



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

**PASSENGER, THIRD-PARTY, AND PROPERTY LIABILITY INSURANCE
COVERAGE FOR U.S. AND FOREIGN AIR CARRIERS – NON-APPROVAL
OF EXCLUSIONS RELATED TO THE YEAR 2000 PROBLEM**

NOTICE

We face a challenge in the Year 2000 (Y2K) computer problem that, if unmet, could pose risks to the public and disrupt the flow of commerce. Addressing the Y2K problem is a top priority for the U.S. Department of Transportation.

While transportation operations are typically the responsibility of the private sector, ensuring their safe, smooth functioning is a matter of national concern and the Department is taking steps to assist our partners. Department officials have met with industry associations and businesses in every sector, and have held industry-wide forums to address the issue. We will continue to work with carriers to address Y2K problems; however, we wish to make clear that carriers must continue to comply with existing requirements while addressing Y2K problems.

Department regulations require airlines to provide a minimum level of insurance coverage for passenger, third-party, and property liability resulting from an accident. 14 CFR Part 205. It has come to our attention that some aviation insurers wish to write into airline insurance policies an exclusionary clause that would exclude all liability for damages related to the Y2K problem. No Y2K insurance exclusion has been approved by the Department.¹

Pursuant to Part 205, all direct air carriers and foreign air carriers, including U.S. commuters and air taxis (14 CFR 298.2) as well as Canadian charter air taxi

¹ The same endorsements that contain the Y2K exclusionary clauses of which we are aware also propose to eliminate coverage for claims arising from computer-related problems in connection with “any other change in time, date, or year,” including the reset of the Global Positioning Satellite system that will occur on August 21-22, 1999. As with the Y2K exclusion, the Department has not approved any such exclusion.

operators (14 CFR 294.2(c)), are required to carry minimum "aircraft accident liability insurance coverage" for "bodily injury to or death of aircraft passengers" as well as "persons, including non-employee cargo attendants, other than passengers, and for damage to property." Each carrier must file a certificate of insurance with the Department, signed by an authorized representative of the insurer or insurance broker, stating that the carrier has in effect insurance coverage meeting the requirements of Part 205. Minimum coverage amounts depend on the class of carrier and aircraft size.

Section 205.6 of the Department's regulations, 14 CFR 205.6, prohibits the effectiveness of any liability insurance policy exclusion not specifically approved by the Department. The Department and the Civil Aeronautics Board before it have permitted exclusions from liability coverage only in a very limited number of circumstances. These exclusions cover, in essence, the following risks:

- (1) War and insurrection;
- (2) Noise, pollution, and other effects not caused by a "crash, fire, explosion, or collision, or a recorded in-flight emergency causing abnormal aircraft operation" [an accident];
- (3) Nuclear risks;
- (4) Damages incurred by an employee arising out of and in the course of his/her employment; and
- (5) Injury to property owned, leased, occupied or used by the insured.

The Department recently established a public docket, OST-99-5051, that contains correspondence regarding exclusions requested in the past, including those described above. All future correspondence regarding requests for exclusions will also be placed in the docket, which can be accessed through the Internet at <http://dms.dot.gov>. You should be aware that, although the Department may not have permitted a particular exclusion, section 205.6 also specifically provides that insurers retain the right to recover from carriers any amounts paid under the policy. For example, although an insurer may be obligated to make payments to claimants because the regulations require a particular coverage, the regulations would not prohibit a provision in a policy requiring a carrier to reimburse an insurer for Y2K-related claims where the carrier has failed to satisfy the insurer that it has in place a program to become Y2K compliant.

Any carrier operating with a Y2K exclusion in place covering passenger, third party, or property liability for aircraft accidents would not be in compliance with the insurance requirements contained in Part 205. All U.S. carriers should be aware that, under 49 U.S.C. 41112(a), any certificate to provide air transportation ceases to be effective if an air carrier fails to comply with Part 205. This condition is also specifically made a part of the operating certificate of each U.S. carrier. Likewise, pursuant to 14 CFR 298.37 air taxis and commuter air carriers

are prohibited from conducting operations not properly covered under Part 205. In addition, all foreign air carriers should be aware that all permit and exemption authority of foreign air carriers is also specifically conditioned on compliance with Part 205. Consequently, any operations performed without lawful insurance coverage as required by Part 205 would be unauthorized.

The Department has been approached by a major aviation industry insurer requesting approval of its Y2K exclusion. In addition, other major insurers have attempted to impose such an exclusion on carriers without first seeking Department approval of the exclusion. The exclusions of which we are aware would involve immediate imposition of a Y2K exclusion, with the insured carrier given the right to obtain a limited "write-back" of coverage, provided it demonstrates adequate Y2K compliance or planning to the insurer's satisfaction. The write-back coverage would be designed to meet Part 205 requirements. We urge carriers that have not done so to implement programs to ensure that they will achieve timely Y2K compliance and to work with their insurers to ensure that there is no lapse in required coverage. **We wish to make clear, however, that the Department has not approved any insurance arrangement for Y2K-related problems that does not provide continuous coverage meeting the minimum coverage requirements set forth in Part 205.**

Certain insurers have assured us they recognize that, in the absence of Department approval, any Y2K exclusion written into the policies of their particular airline clients will not be applicable to the minimum liability requirements of Part 205. However, we are concerned that other carriers may have had Y2K exclusions written into their liability policies by insurers with different views and that such carriers may not yet have obtained coverage meeting the requirements of Part 205 under a "write-back" clause, or otherwise. Any carrier operating without the liability coverage required by part 205, including coverage for Y2K-related problems, is subject to immediate enforcement action, which could include civil penalties assessed under 49 U.S.C. 46301 and action against its operating authority. Section 46301 provides for civil penalties of \$1,100 per violation and, in the case of a continuing violation, \$1,100 per day for each day each violation continues. In addition, carriers and their responsible officials should be aware that 49 U.S.C 46316 provides for criminal penalties in the event of knowing and willful violations of the Department's regulations and Title 49.

This notice is not concerned with Y2K exclusions from insurance coverage not included in the minimum passenger, third-party, or property liability limits set forth in 14 CFR Part 205, such as loss of business by an airline or other liability not resulting directly from operation of an aircraft.

If you have any questions, you may contact Dayton Lehman, Deputy Assistant General Counsel, Office of Aviation Enforcement and Proceedings, on 202-366-9342.

By:

Nancy E. McFadden
General Counsel

Dated: April 19, 1999

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<http://dms.dot.gov>