

Type 2 CEs to determine if the environmental review met Federal requirements. The team also reviewed 422 fiscal project authorization files to determine if NEPA was completed for these projects prior to the authorization.

*Non-Compliance Observation #1: Some FDOT Project Files Contain Insufficient Documentation To Support the Project Authorization, Environmental Analysis, or Environmental Decision*

The team found some CEs that did not have a Statewide Transportation Improvement Program (STIP) page or had an outdated STIP page (10 projects) in their documentation for fiscal constraint. The team also found that some fiscal project authorizations did not have documentation verifying that NEPA was completed (11 projects). FDOT has already updated the SWEPT System by uploading any missing documentation. In addition, FDOT committed to making process improvements to address any remaining concerns.

While the SWEPT system has validation control points in place, there are still opportunities for additional enhancements regarding quality assurance to ensure these documents are included in all project files. It is FHWA's expectation that documentation to support a project's decision will be included in the SWEPT system prior to project close out.

**Update From Previous Audit Findings**

The FHWA reported a non-compliance observation related to some FDOT project files that lacked documentation to support the environmental analysis or decision as part of Audit #1, Audit #2, and Audit #3. Also, as part of Audit #3, FHWA identified the lack of documentation to support the project authorization. The FDOT and FHWA have productively worked together to resolve documentation issues from these previous audits. The FDOT implemented several process improvements to address noted procedural deficiencies.

*2017 Audit #1, Non-Compliance Observation #1 and 2018 Audit #2, Non-Compliance Observation #1: Some FDOT Project Files Contain Insufficient Documentation To Support the Environmental Analysis or Decision*

To address the 2017 and 2018 findings, FDOT implemented enhancements to SWEPT including revisions to the Type 1 CE checklist, the Type 2 CE form, and the reevaluation form. They added STIP/TIP planning consistency uploading instructions,

added validation for data within the Type 1 CE checklist for ROW, wetlands, floodplains, and waterways, added an attachment point for the project commitment record in the Type 1 CE checklist, allowed multiple attachments for Section 7 ESA concurrence letters, integrated Section 4(f) approvals for applicable classes of action, and developed a spreadsheet tool for the project managers to verify which documents need to be uploaded to the project file. The FDOT also updated the PD&E manual, conducted training for their staff on the SWEPT and PD&E manual enhancements and on the areas of noted deficiencies. The FDOT also developed computer based training in some of these areas for future use.

*2019 Audit #3, Non-Compliance Observation #1: Some FDOT Project Files Contain Insufficient Documentation To Support the Project Authorization, Environmental Analysis or Decision*

To address the 2019 findings, FDOT implemented enhancements to SWEPT by adding validation for data within the Type 1 CE checklist for bridge permits. The FDOT also updated the PD&E manual, conducted training for their staff on the SWEPT, and made PD&E manual enhancements in the noted deficiency areas. The FDOT also developed computer based training for class of actions, CEs, and environmental assessments.

The improvements made in response to the 2017, 2018, and 2019 observations were assessed during this final audit and are considered sufficient to address the issues underlying the non-compliance observations in those audits.

**Finalizing This Report**

The FHWA provided a draft of the audit report to FDOT for a 14-day review and comment period. The team considered FDOT's comments in this draft audit report. The FHWA is publishing this notice in the **Federal Register** for a 30-day comment period in accordance with 23 U.S.C. 327(g). No later than 60 days after the close of the comment period, FHWA will address all comments submitted to finalize this draft audit report pursuant to 23 U.S.C. 327(g)(2)(B). Subsequently, FHWA will publish the final audit report in the **Federal Register**.

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**DEPARTMENT OF TRANSPORTATION**

[DOCKET: DOT-OST-2013-0074]

**Agency Information Collection; Activity Under OMB Review: Foreign Air Carrier Application for Statement of Authorization, ICR-2106-0035**

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

**ACTION:** Notice and request for comments; Request OMB Clearance for extension of a currently approved information collection, Foreign Air Carrier Application for Statement of Authorization.

**SUMMARY:** In compliance with the Paperwork Reduction Act, this notice announces that the Information Collection Request, abstracted below, is being forwarded to the Office of Management and Budget for extension of approval of currently approved ICR-2106-0036, Foreign Air Carrier Application for Statement of Authorization. Earlier, a **Federal Register** Notice with a 60-day comment period was published on August 12, 2022. The agency received one comment from Bakersfield College—Britain Cambridge State University stating, "Thank you".

**DATES:** Written comments should be submitted by January 8, 2023.

**ADDRESSES:** Comments should be sent to OMB at the address that appears below and should identify the associated OMB Approval Number 2106-0035 and Docket DOT-OST-2013-0074.

**FOR FURTHER INFORMATION CONTACT:** Darren Jaffe, (202) 366-2512, Office of International Aviation, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W86-441, Washington, DC 20590. Office hours are from 9 a.m. to 5:30 p.m., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

*OMB Approval No.:* 2106-0035.

*Title:* Foreign Air Carrier Application for Statement of Authorization.

*Form No.:* Form OST 4540.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Foreign Air Carriers.

*Number of Respondents:* approximately 100.

*Estimated Time per Response:* 2.25 hours per application.

*Total Annual Burden:* 1,000 hours.

*Abstract:* Applicants use Form OST 4540 to request statements of authorization to conduct numerous types of operations authorized under Title 14, CFR part 212. The form requires basic information regarding the carrier(s) conducting the operation, the

party filing the form, the operations being conducted, the number of third- and fourth-freedom flights conducted in the last twelve-month period, and certification of reciprocity from the carrier's homeland government. DOT analysts will use the information collected to determine if applications for fifth-freedom operations meet the public interest requirements necessary to authorize such applications.

**Burden Statement:** We estimate that the industry-wide total hour burden for this collection to be approximately 1,000 hours or approximately 2.25 hours per application. Conservatively, we estimate the compilation of background information will require 1.75 hours, and the completion and submission of OST Form 4540 will require thirty (30) minutes. Reporting the number of third- and fourth-freedom operations conducted by an applicant carrier will require collection of flight data, and detailed analysis to determine which flights conducted by the carrier are third- and fourth-freedom. Applicants should be able to use data collected for the Department's T-100 program to provide this information (under this program, carriers are required periodically to compile and report certain traffic data to the Department, as more fully described in the Docket referenced in footnote 1 below). The Bureau of Transportation Statistics (BTS) provide carriers with a computer program that allows them to compile and monitor, among other things, flight origin and destination data, to be used in making the carriers' T-100 submissions.<sup>1</sup>

We estimated that carriers will require 1.25 hours per application<sup>2</sup> to compile and analyze the data necessary to disclose the number of third- and fourth-freedom flights conducted within the twelve-month period preceding the filing of an application.

Foreign carriers will also have to provide evidence that their homeland government will afford reciprocity to U.S. carriers seeking authority for the similar fifth-, sixth- and seventh-freedom operations. Carriers may cite

certifications submitted by carriers from the same homeland if that homeland issued such certification within the preceding six-month period.

Approximately 100 carriers from roughly 30 distinct homelands use OST Form 4540 to apply for statements of authorization annually. We estimate that one foreign carrier from any given homeland will expend roughly 4 hours every six-months to obtain certification from its homeland governments.<sup>3</sup>

We have apportioned 30 minutes to each application to account for the time required to obtain certifications from homeland governments.

We have no empirical data to indicate how much time is required for a person to complete OST Form 4540; however, anecdotal evidence reveals that respondents spend thirty (30) minutes or less completing the form and brief justification. In some cases, respondents spend a limited amount of time, less than ten (10) minutes, reviewing the form before sending it via facsimile or email to the Department. In the interest of providing a conservative estimate so as to not understate the burden hours, we estimate the hour burden for completing OST Form 4540 as thirty (30) minutes.

Issued in Washington, DC on December 8, 2022.

**Benjamin J. Taylor,**

*Director, Office of International Aviation.*

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## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

[Docket No. DOT-OST-2022-0119]

### Notice of Rights and Protections Available Under the Federal Antidiscrimination and Whistleblower Protection Laws

**AGENCY:** Office of the Secretary, Department of Transportation.

**ACTION:** No FEAR Act notice.

**SUMMARY:** This notice implements the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act of 2002). In doing so, the Department of Transportation notifies all employees, former employees, and applicants for Federal employment of the rights and protections available to them under the

Federal Anti-discrimination and Whistleblower Protection Laws.

### FOR FURTHER INFORMATION CONTACT:

Yvette Rivera, Associate Director, Equity and Access Division (S-32), Departmental Office of Civil Rights, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W78-306, Washington, DC 20590, 202-366-5131 or by email at [Yvette.Rivera@dot.gov](mailto:Yvette.Rivera@dot.gov).

### SUPPLEMENTARY INFORMATION:

#### Electronic Access

You may retrieve this document online through the Federal Document Management System at <http://www.regulations.gov>. Electronic retrieval instructions are available under the help section of the website.

#### No FEAR Act Notice

On May 15, 2002, Congress enacted the "Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002," now recognized as the No FEAR Act (Pub. L. 107-174). The No FEAR Act was amended on January 1, 2021, by the "Elijah E. Cummings Federal Employee Antidiscrimination Act of 2020" [further strengthening accountability for violations of federal civil rights laws]. One purpose of the No FEAR Act is to "require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws." (Pub. L. 107-174, Summary). In support of this purpose, Congress found that "agencies cannot be run effectively if those agencies practice or tolerate discrimination." (Pub. L. 107-174, Title I, General Provisions, section 101(1)). The No FEAR Act also requires the United States Department of Transportation (USDOT) to issue this Notice to all USDOT employees, former USDOT employees, and applicants for USDOT employment. This Notice informs such individuals of the rights and protections available under Federal antidiscrimination and whistleblower protection laws.

#### Antidiscrimination Laws

A Federal agency cannot discriminate against an employee, former employee or applicant with respect to the terms, conditions, or privileges of employment because of race, color, religion, sex (including gender identity and sexual orientation), national origin, age, disability, marital status, genetic information, political affiliation, or in retaliation for a protected activity. One or more of the following statutes prohibit discrimination on these bases: 5 U.S.C. 2302(b)(1), 29 U.S.C. 631, 29 U.S.C. 633a, 29 U.S.C. 206(d), 29 U.S.C. 791, 42 U.S.C. 2000e-16 and 2000ff.

<sup>1</sup> The rule-making associated with the T-100 program can be found on the Federal Docket Management System (FDMS) at <https://www.regulations.gov>, in Docket DOT-OST-1998-4043. Information regarding burden hours is on file in the Office of Aviation Analysis (X-50).

<sup>2</sup> The Office of Aviation Analysis (X-50) estimated that small-carriers would require 1 burden hour per report, and large carriers would require 3 burden hours per report to analyze and report T-100 program data. Considering that the data required in this information collection can be derived from data already collected, we have taken an average of the estimated time required, and conservatively shortened the time by 45 minutes because no new data entry will be required.

<sup>3</sup> Calculation: (4 burden hours per application) × (30 foreign homelands) × (2 requests per year) = 240 annual burden hours. Apportioning 240 annual burden hours equally among an average of 430 applications annually = approximately 30 burden minutes per application.