

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### 14 CFR Part 399

[Docket No. OST-96-1505]

RIN 2105-AB39

#### Withdrawal of Proposed Rulemaking Action; Statement of Enforcement Policy on Rebating

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

**ACTION:** Withdrawal of notice of proposed rulemaking.

**SUMMARY:** This document withdraws an Office of the Secretary (OST) notice of proposed rulemaking (NPRM), which has been superseded by various changes that make the proposed action no longer necessary.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Abdul-Wali, Office of the General Counsel, 400 Seventh Street, SW., Washington, DC 20590; (202) 366-4723; fax: (202) 366-9313; E-mail: [Jennifer.Abdul-Wali@ost.dot.gov](mailto:Jennifer.Abdul-Wali@ost.dot.gov).

**ADDRESSES:** You may obtain a copy of this document from the DOT public docket through the Internet at <http://dms.dot.gov>, docket number OST-96-1505. If you do not have access to the Internet, you may obtain a copy of the notice by United States mail from the Docket Management System, U.S. Department of Transportation, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590. You must identify docket number OST-02-13179 and request a copy of the document entitled "Withdrawal of Proposed Rulemaking Actions."

You may also review the public docket in person in the Docket office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket office is on the plaza level of the Department of Transportation. Additionally, you can also get a copy of this document from the **Federal Register** Web site at <http://www.gpo.gov>.

**SUPPLEMENTARY INFORMATION:** Airlines are required by 49 U.S.C. § 41510, formerly section 403 of the Federal Aviation Act, to file tariffs with the Department that state their passenger fares, cargo rates, and associated charges in foreign air transportation. Under these requirements, it is unlawful for a carrier or ticket agent to charge a purchaser of foreign air transportation any amount other than that stated in their tariff. This prohibition also applies to cargo agents, as well as any other intermediaries providing for the carriage of passengers or cargo. The prohibition applies not only to overcharges, but also to undercharges, including what are commonly known as rebates. For example, a literal reading of the statute would prohibit a travel agent from sharing its commission on international tickets with the purchaser.

Subsequent to the enactment of Section 41510, the Airline Deregulation Act of 1978 was enacted. It resulted in direct competition among air carriers instead of governmental determination of fares and services. Following deregulation, the Department and its predecessor, the Civil Aeronautics Board, exercised prosecutorial discretion in pursuing matters relating to the rebating requirements of the Act. The Department's goals were to encourage competition and encourage low fares for consumers. As a way of reaching these goals, the Department asserted its discretion by pursuing sanctions for rebating only in instances of fraud, invidious discrimination, or conduct that would violate the antitrust laws.

On October 21, 1988, the Department issued an NPRM entitled "Statement of Enforcement Policy on Rebating" (OST Docket No. 45884; 53 FR 41353). The NPRM was in response to concerns raised by travel agents concerning the rebating of international airline prices. The NPRM proposed to establish an enforcement policy concerning the rebating of international airline prices.

The Department received various comments in response to the NPRM. Travel agents complained that, by obeying the law, they were losing business to competitors who ignored it. Other nations said that the Department should enforce the prohibition against rebating more rigorously.

Since publication of the NPRM, many conditions in the airline industry

related to rebating have changed. The United States has increasingly negotiated with success for liberal pricing regimes in our bilateral agreements with foreign nations. As a result, in July of 1999, the Department adopted 14 CFR part 293, International Passenger Transportation, a rule that effectively exempts all United States and most foreign carriers (1) from filing any tariffs for travel to and from countries with which the United States has agreements in force that contain double-disapproval pricing rules and (2) from filing tariffs for all but normal economy fares for travel to and from countries without double-disapproval pricing regimes that in practice give carriers unfettered pricing discretion. Additionally, current practice for many air carriers is not to pay a base commission for transportation originating in the United States.

For the reasons outlined above, the Department believes that the proposed enforcement policy is no longer necessary and is withdrawing the 1988 NPRM.

Issued in Washington, DC on November 26, 2002.

**Norman Y. Mineta,**

*Secretary of Transportation.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

RIN 1018-AI45

#### Endangered and Threatened Wildlife and Plants; Threatened Status and Special Regulation for the Mountain Plover

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; notice of new information and reopening of the comment period.

**SUMMARY:** We, the Fish and Wildlife Service (Service), are reopening the comment period for our proposal to list the mountain plover (*Charadrius montanus*) as a threatened species. The proposed listing action was published in the **Federal Register** on February 16, 1999 (64 FR 7587), and new information