Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

■ For the reasons set out in the joint preamble, the OCC corrects part 30 of chapter I of title 12 of the Code of Federal Regulations by making the following correcting amendments:

PART 30—SAFETY AND SOUNDNESS STANDARDS

■ 1. The authority citation for part 30 continues to read as follows:

Authority: 12 U.S.C. 93a, 371, 1818, 1831p, 3102(b); 15 U.S.C. 1681s, 1681w, 6801, 6805(b)(1).

Appendix B to Part 30—[Amended]

■ 2. In Supplement A to Appendix B, amend footnote 6 by removing ''12 CFR part 314'' and adding in its place ''16 CFR part 314''.

Federal Reserve System

12 CFR Chapter II

Authority and Issuance

■ For the reasons set out in the joint preamble, the Board corrects parts 208 and 225 of chapter II of title 12 of the Code of Federal Regulations by making the following correcting amendments:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

■ 3. The authority citation for part 208 continues to read as follows:

Authority: 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1820(d)(9), 1823(j), 1828(o), 1831, 1831o, 1831p–1, 1831r–1, 1831w, 1831x, 1835a, 1882, 2901–2907, 3105, 3310, 3331–3351, and 3906–3909, 15 U.S.C. 78b, 781(b), 781(g), 781(i), 78o–4(c)(5), 78q, 78q–1, 78w, 1681s, 1681w, 6801 and 6805; 31 U.S.C. 5318, 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

Appendix D–2 to Part 208—[Amended]

■ 4. In Supplement A to Appendix D–2, amend footnote 6 by removing ''12 CFR part 314'' and adding in its place ''16 CFR part 314''.

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

■ 5. The authority citation for 12 CFR part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3906, 3907, and 3909; 15 U.S.C. 1681s, 1681w, 6801 and 6805.

Appendix F to Part 225—[Amended]

■ 6. In Supplement A to Appendix F, amend footnote 6 by removing ''12 CFR part 314'' and adding in its place ''16 CFR part 314''.

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

■ For reasons set out in the joint preamble, the FDIC corrects part 364 of chapter III of title 12 of the Code of Federal Regulations by making the following correcting amendments:

PART 364—STANDARDS FOR SAFETY AND SOUNDNESS

■ 7. The authority citation for part 364 continues to read as follows:

Authority: 12 U.S.C. 1819 and 1819 (Tenth); 15 U.S.C. 1681b, 1681s, and 1681w.

Appendix B to Part 364—[Amended]

■ 8. In Supplement A to Appendix B, amend footnote 6 by removing ''12 CFR part 314'' and adding in its place ''16 CFR part 316''.

Department of the Treasury

Office of Thrift Supervision

12 CFR Chapter V

Authority and Issuance

■ For reasons set out in the joint preamble the OTS corrects part 570 of chapter V of title 12 of the Code of Federal Regulations by making the following correcting amendment to read as follows''

PART 570—SAFETY AND SOUNDNESS GUIDELINES AND COMPLIANCE PROCEDURES

■ 9. The authority citation for part 570 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 1828, 1831p–1, 1881–1884; 15 U.S.C. 1681s and 1681w; 15 U.S.C. 6801 and 6805(b)(1).

Appendix B to Part 570—[Amended]

■ 10. In Supplement A to Appendix B, amend footnote 6 by removing ''12 CFR part 314'' and adding in its place ''16 CFR part 314''.

Dated: January 24, 2006.

Julie L. Williams,

First Senior Deputy Comptroller and Chief Counsel.

By order of the Board of Governors of the Federal Reserve System, January 17, 2006.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 31st day January, 2006.

Robert E. Feldman,

Executive Secretary.

Dated: January 30, 2006.

Deborah Dakin,

Senior Deputy Chief Counsel.

[FR Doc. 06–1009 Filed 2–2–06; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–10–P; 6720–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 212

[Docket No. OST–2002–11741]

RIN 2105–AD38

Charter Rules for Foreign Direct Air Carriers

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Department is amending its charter regulations by adding definitions of sixth- and seventh-freedom charters to the definitions section of 14 CFR Part 212, and by requiring foreign air carrier applicants for charter authority to provide updated reciprocity statements and operational data relative to its homeland-U.S. services.

DATES: The rule shall become effective April 4, 2006.

FOR FURTHER INFORMATION CONTACT: Brian Hedberg, Office of International Aviation (X–40), U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590; (202) 366–7783.

SUPPLEMENTARY INFORMATION:

Background

On January 21, 2005, the Department of Transportation issued a Notice of Proposed Rulemaking (NPRM) [70 FR 3158, January 21, 2005] which proposed to (1) Clarify the definition of ''fifth freedom charter'' by adding definitions of ''sixth- and seventh-freedom charters'' in § 212.2; (2) modify OST Form 4540 (Foreign Air Carrier Application for Statement of Authorization) by requiring updated reciprocity statements by foreign air carriers seeking a statement of

authorization under Part 212; and (3) require foreign air carrier applicants for a statement of authorization under Part 212 to include historical data relative to the applicant's U.S.-home country operations.

The proposed definitional amendments to Part 212 would clarify that sixth-freedom charter means a charter flight carrying traffic that originates and terminates in a country other than the country of the foreign air carrier's home country, provided the flight operates via the home country of the foreign air carrier; and that seventh-freedom charter means a charter flight carrying traffic that originates and terminates in a country other than the foreign air carrier's home country, where the flight does not have a prior, intermediate, or subsequent stop in the foreign air carrier's home country.

The proposed revision of OST Form 4540 would require that at the time of application for fifth-freedom charter authorization, the applicant foreign air carrier must present certification from its homeland government (or cite certification previously submitted to the Department that is dated within the previous 90-day period), that indicates that the carrier's homeland grants to U.S. carriers a privilege similar to that requested by the applicant. The revision would also require applicant carriers to indicate on the application the number of third- and fourth-freedom flights the carrier has operated in the previous twelve-month period.

Our issuance of the NPRM was taken in response to a petition for rulemaking filed by the National Air Carrier Association (NACA) on behalf of its member carriers. In the NPRM, after considering comments filed by interested parties in response to NACA's petition, the Department proposed to make some, but not all, of the changes sought by NACA. In its comments concerning the NPRM, NACA stated that ''We are grateful to the Department for the grant of NACA's petition. While the Department clarifies that it is not granting all of the changes requested in NACA's petition, the changes satisfy several of the more important concerns that NACA expressed in its petition.'' [1]

We address each of our proposed regulatory changes, in turn, below.

Proposed Modification to the Definitions in 14 CFR 212.2

Summary of Comments

Most of the commenters supported, did not object to, or were silent on our proposed definitional changes. Only two comments to the NPRM explicitly opposed the changes. The supporters said that the new definitions would serve to better delineate between different types of services, fifth-, sixth- and seventh-freedom, in both the scheduled and charter areas. NACA and AFL–CIO Transportation Trades Department (AFL–CIO TTD), although supporting the proposed new definitions for sixth- and seventh-freedom charters, would have us go further by having us define fifth-freedom charter so that it no longer encompasses flights that do not have any stops in the foreign air carrier's homeland. The opponents, First Choice Airways and GWV Travel (GWV), assert that the new definitions go beyond the officially recognized ICAO ''freedoms of the air,'' are not required, and could cause confusion, including in the case of bilateral agreements that rely on the existing meaning of fifth-freedom.

DOT Decision on 14 CFR 212.2

We will finalize the changes to 14 CFR 212.2, as proposed. We find that the new definitions are an accurate reflection of the meaning of the terms presented, and should serve to better delineate the different forms of service involved without causing confusion. We further find that this action is consistent with Section 820 of the Vision 100—Century of Aviation Reauthorization Act, which conveyed the sense of Congress that the Department should formally define fifth-, sixth-, and seventh-freedom consistently for both scheduled and charter passenger traffic. We do not find that the commenters have presented persuasive arguments that our new definitions will generate confusion. In this regard, we find the general lack of opposition on the part of most commenters—many of whom will be using or be affected by the new definitions—to be significant. We will not, however, further amend this section to make changes to the definition of fifth-freedom charters as NACA and AFL–CIO TTD have suggested. While both commenters noted a degree of overlap in the definitions, we saw nothing in the comments received from other interested parties to indicate that they anticipated problems in applying or complying with the new definitions as proposed. In our NPRM we stated that we were proposing to amend our charter definitions because ''even a limited degree of confusion is best avoided.'' 70 FR 3158, 3163. We believed that specifically delineating the meaning of sixth- and seventh-freedom charters while not altering the long-established and widely-recognized definition of fifth-freedom charters was the best means to minimize confusion. Taking into account all the comments filed in response to our NPRM, we are persuaded to finalize our definitions as proposed. We are confident that the definitional changes that we are making should be adequate to address our public interest objectives in this rulemaking proceeding.

Proposed Modifications to OST Form 4540

Evidence of Reciprocity

Summary of Comments

NACA, Airports Council International—North America (ACI–NA), AFL–CIO TTD, one U.S. indirect carrier (Apple Companies), and one U.S. direct air carrier (Amerijet) filed comments generally supporting our proposed change on evidence of reciprocity. They believe that the Department's existing practice requires a finding of reciprocity and that the proposed revision only serves to formalize that existing practice. AFL–CIO TTD states that the requirement will provide a key decisional element to the record at the time of application.

ACI–NA specifies that it does not object to the Department's requirement of a reciprocity statement so long as it is not burdensome to carriers. First Choice Airways, for its part, states that while it is not opposed to an initial reciprocity certification, once a determination of reciprocity is made it should remain valid until challenged. While NACA supports our proposed change, it nevertheless suggests that our proposed 90-day recertification requirement be extended to require recertification every six months.

Air Transportation Association of America (ATA), one U.S. carrier (Atlas), three U.S. indirect carriers (GWV, Vacation Express, and TNT Vacations), and seven foreign direct carriers (Antonov Design Bureau (Antonov), Air Atlanta Icelandic, Condor Flugdienst (Condor), Grupo TACA, Skyservice Airlines, and Thomas Cook UK) filed comments in opposition. ATA suggests that no reciprocity statement be required unless a U.S. carrier lodges a challenge.

ATA, Atlas, and some foreign direct air carriers expressed their preference for maintaining the current system in which reciprocity is determined by the Department and aided by U.S. carrier objections on the record (when they feel that reciprocity is lacking) because they are aware of no problems that have arisen in relation to fifth-freedom charter operations. Some U.S. indirect carriers comment that instituting an official reciprocity requirement might

[1] NACA comments of March 22, 2005, at 1.

lead foreign governments to impose like requirements on U.S. carriers, thus redounding to the detriment of liberalized U.S. aviation policies. Some U.S. indirect carriers and foreign direct carriers state that a reciprocity certification requirement could become burdensome and in some cases even be unobtainable, especially given the short-notice nature of many fifth-freedom charter applications, thus chilling business, preventing market entry, and limiting competitive choices.

Many foreign direct carriers believe that the reciprocity verification requirement does not serve any useful purpose and is inconsistent with the Department's open-skies policy. Grupo TACA asserts that obtaining such certification is unnecessary given the small numbers of charters conducted by foreign carriers relative to the volume of charters provided by U.S. carriers in foreign markets. Yet others suggest that it will be difficult to obtain such a statement from foreign officials, especially in markets where the U.S. presence is minimal. Another feels that the Department has provided insufficient guidance as to what type of certification is necessary. One foreign direct carrier suggested that it be permitted to cite the certification provided by a foreign government to another carrier for these purposes.

DOT Decision on Evidence of Reciprocity

We will finalize our requirement that applicants provide certification of reciprocity. Our NPRM states unequivocally that ''reciprocity on the part of the applicant's home country is the primary criterion for approval of the type of charter requests involved here.'' 70 FR 3158, 3162. In this, the NPRM was simply repeating longstanding Department policy and practice. Clearly, in evaluating the primary criterion for reaching a decision, the public interest calls for our having access to meaningful, reliable evidence.

Given the short-notice nature of many of the requests for these types of services, we have found that we simply could not be assured that potentially interested parties, or we ourselves, might have the wherewithal in the limited time available to verify that an applicant's assertion of reciprocity was justified in the specific circumstances presented. While input from aggrieved U.S. carriers or our own knowledge of a particular bilateral relationship can, of course, be informative—indeed in some instances fully dispositive, cases may well arise where the best available source of information on reciprocity will be the applicant itself.

While we have every confidence that the applicants provide information on Form 4540 to the best of their ability and knowledge and in good faith, the fact remains that the presence or lack of reciprocity is a matter resting within the control not of the applicant itself, but of its government. The applicant is at best a ''second-hand'' provider of such information. Our proposed rule provides a means for ensuring that the first-hand source for information on this essential element of our decisional process exist in the record to speak for itself.

We are confident that in situations where reciprocity truly is not an issue, concerned governments will be able to work with their carriers to ensure that a streamlined process exists for getting the necessary statements to us in a way that should cause little if any additional burden or delay. Indeed, the nature of the exercise, by introducing into the record more probative evidence on this central issue, could serve to expedite the decisional process.

Saying this, we have reflected on whether we need to see the reciprocity affirmations ''refreshed'' every 90 days. We believe that the commenters provided adequate evidence to persuade us to extend the length of validity of a reciprocity certification from 90 days to six months. We have concluded that changing to a six-month period should still provide sufficiently current information for the purposes presented, while addressing the concerns of some of the commenters who asserted that our 90-day requirement was exceedingly burdensome. Of course, as we stated in the NPRM, if intervening events give reason to doubt the continuing validity of a particular verification, we will expect applicants to seek a new verification, even if their subsequent request is submitted within six months of a previous verification.

Reporting of Third- and Fourth-Freedom Statistics

Summary of Comments

NACA, ACI–NA, one U.S. direct carrier (Amerijet), and one U.S. indirect carrier (Apple Companies) submitted comments generally supporting our proposed change. These commenters acknowledge that carriers currently provide information to the Department regarding third- and fourth-freedom operations in the form of T–100 data, but note that the data are not readily accessible due to the delay in T–100 data availability. NACA asserts that access to timely data can help carriers and the Department in evaluating applications for fifth-, sixth-, and seventh-freedom charter operations and can speed the approval process.

ACI–NA specifies that it has no problem with the proposed reporting requirement so long as it does not prove burdensome to carriers. Antonov states that it ''does not object in principle to providing this information.'' It is concerned, however, that considering the unique nature of outsized cargo services, information regarding third- and fourth-freedom charter flight information may provide an inadequate record for the Department to make a public interest determination regarding a carrier's ''undue reliance'' on fifth-, sixth-, or seventh-freedom operations.

ATA, three U.S. indirect carriers (GWV, Vacation Express, and TNT Vacations), and three foreign direct carriers (Air Atlanta Icelandic, Grupo TACA and Skyservice Airlines) submitted comments in opposition. They believe that the data we are requesting are already collected by the Department in the form of T–100 data, and thus our amendment to Form 4540 is unnecessary and redundant. They comment that the reporting requirement imposes expense and delay on carriers without providing any added benefit. Vacation Express and TNT Vacations also suggest that the reporting requirement could have a chilling effect, discouraging carriers from applying and then likely limiting the services available to the public. Grupo TACA asserts that the additional reporting required by this revision to Form 4540 is unnecessary, considering the relative dominance of U.S. charters operating in the U.S.-Central American market, and given that nearly all its members are domiciled in open-skies countries.

DOT Decision on Reporting of Third- and Fourth-Freedom Operations

In our NPRM, we specifically said that, in addition to reciprocity, the Department ''also examines other factors that may be relevant in specific cases (for example, the extent of the applicant's reliance on fifth-freedom operations in relation to its third- and fourth-freedom services).'' 70 FR 3158, 3162. In this regard, we proposed to amend OST Form 4540 so that applicants would specify the number of third- and fourth-freedom flights they have provided over the preceding calendar year. We expressly called upon applicants to present the information with sufficient clarity ''for any commenting parties and the Department to readily evaluate the proposed services against the historical data.'' Id., at 3163.

As our NPRM indicated, the issue of excessive reliance on fifth-, sixth- and

seventh-freedom operations vis-à-vis third- and fourth-freedom operations remains an element of our public interest analysis for applications of this type. As such, interested parties are entitled to have information that would enable them to offer meaningful comments on the record in this issue, and we ourselves would want to have data that permit us to give this issue appropriate consideration in our decisional process.

We find that the reporting requirement we proposed should achieve those objectives. While we recognize, as some of the commenters point out, that T–100 data might cover some of the same terrain, they are no substitute. The T–100 program was never designed to provide a readily accessible data base for undue reliance evaluations in the context of the often short-notice, quick turnaround filings that characterize our charter approval process. It is entirely reasonable to expect that the data we are requesting should be in the applicant's possession and that the applicant should be in a position readily to provide it. Given the role that such data might play in our public interest determination, and the absence of equivalent alternatives in the circumstances presented, on balance, we conclude that whatever burden may be entailed by this new requirement is clearly outweighed by the public benefits produced. We are not persuaded that this result will engender any form of chilling effect. The data at issue are data that carriers are already required to collect and transmit to us. Furthermore, our standards (including our standards as to undue reliance) are not changing; nor is the way in which we intend to apply these standards. Our amendment is essentially an administrative measure designed to promote an enhanced record and more efficient decision-making.

Other Issues

In addition to commenting on the specific aspects of our proposed rule, several commenters also offered other comments, either questioning aspects of our overall approach or requesting that we go even further in our proposed remedies.

For example, Antonov objected to the Form 4540 changes applying to cargo charters as well as passenger charters. Antonov asserts that there are significant commercial and aeropolitical differences between cargo and passenger flights and that ''it would harm U.S. and foreign carrier interests alike if the freely functioning global cargo charter market were suddenly subject to more burdensome and more restrictive new administrative flight requirements by the United States.* * *[2]

We have decided not to create a different Form 4540 regime for cargo charters. As we said above, the materials we are seeking are either within the possession of the applicant foreign carrier or are materials that they should be able to arrange readily for the homeland governments to provide. Therefore, we are unpersuaded that our changes will create an unworkable or unfair burden. We emphasize that we are not changing our applicable decisional standards or the nature of the findings we would need to make to support those decisions. Our changes go entirely to ensuring that those findings rest on a firmer evidentiary foundation. We regard this as entirely consistent with the public interest.

NACA and Atlas would have us modify the rule to require significantly more detailed evidence from the foreign carrier applicant describing the cargo to be carried, bulk versus outsized. They are concerned that we are approving flights because of their asserted outsized cargo, when in fact the outsized cargo may actually represent only a portion of the actual cargo carried. Furthermore, Atlas states that given the typical short-notice nature of many fifth-freedom cargo charter requests, interested parties cannot file meaningful, timely responses unless that application includes more detailed information about the cargo to be carried.

Antonov opposes this proposed change. It states that such a change would mean that applications could only be filed at the very last minute when packing lists were finalized and that even then numerous changes could still occur because shippers and charterers generally operate on the understanding that they are contracting for the entire aircraft and use this flexibility to make packing list changes right up to the time of departure. Antonov states that a cargo-specific approval requirement accordingly would be burdensome: Cumbersome for applicants, U.S. cargo carriers (who would need to be polled regarding the changes), and the Department. Antonov also comments that it would greatly impede the flow of commerce and cause costly delays to time-sensitive shipments.

We will not adopt the modification proposed by NACA and Atlas. Unlike our other proposed changes, which we see as involving materials readily available or obtainable in ways that we are not persuaded would interfere with our existing regulatory approach, we are unconvinced that the proposed NACA and Atlas change could be achieved without introducing the type of regulatory burden and delay we would wish to avoid.

We reach a similar result with regard to the comments of Amerijet. Amerijet raises a procedural due process issue over the awarding of seventh-freedom cargo rights through bilateral negotiations and also raises policy questions relating to our approach on awarding fifth-, sixth-, and seventh-freedom charters. We regard these issues as well beyond the scope of the specifically focused regulatory procedural measures we announced in our NPRM—which Amerijet expressly ''welcomes and supports.''[3] Consequently, we will not pursue them here.

An additional comment beyond the scope of our contemplated changes is the ACI–NA recommendation that we consider amending our rules to cite the value of a proposed international charter to U.S. airports and their local economies as one of the public interest factors to be considered when we receive foreign carrier charter applications. We note this as essentially a suggestion offered for our future consideration.

Finally, we note that commenters, such as TACA, wondered whether some of our proposed changes should even apply to them given prevailing open-skies regimes, and perhaps, also, bilateral seventh-freedom charter rights. We are certainly not seeking by this rule to impose filing requirements when none would be necessary from a public interest standpoint. Parties who believe there are clearly delineated bilateral rights, and that, therefore, they should not need to seek prior approval at all for certain charter operations are free to make appropriate requests for waivers or for adjustments to their underlying operating authority.

Regulatory Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

Executive Order 12866, Regulatory Planning and Review, directs the Department to assess both the costs and the benefits of a regulatory change. We are not allowed to propose or adopt a regulation unless we make a reasoned determination that the benefits of the intended regulation justify the costs.

This rule is a significant regulation under Executive Order 12866 and DOT's Regulatory Policies and procedures

[2] Antonov comments of March 22, 2005, at 5.

[3] Amerijet comments of March 22, 2005, at 5.

because of public interest. The NPRM was reviewed by the Office of Management and Budget under Executive Order 12866. Our assessment of this rulemaking indicates that its economic impact is minimal because the rule will impose only minimal incremental new costs on applicant carriers, and codifies, in part, existing practice. The rule clarifies, by definition, the types of charters being conducted; requires that applicant foreign carriers cite certification from the carrier's homeland government stating that it affords reciprocity to U.S. fifth-freedom charters; and, requires that foreign air carriers accurately represent the number of third- and fourth-freedom flights conducted in the previous twelve-month period.

The definitional changes will not affect the manner in which foreign air carriers conduct business; nor will it affect our decision-making process. Reciprocity is a public interest criterion already considered in evaluating fifth-, sixth- and seventh-freedom charter applications. The required certification will be required only once every six months. The data regarding third- and fourth-freedom flights we now require should be in the applicant's possession and the applicant should be in a position readily to provide it at the time of application.

Executive Order 13132 (Federalism Assessment)

The Department has analyzed this rulemaking action in accordance with the principles and criteria set forth in Executive Order 13132 and has determined that it does not have sufficient federalism implications to warrant consultation with State and local officials. The Department anticipates that any action taken will not preempt a State law or State regulation or affect the States' ability to discharge traditional State government functions.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. Because this rule does not subject U.S. carriers to new procedures or reporting requirements, the Department certifies that this rule will not have a significant economic impact on a substantial number of U.S. small businesses.

The Department notes, however, that this rule imposes a minimal additional paperwork burden on foreign air carriers, that may or may not maintain offices in the U.S., because they must report data regarding the number of third- and fourth-freedom flights provided in the most recent twelve-month period. Although the affected carriers must record this information for other reporting requirements on a monthly basis, the significant time delay in collecting, analyzing, and publicly issuing these data significantly reduces the value of the data for purposes of evaluating fifth-freedom charter applications. With minimal burden, the affected carriers can provide a record of the number of flights provided within the last twelve-month period by adding the numbers reported to the Department for each of the previous twelve months, and recording the sum on application OST Form 4540, thus providing all interested parties with current, detailed information vital to proper evaluation of applications. Furthermore, this reporting requirement will have no net effect on the way in which foreign air carriers conduct business or on the manner in which the Department evaluates the merits of fifth-freedom charter applications.

Regulation Identifier (RIN)

A regulation identifier (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.

Unfunded Mandates Reform Act

The changes proposed would not impose any unfunded mandates for the purpose of the Unfunded Mandates Reform Act of 1995.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. This rule contains information collection requirements. As required by the Paperwork Reduction Act, the Department will submit this requirement to the Office of Information and Regulatory Affairs of the OMB for review, and reinstatement, with change, of a previously approved collection.

OST Form 4540 is a required Application for Statement of Authorization for foreign air carriers to file with the Department prior to engaging in certain charter operations to and from the United States. The Department grants or denies the authorization to the foreign air carrier. Foreign air carriers file this form as often as necessary whenever they wish to perform charter flights for which prior Department approval is required by Part 212. This form is required for all foreign air carriers seeking Department authority to conduct certain types of charter flights, and does not require a significant amount of time to complete, and is not burdensome to complete.

OMB Number: 2106–0035.

Title: 14 CFR Part 212—Charter Rules for U.S. and Foreign Direct Air Carriers.

Burden hours: 1000.

Affected public: Business or other for-profit.

Cost: $400,000.00.

Description of Paperwork: The proposed changes to the rulemaking and the form are intended to improve the Department's ability to assess the merits of applications filed under Part 212, and will ensure that the Department has the most current information on the state of reciprocity for each foreign carrier applicant for charter authority filed under Part 212. These proposed changes will also enhance the Department's decision-making process without imposing an undue burden on applicants or affecting the public benefits that the Department's rules now provide. The collection of historical data relative to the applicant's U.S.-home country operations will allow the Department to satisfy any concerns it might have as to the applicant's reliance on fifth-, sixth- and seventh-freedom operations.

List of Subjects in 14 CFR Part 212

Air carriers, air transportation, charter flights, reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Department amends Part 212 as follows:

PART 212—CHARTER RULES FOR U.S. AND FOREIGN DIRECT AIR CARRIERS

■ 1. The authority citation for 14 CFR part 212 continues to read as follows:

Authority: 49 U.S.C. 40101, 40102, 40109, 40113, 41101, 41103, 41504, 41702, 41708, 41712, 46101.

■ 2. Amend § 212.2 by adding, in alphabetical order among the existing definitions, a definition of ''Seventh freedom charter'' and a definition of ''Sixth freedom charter.''

§ 212.2 Definitions.

* * * * *

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

* * * * *

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

* * * * *

■ 3. In § 212.9, revise paragraph (b) (1) to read as follows:

§ 212.9 Prior authorization requirements.

* * * * *

(b) * * *

(1) Fifth-, sixth- and/or seventh-freedom charter flights to or from the United States;

* * * * *

Issued this 27th day of January, 2006 in Washington, DC.

Michael W. Reynolds,

Acting Assistant Secretary for Aviation and International Affairs.

The following OST Form 4540 will not appear in the Code of Federal Regulations.

BILLING CODE 4910–62–P

The information collected by this form is used to apply affirmatively for statements of authorization under 14 CFR Part 212 to conduct third- and fourth-freedom charter operations that require prior approval, long-term wet-leases, and fifth-freedom charter operations. The form is used by foreign air carriers, and is mandatory, and there is no assurance of confidentiality. The form will take an estimated thirty (30) minutes to complete. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number associated with this collection is 2106-0035, and the expiration date is 01/31/2009.

U.S. Department of Transportation

FOREIGN AIR CARRIER APPLICATION FOR STATEMENT OF AUTHORIZATION

(See Instructions on Reverse Side)

DO NOT WRITE--FOR OFFICIAL USE ONLY

Disposition of Application:

__ Approved
__ Approved, subject to condition(s) on reverse
__ Disapproved/Dismissed for reason(s) cited on reverse.

Under assigned authority _____

Effective from _____ to _____

Director, Office of International Aviation

To: Department of Transportation
Foreign Air Carrier Licensing Division, X-45
Office of International Aviation
400 Seventh Street, S.W.
Washington, D.C. 20590

Operations pursuant to this authorization shall conform to Part 212 of the Department's regulations, to the terms, conditions and limitations of the applicant's foreign air carrier permit or exemption, and to Part 129 of the Federal Aviation Regulations.

Application is made for authorization to conduct charter flights under provisions of applicant's foreign air carrier permit and 14 CFR 212 or DOT order.

1. Name of Applicant:

Nationality:

2. Send authorization To:
a. Name and Address:

b. Telephone:
Fax:

3. Name of Charterer:

Address:

4. Total charter price:

5. Dates of flights under this authorization:

6. Aircraft make, model, and capacity:

7. Country in which aircraft is registered:

8. Planned routing of flights (indicate non-traffic stops by asterisks):

9. No. of flights _____ (specify whether one-way or round-trip) and type:

Passenger ___ Cargo ___ Mixed ___

For passenger flights: available passenger seats _____, number of passengers to be carried _____.

If cargo to be carried, weight and description of cargo:

OST Form 4540 (Continue on back)

10. If application is being filed late, state reason for lateness:
11. Description of chartering organization and purpose of flights:
12. Does the nation which is the domicile of the applicant grant to United States carriers a privilege similar to that requested herein? _____; if so, has evidence of such reciprocity, from an official of the carrier's homeland government, been submitted to the Department? _____; when?_____. Date that applicant last verified reciprocity_____(must be in preceding six months); with whom?_____. If the fact has not been established with the Department, provide documentation to establish such reciprocity.
13. Other information requested by DOT (other than third- and fourth-freedom applications): Include here the number of one-way third- and fourth-freedom flights operated by the applicant in the preceding 12 month period/calendar year (alternatively, this information may be provided in a cover letter).
CERTIFICATION I hereby certify that the flights for which authority is sought herein conform to the requirements of DOT's Regulations and applicable orders of DOT governing charters. _____ _____ (Date) (Signature and title of authorized officer)

INSTRUCTIONS

1. Prepare an original and one copy of this application according to Section 212.10 of the Department's Regulations. If extra space is required to complete an item, continue on a separate sheet of paper.

2. Send the application to: Department of Transportation, Foreign Air Carrier Licensing Division, X-45, Office of International Aviation, 400 Seventh Street, S.W., Washington, D.C. 20590 (and, if required by regulation or Order, to the Director of Flight Standards Service (AFS-1), Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591).

DO NOT WRITE -- FOR OFFICIAL USE ONLY
Exercise of the authorization is subject to the following condition(s), OR Application is disapproved/dismissed for the following reason(s):

[FR Doc. 06–972 Filed 2–2–06; 8:45 am]
BILLING CODE 4910–62–C