

**DEPARTMENT OF TRANSPORTATION**

**INFORMATION COLLECTION  
SUPPORTING STATEMENT**

**Foreign Air Carrier Application for Statement of Authorization**  
**OMB Control Number 2106-0035**

**INTRODUCTION**

This is to request the Office of Management and Budget's (OMB) renewed three-year approved clearance for the information collection entitled, "Foreign Air Carrier Application for Statement of Authorization".

**Part A. Justification**

**1. Circumstances that make the collection information necessary.**

14 CFR Part 212 provides a mechanism for a foreign air carrier to obtain Department of Transportation (DOT) permission, in the form of a 'statement of authorization,' to operate certain types of charter operations that are not encompassed in the bilateral aviation agreement that may exist between the United States and that foreign air carrier's homeland, or a number of other charter types. Because of their extrabilateral nature, these operations represent a valuable economic privilege for the foreign air carrier involved, enhancing overall economic competitiveness in the aviation industry. In granting authority to a foreign air carrier to conduct such operations, DOT must, under the provisions of Part 212, make a finding that the operations are in the public interest. A crucial factor DOT considers is reciprocity on the part of the foreign air carrier's homeland; that is, whether the foreign air carrier's homeland is prepared to grant similar reciprocal economic aviation benefits to U.S. air carrier(s). The collection at issue here is designed to provide DOT the necessary information to make this required public interest determination.

As mentioned in DOT's Strategic Plan for Fiscal Year 2018-22, air transportation plays a key role in the growing tourism and hospitality sector of the economy and also serves business travelers who make the key connections that allow economic activity to grow and expand. As domestic and world economies recover, U.S. airline passenger demand is expected to increase and approach a growth rate of 3 to 4 percent annually. Thus, these charters play an important economic role.

Another key mission for DOT is to negotiate liberalized, bilateral aviation agreements that result in increased air service opportunities and lower fares for consumers. By ensuring that a foreign air carrier's homeland is prepared to grant reciprocal economic aviation benefits to U.S. air carrier(s), we are providing a vital economic interest in an extrabilateral environment.

The form collects minimal, basic information to identify the type of operation, the foreign air carrier(s) involved, a certification from the applicant foreign air carrier's homeland attesting to the existence of reciprocity for U.S. air carriers, and data regarding the number of homeland-U.S. charters the applicant foreign air carrier has conducted in the previous year.

**2. How, by whom, and for what purpose the information is to be used.**

The information collected is used to determine if foreign air carriers applying for statements of authorization meet the public interest requirements necessary to approve such applications. Foreign and U.S. air carriers and their respective legal representatives may also use the information to evaluate a given application and determine whether to file comments in response to that application, and whether such comments should support or oppose the application.

**3. Extent of automated information collection.**

Traditionally, the DOT has accepted applications for statements of authorization via facsimile or e-mail. The OST Form 4540 is fillable and it can now be completed electronically and transmitted by e-mail to DOT. Since these applications are undocketed, this is the most efficient method of information exchange. Given the short-notice nature of these applications, their lack of statutory authorization to be docketed, and the delays experienced in processing docketed applications, using the Federal Docket Management System (FDMS) at [www.regulations.gov](http://www.regulations.gov) 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 to obtain such certification. In practice, however, this has not been a problem because reciprocity certifications are placed in a public Docket in the FDMS, and foreign air carriers, and their homeland governments, have accessed this information and have not made duplicative filings.

We acknowledge that foreign air 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 cannot be used for our purposes because it is not readily accessible due to the delay in T-100 data availability. The T-100 program was not designed to provide a readily accessible data base for DOT's public interest evaluations in the context of the often short-notice, quick turnaround filings that characterize DOT's statement of authorization process.<sup>1</sup>

**5. Efforts to minimize the burden on small business.**

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<sup>1</sup> The T-100 data bank contains domestic and international airline market and segment data for certificated U.S. air carriers and foreign air carriers. The data is reported monthly and collected by the Office of Airline Information, Bureau of Transportation Statistics, Research and Innovative Technology Administration. Please see [http://www.transtats.bts.gov/databaseinfo.asp?DB\\_ID=111](http://www.transtats.bts.gov/databaseinfo.asp?DB_ID=111) for more information.

It is doubtful that the collection would adversely affect small businesses or other small entities, given the nature of the international aviation industry. Moreover, in order to reduce the burden on applicants, whether small entities or not, DOT has kept the information to be provided by applicant foreign air carriers to an absolute minimum.

For our purposes, foreign air carriers that use only small aircraft which are designed to have a maximum passenger capacity of not more than 60 seats and a maximum payload capacity of not more than 18,000 pounds, are subject to the requirements as large aircraft operators. The size of the aircraft operated does not necessarily have any bearing on the size of the business operation.

#### **6. Impact of less frequent collection of information.**

The authority which foreign air carriers must seek using Form OST 4540 represents a valuable economic privilege, as previously noted in the response to question #1 above. In many instances the authority is extrabilateral; that is, it is not a right that is guaranteed to the foreign air carrier under a bilateral aviation agreement.

If the collection were not conducted; i.e., if foreign air carriers could conduct the affected operations without prior DOT approval, DOT would lose the ability to assure that those operations were being conducted in the public interest. Such a situation would cause competitive harm to the U.S. air carrier industry, allowing some foreign air carriers to conduct these operations in situations where U.S. carriers were being denied reciprocal benefits from those foreign air carriers' homelands.

Less frequent collection would also deny the public the ability to review and file public comments on the proposed operations by foreign air carriers; thereby having an adverse public impact. Given the role that this collection plays in our public interest determinations, and the absence of equivalent alternatives to the collection, we conclude that the small burden placed on the public that may be entailed by this requirement is outweighed by the public benefits produced.

#### **7. Special Circumstances.**

Foreign air carriers use OST Form 4540 to apply for statements of authorization under 14 CFR Part 212 to conduct ad hoc 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 other information necessary to make the required public interest determination.

As such, applicants may have to report the required information to the agency more often than quarterly because they may choose to apply for more than one operation requiring prior DOT approval within any given three-month period.

#### **8. Compliance with 5 CFR 1320.8(d).**

On October 3, 2018, DOT issued a notice and request for comments on the extension of this information collection (83 FR 49980). DOT established a public docket to receive comments (Docket DOT-OST-2013-0074 at [www.regulations.gov](http://www.regulations.gov)). Comments were due December 3, 2018. No comments were received. A 30-day notice was published on March 26, 2019 (84 FR 11395).

**9. Payment or gifts to respondents.**

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

**10. Assurance of confidentiality.**

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

**11. Justification for collection of sensitive information.**

There is no sensitive information collected.

**12. Estimate of burden hours for information requested.**

We estimate that the industry-wide total hour burden for this collection to be approximately 1,000 hours or approximately 2.5 hours per application. We estimated 400 responses. 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. Record keeping takes an additional 30 minutes per response.

<b>Background - 3<sup>rd</sup>/4<sup>th</sup> Freedom Research</b>	<b>Background - Reciprocity Certifications</b>	<b>Form Completion &amp; Submission</b>	<b>Record keeping</b>	<b>Total Burden</b>
<b>1 hour and 15 minutes</b>	<b>15 minutes</b>	<b>30 minutes</b>	<b>30 minutes</b>	<b>2 hours 30 minutes</b>

**400 responses x 2.5 hours = 1000 hours**

Reporting the number of third- and fourth-freedom operations conducted by an applicant foreign air carrier will require collection of flight data, and detailed analysis to determine which flights

conducted by the foreign air carrier are third- and fourth-freedom.<sup>2 3</sup> Applicants should be able to use data collected for the T-100 data bank to provide this information; thereby, access to the T-100 data bank alleviates the collection burden to the public.<sup>4</sup> 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.<sup>5</sup> We estimated that foreign air carriers will require 1.25 hours per application<sup>6</sup> 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 air carriers will also have to provide evidence that their homeland government will afford reciprocity to U.S. air carriers seeking authority for the similar fifth-, sixth- and seventh-freedom operations.<sup>7</sup> Foreign air carriers may cite certifications submitted by foreign air carriers from the same homeland if that homeland issued such certification within the preceding six-month period. Approximately 100 foreign air carriers from roughly 30 distinct homelands use OST Form 4540 to apply for statements of authorization annually. We estimate that one foreign air carrier from any given homeland will expend roughly 4 hours every six-months to obtain certification from its homeland governments.<sup>8</sup>

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. Estimate of the total annual costs burden.**

<sup>2</sup> The freedoms of the air are a set of commercial aviation rights granting a country's airlines the privilege to enter and land in another country's airspace.

<sup>3</sup> Third freedom is the right to carry freight and passengers from the home country to another country. Fourth freedom is the right to carry freight and passengers to the home country from another country.

<sup>4</sup> The T-100 data bank is frequently used by the aviation industry to produce reports and analyses on air traffic patterns, carrier market shares, as well as passenger, freight, and mail cargo flow within the aviation mode.

<sup>5</sup> The rulemaking associated with the T-100 program can be found on the FDMS at [www.regulations.gov](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).

<sup>6</sup> 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.

<sup>7</sup> Fifth freedom operations are the right to fly between two foreign countries during flights while the flight originates or ends in one's own country. Sixth freedom operations are the right to fly from a foreign country to another one while stopping in one's own country for non-technical reasons. Seventh freedom operations are the right to fly between two foreign countries while not offering flights to one's own country.

<sup>8</sup> 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 400 applications annually = approximately 30 burden minutes per application.

The cost burden associated with this revised 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 400 applications annually. A large number of foreign air carriers, however, complete applications using internal staff or law firms that do not charge for application preparation.

We supply a conservative estimate so as not to understate the cost burden; however, we have no means by which to access the data needed to better approximate the costs to the air carriers. Therefore, actual costs incurred by any single applicant may be significantly less than estimated here.

#### **14. Estimates of costs to the Federal Government.**

The OST 4540 applications are handled by a total of six analysts that vary in grade from GS-09 to GS-15. Each application presents unique circumstances that are directly relevant to the amount of time needed for the analyst to process the application. However, on average, we have determined a conservative processing time of .75 hours per application. It is also important to note that due to various circumstances, in many cases multiple analysts of different grades are involved the processing of an application. The table below represents an estimated cost burden based on these presumptions.

<b>Grade</b>	<b>Hourly Wage</b>	<b># Applications</b>	<b>Cost Burden</b>
<b>GS-09</b>	<b>28.86 x .75</b>	<b>14</b>	<b>303.03</b>
<b>GS-13</b>	<b>46.93 x .75</b>	<b>202</b>	<b>7,109.90</b>
<b>GS-14</b>	<b>53.77 x .75</b>	<b>54</b>	<b>2,177.69</b>
<b>GS-15</b>	<b>61.28 x .75</b>	<b>130</b>	<b>5,974.80</b>
<b>Totals</b>		<b>400</b>	<b>15,565.42</b>

#### **15. Explanation of the program change or adjustments.**

There is an adjustment for more thorough accounting of the number of burden hours.

#### **16. Publication of results of data collection.**

No results associated with this collection will be published.

#### **17. Approval for not displaying the expiration date of OMB approval.**

Approval is not required.

**18. Exceptions to the certification requirement.**

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.