

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
41308	49 App.:1384.	Aug. 23, 1958, Pub. L. 85-726, §414, 72 Stat. 770; restated Oct. 24, 1978, Pub. L. 95-504, §30(a), 92 Stat. 1731; Feb. 15, 1980, Pub. L. 96-192, §27, 94 Stat. 47.
	49 App.:1551(a)(6) (related to 49 App.:1384).	Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, §1601(a)(6) (related to §414); added Oct. 4, 1984, Pub. L. 98-443, §3(c), 98 Stat. 1704.
	49 App.:1551(b)(1)(C) (related to 49 App.:1384).	Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, §1601(b)(1)(C) (related to §414); added Oct. 24, 1978, Pub. L. 95-504, §40(a), 92 Stat. 1745; Oct. 14, 1982, Pub. L. 97-309, §4(b), 96 Stat. 1454; Oct. 4, 1984, Pub. L. 98-443, §3(a), 98 Stat. 1703.

Subsection (a) is substituted for “the ‘anti-trust laws’ set forth in subsection (a) of section 12 of title 15” for consistency in the revised title and with other titles of the United States Code.

In subsection (b), reference to 49 App.:1378 and 1379 is omitted as obsolete.

§ 41309. Cooperative agreements and requests

(a) FILING.—An air carrier or foreign air carrier may file with the Secretary of Transportation a true copy of or, if oral, a true and complete memorandum of, an agreement (except an agreement related to interstate air transportation), or a request for authority to discuss cooperative arrangements (except arrangements related to interstate air transportation), and any modification or cancellation of an agreement, between the air carrier or foreign air carrier and another air carrier, a foreign carrier, or another carrier.

(b) APPROVAL.—The Secretary of Transportation shall approve an agreement, request, modification, or cancellation referred to in subsection (a) of this section when the Secretary finds it is not adverse to the public interest and is not in violation of this part. However, the Secretary shall disapprove—

(1) or, after periodic review, end approval of, an agreement, request, modification, or cancellation, that substantially reduces or eliminates competition unless the Secretary finds that—

(A) the agreement, request, modification, or cancellation is necessary to meet a serious transportation need or to achieve important public benefits (including international comity and foreign policy considerations); and

(B) the transportation need cannot be met or those benefits cannot be achieved by reasonably available alternatives that are materially less anticompetitive; or

(2) an agreement that—

(A) is between an air carrier not directly operating aircraft in foreign air transportation and a carrier subject to subtitle IV of this title; and

(B) governs the compensation the carrier may receive for the transportation.

(c) NOTICE AND OPPORTUNITY TO RESPOND OR FOR HEARING.—(1) When an agreement, request, modification, or cancellation is filed, the Sec-

retary of Transportation shall give the Attorney General and the Secretary of State written notice of, and an opportunity to submit written comments about, the filing. On the initiative of the Secretary of Transportation or on request of the Attorney General or Secretary of State, the Secretary of Transportation may conduct a hearing to decide whether an agreement, request, modification, or cancellation is consistent with this part whether or not it was approved previously.

(2) In a proceeding before the Secretary of Transportation applying standards under subsection (b)(1) of this section, a party opposing an agreement, request, modification, or cancellation has the burden of proving that it substantially reduces or eliminates competition and that less anticompetitive alternatives are available. The party defending the agreement, request, modification, or cancellation has the burden of proving the transportation need or public benefits.

(3) The Secretary of Transportation shall include the findings required by subsection (b)(1) of this section in an order of the Secretary approving or disapproving an agreement, request, modification, or cancellation.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 1129; Pub. L. 104-88, title III, §308(L), Dec. 29, 1995, 109 Stat. 948; Pub. L. 104-287, §5(71), Oct. 11, 1996, 110 Stat. 3396.)

HISTORICAL AND REVISION NOTES
PUB. L. 103-272

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
41309(a)	49 App.:1382(a)(1).	Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, §412(a), (b); added Oct. 24, 1978, Pub. L. 95-504, §28(c), 92 Stat. 1729; Feb. 15, 1980, Pub. L. 96-192, §11, 94 Stat. 39.
	49 App.:1551(a)(6) (related to 49 App.:1382).	Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, §1601(a)(6) (related to §412); added Oct. 4, 1984, Pub. L. 98-443, §3(c), 98 Stat. 1704.
	49 App.:1551(b)(1)(C) (related to 49 App.:1382(a)).	Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, §1601(b)(1)(C) (related to §412(a), (b)); added Oct. 24, 1978, Pub. L. 95-504, §40(a), 92 Stat. 1745; Oct. 14, 1982, Pub. L. 97-309, §4(b), 96 Stat. 1454; Oct. 4, 1984, Pub. L. 98-443, §3(a), 98 Stat. 1703.
41309(b)	49 App.:1382(a)(2)(A). 49 App.:1551(a)(6), (b)(1)(C) (as 1551(a)(6), (b)(1)(C) relates to 49 App.:1382(a)).	
41309(c)(1) ..	49 App.:1382(b). 49 App.:1551(a)(6), (b)(1)(C) (as 1551(a)(6), (b)(1)(C) relates to 49 App.:1382(b)).	
41309(c)(2) ..	49 App.:1382(a)(2)(B).	
41309(c)(3) ..	49 App.:1382(a)(2)(C). 49 App.:1551(a)(6), (b)(1)(C) (as 1551(a)(6), (b)(1)(C) relates to 49 App.:1382(a)).	

In this section, the word “contract” is omitted as being included in “agreement”.

In subsection (a), the words “(whether enforceable by provisions for liquidated damages, penalties, bonds, or otherwise)” are omitted as surplus. The words “(except an agreement related to interstate air transportation)” and “(except arrangements related to interstate air transportation)” are added because of 49 App.:1551(a)(6)

(related to 49 App.:1382). The word “working” is omitted as surplus. The words “in force on October 24, 1978, or thereafter entered into” are omitted as executed. The words “and any modification or cancellation of an agreement” are substituted for “or any modification or cancellation thereof” for clarity and consistency.

In subsection (b), before clause (1), the words “The Board shall by order disapprove any contract, agreement, or request . . . that it finds to be adverse to the public interest or in violation of this chapter” are omitted as surplus because of the language restated in this subsection that sets out the requirements for approval by the Secretary of Transportation before the antitrust exemption is effective. The words “whether or not previously approved by it” are omitted as surplus because of the language in clause (1) requiring periodic review and continuing approval. The words “by order” are omitted as unnecessary because of 5 ch. 5, subch. II. The text of 49 App.:1382(a)(2)(A)(iii) is omitted as obsolete because of 49 App.:1551(a)(6) (related to 49 App.:1382).

In subsection (c)(1), the words “in accordance with regulations which it prescribes” are omitted as surplus. The words “in accordance with regulations prescribed by the Board” are omitted as surplus.

PUB. L. 104-287

This amends 49:41309(b)(2)(B) for consistency in the subsection.

AMENDMENTS

1996—Subsec. (b)(2)(B). Pub. L. 104-287 substituted “carrier” for “common carrier”.

1995—Subsec. (b)(2)(A). Pub. L. 104-88 substituted “a carrier” for “a common carrier”.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-88 effective Jan. 1, 1996, see section 2 of Pub. L. 104-88, set out as an Effective Date note under section 1301 of this title.

AIR TRANSPORTATION ARRANGEMENTS IN CERTAIN STATES

Pub. L. 107-71, title I, § 116, Nov. 19, 2001, 115 Stat. 624, which related to air transportation arrangements for flights that both originate and terminate at points within the same State, was repealed by Pub. L. 107-273, div. C, title IV, § 14102(g), Nov. 2, 2002, 116 Stat. 1922.

§ 41310. Discriminatory practices

(a) PROHIBITION.—An air carrier or foreign air carrier may not subject a person, place, port, or type of traffic in foreign air transportation to unreasonable discrimination.

(b) REVIEW AND NEGOTIATION OF DISCRIMINATORY FOREIGN CHARGES.—(1) The Secretary of Transportation shall survey charges imposed on an air carrier by the government of a foreign country or another foreign entity for the use of airport property or airway property in foreign air transportation. If the Secretary of Transportation decides that a charge is discriminatory, the Secretary promptly shall report the decision to the Secretary of State. The Secretaries of State and Transportation promptly shall begin negotiations with the appropriate government to end the discrimination. If the discrimination is not ended in a reasonable time through negotiation, the Secretary of Transportation shall establish a compensating charge equal to the discriminatory charge. With the approval of the Secretary of State, the Secretary of the Treasury shall impose the compensating charge on a foreign air carrier of that country as a condition to accepting the general declaration of the air-

craft of the foreign air carrier when it lands or takes off.

(2) The Secretary of the Treasury shall maintain an account to credit money collected under paragraph (1) of this subsection. An air carrier shall be paid from the account an amount certified by the Secretary of Transportation to compensate the air carrier for the discriminatory charge paid to the government.

(c) ACTIONS AGAINST DISCRIMINATORY ACTIVITY.—(1) The Secretary of Transportation may take actions the Secretary considers are in the public interest to eliminate an activity of a government of a foreign country or another foreign entity, including a foreign air carrier, when the Secretary, on the initiative of the Secretary or on complaint, decides that the activity—

(A) is an unjustifiable or unreasonable discriminatory, predatory, or anticompetitive practice against an air carrier; or

(B) imposes an unjustifiable or unreasonable restriction on access of an air carrier to a foreign market.

(2) The Secretary of Transportation may deny, amend, modify, suspend, revoke, or transfer under paragraph (1) of this subsection a foreign air carrier permit or tariff under section 41302, 41303, 41304(a), 41504(c), 41507, or 41509 of this title.

(d) FILING OF, AND ACTING ON, COMPLAINTS.—(1) An air carrier, computer reservations system firm, or a department, agency, or instrumentality of the United States Government may file a complaint under subsection (c) or (g) of this section with the Secretary of Transportation. The Secretary shall approve, deny, or dismiss the complaint, set the complaint for a hearing or investigation, or begin another proceeding proposing remedial action not later than 60 days after receiving the complaint. The Secretary may extend the period for acting for additional periods totaling not more than 30 days if the Secretary decides that with additional time it is likely that a complaint can be resolved satisfactorily through negotiations with the government of the foreign country or foreign entity. The Secretary must act not later than 90 days after receiving the complaint. However, the Secretary may extend this 90-day period for not more than an additional 90 days if, on the last day of the initial 90-day period, the Secretary finds that—

(A) negotiations with the government have progressed to a point that a satisfactory resolution of the complaint appears imminent;

(B) an air carrier or computer reservations system firm has not been subjected to economic injury by the government or entity as a result of filing the complaint; and

(C) the public interest requires additional time before the Secretary acts on the complaint.

(2) In carrying out paragraph (1) of this subsection and subsection (c) of this section, the Secretary of Transportation shall—

(A) solicit the views of the Secretaries of Commerce and State and the United States Trade Representative;

(B) give an affected air carrier or foreign air carrier reasonable notice and an opportunity to submit written evidence and arguments within the time limits of this subsection; and