

**§ 330.39**

**14 CFR Ch. II (1-1-07 Edition)**

as an air carrier and was the most current forecast prepared prior to September 11, 2001;

(2) Determine that, if forecasts presented to the Department for prior periods had material variances from actual results, the carrier provided explanations to account for such variances;

(3) Determine that the methodology for allocating revenue and expenses to the periods September 1-10 and September 11-30, from the forecasted and actual September results, was in accordance with air carrier records and analyses;

(4) Determine that the actual expenses and revenues presented to the Department are in accordance with the official accounting records of the carrier or the financial statements included in the carrier's Securities and Exchange Commission Form 10-Q (for availability, see 17 CFR 249.0-1(b)), and consistent with Generally Accepted Accounting Principles (GAAP), except to the extent that GAAP would require or allow treatment that would be inconsistent with the Act or this part;

(5) Verify that the carrier provided explanations supporting the allocation methodology used if the forecasted and/or actual results for the September 11-30 period was different from allocating 66.7 percent of the total amounts for September;

(6) Determine that the carrier provided full explanations for all material differences between forecast and actual results for the September 11-30, 2001 period and the October 1-December 31, 2001 period;

(7) Determine that the amounts included in management's explanations for such material differences were in accordance with the carrier's analysis of such fluctuations, and the amounts and explanations were traceable to supporting general ledger accounting records or analyses prepared by the carrier;

(8) Determine that the amounts presented to the Department in Form 330 (Final), pages 2-3, in appendix A to this part that the carrier identified as adjustments to the difference between the pre-September 11 forecast and actual results for the period September 11 through December 31, 2001, were in accordance with the official accounting

records of the carrier or the financial statements included in the carrier's Securities and Exchange Commission Form 10-Q, and consistent with GAAP, except to the extent that GAAP would require or allow treatment that would be inconsistent with the Act or this part;

(9) Determine that the insurance recoveries and government payments reported by the air carrier and offsetting income were in accordance with the air carrier's general ledger accounting records;

(10) Determine that the information presented in the air carrier's Supplemental Certification were in accordance with the air carrier's general ledger accounting records;

(11) Include in the auditor's report full documentation for each exception taken by the auditor; and

(12) Identify air carrier reports and records utilized in performing the procedures in paragraphs (c)(1) through (11) of this section.

(d) If you are a carrier that reported fewer than 10 million ASMs for the month of August 2001 or fewer than two million RTMs for the quarter ending June 30, 2001, you are not required to report to the Department on the basis of an agreed-upon procedures engagement by an independent public accountant. Instead, you may report on the basis of simplified procedures approved by the Department.

**§ 330.39 What are examples of types of losses that the Department does not allow?**

(a)(1) The Department generally does not allow air carriers to include in their calculations aircraft impairment charges, charges or expenses attributable to lease buyouts, or other losses that are not actually and fully realized in the period between September 11, 2001 and December 31, 2001.

(2) The Department will consider requests to accept adjustments for extraordinary or non-recurring expenses or revenues on a case-by-case basis. If, as a carrier, you make such a request, you must demonstrate the following to the satisfaction of the Department:

(i) That the expense or revenue was (or was not, as appropriate) the direct

result of the terrorist attacks of September 11, 2001;

(ii) That the revenue or expense was reported in accordance with Generally Accepted Accounting Principles (GAAP), except to the extent that the GAAP would require or allow treatment that would be inconsistent with the Act or this part;

(iii) That an expense was fully borne within the September 11–December 31, 2001, period and is permanent; and

(iv) That the resulting additional compensation would not be duplicative of other allowances for compensation.

(b) The Department generally does not accept claims by air carriers that cost savings should be excluded from the calculation of incurred losses. Consequently, the Department will generally not allow such claims to be used in a way that has the effect of increasing the compensation for which an air carrier is eligible.

### Subpart C—Set-Aside for Certain Carriers

#### § 330.41 What funds is the Department setting aside for eligible classes of air carriers?

The Department is setting aside a sum of up to \$35 million to compensate eligible classes of air carriers, for which application of a distribution formula containing ASMs as a factor, as set forth in section 103(b)(2) of the Act, would inadequately reflect their share of direct and incremental losses.

#### § 330.43 What classes of air carriers are eligible under the set-aside?

There are two classes of eligible air carriers:

(a) You are a Class I air carrier if you are an air taxi, regional, commuter or indirect air carrier and you reported 75,000 or fewer ASMs to the Department for the month of August, 2001.

(b) You are a Class II air carrier if you are an air taxi, regional, commuter or indirect air carrier and you reported between 75,001 and 10 million ASMs to the Department for the month of August 2001.

[Docket No. OST-2001-10885, 67 FR 54066, Aug. 20, 2002, as amended at 68 FR 44458, July 29, 2003]

#### § 330.45 What is the basis on which air carriers will be compensated under the set-aside?

(a) Except as provided in paragraph (c) of this section, as an air carrier eligible for compensation through the set-aside, you will be compensated for an amount calculated as provided in paragraph (b) of this section.

(b)(1) As a Class I carrier, your compensation will be calculated using a fixed ASM rate equivalent to the mean losses per ASM for all Class I carriers applying for compensation.

(2) As a Class II carrier, your compensation will be calculated using a graduated ASM rate equivalent to—

(i) The mean loss per ASM for all Class I carriers applying for compensation, for each of the first 75,000 ASMs reported; and

(ii) The mean remaining loss per ASM for all Class II carriers applying for compensation for each ASM in excess of 75,000.

(3) For purposes of this paragraph (b), ASMs are those verified by the Department for August 2001.

(4) Any compensation payments previously made to air carriers eligible for the set-aside will be deducted from the amount calculated as the carrier's total compensation under the set-aside formula.

(c) If you are an air carrier whose compensation is calculated using an ASM rate as provided in paragraph (b) of this section, your compensation will not be less than an amount equivalent to 25 percent of the direct and incremental transportation-related losses you have demonstrated to the satisfaction of the Department were incurred as a direct result of the terrorist attacks of September 11, 2001. Your compensation will not be more than an amount equivalent to the mean percentage of compensation for losses received by passenger and combination air carriers that are not eligible for the set-aside funds, unless you would have been compensated for more than that percentage of losses under the formula set forth in section 103(b)(2) of the Act, in which case you will be compensated under that formula.

[Docket No. OST-2001-10885, 67 FR 54066, Aug. 20, 2002, as amended at 68 FR 44458, July 29, 2003]