



4910-9X

DEPARTMENT OF TRANSPORTATION

[Docket No. DOT-OST-2007-27057]

Notice of Submission of Proposed Information Collections to OMB; Agency Request for OMB Approval of Information Collections: Increasing Charter Air Transportation Options

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

ACTION: Notice and request for comments

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Department of Transportation's (DOT or Department) intention to request an Office of Management and Budget (OMB) control number for requirements in the Department's final rule, *Increasing Charter Air Transportation Options*, that certain disclosures be made to consumers by air charter brokers, air taxi operators, and commuter air carriers.

DATES: Written comments should be submitted by **[INSERT DATE 60 DAYS**

AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by DOT Docket Number OST-2007-27057 through one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Fax:* 1-202-493-2251.
- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, 1200 New Jersey Avenue, S.E.,

Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays. The telephone number is 202-366-9329.

FOR FURTHER INFORMATION CONTACT: Sohum Karia, Office of the General Counsel, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue, SE, Washington, DC, 20590, 202-366-9342 (Voice), 202-366-7152 (Fax), or *sohum.karia@dot.gov* (Email). Arrangements to receive this document in an alternative format may be made by contacting the above-named individual.

SUPPLEMENTARY INFORMATION:

Title: Increasing Charter Air Transportation Options

Type of Review: New Information Collections

Background: This notice concerns two new information collection requirements in the Department's final rule, *Increasing Charter Air Transportation Options*, 83 Fed. Reg. 46867 (September 17, 2018), which is effective on February 14, 2019. Under the final rule, air charter brokers¹ are authorized to act as indirect air carriers² by contracting in their own right with customers to provide charter air transportation and separately arranging with direct air carriers to provide such transportation services. The first

¹ The final rule defines an air charter broker as "any person or entity that, as an indirect air carrier, foreign indirect air carrier, or a *bona fide agent*, holds out, sells, or arranges single entity charter air transportation using a direct air carrier."

² "Indirect air carrier" means any person who undertakes to engage indirectly in air transportation operations and who uses for such transportation the services of a direct air carrier. 14 CFR 380.2. "Direct air carrier" means a certificated commuter or foreign air carrier, or an air taxi operator registered under 14 CFR Part 298, or a Canadian charter air taxi operator registered under 14 CFR Part 294, that directly engages in the operation of aircraft under a certificate, authorization, permit or exemption issued by the Department. *Id.*

information collection pertains to the requirement that air charter brokers disclose in all solicitation materials and advertisements that they are air charter brokers and not direct air carriers. The second information collection involves the requirement that air charter brokers, air taxi operators, and commuter air carriers provide notification to consumers containing pertinent information regarding the terms of the charter air transportation at the time a consumer is considering the purchase of air transportation. If the information is not known at that time or changes thereafter, then the entities must provide notification within a reasonable time after the information becomes known. This information is intended to aid the prospective charterer in making a more informed choice regarding the purchase of charter air transportation, and to facilitate travel by reducing the possibility that the consumer will be misled or ill-informed about key information regarding a given flight before and during his or her trip.

The title, a description of the information collection and respondents, and the periodic reporting burden are set forth below for each of the information collections:

1. Requirement to disclose that air charter brokers are not direct air carriers in advertising and solicitation materials (14 CFR § 295.23)

All air charter broker solicitation materials and advertising, including Internet webpages, must clearly and conspicuously state that the air charter broker is not a direct air carrier in operational control of aircraft, and that the air service advertised would be provided by a properly licensed direct air carrier.

Respondents: Air charter brokers.

Estimated Number of Respondents: 700. To reach this estimate, the Department began by determining the approximate number of flights arranged by air charter brokers annually, using flight records information from the air traffic control radar system and data reports from private sector aviation research organizations.³ These data indicate annual flight activity by these operators of between 760,000 and 1.1 million flights, as shown in Table 1 below.⁴

Table 1: Part 135 Non-Scheduled Passenger Flights per Fiscal Year	Part 135 Non-Scheduled Passenger Flights
2006	1,005,248
2007	965,401
2008	1,084,398
2009	761,301
2010	900,003
2011	870,619

The Department utilized the most recent figure of 870,619 FY2011 Part 135 Non - Scheduled Passenger Flights (see Table 1). Not all of these flights are revenue flights, since aircraft must sometimes be positioned to meet customers. Although the frequency of non-revenue positioning flights is generally non-public, the Department, based on discussions with parties knowledgeable about this aspect of the industry, estimates that 25 percent of non-scheduled passenger flights are non-revenue, meaning that 75 percent,

³ These data are developed from the Enhanced Traffic Management System (ETMS) flight records, and rely on aircraft and user classifications made by air traffic controllers as well as tail number and operator data. The development of these data for the Federal Aviation Administration (FAA) Business model is presented in the report “Air Traffic Services Business Model: Overview, Model Description and Applications with Supporting Documentation, Final Report”, September 2011, prepared for the FAA by GRA, Incorporated, a contractor.

⁴ Based on the data developed by GRA, Incorporated, for the FAA, Table 1 displays annual flight activity for non-scheduled Part 135 passenger operations from Fiscal Year 2006 through Fiscal Year 2011. The Department was unable to supplement Table 1 with data from subsequent fiscal years, as FAA has ceased maintaining the information. Nevertheless, the Department believes that data from FY2012-2017 would not alter our analysis.

or 652,964 ($870,619 \times 75\%$) are revenue flights. We then estimated the percentage of revenue air charter flights arranged by brokers. There was no firm industry estimate of this value, so we assumed a midrange estimate of 30 percent⁵, resulting in a value of approximately 195,889 ($652,964 \times 30\%$) non-scheduled passenger flights arranged by air charter brokers per year. In response to its Notice of Proposed Rulemaking (NPRM), the Department received no public comments disputing this assumption.

The Department sought to derive the number of respondents from the 195,889 flights by estimating of the number of flights arranged annually by the average air charter broker. However, since there was no reliable data on the number of flights arranged by the average air charter broker, we considered various estimates of the number of air charter brokers based on general industry knowledge, avoiding selection of extreme outliers. For instance, because the industry includes both large and small entities, we did not consider an extremely low estimate of five respondents, which would amount to approximately 39,200 ($195,889/5$) flights arranged annually by each broker, and would not account for the relatively lower business volume of smaller entities. Similarly, we did not consider extremely high estimates, such as 10,000 respondents, which would amount to approximately 20 flights arranged annually by each broker, and would not account for the relatively higher business volume of larger entities. Ultimately, our approach yielded an estimate of 700 respondents, with an estimated 280 flights arranged annually per broker ($195,889/700$).

⁵ The Department also considered a low estimate of 20 percent, resulting in a value of 130,593 flights, and a high estimate of 40 percent, resulting in a value of 261,186. In order to reach a more definitive estimate of the number of respondents, this notice focuses on the midrange estimate of 30 percent.

A value of 700 respondents is reasonable based on public comments in response to the NPRM. These comments noted that the industry has relatively low barriers to entry and therefore is likely comprised of many small air charter brokers operating in the marketplace, in addition to a few dozen larger, more established, and well-known companies. Therefore, many of those 700 would likely arrange fewer than the average of 280 flights annually, and a few dozen would likely arrange more than that average. Accordingly, given our assumption of 195,889 total annual flights arranged by air charter brokers, we estimate that approximately 700 respondents will be subject to the rule's information collection requirements pertaining to air charter brokers.

Frequency: 15 minutes per flight, for approximately 280 flights per year. The estimate of 280 flights derives from our assumption of 195,889 total annual flights arranged by air charter brokers and our estimate of 700 air charter broker respondents (195,889/700). We believe that the burden required for an air charter broker to comply with this disclosure requirement by changing a small portion of an air charter broker's advertising webpages or printed materials would be minimal. To quantify the estimated burden, it was assumed that accomplishing these disclosures takes 15 minutes of the time of a qualified sales staff person employed by the air charter broker, comprised of 10 minutes required to draft the language to be used and 5 minutes to post this information on the air charter broker's website. It was also assumed that each flight involves one advertisement or solicitation material, though this is likely an overestimate given that such materials in this industry are primarily displayed or sent electronically to many

consumers with identical content and form, resulting in minimal burden to the broker per individual consumer.

Estimated Annual Burden per Respondent: 70 hours, given that each advertisement or solicitation material would require a burden of 15 minutes, and that each air charter broker will arrange an estimated 280 flights per year (280 x .25 hours). However, discussions with individuals knowledgeable about the current air charter broker industry indicated that making the required disclosures is already customary business practice in a significant part of the industry. Comments received in response to the NPRM confirmed the Department's prior understanding. Thus, the burden of compliance with this aspect of the final rule will be minimal for entities in the air charter broker industry.

Estimated Total Annual Burden: 49,000 hours. This figure derives from our estimate of 700 respondents, with approximately 70 hours annually per respondent (700 x 70 hours). Alternatively, the estimate of 49,000 hours results by multiplying our previously stated estimates of 195,889 total annual flights arranged by air charter brokers and a burden of 15 minutes per flight (195,889 x .25 hours ~ 48,972).

2. Requirement for air charter brokers, air taxi operators, and commuter air carriers to charterers to provide certain disclosures to consumers (14 CFR sections 295.24 and 298.80)

The final rule requires that before entering a contract for a specific flight or series of flights with charterers, air charter brokers must make the following disclosures: (a) The corporate name of the direct air carrier or direct foreign air carrier in operational control of the aircraft on which the air transportation is to be performed and any other names in

which that direct carrier holds itself out to the public; (b) The capacity in which the air charter broker is acting in contracting for the air transportation, i.e., as an indirect air carrier, indirect foreign air carrier, as an agent of the charterer, or as an agent of the direct air carrier or direct foreign air carrier that will be in operational control of the flight; (c) The existence or absence of liability insurance held by the air charter broker covering the charterer and passengers and property on the charter flight, and the monetary limits of any such insurance.

The final rule further requires that before entering a contract for a specific flight or series of flights with charterers, air charter brokers must make the following disclosures upon request of the charterer, prior to the start of the air transportation: (a) If the air charter broker is acting as the agent of the charterer, the air charter broker must disclose the existence of any corporate or business relationship, including a preexisting contract, between the air charter broker and the direct air carrier or direct foreign air carrier that will be in operational control of the flight that may have a bearing on the air charter broker's selection of the direct carrier that will be in operational control of the flight; (b) The total cost of the air transportation paid by the charterer to or through the air charter broker, including any air charter broker or carrier-imposed fees or government-imposed taxes and fees. Specific individual fees, taxes, or costs may, but are not required to be itemized. The total cost of the air transportation is not required to include fees charged by third-parties; (c) The existence of any fees and their amounts collected by third-parties, if known (or a good faith estimate if not known), including fuel, landing fees, and

aircraft parking or hangar fees, for which the charterer will be responsible for paying directly.

If any of the information that is required to be disclosed to the charterer or requested by the charterer to be disclosed is not known at the time the contract is entered into or changes thereafter, air charter brokers must provide the information to the charterer within a reasonable time after such information becomes available to the air charter broker, such that the charterer has enough time to make an informed decision as to whether to accept the additional information or accept the change.

If the information that is required to be disclosed to the charterer or requested by the charterer to be disclosed changes after the air transportation covered by the contract has begun, air charter brokers must provide information regarding any such changes to the charterer within a reasonable time after such information becomes available to the air charter broker.

In addition, the final rule requires that before entering a contract for a specific flight or series of flights with charterers, air taxi operators and commuter air carriers must make similar disclosures, prior to the start of the air transportation. For example, they must disclose that the flight will be performed by another direct air carrier or direct foreign air carrier if that is the case, as well as the corporate name of the direct air carrier or direct foreign air carrier in operational control of the aircraft on which the air transportation is to be performed and any other names in which that direct carrier holds itself out to the public. If the flight is to be performed by another direct air carrier or direct foreign air carrier, they must disclose the capacity in which the air taxi operator or commuter air

carrier is acting in contracting for the air transportation, i.e., as a principal, as an agent of the charterer, or as an agent of the direct air carrier that will be in operational control of the flight.

Air taxi operators and commuter air carriers must also make the following disclosures upon request of the charterer, prior to the start of the air transportation: (a) If the flight is to be performed by another direct air carrier or foreign direct air carrier and the air taxi operator or commuter air carrier is acting as the agent of the charterer, the air taxi operator or commuter air carrier must disclose the existence of any corporate or business relationship, including a preexisting contract, between the air taxi operator or commuter air carrier and the direct carrier that will be in operational control of the flight that may have a bearing on the air taxi operator's or commuter air carrier's selection of the direct carrier that will be in operational control of the flight; (b) The total cost of the air transportation paid by the charterer to or through the air taxi operator or commuter air carrier, including any carrier-imposed fees or government-imposed taxes and fees. Specific individual fees, taxes, or costs may, but are not required to be itemized. The total cost of the air transportation is not required to include fees charged by third parties; (c) The existence of any fees and their amounts collected by third parties, if known (or a good faith estimate if not known), including fuel, landing fees, and aircraft parking or hangar fees for which the charterer will be responsible for paying directly.

If any of the information that is required to be disclosed to the charterer or requested by the charterer to be disclosed is not known at the time the contract is entered into or changes thereafter, air taxi operators and commuter air carriers must provide the

information to the charterer within a reasonable time after such information becomes available to the air taxi operator or commuter air carrier, such that the charterer has enough time to make an informed decision as to whether to accept the additional information or accept the change.

If the information that is required to be disclosed to the charterer or requested by the charterer to be disclosed changes after the air transportation covered by the contract has begun, air taxi operators and commuter air carriers must provide information regarding any such changes to the charterer within a reasonable time after such information becomes available to the air taxi operator or commuter air carrier.

Respondents: Air taxi operators; commuter air carriers operating or arranging non-scheduled, charter flights operated pursuant to Federal Aviation Regulations (FAR) Part 135 and 14 CFR Part 298; and air charter brokers.

Estimated Number of Respondents: 2,855, of which 2,155⁶ are air taxi operators and commuter air carriers and 700 are air charter brokers.

Frequency: 15 minutes per flight, for approximately 280 flights per year. The estimate of 280 flights derives from our assumption of 195,889 total annual flights arranged by air charter brokers and our estimate of 700 air charter broker respondents (195,889/700). For each air charter broker transaction, discussions with individuals knowledgeable about the current air charter broker industry indicated that the time required for an air charter broker to record and share the necessary data elements with a charterer was modest. To estimate the cost of this for air charter brokers not currently

⁶ This estimate is based on October 2012 FAA data. "Study of Operators Regulated Under Part 135," at ES-2, Federal Aviation Administration (April 2016), *available at:* http://nata.aero/data/files/gia/4656_001.pdf.

providing charterers with the identified disclosures, it is assumed that accomplishing the disclosures takes 15 minutes of the time of a qualified sales staff person employed by the air charter broker. Part of the justification for this time estimate is that the information to be disclosed is comprised of data elements that arise naturally from the arrangement of a flight operated by a direct air carrier. Given the substantive similarity of the disclosures required of air taxi operators and commuter air carriers, the Department assumed that they also require no more than 15 minutes per transaction.

Estimated Annual Burden on Respondents: 70 hours for air charter brokers, assuming 15 minutes per transaction and 280 transactions per year per respondent (280 x .25 hours). Regarding the estimated 2,155 taxi operators and commuter air carriers, given our previously stated estimate of 652,964 non-scheduled passenger revenue flights operated annually under Part 135, we estimate approximately 303 (652,964/2,155) transactions annually per air taxi operator or commuter air carrier. Assuming 15 minutes per transaction, we estimate the total annual burden per respondent to be approximately 75 hours and 45 minutes (303 x .25 = 75.75). However, discussions with individuals knowledgeable about the industry indicated that making these disclosures to charterers is already a standard part of customary and usual business practices for air charter brokers as well as air taxi operators and commuter air carriers. Thus, these entities should expect little or no incremental burden due to these disclosure requirements, as supported by comments received in response to the Department's NPRM.

Estimated Total Annual Burden: The estimated total annual burden would be 212,241 hours and 15 minutes. Regarding air charter brokers, based on the estimate of 700

respondents, with approximately 70 hours annually per respondent, the estimated total annual burden of the flight-specific disclosure requirements would be 49,000 hours. Regarding air taxi operators and commuter air carriers, based on the estimate of 2,155 respondents, with approximately 75.75 hours annually per respondent, the estimated total annual burden would be 163,241 hours and 15 minutes (2,155 x 75.75). As stated previously, the total annual incremental burden to air taxi operators and commuter air carriers is expected to be minimal to none, since making these disclosures is already standard practice for this segment of the industry.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility, and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1:48.

Issued in Washington, DC on February 22, 2019.

Blane A. Workie,

Assistant General Counsel for Aviation Enforcement and Proceedings.
[FR Doc. 2019-03678 Filed: 2/28/2019 8:45 am; Publication Date: 3/1/2019]