

DEPARTMENT OF TRANSPORTATION
SUPPORTING STATEMENT
FOR PAPERWORK REDUCTION ACT SUBMISSION

OMB # 2106-0035 FOREIGN Air Carrier Application for Statement of Authorization

Justification

1. Circumstances that make the collection of information necessary.

Background

Foreign air carriers have used Form OST 4540 for over twenty years to apply affirmatively for statements of authorization under 14 CFR Part 212 (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 collects minimal, basic information required to identify the type of operation, the carrier(s) involved, and information necessary to make the required public interest determination.

On February 3, 2006, the Department issued a final rule [71 FR 5780] modifying OST Form 4507 and amending its Part 212 charter regulations. The revised OST Form 4540 required 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 six-month period), that indicates that the carrier's homeland grants to U.S. carriers a privilege similar to that requested by the applicant. The applicant carrier is also required to indicate on the application the number of third- and fourth-freedom flights the carrier has operated in the previous twelve-month period. This collection supports the DOT Strategic Goal of National Security and Safety, which is to ensure that no terrorists and/or individuals are able to inflict harm or significant disruption upon the aviation system.

2. Indicate how, by whom, and for what purpose the information is to be used.

DOT analysts, domestic and foreign air carriers, and their respective representatives will use the information collected regarding reciprocity and number of third- and fourth-freedom flights operated by the applicant carrier in the twelve-month period immediately preceding the application. DOT analysts must use the information collected to determine if applications for fifth-freedom operations meet the public interest requirements necessary to authorize such applications. Foreign and domestic air carriers and their respective representatives may use such information to evaluate a given application and determine whether to file comments in response to a given application, and whether such comments should support or oppose the application.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other

forms of information technology (e.g. permitting electronic submission of responses) and the basis for the decision for adopting this means of collection. Also, describe any consideration of using information technology to reduce burden.

Traditionally, the DOT has accepted applications for authority to operate fifth-freedom flights received via facsimile or email. Since these applications are undocketed, this is the most efficient method of information exchange. Given the short-notice nature of fifth-freedom applications, their lack of statutory authorization to be docketed, and the delays experienced in processing docketed applications, using Regulations.gov (formerly Docket Management System) to process such applications is not feasible, at this time.

4. Describe efforts to identify duplication.

We recognize that requiring that applicant carriers submit certification of reciprocity from their homeland governments could result in duplicative efforts by several carriers from the same homeland, and their homeland government. All applications, however, must be served on numerous carriers and trade associations. Filed applications will indicate the date when previous certifications were submitted to the DOT, and should be readily accessible to interested parties.

We 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. 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.

5. Efforts to minimize the burden on small businesses. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.

Given the nature of the international aviation industry, it is highly unlikely that the collection of information will affect small businesses or other small entities. The form directly affects foreign air carriers. In order to reduce the burden on applicants, whether small entities or not, the DOT allows foreign air carrier applicants the flexibility to cite reciprocity certifications submitted by other carriers of the same homeland to the DOT.

6. Impact of less frequent collection of information. Describe the consequences to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

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 must have data that permit us to give this issue appropriate consideration in our decisional process. 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. Our amendment is essentially an administrative measure designed to promote an enhanced record and more efficient decision-making process.

- 7. Special circumstances. Explain any special circumstances that would cause an information collection to be conducted in a manner:**
- **Requiring respondents to report information to the agency more often than quarterly;**
 - **Requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**
 - **Requiring respondents to submit more than an original and two copies of any document;**
 - **Requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;**
 - **In connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;**
 - **Requiring the use of a statistical data classification that has not been reviewed and approved by OMB;**
 - **That includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impeded sharing of data with other agencies; or**
 - **Requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

Foreign air carriers use OST Form 4540 to apply for statements of authorization under 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 collects minimal, basic information required to identify the type of operation, the carrier(s) involved, and information necessary to make the required public interest determination. Use of OST Form 4540 requires foreign carriers to report the number of third- and fourth-freedom flights conducted by that carrier to/from the United States within the previous twelve-month period, at the time of application for authorization to conduct a fifth-, sixth-, or seventh-freedom operation.

As such, applicants *may* have to report the required information to the agency more often than quarterly because they *may chose* to apply for more than one fifth-, sixth-, or seventh-freedom operation within any given three-month period. Similarly, respondents *may* be required to prepare a written response to a collection of information in fewer than 30 days after receipt of that information if they *chose* to operate third- or fourth-freedom flights within 30 preceding an application for authorization to conduct a fifth-, sixth-, or seventh-freedom operation. It should be recognized that it is reasonable to expect that foreign air carriers would have immediately available knowledge as to the numbers of third- and fourth-freedom flights operated currently up to and including the date of flight.

8. Compliance with 5 CFR 1320.8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe action taken by the agency in response to those comments. Specifically address comments received on the cost and hour burden.

On December 5, 2008, the Department of Transportation issued a Federal Register Notice [73 FR 74223] announcing and requesting comments on its intention to request for an extension of the previously approved collection of information regarding Foreign Air Carrier Application for Statement of Authorization. No comments were received in response to the notice.

9. Payments or gifts to respondents. Explain any decision to provide any payment or gift respondents, other than remuneration of contractors or grantees.

No such decisions providing for payment or gift are made in response to Form OST 4540.

10. Assurance of confidentiality. Describe any assurances of confidentiality provided to respondents and the basis for assurances in statute, regulation, or agency policy.

No assurances of confidentiality are provided to respondents on the basis for assurances in statute, regulation, or agency policy. In fact, the data provided is available for public inspection.

11. Justification for collection of sensitive information. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private, This justification should include the reasons why that agency considers that questions necessary, the specific uses to be made of the information and the explanation to be given to persons from whom the information is requested, and any steps taken to obtain their consent.

There are no sensitive questions.

12. Estimate of burden hours for information requested. Provide estimates of the hour burden of the collection of information.

We estimate that the industry-wide total hour burden for this collection to be approximately 1,000 hours or approximately 2.25 hours per application. Conservatively, we estimate the compilation of background information will require 1.75 hours, and the completion and submission of OST Form 4540 will require thirty (30) minutes.

Applicants use Form OST 4540 to request statements of authorization to conduct numerous types of operations authorized under Title 14, CFR Part 212. The form requires basic information regarding the carrier(s) conducting the operation, the party filing the form, the operations being conducted, the number of third- and fourth-freedom flights conducted in the last twelve-month period, and certification of reciprocity from the carrier's homeland government.

Reporting the number of third- and fourth-freedom operations conducted by an applicant carrier will require collection of flight data, and detailed analysis to determine which flights conducted by the carrier are third- and fourth-freedom. Applicants should be able to use data collected for the T-100 program to provide this information. As discussed in the paperwork reduction act justification for that program, the Bureau of Transportation Statistics (BTS) provides carriers with a computer program that allows them to compile and monitor, among other things, flight origin and destination data.¹ We estimated that carriers will require 1.25 hours per application² to compile and analyze the data necessary to disclose the number of third- and fourth-freedom flights conducted within the twelve-month period preceding the filing of an application.

Foreign carriers will also have to provide evidence that their homeland government will afford reciprocity to U.S. carriers seeking authority for the similar fifth-, sixth- and seventh-freedom operations. Carriers may cite certifications submitted by carriers from the same homeland if that homeland issued such certification within the preceding six-month period. Approximately 100 carriers from roughly 30 distinct homelands use OST Form 4540 to apply for statements of authorization annually. We estimate that one foreign carrier from any given homeland will expend roughly 4 hours every six-months to obtain certification from its homeland governments.³ We have apportioned 30 minutes to each application to account for the time required to obtain certifications from homeland governments.

We have no empirical data to indicate how much time is required for a person to complete OST Form 4540; however, anecdotal evidence reveals that respondents spend thirty (30) minutes or less completing the form and brief justification. In some cases, respondents spend a limited amount of time, less than ten (10) minutes, reviewing the form before sending it via facsimile or email to the Department. In the interest of providing a conservative estimate so as to not understate the burden hours, we estimate the hour burden for completing OST Form 4540 as thirty (30) minutes.

13. Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection information.

The cost burden associated with this information collection will have minimal impact on foreign air carriers. We estimate, conservatively, that the information collection associated with OST Form 4540 currently costs foreign air carriers approximately \$400,000. We are aware that some attorneys charge as much as \$1000 dollars per application, and foreign air carriers file approximately 430 applications annually. Many carriers, however, complete applications using internal staff or law firms that do not charge a premium for individual applications.

¹ The rule-making associated with the T-100 program can be found at <http://www.regulations.gov>, in docket DOT-OST-1998-4043. Information regarding burden hours is on file in the Office of Aviation Analysis (X-50).

² The Office of Aviation Analysis (X-50) estimated that small carriers would require 1 burden hour per report, and large carriers would require 3 burden hours per report to analyze and report T-100 program data. Considering that the data required in this information collection can be derived from data already collected, we have taken an average of the estimated time required, and conservatively shortened the time by 45 minutes because no new data entry will be required.

³ Calculation: (4 burden hours per application) x (30 foreign homelands) x (2 requests per year) = 240 annual burden hours. Apportioning 240 annual burden hours equally among an average of 430 applications annually = approximately 30 burden minutes per application.

We do not foresee a significant increase in cost to foreign air carriers as a result of the information collected here because foreign air carriers collect data regarding third- and fourth-freedom operations that now must be notated on OST Form 4540. Certification of reciprocity from the carrier's homeland is required and specified on the form. As discussed above, only one carrier from each foreign homeland needs to obtain such certification two times per year. Other carriers may cite that certification when they file for a statement of authorization.

We supply a conservative estimate so as not to understate the cost burden, however, actual costs incurred by any single applicant may be less than estimated here.

14. Provide estimated or annualized cost the Federal Government.

No annualized costs to the Federal Government are associated with this collection of information.

15. Explain the reasons for any program change or adjustments reported.

There are no program changes or adjustments reported.

16. For collection of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginnings and ending dates of the collection of information, completion of report, publication dates, and other actions.

No results associated with this collection will be published.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

Approval is not required.

18. Exceptions to the certification statement.

No exceptions will be requested. Note that exception (i) does not apply in this instance because the collection does not use any statistical survey methodologies.