

Issued in Washington, DC, on May 6, 2005.

**James J. Ballough,**

*Director, Flight Standards Service.*

### Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

### PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

#### \* \* \* Effective 09 JUN 2005

Newnan, GA, Newnan Coweta County, VOR/DME–A, Amdt 7

Newnan, GA, Newnan Coweta County, RNAV (GPS) RWY 32, Orig

Newnan, GA, Newnan Coweta County, GPS RWY 32, Orig–A, CANCELLED

#### \* \* \* Effective 07 JUL 2005

Kalskag, AK, Kalskag, RNAV (GPS) RWY 6, Orig

Kalskag, AK, Kalskag, RNAV (GPS)–A, Orig  
Kalskag, AK, Kalskag, GPS RWY 6, Orig–A, CANCELLED

Kalskag, AK, Kalskag, GPS RWY 24, Orig–A, CANCELLED

Nome, AK, Nome, RNAV (GPS) RWY 3, Orig  
Nome, AK, Nome, RNAV (GPS) RWY 10, Orig

Nome, AK, Nome, RNAV (GPS) RWY 28, Orig

Nome, AK, Nome, ILS OR LOC Y RWY 28, Amdt 2

Nome, AK, Nome, ILS OR LOC Z RWY 28, Amdt 2

Nome, AK, Nome, LOC/DME BC RWY 10, Amdt 2

Nome, AK, Nome, NDB–A, Orig  
Nome, AK, Nome, NDB/DME RWY 3, Amdt 2

Nome, AK, Nome, VOR RWY 28, Amdt 2

Nome, AK, Nome, VOR/DME RWY 10, Amdt 2

Nome, AK, Nome, NDB RWY 27, Amdt 1A, CANCELLED

Nome, AK, Nome, GPS RWY 27, Orig–C, CANCELLED

Nome, AK, Nome, GPS RWY 9, Orig–C, CANCELLED

Nome, AK, Nome, GPS RWY 2, Orig–C, CANCELLED

Perryville, AK, Perryville, RNAV (GPS) RWY 3, Orig

St Michael, AK, St Michael, RNAV (GPS) RWY 2, Orig

St Michael, AK, St Michael, RNAV (GPS) RWY 20, Orig

St Michael, AK, St Michael, GPS RWY 2, Orig, CANCELLED

St Michael, AK, St Michael, GPS RWY 20, Orig, CANCELLED

Yakutat, AK, Yakutat, RNAV (GPS) RWY 2, Orig

Yakutat, AK, Yakutat, RNAV (GPS) RWY 11, Orig

Yakutat, AK, Yakutat, RNAV (GPS) RWY 29, Orig

Yakutat, AK, Yakutat, ILS OR LOC/DME RWY 11, Orig

Yakutat, AK, Yakutat, LOC/DME BC RWY 29, Amdt 3

Yakutat, AK, Yakutat, NDB RWY 11, Amdt 3  
Yakutat, AK, Yakutat, VOR/DME RWY 2, Amdt 2

Yakutat, AK, Yakutat, VOR/DME RWY 11, Amdt 1

Yakutat, AK, Yakutat, VOR/DME RWY 29, Amdt 1

Yakutat, AK, Yakutat, GPS RWY 2, Orig–A, CANCELLED

Yakutat, AK, Yakutat, GPS RWY 11, Orig–A, CANCELLED

Yakutat, AK, Yakutat, GPS RWY 29, Orig–A, CANCELLED

Yakutat, AK, Yakutat, ILS RWY 11, Amdt 4, CANCELLED

Yakutat, AK, Yakutat, VOR RWY 29, Amdt 4, CANCELLED

Atlanta, GA, Cobb County–Mc Collum Field, ILS OR LOC RWY 27, Amdt 2

Boise, ID, Boise Air Terminal (Gowen Field), MLS RWY 28L, Amdt 1, CANCELLED

Pittsfield, IL, Pittsfield Penstone Muni, NDB RWY 31, Amdt 6, CANCELLED

Clarksdale, MS, Fletcher Field, NDB–A, Amdt 2

Clarksdale, MS, Fletcher Field, NDB RWY 36, Amdt 9

Clarksdale, MS, Fletcher Field, GPS RWY 18, Orig–A, CANCELLED

Clarksdale, MS, Fletcher Field, RNAV (GPS) RWY 18, Orig

Clarksdale, MS, Fletcher Field, RNAV (GPS) RWY 36, Orig

Dansville, NY Dansville Muni, RNAV (GPS) RWY 14, Orig

Dansville, NY Dansville Muni, RNAV (GPS) RWY 18, Orig

Dansville, NY Dansville Muni, RNAV (GPS)–A, Orig

Dansville, NY Dansville Muni, VOR/DME OR GPS RWY 18, Amdt 2A, CANCELLED

New Castle, PA, New Castle Muni, NDB RWY 23, Amdt 3

New Castle, PA, New Castle Muni, RNAV (GPS) RWY 5, Orig

New Castle, PA, New Castle Muni, RNAV (GPS) RWY 23, Orig

Dyersburg, TN, Dyersburg Muni, VOR/DME RWY 4, Amdt 3

Dallas–Fort Worth, TX, Dallas/Fort Worth Intl, NDB RWY 17R, Amdt 8, CANCELLED

Bellingham, WA, Bellingham Intl, MLS RWY 34, Orig–B, CANCELLED

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**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

**14 CFR Parts 201, 203, 205, 215, 298, 380, 385, and 389**

[Docket No. OST–2004–19426]

RIN 2105–AD43

### Elimination of Commuter Air Carrier Registrations

**AGENCY:** Office of the Secretary (OST), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** This action amends the regulations governing air taxi operators and commuter air carriers to eliminate the requirement that commuter air carriers file initial and amended registration forms. The information provided on such forms is duplicative of information that commuter air carriers are separately required to file under other regulations. Accordingly, this amendment simplifies the process of applying for and maintaining commuter air carrier authority. This action also makes conforming amendments to other rules affected by the amendment, as well as to make other minor administrative, editorial, clarifying, and organizational changes to rules applicable to air taxi operators and commuter air carriers.

**DATES:** This final rule becomes effective June 15, 2005.

**FOR FURTHER INFORMATION CONTACT:** Vanessa R. Wilkins, Air Carrier Fitness Division, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9721.

#### SUPPLEMENTARY INFORMATION:

##### Background

##### Notice of Proposed Rulemaking

These amendments follow a Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** on October 28, 2004 (69 FR 62833). In that NPRM, the Department proposed to amend Part 298 of Title 14 of the Code of Federal Regulations (14 CFR) to eliminate the requirement that commuter air carriers file initial and amended registration forms, as currently required, thus relieving commuters from the often duplicative burden of filing registration forms and amendments, as well as initial and updated fitness information with the Department. Presently, approximately 35 air carriers hold commuter authority from the Department.

In the NPRM, the Department explained that in addition to meeting

the registration and insurance requirements of Part 298, a commuter air carrier must also be found "fit, willing, and able" to conduct its scheduled passenger operations. In making that fitness determination, the Department requires companies proposing to operate as a commuter air carrier to file an application with the Department in accordance with 14 CFR Parts 201 and 204. Once the Department determines that the company is fit to provide its proposed scheduled passenger operations, the Department issues a Commuter Air Carrier Authorization with accompanying terms, conditions, and limitations. Additionally, Part 298 requires commuter air carriers to notify the Department of any substantial changes in their operations, ownership, or management.

All of the information reported on the air taxi/commuter air carrier registration form, OST Form 4507, is filed by commuter air carriers in connection with their fitness determinations. Therefore, the Department concluded that it is redundant to require commuter air carriers to file both registration forms and fitness data.

#### *Discussion of Comments*

One comment from an individual was received in response to the NPRM. The commenter argued that the Department's air operator classifications for economic authority (air taxi, commuter air carrier, and certificated air carrier) differ significantly from those of the Federal Aviation Administration (FAA), and contends that such differences in classifications are extremely confusing to the aviation industry. The commenter urges the Department to amend its classifications to coincide with those of the FAA.

We have reviewed the arguments made by the commenter, and find that, although the concerns raised are related to air carrier classifications, the commenter's proposed actions are beyond the scope of this rulemaking action, which is intended to alleviate the burden on commuter air carriers to file duplicative information with the Department. We will retain the commenter's recommendations, however, for consideration should we pursue a future rulemaking action that addresses the issues raised.

#### *Discussion of the Final Rule*

This final rule adopts the amendments proposed in the NPRM without any modifications or changes. Specifically, this action (1) reclassifies commuter air carriers from being a subset of air taxi operators to their own

air carrier class that operates small aircraft in scheduled passenger service; (2) removes the requirement in Part 298 for commuter air carriers to file air taxi registrations (and amendments) with the Department; and (3) makes conforming amendments to other rules affected by these changes to commuter air carrier economic authority.

#### *Paperwork Reduction Act*

This final rule contains information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (Pub. L. 104-13). In the NPRM, the Department requested comments on the estimated information collection burden associated with this rulemaking action, which is summarized below. No comments were received. Since this final rule is relieving in nature and reduces the paperwork burden associated with OST Form 4507, the Department has requested OMB approval of the reduced paperwork burden.

*OMB Information Collection Number:* 2120-0633.

*Title of Information Collection:* Exemptions for Air Taxi and Commuter Air Carrier Operations.

*Affected Public:* Commuter air carriers and applicants for commuter air carrier authority.

*Brief Abstract:* Applicants for authority to operate as an air taxi operator or commuter air carrier under 14 CFR Part 298 are required to submit a registration form (OST Form 4507) that asks for basic information about the company (such as, name, address, telephone/fax numbers, types of operations being performed, Federal Aviation Administration (FAA) operating certificate, aircraft operated, and whether the company is a U.S. citizen). Once registered with the Department, the air taxi or commuter air carrier is required to submit an amendment to the Department when information on the registration changes. This final rule eliminates this registration requirement for commuter air carriers—since the information required on the registration is duplicative of information provided to the Department elsewhere—thus resulting in a reduction in the above-noted paperwork collection.

*Burden Hours:* This amendment results in a diminution of the regulatory burden on affected parties. There are approximately 35 currently-authorized commuter air carriers subject to this reporting requirement, and new applicants for commuter authority over the past three years have averaged approximately four per year. The

paperwork burden of this reporting requirement on commuter air carriers varies depending on the extent to which the information on the registration changes. A carrier does not need to submit further forms if the information contained in a registration does not change. As a result, the number of registration forms filed will vary. Based on our recent experience in this area, we have estimated approximately two amended registrations per currently-authorized commuter air carrier plus one registration for each new commuter applicant. Thus, we estimate the reduction in the paperwork burden for these carriers to be, on an annual basis, approximately 74 responses (4 new and 70 amended OST Forms 4507s) and 37 burden hours (74 responses x .5 hours per response).

*Cost to the Respondents:* We have previously estimated the average cost of completing and submitting a new or amended OST Form 4507 to be approximately \$20.00. Thus, we estimate the cost savings to respondents of the proposed elimination of commuter registrations to be approximately \$1,480 (74 responses x \$20 per response).

#### *International Compatibility*

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is the Department's policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The Department has determined that there are no ICAO Standards and Recommended Practices that correspond to these amendments.

#### *Executive Order 12866 and DOT Regulatory Policies and Provisions*

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. Our assessment of this rulemaking indicates that its economic impact is minimal because the rule will not impose any new costs on the affected commuter air carriers; in fact, it relieves them of a filing requirement with the attendant costs and burdens. The remaining changes are administrative and editorial in nature and primarily reflect organizational and procedural changes within the Department. This rulemaking is non-significant under DOT policies and procedures and was not reviewed by the Office of

Management and Budget under Executive Order 12866.

#### *Regulatory Flexibility Act Analysis*

The Regulatory Flexibility Act of 1980 (RFA) directs the Department to fit regulatory requirements to the scale of the business, organizations, and governmental jurisdictions subject to the regulation. We are required to determine whether a proposed or final action will have a “significant economic impact on a substantial number of small entities” as they are defined in the Act. If we find that the action will have a significant impact, we must do a “regulatory flexibility analysis.”

This final rule relieves commuter air carriers from filing registration forms and amendments, and reorganizes some of the regulations applicable to commuter air carriers. Since elimination of this requirement will affect fewer than 40 companies, we certify that this action will not have a significant economic impact on a substantial number of small entities.

#### *Trade Impact Assessments*

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The Department has assessed the potential effect of this rulemaking and has determined that it will have only a domestic impact and therefore no effect on any trade-sensitive activity.

#### *Unfunded Mandates Assessment*

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a “significant regulatory action.”

This final rule does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply.

#### *Executive Order 13132, Federalism*

The Department has analyzed these amendments under the principles and criteria of Executive Order 13132, Federalism. We have determined that this rulemaking action would not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government.

#### **List of Subjects**

##### *14 CFR Part 201*

Air carriers, Reporting and recordkeeping requirements.

##### *14 CFR Part 203*

Air carriers, Air transportation, Foreign relations, Insurance, Reporting and recordkeeping requirements.

##### *14 CFR Part 205*

Air carriers, Freight, Insurance, Reporting and recordkeeping requirements.

##### *14 CFR Part 215*

Air carriers, Reporting and recordkeeping requirements, Trade names.

##### *14 CFR Part 298*

Air taxis, Reporting and recordkeeping requirements.

##### *14 CFR Part 380*

Charter flights, Reporting and recordkeeping requirements, Surety bonds.

##### *14 CFR Part 385*

Organization and functions (Government agencies).

##### *14 CFR Part 389*

Administrative practice and procedure, Reporting and recordkeeping requirements.

#### **The Amendment**

■ In consideration of the foregoing, the Department amends Title 14, Chapter II of the Code of Federal Regulations as follows:

#### **PART 201—AIR CARRIER AUTHORITY UNDER SUBTITLE VII OF TITLE 49 OF THE UNITED STATES CODE**

■ 1. The authority citation for part 201 continues to read as follows:

**Authority:** 5 U.S.C. 1008; 49 U.S.C. Chapters 401, 411, 413, 415, 417.

##### **§ 201.1 [Amended]**

■ 2. In § 201.1(b), remove the word “registration” in the first sentence.

#### **PART 203—WAIVER OF WARSAW CONVENTION LIABILITY LIMITS AND DEFENSES**

■ 3. The authority citation for part 203 continues to read as follows:

**Authority:** 49 U.S.C. Chapters 401, 411, 413, 415, 417.

##### **§ 203.3 [Amended]**

■ 4. In § 203.3, in the second sentence remove the words “with the Department’s Office of Aviation Analysis” and add, in their place, “in accordance with the provisions of those parts”, and remove the last sentence.

#### **PART 205—AIRCRAFT ACCIDENT LIABILITY INSURANCE**

■ 5. The authority citation for Part 205 continues to read as follows:

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

■ 6. Amend § 205.4 as follows:

■ A. Revise paragraph (a) to read as set forth below;

■ B. Amend paragraph (b) by removing the words “Department’s Office of Aviation Analysis” in the first sentence and adding, in their place, “Department at the addresses specified in paragraph (c) of this section”; and

■ C. Revise paragraph (c) to read as set forth below.

The revisions read as follows:

##### **§ 205.4 Filing of evidence of insurance.**

(a) A U.S. or foreign air carrier shall file a certificate of insurance or a complete plan for self-insurance with the Department. Each carrier shall ensure that the evidence of aircraft accident liability coverage filed with the Department is correct at all times. The Department will normally notify the carrier within 20 days of receipt if the certificate or plan does not meet the requirements of this part. Certificates of Insurance shall be filed on OST Form 6410 for U.S. air carriers, including commuter air carriers and air taxi operators, and OST Form 6411 for foreign air carriers, including Canadian air taxi operators. The Department may return the certificate or self-insurance plan to the carrier if it finds for good cause that such certificate or plan does not show adequate evidence of insurance coverage under this part. Forms may be obtained from and should be filed with the Department at the addresses specified in paragraph (c) of this section. Forms may also be obtained on the Internet at <http://ostpxweb.dot.gov>.

\* \* \* \* \*

(c) Certificates of insurance and endorsements required in paragraphs (a) and (b) of this section shall be submitted to the Department of Transportation, Federal Aviation Administration, Program Management Branch, AFS-260, 800 Independence Avenue, SW., Washington, DC 20591. For those air carriers that have a mailing address in the State of Alaska, the forms shall be submitted to the Department of Transportation, Federal Aviation Administration, Alaskan Region Headquarters, AAL-230, 222 West 7th Avenue, Box 14, Anchorage, Alaska 99513. For Canadian air taxis, the forms shall be submitted to the Department of Transportation, Special Authorities Division, X-46, 400 7th Street, SW., Washington, DC 20590.

\* \* \* \* \*

#### § 205.7 [Amended]

■ 7. In § 205.7(a), remove the words “Department’s Office of Aviation Analysis (or, for Alaskan air taxi operators, to the Department’s Alaska Field Office)” and add, in their place the words “Department at the addresses specified in § 205.4(c)”.

#### PART 215—USE AND CHANGE OF NAMES OF AIR CARRIERS, FOREIGN AIR CARRIERS AND COMMUTER AIR CARRIERS

■ 8. The authority citation for part 215 continues to read as follows:

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

#### § 215.3 [Amended]

■ 9. In § 215.3, in the second sentence, remove the words “Except as provided in §§ 221.21(j) and 221.35(d) of this chapter.”.

#### § 215.4 [Amended]

■ 10. In § 215.4(a), in the second sentence, remove the words “, as well as any commuter air carrier registration or amendment filed under part 298,” and add the word “commuter” after “certificate,” in the fourth sentence.

#### § 215.6 [Amended]

■ 11. In § 215.6, remove the words “or in approving the commuter registration,” in the first sentence.

#### PART 298—EXEMPTIONS FOR AIR TAXI & COMMUTER AIR CARRIER OPERATIONS

■ 12. The authority citation for part 298 continues to read as follows:

**Authority:** 49 U.S.C. 329 and Chapters 401, 411, 417.

■ 13. Amend part 298 by revising subparts A through E to read as follows:

#### Subpart A—General

Sec.

- 298.1 Applicability of part.
- 298.2 Definitions.
- 298.3 Classification.
- 298.4 Requests for statement of authority.

#### Subpart B—Exemptions

- 298.11 Exemption authority.
- 298.12 Duration of exemption.

#### Subpart C—Registration for Exemption by Air Taxi Operators

- 298.21 Filing for registration by air taxi operators.
- 298.22 Processing by the Department.
- 298.23 Notifications to the Department of change in operations.
- 298.24 Cancellation of the registration.

#### Subpart D—Limitations and Conditions on Exemptions and Operations

- 298.30 Public disclosure of policy on consumer protection.
- 298.31 Scope of service and equipment authorized.
- 298.32 Limitations on operations to eligible places.
- 298.33 Security requirements
- 298.34 [Reserved]
- 298.35 Limitations on carriage of mail.
- 298.36 Limitations on use of business name.
- 298.37 Prohibition of services not covered by insurance.
- 298.38 Financial security arrangements for operating Public Charters.

#### Subpart E—Commuter Air Carrier Authorizations

- 298.50 Applications.
- 298.51 Processing by the Department.
- 298.52 Air taxi operations by commuter air carriers.
- 298.53 Suspension or revocation of authority.

#### Subpart A—General

##### § 298.1 Applicability of part.

This part establishes classifications of air carriers known as “air taxi operators” and “commuter air carriers,” provides certain exemptions to them from some of the economic regulatory provisions of Subtitle VII of Title 49 of the United States Code (Transportation), specifies procedures by which such air carriers may obtain authority to conduct operations, and establishes rules applicable to their operations in interstate and/or foreign air transportation in all States, Territories and possessions of the United States. This part also establishes reporting requirements for commuter air carriers and small certificated air carriers.

##### § 298.2 Definitions.

As used in this part:

*Air taxi operator* means an air carrier as established by § 298.3(a).

*Air transportation* means interstate air transportation, foreign air transportation, or the transportation of mail by aircraft as defined by the Statute.<sup>1</sup>

*Aircraft-hours* means the airborne hours of aircraft computed from the moment an aircraft leaves the ground until it touches the ground at the end of a flight stage.

*Aircraft miles* means the miles (computed in airport-to-airport distances) for each flight stage actually completed, whether or not performed in accordance with the scheduled pattern.

*Certificated air carrier* means an air carrier holding a certificate issued under section 41102 of the Statute.

*Citizen of the United States* means:

- (1) An individual who is a citizen of the United States;
- (2) A partnership each of whose partners is an individual who is a citizen of the United States; or
- (3) A corporation or association organized under the laws of the United States or a state, the District of Columbia, or a territory or possession of the United States, of which the president and at least two-thirds of the board of directors and other managing officers are citizens of the United States, which is under the actual control of citizens of the United States, and in which at least 75 percent of the voting interest is owned or controlled by persons that are citizens of the United States.

*Commuter air carrier* means an air carrier as established by § 298.3(b) that

<sup>1</sup> Interstate air transportation is defined in section 40102(a)(25) as the transportation of passengers or property by aircraft as a common carrier for compensation, or the transportation of mail by aircraft (1) between a place in (i) a State, territory, or possession of the United States and a place in the District of Columbia or another State, territory, or possession of the United States; (ii) Hawaii and another place in Hawaii through the airspace over a place outside Hawaii; (iii) the District of Columbia and another place in the District of Columbia; or (iv) a territory or possession of the United States and another place in the same territory or possession; and (2) when any part of the transportation is by aircraft. **NOTE:** Operations wholly within the geographic limits of a single State are not considered interstate air transportation if in those operations the carrier transports no more than a *de minimus* volume of passengers or property moving as part of a continuous journey to or from a point outside the State.

Foreign air transportation is defined in section 40102(a)(23) of the Statute as the transportation of passengers or property by aircraft as a common carrier for compensation, or the transportation of mail by aircraft, between a place in the United States and a place outside the United States when any part of the transportation is by aircraft.

Air transportation also is defined to include the transportation of mail by aircraft. Section 5402 of the Postal Reorganization Act, 39 U.S.C. 5402, authorizes the carriage of mail by air taxi operators and commuter air carriers in some circumstances under contract with the U.S. Postal Service.

carries passengers on at least five round trips per week on at least one route between two or more points according to its published flight schedules that specify the times, days of the week, and places between which those flights are performed.

*Departure* means takeoff from an airport.

*Eligible place* means a place in the United States that—

(1)(i) Was an eligible point under section 419 of the Federal Aviation Act of 1958 as in effect before October 1, 1988;

(ii) Received scheduled air transportation at any time after January 1, 1990; and

(iii) Is not listed in Department of Transportation Orders 89–9–37 and 89–12–52 as a place ineligible for compensation under Subchapter II of Chapter 417 of the Statute; or

(2) Was determined, on or after October 1, 1988, and before the date of the enactment of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, by the Department to be eligible to receive subsidized small community air service under section 41736(a) of the Statute.

*Flight stage* means the operation of an aircraft from takeoff to landing.

*Large aircraft* means any aircraft originally designed to have a maximum passenger capacity of more than 60 seats or a maximum payload capacity of more than 18,000 pounds.

*Maximum certificated takeoff weight* means the maximum takeoff weight authorized by the terms of the aircraft airworthiness certificate.<sup>2</sup>

*Maximum passenger capacity* means the maximum number of passenger seats for which an aircraft is configured.

*Maximum payload capacity* means:

(1) The maximum certificated take-off weight of an aircraft, less the empty weight,<sup>3</sup> less all justifiable aircraft equipment, and less the operating load (consisting of minimum fuel load, oil, flight crew, steward's supplies, etc.). For purposes of this part, the allowance for the weight of the crew, oil, and fuel is as follows:

(i) Crew—200 pounds per crew member required under FAA regulations,

(ii) Oil—350 pounds,

(iii) Fuel—the minimum weight of fuel required under FAA regulations for a flight between domestic points 200 miles apart,<sup>4</sup>

(2) *Provided, however*, That in the case of aircraft for which a maximum zero fuel weight is prescribed by the FAA,<sup>5</sup> maximum payload capacity means the maximum zero fuel weight, less the empty weight, less all justifiable aircraft equipment, and less the operating load (consisting of minimum flight crew, steward's supplies, etc., but not including disposable fuel or oil).

*Mile* means a statute mile, *i.e.*, 5,280 feet.

*Nonrevenue passenger* means a person traveling free or under token charges, except those expressly named in the definition of revenue passenger; a person traveling at a fare or discount available only to employees or authorized persons of air carriers or their agents or only for travel on the business of the carriers; and an infant who does not occupy a seat. (This definition is for 14 CFR part 298 traffic-reporting purposes and may differ from the definitions used in other parts by the Federal Aviation Administration and the Transportation Security Administration for the collection of Passenger Facility Charges and Security Fees.) The definition includes, but is not limited to, the following examples of passengers when traveling free or pursuant to token charges:

(1) Directors, officers, employees, and others authorized by the air carrier operating the aircraft;

(2) Directors, officers, employees, and others authorized by the air carrier or another carrier traveling pursuant to a pass interchange agreement;

(3) Travel agents being transported for the purpose of familiarizing themselves with the carrier's services;

(4) Witnesses and attorneys attending any legal investigation in which such carrier is involved;

(5) Persons injured in aircraft accidents, and physicians, nurses, and others attending such persons;

(6) Any persons transported with the object of providing relief in cases of general epidemic, natural disaster, or other catastrophe;

(7) Any law enforcement official, including any person who has the duty of guarding government officials who

are traveling on official business or traveling to or from such duty;

(8) Guests of an air carrier on an inaugural flight or delivery flights of newly-acquired or renovated aircraft;

(9) Security guards who have been assigned the duty to guard such aircraft against unlawful seizure, sabotage, or other unlawful interference;

(10) Safety inspectors of the National Transportation Safety Board or the FAA in their official duties or traveling to or from such duty;

(11) Postal employees on duty in charge of the mails or traveling to or from such duty;

(12) Technical representatives of companies that have been engaged in the manufacture, development or testing of a particular type of aircraft or aircraft equipment, when the transportation is provided for the purpose of in-flight observation and subject to applicable FAA regulations;

(13) Persons engaged in promoting air transportation;

(14) Air marshals and other Transportation Security officials acting in their official capacities and while traveling to and from their official duties; and

(15) Other authorized persons, when such transportation is undertaken for promotional purpose.

*Passengers carried* means passengers on board each flight stage.

*Point* when used in connection with any territory or possession of the United States, or the States of Alaska and Hawaii, means any airport or place where aircraft may be landed or taken off, including the area within a 25-mile radius of such airport or place; when used in connection with the continental United States, except Alaska, it shall have the same meaning except be limited to the area within a 3-mile radius of such airport or place: Provided, That for the purposes of this part, West 30th Street Heliport and Pan Am Building Heliport, both located in New York City, shall be regarded as separate points.

*Reporting carrier* for Schedule T–100 purposes means the air carrier in operational control of the flight, *i.e.*, the carrier that uses its flight crews under its own FAA operating authority.

*Revenue passenger* means a passenger for whose transportation an air carrier receives commercial remuneration. (This definition is for 14 CFR part 298 traffic-reporting purposes and may differ from the definitions used in other parts by the Federal Aviation Administration and the Transportation Security Administration for the collection of Passenger Facility Charges

<sup>2</sup> This weight may be found in the airplane operating record or in the airplane flight manual, which is incorporated by regulation into the airworthiness certificate.

<sup>3</sup> Empty weight is defined in section 03 of part 241 as follows: the weight of the airframe, engines, propellers, and fixed equipment. Empty weight excludes the weight of the crew and payload, but includes the weight of all fixed ballast, unusable fuel supply, undrainable oil, total quantity of engine coolant, and total quantity of hydraulic fluid.

<sup>4</sup> Assumes VFR weather conditions and flights not involving extended overwater operations.

<sup>5</sup> The maximum zero fuel weight is the maximum permissible weight of an airplane with no disposable fuel or oil. The zero fuel weight figure may be found in the FAA's type certificate data sheets, and/or in FAA-approved flight manuals.

and Security Fees.) This includes, but is not limited to, the following examples:

(1) Passengers traveling under publicly available tickets including promotional offers (for example two-for-one) or loyalty programs (for example, redemption of frequent flyer points);

(2) Passengers traveling on vouchers or tickets issued as compensation for denied boarding or in response to consumer complaints or claims;

(3) Passengers traveling at corporate discounts;

(4) Passengers traveling on preferential fares (Government, seamen, military, youth, student, etc.);

(5) Passengers traveling on barter tickets; and

(6) Infants traveling on confirmed-space tickets.

*Revenue passenger-mile* means one revenue passenger transported one mile. Revenue passenger-miles are computed by multiplying the aircraft miles flown on each flight stage by the number of revenue passengers carried on that flight stage.

*Revenue seat-miles available* means the aircraft-miles flown on each flight stage multiplied by the number of seats available for sale on that flight stage.

*Revenue ton-mile* means one ton of revenue traffic transported one mile. Revenue ton-miles are computed by multiplying the aircraft-miles flown on each flight stage by the number of pounds of revenue traffic carried on that flight stage and converted to ton-miles by dividing total revenue pound-miles by 2,000 pounds.

*Revenue ton-miles available* means the aircraft-miles flown on each flight stage multiplied by the number of pounds of aircraft capacity available for use on that stage and converted to ton-miles by dividing total pound-miles available by 2,000 pounds.

*Scheduled service* means transport service operated over routes pursuant to published flight schedules or pursuant to mail contracts with the U.S. Postal Service.

*Small aircraft* means any aircraft originally designed to have a maximum passenger capacity of 60 seats or less or a maximum payload capacity of 18,000 pounds or less.

*Small certificated air carrier* means an air carrier holding a certificate issued under section 41102 of the Statute that provides scheduled passenger air service within and between only the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands with small aircraft as defined in this section.

*Statute* means Subtitle VII of Title 49 of the United States Code (Transportation).

*Ton* means a short ton, *i.e.*, 2,000 pounds.

*Wet-Lease Agreement* means an agreement under which one carrier leases an aircraft with flight crew to another air carrier.

### § 298.3 Classification.

(a) There is hereby established a classification of air carriers, designated as "air taxi operators," which directly engage in the air transportation of persons or property or mail or in any combination of such transportation and which:

(1) Do not directly or indirectly utilize large aircraft in air transportation;

(2) Do not hold a certificate of public convenience and necessity and do not engage in scheduled passenger operations as specified in paragraph (b) of this section;

(3) Have and maintain in effect liability insurance coverage in compliance with the requirements set forth in part 205 of this chapter and have and maintain a current certificate of insurance evidencing such coverage on file with the Department;

(4) If operating in foreign air transportation or participating in an interline agreement, subscribe to Agreement 18900 (OST Form 4523 or OST Form 4507) and comply with all other requirements of part 203 of this chapter; and

(5) Have registered with the Department in accordance with subpart C of this part.

(b) There is hereby established a classification of air carriers, designated as "commuter air carriers," which directly engage in the air transportation of persons, property or mail, and which:

(1) Do not directly or indirectly utilize large aircraft in air transportation;

(2) Do not hold a certificate of public convenience and necessity;

(3) Carry passengers on at least five round trips per week on at least one route between two or more points according to its published flight schedules that specify the times, days of the week, and places between which those flights are performed;

(4) Have and maintain in effect liability insurance coverage in compliance with the requirements set forth in part 205 of this chapter and have and maintain a current certificate of insurance evidencing such coverage on file with the Department;

(5) Have and maintain in effect and on file with the Department a signed counterpart of Agreement 18900 (OST Form 4523) and comply with all other

requirements of part 203 of this chapter; and

(6) Hold a Commuter Air Carrier Authorization issued in accordance with subpart E of this part.

(c) A person who does not observe the conditions set forth in paragraph (a) or (b) of this section shall not be an air taxi operator or commuter air carrier within the meaning of this part with respect to any operations conducted while such conditions are not being observed, and during such periods is not entitled to any of the exemptions set forth in this part.

### § 298.4 Requests for statement of authority.

In any instance where an air taxi operator or commuter air carrier is required by a foreign government to produce evidence of its authority to engage in foreign air transportation under the laws of the United States, the Director, Office of Aviation Analysis (X-50), Office of the Secretary, 400 7th Street, SW, Washington, DC 20590, will, upon request, furnish the carrier with a written statement, outlining its general operating privileges under this part for presentation to the proper authorities of the foreign government.

## Subpart B—Exemptions

### § 298.11 Exemption authority.

Air taxi operators and commuter air carriers are hereby relieved from the following provisions of the Statute only if and so long as they comply with the provisions of this part and the conditions imposed herein, and to the extent necessary to permit them to conduct air taxi or commuter air carrier operations:

(a) Section 41101;

(b) Section 41504; except that the requirements of that section shall apply to:

(1) Tariffs for through rates, fares, and charges filed jointly by air taxi operators or commuter air carriers with air carriers or with foreign air carriers subject to the tariff-filing requirements of Chapter 415; and

(2) Tariffs required to be filed by air taxi operators or commuter air carriers which embody the provisions of the counterpart to Agreement 18900 as specified in part 203 of this chapter;

(c) Section 41702, except for the requirements that air taxi operators and commuter air carriers shall:

(1) Provide safe service, equipment, and facilities in connection with air transportation;

(2) Provide adequate service insofar as that requires them to comply with parts 252 and 382 of this chapter;

(3) Observe and enforce just and reasonable joint rates, fares, and charges, and just and reasonable classifications, rules, regulations and practices as provided in tariffs filed jointly by air taxi operators or commuter air carriers with certificated air carriers or with foreign air carriers; and

(4) Establish just, reasonable, and equitable divisions of such joint rates, fares, and charges as between air carriers participating therein which shall not unduly prefer or prejudice any of such participating air carriers;

(d) Section 41310, except that the requirements of that subsection shall apply to through service provided pursuant to tariffs filed jointly by air taxi operators or commuter air carriers with certificated air carriers or with foreign air carriers and to transportation of the handicapped to the extent that that is required by part 382 of this chapter;

(e) Section 41902;

(f) Section 41708.

#### § 298.12 Duration of exemption.

The exemption from any provision of the Statute provided by this part shall continue in effect only until such time as the Department shall find that enforcement of that provision would be in the public interest, at which time the exemption shall terminate or be conditioned with respect to the person, class of persons, or service (*e.g.*, limited-entry foreign air transportation market) subject to the finding.

#### Subpart C—Registration for Exemption by Air Taxi Operators

##### § 298.21 Filing for registration by air taxi operators.

(a) Every air taxi operator who plans to commence operations under this part shall register with the Department not later than 30 days prior to the commencement of such operations, unless, upon a showing of good cause satisfactory to the Manager, Program Management Branch (AFS-260), Federal Aviation Administration, registration within a lesser period of time is allowed.

(b) The registration of an air taxi operator shall remain in effect until it is amended by the carrier or canceled by the Department.

(c) Registration by all air taxi operators shall be accomplished by filing with the Department at the address specified in paragraph (d) of this section the following:

(1) Air Taxi Registration (OST Form 4507), executed in duplicate.<sup>6</sup> This form

shall be certified by a responsible official and shall include the following information:

(i) The name of the carrier and its mailing address;

(ii) The carrier's principal place of business, if different from its mailing address, and its telephone number and fax number;

(iii) The carrier's FAA certificate number, if any, and the address and telephone number of the carrier's local FAA office;

(iv) The type of service the carrier will offer (scheduled passenger,<sup>7</sup> scheduled cargo, mail under a U.S. Postal Service contract, on-demand passenger, on-demand cargo, or other service such as air ambulance operations, firefighting or seasonal operations);

(v) A list of the aircraft that the carrier proposes to operate, or, in the case of an amendment to the registration, the aircraft that it is currently operating in its air taxi operations, and the aircraft type, FAA registration number and passenger capacity of each aircraft;

(vi) For initial registration, the proposed date of commencement of air taxi operations;

(vii) For amendments, whether the carrier has carried passengers in foreign air transportation during the previous 12 months;

(viii) Whether the carrier is a citizen of the United States; and

(ix) A certification that the registration is complete and accurate and that, if the carrier is engaged in foreign air transportation, or participating in an interline agreement, it subscribes to the terms of Agreement 18900 (*see* OST Form 4523).

(2) A certificate of insurance (OST Form 6410) which is currently effective (or in case of initial registration, is to become effective), as defined in part 205 of this chapter;

(3) An 8 dollar (\$8) registration filing fee in the form of a check, draft, or postal money order payable to the Department of Transportation.

(d) Registrations required in paragraph (c) of this section shall be submitted to the Department of Transportation, Federal Aviation Administration, Program Management Branch (AFS-260), 800 Independence Avenue, SW., Washington, DC 20591.

Aviation Administration, AFS-260, or on the World Wide Web at <http://www.faa.gov/avr/afs/afs200/afs260/Part298.cfm>.

<sup>7</sup> Companies proposing to provide scheduled passenger service at the level established by this Part for commuter air carriers are not permitted to conduct such operations under their air taxi registration; such companies must first be found fit, willing and able to operate and be issued a Commuter Air Carrier Authorization by the Department.

For those air taxi operators that have a mailing address in the State of Alaska, the registrations shall be filed with the Department of Transportation, Federal Aviation Administration, Alaskan Region Headquarters (AAL-230), 222 West 7th Avenue, Box 14, Anchorage, Alaska 99513.

#### § 298.22 Processing by the Department.

After examination of the OST Form 4507 submitted by the carrier, the Department will stamp the effective date of the registration on the form and return the duplicate copy to the carrier to confirm that it has registered with the Department as required by this part. The effective date of the registration shall not be earlier than the effective date of the insurance policy or policies named in the certificate of insurance filed by the carrier under § 298.21(c)(2).

#### § 298.23 Notifications to the Department of change in operations.

(a) If any of the information contained on its registration changes, an air taxi operator shall submit an amendment reflecting the updated information. This amendment shall be filed no later than 30 days after the change occurs. There is no filing fee for submitting an amendment.

(b) An amendment shall be made by resubmitting OST Form 4507 to the Department of Transportation, Federal Aviation Administration, Program Management Branch (AFS-260), 800 Independence Avenue, SW., Washington, DC 20591. If the air taxi operator has a mailing address in the State of Alaska, the form shall be mailed to the Department of Transportation, Federal Aviation Administration, Alaskan Region Headquarters (AAL-230), 222 West 7th Avenue, Box 14, Anchorage, Alaska 99513.

#### § 298.24 Cancellation of the registration.

The registration of an air taxi operator may be canceled by the Department if any of the following occur:

(a) The operator ceases its operations;

(b) The operator's insurance coverage changes or lapses;

(c) The operator fails to file an amended registration when required by § 298.23;

(d) The operator's Air Carrier Certificate and/or Operations Specifications is revoked by the Federal Aviation Administration;

(e) The operator fails to qualify as a citizen of the United States;

(f) The Department determines that it is otherwise in the public interest to do so.

<sup>6</sup> OST Form 4507 can be obtained from the Manager, Program Management Branch, Federal

### Subpart D—Limitations and Conditions on Exemptions and Operations

#### § 298.30 Public disclosure of policy on consumer protection.

(a) Every air taxi and commuter air carrier shall cause to be displayed continuously in a conspicuous public place at each desk, station and position in the United States that is in charge of a person employed exclusively by it, or by it jointly with another person, or by any agent employed by it to sell tickets to passengers, a sign located so as to be clearly visible and readable to the traveling public, containing a statement setting forth the air taxi and commuter air carrier's policy on baggage liability and denied boarding compensation.

(b) An air taxi or commuter air carrier shall provide a written notice on or with a passenger's ticket concerning baggage liability as provided in § 254.5 of this chapter. These ticket notices are required only for passengers whose ticket includes a flight segment that uses large aircraft (more than 60 seats).

(c) If the substantive terms of the counter sign and ticket notice required by this section differ, the terms contained in the required ticket notice govern.

#### § 298.31 Scope of service and equipment authorized.

Nothing in this part shall be construed as authorizing the operation of large aircraft in air transportation, and the exemption provided by this part to air taxi operators and commuter air carriers that register with the Department extends only to the direct operation in air transportation in accordance with the limitations and conditions of this part of aircraft originally designed to have a maximum passenger capacity of 60 seats or less or a maximum payload capacity of 18,000 pounds or less.

#### § 298.32 Limitations on operations to eligible places.

No person shall provide scheduled passenger service as a commuter air carrier at an eligible place unless it has been found by the Department to be fit, willing, and able to conduct such service and issued a Commuter Air Carrier Authorization as provided in subpart E of this part.

#### § 298.33 Security requirements.

In conducting operations under this part, an air taxi operator or a commuter air carrier is required to adhere to all security requirements established by the Department of Transportation and the Department of Homeland Security applicable to such operations.

#### § 298.34 [Reserved]

#### § 298.35 Limitations on carriage of mail.

An air taxi operator or commuter air carrier is not authorized to carry mail except pursuant to contract with the U.S. Postal Service entered into pursuant to section 5402 of the Postal Reorganization Act (39 U.S.C. 5402).

#### § 298.36 Limitations on use of business name.

(a) An air taxi operator or commuter air carrier in holding out to the public and in performing its services in air transportation shall do so only in the name or names in which its air carrier certificate is issued pursuant to section 44702 of the Statute by the Federal Aviation Administration, and in which it is registered with the Department under this part, or in which its Commuter Air Carrier Authorization is issued or other trade name is registered.

(b) Slogans shall not be considered names for the purposes of this section, and their use is not restricted hereby.

(c) Commuter air carriers are subject to the provisions of part 215 of this chapter with regard to the use and change of air carrier names.

(d) Neither the provisions of this section nor the grant of a permission hereunder shall preclude Department intervention or enforcement action should there be evidence of a significant potential for, or of actual, public confusion.

#### § 298.37 Prohibition of services not covered by insurance.

An air taxi operator or commuter air carrier shall not operate in air transportation or provide or offer to provide air transportation unless there is in effect liability insurance which covers such transportation and which is evidenced by a current certificate of insurance on file with the Department as required by part 205 of this chapter.

#### § 298.38 Financial security arrangements for operating Public Charters.

When an air taxi operator or commuter air carrier performs a Public Charter under part 380 of this chapter, either:

(a) The air taxi operator or commuter air carrier shall meet the bonding or escrow requirements applicable to certificated air carriers as set forth in § 212.8 of this chapter; or

(b) The air taxi operator or commuter air carrier shall ensure that it does not receive any payments for the charter until after the charter has been completed. In this case, its contracts with the charter operator and the charter operator's depository bank, if any, shall state that the charter operator or bank,

as applicable, shall retain control of and responsibility for all participant funds intended for payment for air transportation until after the charter has been completed, notwithstanding any provision of part 380 of this chapter.

### Subpart E—Commuter Air Carrier Authorizations

#### § 298.50 Application.

(a) Any person desiring to provide air transportation as a commuter air carrier must first obtain a Commuter Air Carrier Authorization. This shall be accomplished by filing with the Department—

(1) An application in accordance with the requirements of parts 201 and 302 of this chapter;

(2) Data in accordance with part 204 of this chapter to support a determination by the Department that the person is "fit, willing, and able" to operate the proposed commuter service; and

(3) A \$670 filing fee in the form of a check, draft, or postal money order payable to the Department of Transportation.

(b) An executed original and two true copies of an application for a Commuter Air Carrier Authorization shall be filed with Department of Transportation Dockets, 400 7th Street SW, PL-401, Washington, DC 20590.

#### § 298.51 Processing by the Department.

In processing applications filed in accordance with § 298.50, the Department will generally follow the procedures set forth in §§ 302.207 through 302.211 of this chapter.

#### § 298.52 Air taxi operations by commuter air carriers.

(a) A commuter air carrier that holds an effective Commuter Air Carrier Authorization and otherwise meets the requirements of this part is also authorized to conduct air taxi operations (e.g., scheduled cargo, mail under a U.S. Postal Service contract, on-demand passenger, on-demand cargo, or other service such as air ambulance operations, firefighting or seasonal operations) without having to meet the registration requirements of subpart C of this part, except as provided in paragraph (b) of this section.

(b) Should a commuter air carrier cease conducting all scheduled passenger operations and its Commuter Air Carrier Authorization is suspended pursuant to §§ 298.53 and/or 204.7 of this chapter, it may continue to conduct air taxi operations *provided that* the carrier maintains in effect liability insurance coverage as required for such operations by part 205 of this chapter

and, within 10 days of the cessation of scheduled passenger operations, registers as an air taxi operator in accordance with subpart C of this part; and *provided further* that the carrier continues to hold authority from the Federal Aviation Administration to conduct such air taxi operations.

#### § 298.53 Suspension or revocation of authority.

A Commuter Air Carrier Authorization may be suspended or revoked if any of the following occur:

(a) The operator fails to maintain insurance coverage as required by part 205 of this chapter for commuter operations;

(b) The scheduled passenger authority under the operator's Air Carrier Certificate is suspended or revoked by the Federal Aviation Administration;

(c) The operator does not commence operations for which it has been found fit, or the operator ceases those operations as provided in § 204.7 of this chapter;

(d) The Department finds that the carrier is not fit, willing, and able to conduct scheduled service or fails to qualify as a citizen of the United States; or

(e) The Department determines that it is otherwise in the public interest to do so.

### PART 380—PUBLIC CHARTERS

■ 14. The authority citation for part 380 continues to read as follows:

**Authority:** 49 U.S.C. 40101, 40102, 40109, 40113, 41101, 41103, 41301, 41504, 41702, 41708, 41712, 46101.

#### § 380.2 [Amended]

■ 15. In § 380.2, in the definition of *Direct Air Carrier* add the word “, commuter” after “certificated”; remove the words “or commuter air carrier” and add “authorization,” between “certificate” and “permit”.

### PART 385—STAFF ASSIGNMENTS AND REVIEW OF ACTION UNDER ASSIGNMENTS

■ 16. The authority citation for part 385 continues to read as follows:

**Authority:** 49 U.S.C. Subtitle I, Chapters 401, 411, 413, 415, 417.

#### § 385.12 [Amended]

■ 17. In § 385.12(e), remove the words “and commuter air carriers”.

### PART 389—FEES AND CHARGES FOR SPECIAL SERVICES

■ 18. The authority citation for part 389 continues to read as follows:

**Authority:** Sec. 204, 1002, Pub. L. 85–726, as amended, 72 Stat. 743, 797; 49 U.S.C. 1324, 1502. Act of August 31, 1951, ch. 376, 65 Stat. 268; 31 U.S.C. 483a.

#### § 389.25 [Amended]

19. In § 389.25(a), in the table, under the entry for Code 7, remove the words “Scheduled Passenger Commuter Registration” and add, in their place, “Commuter Air Carrier Authorization”.

Issued on May 10, 2005.

**Karan K. Bhatia,**

*Assistant Secretary for Aviation and International Affairs.*

[FR Doc. 05–9655 Filed 5–13–05; 8:45 am]

**BILLING CODE 4910–62–P**

## DEPARTMENT OF COMMERCE

### Bureau of the Census

#### 15 CFR Part 30

[Docket Number 041029301–5119–02]

RIN 0607–AA44

#### Requirement for Reporting the Kimberley Process Certificate Number for Exports and Reexports of Rough Diamonds

**AGENCY:** Bureau of the Census, Commerce Department.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Census Bureau (Census Bureau) is amending the Foreign Trade Statistics Regulations (FTSR) to incorporate the requirement that the Kimberley Process Certificate (KPC) number for the exports and the reexports of rough diamonds be filed through the Automated Export System (AES). This rule serves to carry out the purposes of Executive Order 13312 of July 29, 2003, which implemented the Clean Diamond Trade Act and the Kimberley Process Certification Scheme in the United States.

**DATES:** This rule is effective June 15, 2005.

**FOR FURTHER INFORMATION CONTACT:** C. Harvey Monk, Jr., Chief, Foreign Trade Division, U.S. Census Bureau, Room 2104, Federal Building 3, Washington, DC 20233–6700; by phone at (301) 763–2255; by fax at (301) 457–2645; or by e-mail: [c.harvey.monk.jr@census.gov](mailto:c.harvey.monk.jr@census.gov).

**SUPPLEMENTARY INFORMATION:** In the January 12, 2005 *Federal Register*, 70 FR 2072, the Census Bureau published a notice of proposed rulemaking and request for comments for a requirement that the KPC number for exports and reexports of rough diamonds be filed through the AES. Public comments were

requested through February 11, 2005. The Census Bureau did not receive any comments on the proposed rule. This final rule adopts the measures contained in the proposed rule.

This final rule amends 15 CFR part 30 by revising § 30.63 of the FTSR to specify the requirement for reporting the KPC number via the AES for exports and reexports of rough diamonds. On July 29, 2003, the President issued Executive Order 13312, which implemented Public Law 108–19, known as the Clean Diamond Trade Act (the Act). The Act implemented the Kimberley Process in the United States by authorizing the President to prohibit the importation into or the exportation from the United States of any rough diamond, from whatever source, unless the rough diamond is controlled through the Kimberley Process Certification Scheme, as defined in the Act. Pursuant to the Act, shipments of rough diamonds between the United States and nonparticipants in the Kimberley Process are prohibited, and shipments between the United States and participants are permitted only if they are handled in accordance with the standards, practices, and procedures of the Kimberley Process set forth in the Rough Diamonds Control Regulations, 31 CFR part 592, promulgated by the Department of the Treasury's Office of Foreign Assets Control (OFAC) (see 69 FR 56936 dated September 23, 2004).

Section 6 of the Act names the Census Bureau as the exporting authority for the United States. This requires the Census Bureau to validate the KPC for exports of rough diamonds. The KPC is a forgery-resistant document of a participant nation or entity that demonstrates that an exportation of rough diamonds has been controlled through the Kimberley Process and contains the minimum elements required by OFAC regulations (Title 31 CFR part 592). Each KPC is assigned an identification number called the KPC number.

To comply with the requirements of the Act, the Census Bureau amended the FTSR on October 20, 2003, to incorporate requirements for the mandatory electronic filing via the AES of exports of rough diamonds. The Census Bureau is now amending the FTSR to require the reporting through AES of the KPC number found on the KPC for all exports of rough diamonds classified under Harmonized System subheadings 7102.10, 7102.21, and 7102.31. This requirement will not affect filers of Shipper's Export Declarations since all exports of rough diamonds are required to be filed through the AES.