity for inter-carrier agreements. Under sections 41308 and 41309 of the Statute, air carriers and foreign air carriers may seek approval of antitrust immunity for agreements and activities with common business objectives. Applicants seek the benefit of this immunity in order to protect themselves from lawsuits alleging behavior normally not permitted under the antitrust laws. A processing fee is warranted since the applicant is seeking the special benefit of the Department's approval of immunity from antitrust enforcement.

No applications under this schedule item were concluded during the cost-collection period, and we have no other basis to propose a change in the current fee or to assume that fee costs have changed. Accordingly, the current fee of \$1,080 per Application is retained.

Schedule Item 73. [Reserved.]

Schedule Item 74. [Reserved.]

Schedule Item 75. Petition for a change in mail rates. Section 41901 of the Statute provides that the United States Postal Service or a certificated air carrier may file a petition with the

Department to change the mail rates set by the Department to be paid by the Postal Service to U.S. air carriers for the carriage of U.S. mail between the United States and foreign countries and/or within the State of Alaska. A fee for processing a petition is warranted since the petitioner is seeking the special benefit of the Department's approval to change existing mail rates.

No applications under this schedule item were processed during the cost-collection period, and we have no other basis to propose a change in the current fee or to assume that fee costs have changed. Accordingly, the current fee of \$420 per Application is retained.

Schedule Item 76. Application for overseas military personnel charter operator authority. Under Part 372 of the Department's regulations, any U.S. citizen desiring to operate as an overseas military personnel charter operator may apply to the Department for operating authority. If granted this authority, the operator is relieved from provisions of section 41102 of the Statute for the purpose of enabling the operator to provide overseas military personnel charters utilizing aircraft chartered from direct air carriers or foreign air carriers. A processing fee is warranted since the applicant is seeking the special benefit of the Department's permission to advertise, organize, provide, sell and/or offer to sell overseas military personnel charters.

No applications under this schedule item were processed during the cost-collection period, nor has the Department had occasion to process any such applications for several years. Absent evidence of a cost change, the current fee of \$665 per Application is retained.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 98N-0826]

Food Labeling: Use on Dietary Supplements of Health Claims Based on Authoritative Statements

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to permit the use on dietary supplements