

§ 41508. Authority of the Secretary of Transportation to adjust divisions of joint prices for foreign air transportation

(a) GENERAL.—When the Secretary of Transportation decides that a division between air carriers, foreign air carriers, or both, of a joint price for foreign air transportation is or will be unreasonable or unreasonably discriminatory against any of those carriers, the Secretary shall prescribe a reasonable division of the joint price among those carriers. The Secretary may order the adjustment in the division of the joint price to be made retroactively to the date the complaint was filed, the date the order for an investigation was made, or a later date the Secretary decides is reasonable.

(b) WHEN SECRETARY MAY ACT.—The Secretary may act under this section on the Secretary's own initiative or on a complaint filed with the Secretary and only after notice and an opportunity for a hearing.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 1135.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
41508(a)	49 App.:1482(h) (words after 3d comma). 49 App.:1551(a)(5)(D) (related to 49 App.:1482(h)), (b)(1)(E).	Aug. 23, 1958, Pub. L. 85-726, §1002(h), 72 Stat. 790; Nov. 9, 1977, Pub. L. 95-163, §18(c), 91 Stat. 1287. Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, §1601(a)(5)(D) (related to §1002(h)), (b)(1)(E); added Oct. 4, 1984, Pub. L. 98-443, §3(c), (e), 98 Stat. 1703, 1704.
41508(b)	49 App.:1482(h) (words before 3d comma). 49 App.:1551(a)(5)(D) (related to 49 App.:1482(h)), (b)(1)(E).	

In subsection (a), the words “interstate air transportation of persons, air transportation of property within the State of Alaska, air transportation of property within the state of Hawaii, or overseas or” are omitted because 49:1551(a)(5)(D) provides that 49 App.:1482(h) applies only to foreign air transportation. The words “unreasonable or unreasonably discriminatory” are substituted for “unjust, unreasonable, inequitable, or unduly preferential or prejudicial” for consistency in the revised title and to eliminate unnecessary words. See the revision notes following 49:10101. The words “against any of those carriers” are substituted for “as between the air carriers or foreign air carriers parties thereto” to eliminate unnecessary words. The word “retroactively” is added for clarity.

In subsection (b), the words “an opportunity for a” are added for consistency in the revised title and with other titles of the United States Code.

§ 41509. Authority of the Secretary of Transportation to suspend, cancel, and reject tariffs for foreign air transportation

(a) CANCELLATION AND REJECTION.—(1) On the initiative of the Secretary of Transportation or on a complaint filed with the Secretary, the Secretary may conduct a hearing to decide whether a price for foreign air transportation contained in an existing or newly filed tariff of an air carrier or foreign air carrier, a classification, rule, or practice affecting that price, or the value of the transportation provided under that price, is lawful. The Secretary may begin the

hearing at once and without an answer or another formal pleading by the air carrier or foreign air carrier, but only after reasonable notice. If, after the hearing, the Secretary decides that the price, classification, rule, or practice is or will be unreasonable or unreasonably discriminatory, the Secretary may cancel or reject the tariff and prevent the use of the price, classification, rule, or practice.

(2) With or without a hearing, the Secretary may cancel or reject an existing or newly filed tariff of a foreign air carrier and prevent the use of a price, classification, rule, or practice when the Secretary decides that the cancellation or rejection is in the public interest.

(3) In deciding whether to cancel or reject a tariff of an air carrier or foreign air carrier under this subsection, the Secretary shall consider—

(A) the effect of the price on the movement of traffic;

(B) the need in the public interest of adequate and efficient transportation by air carriers and foreign air carriers at the lowest cost consistent with providing the transportation;

(C) the standards prescribed under law related to the character and quality of transportation to be provided by air carriers and foreign air carriers;

(D) the inherent advantages of transportation by aircraft;

(E) the need of the air carrier and foreign air carrier for revenue sufficient to enable the air carrier and foreign air carrier, under honest, economical, and efficient management, to provide adequate and efficient air carrier and foreign air carrier transportation;

(F) whether the price will be predatory or tend to monopolize competition among air carriers and foreign air carriers in foreign air transportation;

(G) reasonably estimated or foreseeable future costs and revenues for the air carrier or foreign air carrier for a reasonably limited future period during which the price would be in effect; and

(H) other factors.

(b) SUSPENSION.—(1)(A) Pending a decision under subsection (a)(1) of this section, the Secretary may suspend a tariff and the use of a price contained in the tariff or a classification, rule, or practice affecting that price.

(B) The Secretary may suspend a tariff of a foreign air carrier and the use of a price, classification, rule, or practice when the suspension is in the public interest.

(2) A suspension becomes effective when the Secretary files with the tariff and delivers to the air carrier or foreign air carrier affected by the suspension a written statement of the reasons for the suspension. To suspend a tariff, reasonable notice of the suspension must be given to the affected carrier.

(3) The suspension of a newly filed tariff may be for periods totaling not more than 365 days after the date the tariff otherwise would go into effect. The suspension of an existing tariff may be for periods totaling not more than 365 days after the effective date of the suspension. The Secretary may rescind at any time the suspension of a newly filed tariff and allow the price, classification, rule, or practice to go into effect.

(c) EFFECTIVE TARIFFS AND PRICES WHEN TARIFF IS SUSPENDED, CANCELED, OR REJECTED.—(1) If a tariff is suspended pending the outcome of a proceeding under subsection (a) of this section and the Secretary does not take final action in the proceeding during the suspension period, the tariff goes into effect at the end of that period subject to cancellation when the proceeding is concluded.

(2)(A) During the period of suspension, or after the cancellation or rejection, of a newly filed tariff (including a tariff that has gone into effect provisionally), the affected air carrier or foreign air carrier shall maintain in effect and use—

(i) the corresponding seasonal prices, or the classifications, rules, and practices affecting those prices or the value of transportation provided under those prices, that were in effect for the carrier immediately before the new tariff was filed; or

(ii) another price provided for under an applicable intergovernmental agreement or understanding.

(B) If the suspended, canceled, or rejected tariff is the first tariff of the carrier for the covered transportation, the carrier, for the purpose of operations during the period of suspension or pending effectiveness of a new tariff, may file another tariff containing a price or another classification, rule, or practice affecting the price, or the value of the transportation provided under the price, that is in effect (and not subject to a suspension order) for any air carrier providing the same transportation.

(3) If an existing tariff is suspended or canceled, the affected air carrier or foreign air carrier, for the purpose of operations during the period of suspension or pending effectiveness of a new tariff, may file another tariff containing a price or another classification, rule, or practice affecting the price, or the value of the transportation provided under the price, that is in effect (and not subject to a suspension order) for any air carrier providing the same transportation.

(d) RESPONSE TO REFUSAL OF FOREIGN COUNTRY TO ALLOW AIR CARRIER TO CHARGE A PRICE.—When the Secretary finds that the government or an aeronautical authority of a foreign country has refused to allow an air carrier to charge a price contained in a tariff filed and published under section 41504 of this title for foreign air transportation to the foreign country—

(1) the Secretary, without a hearing—

(A) may suspend any existing tariff of a foreign air carrier providing transportation between the United States and the foreign country for periods totaling not more than 365 days after the date of the suspension; and

(B) may order the foreign air carrier to charge, during the suspension periods, prices that are the same as those contained in a tariff (designated by the Secretary) of an air carrier filed and published under section 41504 of this title for foreign air transportation to the foreign country; and

(2) a foreign air carrier may continue to provide foreign air transportation to the foreign country only if the government or aeronautical authority of the foreign country allows an

air carrier to start or continue foreign air transportation to the foreign country at the prices designated by the Secretary.

(e) STANDARD FOREIGN FARE LEVEL.—(1)(A) In this subsection, “standard foreign fare level” means—

(i) for a class of fares existing on October 1, 1979, the fare between 2 places (as adjusted under subparagraph (B) of this paragraph) filed for and allowed by the Civil Aeronautics Board to go into effect after September 30, 1979, and before August 13, 1980 (with seasonal fares adjusted by the percentage difference that prevailed between seasons in 1978), or the fare established under section 1002(j)(8) of the Federal Aviation Act of 1958 (Public Law 85-726, 72 Stat. 731), as added by section 24(a) of the International Air Transportation Competition Act of 1979 (Public Law 96-192, 94 Stat. 46); or

(ii) for a class of fares established after October 1, 1979, the fare between 2 places in effect on the effective date of the establishment of the new class.

(B) At least once every 60 days for fuel costs, and at least once every 180 days for other costs, the Secretary shall adjust the standard foreign fare level for the particular foreign air transportation to which the standard foreign fare level applies by increasing or decreasing that level by the percentage change from the last previous period in the actual operating cost for each available seat-mile. In adjusting a standard foreign fare level, the Secretary may not make an adjustment to costs actually incurred. In establishing a standard foreign fare level and making adjustments in the level under this paragraph, the Secretary may use all relevant or appropriate information reasonably available to the Secretary.

(2) The Secretary may not decide that a proposed fare for foreign air transportation is unreasonable on the basis that the fare is too low or too high if the proposed fare is neither more than 5 percent higher nor 50 percent lower than the standard foreign fare level for the same or essentially similar class of transportation. The Secretary by regulation may increase the 50 percent specified in this paragraph.

(3) Paragraph (2) of this subsection does not apply to a proposed fare that is not more than—

(A) 5 percent higher than the standard foreign fare level when the Secretary decides that the proposed fare may be unreasonably discriminatory or that suspension of the fare is in the public interest because of an unreasonable regulatory action by the government of a foreign country that is related to a fare proposal of an air carrier; or

(B) 50 percent lower than the standard foreign fare level when the Secretary decides that the proposed fare may be predatory or discriminatory or that suspension of the fare is required because of an unreasonable regulatory action by the government of a foreign country that is related to a fare proposal of an air carrier.

(f) SUBMISSION OF ORDERS TO PRESIDENT.—The Secretary shall submit to the President an order made under this section suspending, canceling,

or rejecting a price for foreign air transportation, and an order rescinding the effectiveness of such an order, before publishing the order. Not later than 10 days after its submission, the President may disapprove the order on finding disapproval is necessary for United States foreign policy or national defense reasons.

(g) COMPLIANCE AS CONDITION OF CERTIFICATE OR PERMIT.—This section and compliance with an order of the Secretary under this section are conditions to any certificate or permit held by an air carrier or foreign air carrier. An air carrier or foreign air carrier may provide foreign air transportation only as long as the carrier maintains prices for that transportation that comply with this section and orders of the Secretary under this section.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 1135.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
41509(a)(1) ..	49 App.:1482(j)(1) (1st sentence words before semicolon, 2d sentence related to tariffs of air carriers and foreign air carriers), (2) (1st sentence words before semicolon, 2d sentence related to tariffs of air carriers and foreign air carriers). 49 App.:1551(b)(1)(E).	Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, §1002(j)(1), (2); added Mar. 22, 1972, Pub. L. 92-259, §3(a), 86 Stat. 96; restated Feb. 15, 1980, Pub. L. 96-192, §§14, 15, 94 Stat. 40. Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, §1601(a)(4)(B) (related to §403(c)(3)), (b) (1)(E); added Oct. 4, 1984, Pub. L. 98-443, §3(c), (e), 98 Stat. 1703, 1704.
41509(a)(2) ..	49 App.:1482(j)(1) (2d sentence related to tariffs of foreign air carriers), (2) (2d sentence related to tariffs of foreign air carriers). 49 App.:1551(b)(1)(E). 49 App.:1482(j)(5).	Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, §1002(j)(5); added Mar. 22, 1972, Pub. L. 92-259, §3(a), 86 Stat. 98; Feb. 15, 1980, Pub. L. 96-192, §16, 94 Stat. 42.
41509(b)	49 App.:1551(b)(1)(E). 49 App.:1373(c)(3). 49 App.:1482(j)(1) (1st sentence words after semicolon, 3d sentence), (2) (1st sentence words after semicolon). 49 App.:1551(a)(4)(B) (related to 49 App.:1373(c)(3)), (b)(1)(E).	Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, §403(c)(3); added Oct. 24, 1978, Pub. L. 95-504, §22, 92 Stat. 1724.
41509(c)(1) ..	49 App.:1482(j)(1) (4th sentence), (2) (3d sentence). 49 App.:1551(b)(1)(E).	
41509(c)(2) ..	49 App.:1482(j)(1) (5th, last sentences).	
41509(c)(3) ..	49 App.:1482(j)(2) (last sentence).	
41509(d)	49 App.:1482(j)(3).	Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, §1002(j)(3), (4); added Mar. 22, 1972, Pub. L. 92-259, §3(a), 86 Stat. 98.
41509(e) (1)(A).	49 App.:1551(b)(1)(E). 49 App.:1482(j)(7).	Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, §1002(j)(6), (7), (9), (10); added Feb. 15, 1980, Pub. L. 96-192, §24(a), 94 Stat. 45, 47.

HISTORICAL AND REVISION NOTES—CONTINUED

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
41509(e) (1)(B).	49 App.:1482(j)(9).	
41509(e)(2), (3).	49 App.:1551(b)(1)(E). 49 App.:1482(j)(6), (10). 49 App.:1551(b)(1)(E).	
41509(f)	49 App.:1461(b).	Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, §801(b); added Mar. 22, 1972, Pub. L. 92-259, §2, 86 Stat. 96.
41509(g)	49 App.:1551(b)(1)(E). 49 App.:1482(j)(4). 49 App.:1551(b)(1)(E).	

In subsection (a)(1) and (2), the words “take action to” are omitted as surplus.

In subsection (a)(1), the words “individual or joint (between air carriers, between foreign air carriers, or between an air carrier or carriers and a foreign air carrier or carriers)” and “and, if it so orders” are omitted as surplus. The words “unreasonable or unreasonably discriminatory” are substituted for “unjust or unreasonable, or unjustly discriminatory, or unduly preferential, or unduly prejudicial” for consistency in the revised title and to eliminate unnecessary words. See the revision notes following 49:10101.

In subsection (a)(3), before clause (A), the words “In deciding whether to cancel or reject a tariff of an air carrier or foreign air carrier under this subsection” are substituted for “In exercising and performing its powers and duties under this subsection with respect to the rejection or cancellation of rates for the carriage of persons or property” for consistency in this section and to eliminate unnecessary words. In clause (B), the words “of persons and property” are omitted as surplus.

In subsection (b)(1), the words “contained in the tariff” are added for clarity.

In subsection (b)(1)(A), the words “such hearing and” are omitted as surplus.

In subsection (b)(1)(B), the words “or in the case of” are omitted as surplus.

In subsection (b)(2), the text of 49 App.:1373(c)(3) is omitted as obsolete. Reference to 49 App.:1482(g) is omitted because 49 App.:1482(g) does not relate to foreign air transportation and 49 App.:1551(a)(5)(D) provides that 49 App.:1482(g) ceased to be in effect on January 1, 1985, except insofar as it related to foreign air transportation. Reference to 49 App.:1482(j) is omitted because it consistently has been interpreted that the minimum notice requirement does not apply to foreign air transportation.

In subsection (b)(3), the words “for periods totaling not more than 365 days after” are substituted for “a period or periods not exceeding 365 days in the aggregate beyond the time when” and “a period or periods not exceeding 365 days in the aggregate from” to eliminate unnecessary words.

In subsection (c)(1), the words “a tariff is suspended pending the outcome of a proceeding under subsection (a) of this section” are added for clarity. The words “and the Secretary does not take final action in the proceeding during the suspension period” are substituted for “the proceeding has not been concluded and an order made within the period of suspension or suspensions” and “the proceeding has not been concluded within the period of suspension or suspensions” to eliminate unnecessary words. The words “or if the Board shall otherwise so direct” are omitted as surplus because under subsection (b)(3) of this section the Secretary may rescind a suspension at any time.

In subsection (c)(2)(A), before clause (i), the words “or suspensions” are omitted because of 1:1. In clause (i), the words “corresponding seasonal” are added for clarity.

In subsection (c)(2)(B) and (3), the words “providing the same transportation” are substituted for “engaged in the same foreign air transportation” for consistency in this chapter and to eliminate unnecessary words.

In subsection (c)(2)(B), the words “of the carrier for the covered transportation” and “during the period of suspension or” are added for clarity.

In subsection (c)(3), the words “If an existing tariff is suspended or canceled” are added for clarity. The words “following cancellation of an existing tariff” are omitted as surplus.

In subsection (d), the word “properly” is omitted as surplus. In clause (1)(A), the words “the operation of” are omitted as surplus. The words “periods totaling not more than 365 days after the date of the suspension” are substituted for “for a period or periods not exceeding three hundred and sixty-five days in the aggregate from the date of such suspension” for clarity and to eliminate unnecessary words. In subclause (B), the words “or suspensions” are omitted because of 1:1. In clause (2), the words “by the Secretary” are added for clarity.

In subsection (e)(1)(B), the words “within 30 days after February 15, 1980” are omitted as executed. The words “as the case may be” are omitted as surplus.

In subsection (e)(2), the text of 49 App.:1482(j)(6)(A) is omitted as expired. The words “with respect to any proposed increase filed with the Board after the 180th day after February 15, 1980” and “with respect to any proposed decrease filed after February 15, 1980” are omitted as obsolete. The words “of persons” are omitted as surplus because a “fare” is only for passengers. The words “The Secretary by regulation may increase the 50 percent specified in this paragraph” are substituted for 49 App.:1482(j)(10) for clarity.

In subsection (e)(3)(A), the words “unreasonably discriminatory” are substituted for “unduly preferential, unduly prejudicial, or unjustly discriminatory” to eliminate unnecessary words and for consistency in the revised title. See the revision notes following 49:10101.

In subsection (g), the words “express” and “now . . . or hereafter issued” are omitted as surplus. The words “may provide foreign air transportation only as long as” are substituted for “shall be a condition to the continuation of the affected service” for clarity.

REFERENCES IN TEXT

Section 1002(j)(8) of the Federal Aviation Act of 1958, referred to in subsec. (e)(1)(A)(i), is section 1002(j)(8) of Pub. L. 85-726, which was classified to section 1482(j)(8) of former Title 49, Transportation, prior to repeal by Pub. L. 103-272, §7(b), July 5, 1994, 108 Stat. 1379.

§ 41510. Required adherence to foreign air transportation tariffs

(a) PROHIBITED ACTIONS BY AIR CARRIERS, FOREIGN AIR CARRIERS, AND TICKET AGENTS.—An air carrier, foreign air carrier, or ticket agent may not—

(1) charge or receive compensation for foreign air transportation that is different from the price specified in the tariff of the carrier that is in effect for that transportation;

(2) refund or remit any part of the price specified in the tariff; or

(3) extend to any person a privilege or facility, related to a matter required by the Secretary of Transportation to be specified in a tariff for foreign air transportation, except as specified in the tariff.

(b) PROHIBITED ACTIONS BY ANY PERSON.—A person may not knowingly—

(1) pay compensation for foreign air transportation of property that is different from the price specified in the tariff in effect for that transportation; or

(2) solicit, accept, or receive—

(A) a refund or remittance of any part of the price specified in the tariff; or

(B) a privilege or facility, related to a matter required by the Secretary to be specified in a tariff for foreign air transportation of property, except as specified in the tariff.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 1138.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
41510(a)	49 App.:1373(b)(1) (1st sentence).	Aug. 23, 1958, Pub. L. 85-726, §403(b)(1) (1st sentence), 72 Stat. 759; restated Jan. 3, 1975, Pub. L. 93-623, §§7(a), 8(a), 88 Stat. 2105.
	49 App.:1551(a)(4)(B) (related to 49 App.:1373(b)(1)), (b)(1)(E).	Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, §1601(a)(4)(B) (related to §403(b)), (b)(1)(E); added Oct. 4, 1984, Pub. L. 98-443, §3(c), (e), 98 Stat. 1703, 1704.
41510(b)	49 App.:1373(b)(2).	Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, §403(b)(2); added Jan. 3, 1975, Pub. L. 93-623, §8(a), 88 Stat. 2105.
	49 App.:1551(a)(4)(B) (related to 49 App.:1373(b)(2)), (b)(1)(E).	

In this section, the words “greater or less” are omitted as being included in “different”. The words “foreign air transportation” are substituted for “air transportation” because 49 App.:1551(a)(4)(B) provides that 49 App.:1373 no longer applies to interstate or overseas air transportation and 49 App.:1376(a)–(e), restated in section 41901 of the revised title, governs prices for the transportation of mail by aircraft. See section 40102(a) of the revised title defining “air transportation” to mean interstate or foreign air transportation or the transportation of mail by aircraft. The words “for any service in connection therewith” are omitted as surplus because the word “transportation” includes any services related to the transportation.

In subsection (a), before clause (1), the words “may not” are substituted for “no . . . shall” and “no . . . shall, in any manner or by any device, directly or indirectly, or through any agent or broker, or otherwise” for clarity and to eliminate unnecessary words. In clause (1), the words “demand or collect” are omitted as being included in “charge or receive”. The words “then currently” are omitted as surplus. In clause (3), the words “tariff for foreign air transportation” are substituted for “such tariffs” for clarity.

In subsection (b), before clause (1), the words “shipper, consignor, consignee, forwarder, broker, or other . . . or any director, officer, agent, or employee thereof” are omitted as surplus. In clause (1), the words “directly or indirectly, by any device or means” and “currently” are omitted as surplus. In clause (2), before subclause (A), the words “in any manner or by any device, directly or indirectly, through any agent or broker, or otherwise” are omitted as surplus. In subclause (B), the word “favor” is omitted as surplus.

§ 41511. Special prices for foreign air transportation

(a) FREE AND REDUCED PRICING.—This chapter does not prohibit an air carrier or foreign air carrier, under terms the Secretary of Transportation prescribes, from issuing or interchanging tickets or passes for free or reduced-price foreign air transportation to or for the following:

(1) a director, officer, or employee of the carrier (including a retired director, officer, or employee who is receiving retirement benefits from an air carrier or foreign air carrier).

(2) a parent or the immediate family of such an officer or employee or the immediate family of such a director.