

supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA-2004-19053 and Airspace Docket No. 04-ANM-10) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at <http://dms.dot.gov>.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA-2004-19053 and Airspace Docket No. 04-ANM-10." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

#### Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at <http://dms.dot.gov>. Recently published rulemaking documents can also be accessed through the FAA's Web page at <http://www.faa.gov> or the **Federal Register's** Web page at <http://www.gpoaccess.gov/fr/index.html>.

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, Washington, 98055-4056.

Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267-9677, for a copy of Advisory

Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

#### Background

Currently, the Southern California Terminal Radar Approach Control (TRACON) and the Los Angeles Air Route Traffic Control Center (ARTCC) issue clearances to aircraft along specified radials to separate enroute aircraft from jet aircraft departing the Los Angeles International Airport. However, these clearances increase both pilot and ATC workload. As such these facilities request that V-208 be modified to incorporate these clearances. This proposed action responds to that request.

#### The Proposal

This action proposes to amend Title 14 Code of Federal Regulations (14 CFR) part 71 (part 71) to modify Federal airway V-208 by changing the originating point of the airway from the Santa Catalina VORTAC to the Ventura VORTAC. The revision would incorporate routing that is currently issued by ATC when managing aircraft in the Los Angeles, CA, terminal area. Extending V-208 as described above would significantly reduce pilot-controller communications, alleviate radio frequency congestion, reduce the potential for pilot readback errors, and enhance the management of aircraft operations in the Southern California area.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

#### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

#### The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

#### PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

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

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

##### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

*Paragraph 6010(a) Domestic VOR Federal Airways*

\* \* \* \* \*

##### V-208 [Revised]

From Ventura, CA 175° Santa Catalina, CA, 310° Oceanside, CA; Julian, CA; Thermal, CA; Twentynine Palms, CA; 20 miles, 24 miles 73 MSL, Needles, CA; Peach Springs, AZ; Grand Canyon, AZ; INT Grand Canyon 095° and Tuba City, AZ, 246° radials; Tuba City; Page, AZ; Hanksville, UT; Carbon, UT; Myton, UT; 79 MSL, Vernal, UT, 25 miles, 105 MSL, Cherokee, WY. The airspace within R-2503 and the airspace below 2,000 feet MSL outside the United States is excluded. The portion outside the United States has no upper limit.

\* \* \* \* \*

Issued in Washington, DC, October 19, 2004.

**Reginald C. Matthews,**

*Manager, Airspace and Rules.*

[FR Doc. 04-24146 Filed 10-27-04; 8:45 am]

**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:** Notice of proposed rulemaking.

**SUMMARY:** The Department proposes to amend 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, the proposed amendment will simplify the process of applying for and maintaining commuter air carrier authority. The Department also proposes to make conforming amendments to other rules affected by the proposed 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:** Comments must be received on or before December 13, 2004.

**ADDRESSES:** You may send comments identified by Docket No. OST-2004-19426 using any of the following methods:

- DOT Docket Web site: go to <http://dms.dot.gov> and follow the instructions for sending you comments electronically.
- Government-wide Rulemaking Web site: Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.
- Mail: Dockets Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590. Fax: 1-202-493-2251.
- Hand Delivery: Room PL-401 on the plaza level of the Nassif building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Delores A. King, Air Carrier Fitness Division, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-9721.

#### **SUPPLEMENTARY INFORMATION:**

##### **Comments Invited**

The Department invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to any economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments will reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with Department personnel concerning this proposed

rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of the preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the Web address in the **ADDRESSES** section.

**Privacy Act:** Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment on behalf of an association, business, labor union, etc.) You may review the Department's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78) or you may visit <http://dms.dot.gov>.

Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

If you want the Department to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

##### **Background**

Air carriers operating or proposing to operate small aircraft (*i.e.*, those designed to hold 60 seats or less or 18,000 pounds payload or less) are exempt from the provisions of 49 U.S.C. 41101, which requires U.S. air carriers to hold certificates of public convenience and necessity in order to engage in interstate and/or foreign air transportation operations. This exemption is conditioned upon the air carrier meeting the registration, insurance and other requirements set for in part 298 of the Department's Economic Regulations (14 CFR part 298). Air carriers operating under a part 298 exemption are generally referred to as "air taxi operators."

A "commuter air carrier," as defined in part 298, is an air taxi operator that carries passengers on at least five round trips per week on at least one route between two or more points according to a published flight schedule that specifies the times, days of the week, and places between which those flights are performed.

To register as an air taxi operator (whether or not commuter air carrier operations are involved), an air carrier

must submit a registration form (OST Form 4507) that asks for basic information about the company, including name, address, telephone and fax numbers, types of operations being performed, Federal Aviation Administration (FAA) office overseeing the carrier's operations, list of aircraft being used in the operation, and whether the company is a U.S. citizen. Evidence of current insurance coverage that meets the requirements of part 205 of the Department's regulations must accompany the registration. If the information on the registration form subsequently changes, the carrier is required to submit an amendment to the Department within 30 days reflecting the change.

In addition, section 298.21(d) requires a commuter carrier to be found "fit, willing and able" to conduct its scheduled passenger operations in addition to meeting the registration and insurance requirements of the rule. In making that fitness determination, the Department requires companies proposing to operate as a commuter air carrier to file an application and submit data to the Department in accordance with 14 CFR parts 201 and 204. Once the Department determines 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 to the air carrier.

##### **Statement of Proposed Action**

The fitness requirements and the process for obtaining authority for commuter air carriers are nearly identical to those applicable to companies seeking certificates of public convenience and necessity under 49 U.S.C. 41101. In fact, many companies that propose to operate small aircraft (under 60 seats of 18,000 pounds payload) and that would otherwise qualify for commuter authority choose instead to seek a certificate. At present, approximately 35 carriers hold commuter authority from the Department; of the approximately 145 carriers that currently hold certificates of public convenience and necessity, approximately 60 operate small aircraft only. In addition, both commuter air carriers and certificated air carriers must notify the Department under 14 CFR 204.5 of any substantial changes in their operations, ownership, or management. Unlike commuters, however, certificated air carriers are not required to file registration forms or amendments.

Since the fitness and licensing requirements for commuter air carriers

are so closely aligned to those for certificated air carriers operating similar aircraft, we propose to revise the regulations to eliminate the requirement that commuter air carriers file initial and amended registration forms as currently required by part 298, thus relieving commuters from the often duplicative burden of filing registration forms and amendment as well as initial and updated fitness information.

All of the information contained on OST Form 4507 is filed by commuter applicants requesting a fitness determination under 14 CFR 204.5. Once found fit, commuters are required to notify the Department of substantial changes in their operations, ownership, or management. In addition to these substantial change notifications, the Department periodically requests updated fitness information from commuter air carriers. We believe that these requirements and procedures provide the Department an adequate opportunity to obtain relevant information regarding commuter air carriers. Under these circumstances, we believe that the separate registrations and amendments required of commuters under part 298 are no longer necessary and can be eliminated. These changes will not, however, affect the requirement that other air taxi operators must still file registrations and amendments with the Department, nor will they relieve commuters of any other requirements or provisions of part 298 applicable to their operations. This includes submitting evidence of liability insurance coverage which, under the proposal, would be filed with the Program Management Branch (AFS-260) of the Federal Aviation Administration, just as air taxi registrations and insurance and certificated air carrier insurance currently are.

### Section-by-Section Analysis of Proposal

We propose to reorganize part 298 to reflect the changes discussed above, to codify current Department policies or procedures, and to improve the clarity of the party. This section-by-section analysis explains the proposed amendments to each subpart of the rule.

#### Subpart A—General

In this subpart, we propose to reclassify commuter air carriers from being a subset of air taxi operators to their own class of carrier that operate small aircraft in scheduled passenger service, and to amend sections 298.1, 298.2, and 298.3 accordingly. We also propose to amend section 298.4 to include the address for obtaining a

statement of authority, and to eliminate section 298.5.

#### Section 298.1 Applicability

We propose to add a reference in section 298.1 to indicate that part 298 applies to both air taxi operators and commuter air carriers.

#### Section 298.2 Definitions

We propose to amend the definitions of “air taxi operator” and “commuter air carrier” to reference revised sections 298.3(a) and (b) (see Section 298.3 Classification, below). For purposes of clarity and convenience, we proposed to add definitions of “statute” to refer to subtitle VII of title 49 of the United States Code, “eligible place” with respect to operations by commuters as contained in 49 U.S.C. 41731(a)(1), and “citizen of the United States” as contained in 49 U.S.C. 40102(a)(15). We are also proposing to add the word “originally” before the word “designed” in the definition of “large aircraft” to codify our long-held interpretation of that definition as we recently reiterated in Order 2002–9–4. Finally, we propose to amend the definition of “small aircraft” so that it no longer merely indicates that it is the “opposite” of “large aircraft,” but instead sets out the specific seating and payload limitations applicable to small aircraft. As discussed below in section 298.5, we are also deleting the definition of “all-cargo air carrier or section 41103 carrier” as no longer necessary for purposes of this part.

#### Section 298.3 Classification

The Department proposes to amend section 298.3 to reclassify commuter air carriers as their own class of carrier that operate small aircraft in scheduled passenger service and do not hold certificates, but that do hold Commuter Air Carrier Authorizations (see revised section 298.3(b)). We propose to delete the references in section 298.3(a) to the requirement that commuters must file registration forms, and adopt a new “Subpart E—Commuter Air Carrier Authorizations,” that describes the requirements for obtaining commuter authority. As a result of these changes, we propose to renumber old section 298.3(b) as section 298.3(c).

#### Section 298.4 Requests for Statement of Authority

We propose to add the mailing address of the Director, Office of Aviation Analyses for ease in requesting a statement of authority.

#### Section 298.5 Dual Operations—Air Taxi or Commuter Air Carrier and All-Cargo Service

We propose to eliminate section 298.5 which authorizes air taxi and commuter operations by air carriers holding All-Cargo Air Service Certificates issued under 49 U.S.C. 41103 (formerly section 418 of the Federal Aviation Act). There currently are no certificated air carriers that hold only all-cargo certificates issued under 49 U.S.C. 41103—all such carriers also hold certificates issued under 49 U.S.C. 41102. Moreover, no applications pursuant to 49 U.S.C. 41103 have been received in a number of years—most carriers preferring to receive certificates under 49 U.S.C. 41102 for scheduled all-cargo authority, which also confer charter all-cargo rights. Small aircraft operations by carriers holding certificates issued under 49 U.S.C. 41102 are specifically authorized by 14 CFR 206.5 under the same terms and conditions as air taxi and commuter operations; thus section 298.5 is redundant and can be eliminated, along with the references to that section in sections 298.3(a)(1) and (2) and current section 298.3(b) (renumbered section 298.3(c)).

#### Subpart B—Exemptions

In this subpart, we proposed to re-designate current section 298.13 as section 298.12. All other sections in this subpart remain unchanged.

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

This subpart is currently titled “Registration and Reregistration for Exemption.” We propose to re-title this subpart as “Registration for Exemption by Air Taxi Operators” to eliminate an obsolete reference to “re-registrations”. Also, as discussed below, we propose to amend all sections in this subpart (sections 298.21 through 298.24) to eliminate references to commuter air carriers and make other clarifying or organizational changes.

#### Section 298.21 Filing for Registration by Air Taxi Operators

Currently, this section states that all air taxi operators, regardless of whether or not they are operating as commuter air carriers, must file a registration with the Department. We propose to amend this section to remove the requirement for commuter air carriers to file registrations.

We also propose to make administrative changes to this section. Specifically, we propose to replace the reference to the Director, Office of Aviation Analysis in 298.21(a) with a reference to the Manager, Program

Management Branch (AFS-260) of the FAA—the office that processes air taxi registrations—and amend sections 298.21(c) and (d) to clarify the addresses where air taxi registrations should be filed. Further, we propose to clarify the requirements for air taxi operators engaged in foreign air transportation or participating in an interline agreement. Specifically, we are proposing to delete section 298.21(c)(4) to eliminate the requirement that air taxi operators engaged in foreign air transportation or participating in an interline agreement must file OST Form 4523—counterpart to Agreement 18900—and, instead, include a new section 298.21(c)(1)(ix) that references language currently contained on the registration form (OST Form 4507) certifying that the air taxi operator complies with Agreement 18900 and certifying that the information submitted on the registration form is complete and accurate. Finally, we propose to move the current requirement of section 298.21(d), which prohibits an air taxi from operating scheduled passenger service unless it has first been found fit by the Department as a commuter air carrier, to new section 298.32.

#### *Section 298.22 Processing by the Department*

In this section, we propose to replace the obsolete reference to registration form “298-A” with the correct form number “OST Form 4507.”

#### *Section 298.23 Notification of the Department of Change in Operations*

We propose to amend section 298.23(a) to clarify that amended air taxi registrations are to be submitted whenever any of the information contained on the most recently filed registration form changes. In doing so, we will replace the specific listing of items with a more general statement that applies to any of the information on the registration. We have also added a provision stating that filing fees are not required when submitting an amendment to a registration form. Section 298.23(b) will be amended to reflect the current addresses where amended air taxi registrations are to be submitted.

#### *Section 298.24 Cancellation of the Registration*

We propose to amend this section, which sets out circumstances under which the Department may cancel registrations issued under part 298, to eliminate all references to commuter air carriers, since the suspension or revocation of a commuter's authority will now be addressed in new section

298.53. In addition, we propose to specify additional circumstances beyond those currently contained in this section under which an air taxi registration may be cancelled. Specifically, these include (1) an air taxi operator's failure to remain a U.S. citizen under 49 U.S.C. 40102(a)(15) (amended section 298.24(e)), and (2) other circumstances under which the Department determines that it is in the public interest to cancel a company's registration (new section 298.24(f)). These changes merely clarify that an air taxi operator must remain a U.S. citizen to hold authority under part 298 as is required under the statute, and that the Department has the ability to cancel the exemption authority awarded to an air taxi if the Department determines that it is in the public interest to do so.

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

In this subpart, we propose to add sections 298.32 and 298.33 and amend sections 298.32, 298.35 and 298.36.

#### *Section 298.31 Scope of Service and Equipment Authorized*

As discussed in Section 298.2 above, we propose to add the word “originally” before the word “designed” to codify our long-held interpretation that aircraft operated under this part must have been originally designed to hold no more than 60 seats or 18,000 pounds payload.

#### *Section 298.32 Limitations on Operations to Eligible Places*

As mentioned previously, we propose to move, without change, the provisions of current section 298.21(d), which prohibits a commuter air carrier from operating without first having its fitness determined, to new section 298.32.

#### *Section 298.33 Security Requirements*

We propose to add this new section to clarify that, like certificated air carriers, air taxi operators and commuter air carriers must comply with security requirements established by the U.S. Government for such carriers. This imposes no new obligations on air taxis or commuters.

#### *Section 298.35 Limitations on Carriage of Mail*

We propose to amend this section to clarify that “Postal Service” as used in that section refers to the “U.S. Postal Service.”

#### *Section 298.36 Limitations on Use of Business Name*

We propose to amend this section to clarify that a commuter may only hold out to the public in the name in which

its Commuter Air Carrier Authorization is issued or in which another trade name is registered in accordance with part 215 (see revised section 298.36(a)). For clarity, we propose to revise paragraph (d) of this section to indicate that the Department is not precluded from intervening or taking enforcement action should there be evidence of a significant potential for, or actual, public confusion as a result of the use of a particular name.

#### *Section 298.38 Financial Security Arrangements for Operating Public Charters*

This section was previously titled “Security arrangements for operating Public Charters.” We propose to amend the title of this section to clarify that this section refers to financial security requirements to avoid any confusion with general security requirements. In addition, we propose to replace an obsolete reference to 14 CFR 207.17 with the correct reference to 14 CFR 212.8.

#### *Subpart E—Commuter Air Carrier Authorizations*

We propose to add a new subpart E, “Commuter Air Carrier Authorizations.” This subpart prescribes rules pertaining to commuter air carrier authority.

#### *Section 298.50 Applications*

This proposed new section contains directions for filing an application for a Commuter Air Carrier Authorization. In this section, we are not proposing any new requirements; rather, we are setting out provisions from other parts of the Department's regulations to clarify in part 298 the actions required by applicants requesting a Commuter Air Carrier Authorization (e.g., an original and two copies of the application must be filed with the Department's Dockets section, accompanied by the information required by 14 CFR 204 and the \$670 filing fee). These requirements are found currently in sections 201.1 and 389.25.

#### *Section 298.51 Processing by the Department*

This proposed new section states that applications for commuter authority will be processed in accordance with the procedural provisions of sections 302.207–302.211 which are applicable to certificated air carriers but have been followed by the Department in processing applications for commuter air carrier authority. Thus, the section imposes no new requirements on commuter applicants.

### *Section 298.52 Air Taxi Operations by Commuter Air Carriers*

Proposed section 298.52(a) provides that, during such time as a commuter holds an *effective* Commuter Air Carrier Authorization, it may also conduct air taxi-type operations (e.g., scheduled and on-demand cargo, on-demand passenger service, and scheduled passenger services consisting of less than four weekly round trips in a market pursuant to a published schedule) under part 298 without having to file a separate air taxi registration. Proposed section 298.53(b) provides that, if the carrier ceases its scheduled passenger commuter operations, resulting in the suspension of its commuter authority, it can continue to conduct other air taxi operations authorized by this part, provided that it registers as an air taxi operator under section 298.21 within 10 days of such cessation and complies with all other requirements applicable to air taxi operators under part 298 (including, for example, maintaining insurance coverage as required by part 205 and retaining appropriate FAA authority).

### *Section 298.53 Suspension or Revocation of Authority*

Proposed section 298.53 sets out circumstances under which the Department may suspend or revoke a Commuter Air Carrier Authorization. They also include the two additional requirements previously discussed in connection with changes to section 298.24 (see the discussion above on section 298.24).

### *Subparts F Through H*

No amendments are being made to subpart F, "Reporting Requirements," subpart G, "Public Disclosure of Data," and subpart H, "Violations."

### *Amendments to Other Rules*

To reflect the elimination of commuter registrations, we propose to make conforming amendments to other rules. We are also taking this opportunity to propose other minor administrative amendments to the Department's regulations. Affected rules include the following:

We propose to amend section 201.1(b) to remove the reference to commuter registrations by deleting the word "registration" in the first sentence.

We propose to amend section 203.3 to remove outdated references to the Department's "Office of Aviation Analysis, Special Authorities Division" as the source for obtaining OST Forms 4507 and 4523, replacing it with a reference to instructions in part 298 and

14 CFR 294 on where to obtain these forms.

We propose to amend sections 205.4(a), (b), and (c) and 205.7(a) to remove the outdated references to the "Office of Aviation Analysis" as the recipient of, and source for, certificate of insurance forms (OST Forms 6410 and 6411) and other notices of insurance changes. A revised section 205.4(c) is added to reflect the correct addresses at the Department where insurance certificates and endorsements are to be filed.

We propose to amend section 215.3 to delete in the second sentence obsolete references to 14 CFR 221.21(j) and 221.35(d).

We propose to amend section 215.4(a) to delete the references to commuter registrations and amendments in the second sentence. The word "commuter" is added in the fourth sentence after the words "underlying certificate"; the word "or" is eliminated before "foreign air carrier"; and the word "permit" is eliminated and replaced with a comma (",") after "foreign air carrier".

We propose to amend section 215.6 to delete the reference to commuter registrations.

In section 380.2, we propose to amend the definition of "direct air carrier" to add the word "commuter" after the word "certificate" and before the words "or foreign air carrier", to delete the reference to "commuter air carrier" after "air taxi operator," and to add "authorization" after the word "certificate" and before the word "permit" to reflect that commuters receive a Commuter Air Carrier Authorization.

We propose to amend section 385.12(e) to remove the reference to commuter air carriers.

We propose to amend section 389.25(a), code 7, to read "Commuter Air Carrier Authorization \* \* \* \$670."

### **Paperwork Reduction Act**

*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. The proposed amendment here will eliminate 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:* The amendment proposed here will result 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 × .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 × \$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 proposed regulations.

#### **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 proposed rule relieves commuter air carriers from filing registration forms and amendments, and it reorganizes some of the regulations applicable to commuter air carriers. Therefore, 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 proposal 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 this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We have determined that this 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, Insurances, 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 Proposed Amendment**

For the reasons set forth in the preamble, the Department proposes to amend 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/aviation>.

\* \* \* \* \*

(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]**

\* \* \* \* \*

9. 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**

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

**Authority:** 40 U.S.C. chapters 401, 411, 413, 417.

#### **§ 215.3 [Amended]**

11. 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]**

12. 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]**

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

#### **PART 298—EXEMPTIONS FOR AIR TAXI AND COMMUTER AIR CARRIER OPERATIONS**

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

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

15. Amend Part 298 by revising Subparts A through E to read as follows:

#### **PART 298—EXEMPTIONS FOR AIR TAXI AND COMMUTER AIR CARRIER OPERATIONS**

##### **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 Limitation 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 Application.
- 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 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.

<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 of the United States and 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.



*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 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 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 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:

- (1) Crew—200 pounds per crew member required under FAA regulations;
- (2) Oil—350 pounds;
- (3) Fuel—The minimum weight of fuel required under FAA regulations for a flight between domestic points 200 miles apart,<sup>4</sup>

*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:

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.

(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 or 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 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

<sup>2</sup> This weight may be found in the airplane operating record or in the airplane flight manual,



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 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 amendment, 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

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

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. For those air taxi operators that have a mailing address in the State of Alaska, the registrants 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.

**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 considered 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 Limitation 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 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 §§ 302.07 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**

16. 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]**

17. In § 380.2 in the definition of *Direct air carrier* add the word “, commuter” after “certificated”; remove the words “or commuter air carrier” after “air taxi operator” the first time that term is used; and add

“authorization,” between “certificate” and “permit”.

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

18. 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]**

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

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

20. 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]**

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

**Karan K. Bhatia,**

*Assistant Secretary for Aviation and International Affairs.*

[FR Doc. 04–23859 Filed 10–27–04; 8:45 am]

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#### **DEPARTMENT OF COMMERCE**

##### **National Oceanic and Atmospheric Administration**

##### **50 CFR Part 648**

[Docket No. 041018283-4283-01; I.D. 102204C]

**RIN 0648-AS81**

##### **Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed interim rule; request for comments.

**SUMMARY:** NMFS proposes to implement the days-at-sea (DAS) allocation procedure contained in the final rule implementing Amendment 13 to the NE Multispecies Fishery Management Plan (FMP) under Magnuson-Stevens Act

interim rule authority. This DAS allocation procedure established a DAS baseline allocation based on historic participation in the NE multispecies DAS fishery. The proposed rule to implement Amendment 13 did not include an explicit provision that would have capped a vessel's annual DAS usage at the vessel's DAS allocation prior to August 1, 2002, the annual DAS allocation for the 2001 fishing year (May 1, 2001 - April 30, 2002). To rectify the omission of the DAS usage cap in the proposed rule, NMFS added language to include the cap in the regulatory text of the final rule implementing Amendment 13 to ensure that the DAS baseline procedure complied with NMFS' understanding of the New England Fishery Management Council's (Council) intent. To address the fact that the public was not provided with the opportunity to comment on the DAS usage cap, NMFS proposes to implement the DAS allocation procedure including the cap, as an interim rule through proposed and final rulemaking so as to provide opportunity for public comment consistent with the Administrative Procedure Act (APA).

**DATES:** Comments must be received on or before 5 P.M., local time, November 12, 2004.

**ADDRESSES:** Written comments on the proposed interim rule may be submitted by any of the following methods:

- E-mail: E-mail comments may be submitted to [DASprocedure@noaa.gov](mailto:DASprocedure@noaa.gov). Include in the subject line the following: “Comments on the Proposed Interim Rule for the DAS Allocation Procedure.”
- Federal e-Rulemaking Portal: <http://www.regulations.gov>

- Mail: Comments submitted by mail should be sent to Patricia A. Kurkul, Regional Administrator (RA), Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930-2298. Mark the outside of the envelope “Comments on the Proposed Interim Rule for the DAS Allocation Procedure.”

- Facsimile (fax): Comments submitted by fax should be faxed to (978) 281-9135.

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) for this action, which is contained in the Classification section of this proposed interim rule.

Copies of the Final Supplemental Environmental Impact Statement (FSEIS) and Regulatory Impact Review (RIR) prepared for Amendment 13 and supporting this action are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, The Tannery Mill 2, Newburyport, MA 01950. The FSEIS